



An
Bord
Pleanála

Inspector's Report

ABP-306156-19

Development	Point of detail regarding financial contribution condition no. 14 of FW16A/0134
Location	Warrenstown House, Blanchardstown Road North, Blanchardstown, Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW16A/0134
An Bord Pleanála Reg. Ref.	PL06F.249341
Bord Decision	Grant Permission
Referral	
Referrer	Shuhada Foundation of Ireland
Referral Type	Point of Detail Referral
Applicant for Declaration	Shuhada Foundation of Ireland
Owner/Occupier	Shuhada Foundation of Ireland
Observer(s)	None
Date of Site Inspection	Not Required
Inspector	Angela Brereton

1.0 Introduction

- 1.1. This case is a referral under section 34(5) of the Planning and Development Act 2000, (as amended) requesting a determination on the appropriate implementation of a point of detail relating to Condition 14 (relative to the payment of a Bond). The Council's permission register reference FW16/0134 was subsequently the subject of an appeal to the Board reference PL06F.249341 refers. The proposed development was granted permission subject to conditions by the Board and this referral concerns a point of detail relative to Condition no. 14 of the Board's determination.

2.0 Site Location and Description

- 2.1. The appeal site is located in Blanchardstown on the W side of Dublin. It is located 1.5km to the N of Blanchardstown Shopping Centre, along Blanchardstown Road North (R121) and to the W of a roundabout junction. The surrounding area is mixed use in character and it comprises a range of residential, educational, religious and employment uses. The site is bound to the N and W by the Blanchardstown Institute of Technology and to the S and SW by the Kingdom Hall of Jehovah's Witnesses and Riversdale Community College. There is an area of landscaped public open space located between the S site boundary and Blanchardstown Road North. The wider area to the S and SW is characterised by 2-storey houses whilst there are commercial uses to the N and NE.
- 2.2. The c.1.17ha appeal site has been occupied by the former Warrenstown House, a 2-storey, double fronted, period property that had been extended to the side and rear. This building was previously used by the HSE and subsequently as a Mosque with a residential unit at first floor level.
- 2.3. Please note this Site Description has been noted in the parent application Ref. PL06F.249341. Photographs & maps as per that application, described the site & surroundings in more detail.

3.0 Planning History

- 3.1. The Planner's Report relevant to the most recent planning decision on this site sets out the planning history of the site. The following is the most relevant:

- Reg.Ref. FW16A/0134 - Planning permission granted by the Council and subsequently subject to conditions by the Board in Ref. PL06F.249341 for a mixed use community/educational development including a mosque, community centre and primary school, associated parking and works. The proposal includes provision for upgrades to the vehicular and pedestrian access off Blanchardstown Road North, all at Warrenstown House, Blanchardstown Road North, Blanchardstown, Dublin as amended by the further public notice received by the PA on the 14th day of August, 2017.

4.0 Background

- 4.1. Regard is had to the planning permission granted by the Council Reg.Ref. FW16A/0134 refers and subsequently granted subject to conditions by the Board permission Ref. PL06F.249341 refers. Permission was granted to the Shuhada Foundation of Ireland, for the construction of a mosque, primary school and community centre on their site at Warrenstown House, Blanchardstown. It is noted that as part of the development, and at the request of the Council, they were to widen the public road (Blanchardstown Road North) to create a right turning lane for access to the development, and to upgrade the existing access road.
- 4.2. Their query relative to the point of detail concerns Condition no.14 of the Board's permission i.e.:

Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: *To ensure the satisfactory completion of the development.*

5.0 Referral

5.1. The Referrer, Doherty Finegan Kelly, Consulting Civil & Structural Engineers have submitted a Point of Detail Referral on behalf of The Shuhada Foundation of Ireland. They provide a sequence of events and these can be summarised as follows:

- Condition no. 14 states that the form and amount of the security shall be agreed between the planning authority and the developer or, in default of agreement it shall be referred to the Board for determination. They consider that the need for a bond in such a case is very unusual.
- It was assumed at the time that this bond was to cover the external road works etc – they had to widen the public road to install a right turning lane. The development within the site is all for their own use and they will not be selling on any part of the development.
- In May 2018 Fingal County Council (FCC) issued a Noting Order recommending that this bond be set at €12,936. This was the same amount as the contribution levy stipulated in the original FCC grant of permission.
- In August they issued an amendment to the Noting Order, stating that an error had been made and that they were now recommending a bond amount of €50,000 – Attachment A refers.
- They provide that works on the external road widening were due to commence as phase 1 of the works. In order to work on the public road a road opening licence was required. A non-refundable fee and a refundable bond were required as part of the licence agreement. FCC initially set these amounts as €22,070 fee and €66,468 (bond) i.e €88,538 in total. This was for a project with a construction cost of c. €250,000. They refer to document B attached.
- They expressed their disagreement to FCC engineers dealing with the road opening licence and it is their opinion that there is a duplication of bonds between the bond required under Condition no. 14 of the planning permission and that required in connection with the road opening licence.

- FCC issued revised costs associated with this road opening licence were as follows: (i) a refundable bond of €18,000, and (ii) non-refundable fees of €6,250. They provide that these bonds and fees have already been paid to FCC. - document G refers.
- They note various correspondence with the Council and provide documentation in appendices A – G relative to their querying the amount and duplication of the bonds.
- They note that while they have written to FCC expressing their disagreement and requesting an appropriate bond amount, the Council are still seeking a bond of €50,000 under Condition no. 14 of the ABP decision.

5.2. Planning Authority Response

The Planning Authority Response can be summarised as follows:

- They attach copies of internal FCC emails and some email correspondence with Doherty Finegan Kelly in which the agent clearly states that the applicant/agent accepts the Planning & Strategic Infrastructure Bond of €50,000 and requests that the Road Opening Licence is reviewed.
- Attached internal email correspondence outlines that the Road Opening Licence charges were substantially reduced taking into account the works to be carried out and the Planning & Strategic Bond of €50,000 in place. They provide that the applicant/agent accepted the reduction in Road Opening Licence fees on that basis.
- They note that correspondence submitted to the Board clarifies the difference between the road opening licence fees and the Planning & Strategic Infrastructure Bond of €50,000. This stated that FCC does not recommend any reduction on the €50,000 bond.
- They provide details of the bonds that are in place and include a number of attachments relative to previous correspondence.

5.3. Referrer's Response

Two separate responses have been submitted by the Referrer dated the 13th of February 2020 and the 7th of April 2020. These include the following:

- They note that their client initially accepted the €50,000 bond amount. That was the case until he saw the additional bond being sought as part of the road opening licence.
- They have regard to Condition no. 14 and note that a separate bond was being required for works to the public road. This bond amount was originally set at €66,648 and was later reduced to €18,000.
- In their response to the Board dated 23rd of January 2020, FCC state that the €50,000 bond is for the satisfactory completion of works to the *public area*. They take this to mean the works outside of the site on the public roads etc. That being the case they believe that there is a double charge for the same works. They also believe that the amount of €18,000 is more appropriate than €50,000.
- The development within the site is for the use of the Shuhada Foundation and they will not be selling on any part of the development. Therefore, it will be in their interest to complete all the external works within their site to a satisfactory level and they consider the need for a bond in such a case would be very unusual.
- They provide that it would be a different matter, for example, if it were for a residential development where units were being sold to third parties, in which case the bond might be required to protect their interest. This would be particularly the case if the roads etc, were to be taken in charge, which will not be the case in this development.
- In summary they believe that the bond of €18,000 is sufficient to cover the works external to the site and that there should be no need for a bond to cover the works internally on site.
- In their later submission they consider that the scheme for which planning permission was granted is too ambitious and that it will not be possible for them to raise sufficient funds to complete it. They provide that they now intend

to submit a new application for a simpler revised scheme, which will cost less and for which they will be able to raise funding for.

- In the meanwhile, they provide that works on upgrading the public road to insert a right turning lane at the entrance have been completed, and work on upgrading the access road is well advanced.
- Part of the works still to be completed on the access road in connection with the foul sewer and surface water drainage to public sewer and drainage systems. They provide that Irish Water will not deal with their application for the sewer connection until the issue of the bond payment has been resolved. Likewise, the Council will not deal with the connection to the surface water drainage.
- They would like to complete works on site, ceased due to the coronavirus as soon as the contractors are permitted to return. They would appreciate if the Board could adjudicate on the matter concerning the bond payment as soon as possible.

6.0 Policy Context

6.1. Fingal County Development Plan 2017-2023

Chapter 7 refers to Movement and Infrastructure. Section 7.1 includes reference to Section 48 and 49 Levies and notes: *Financial contributions will be sought as part of the development management process for certain development under the provisions of Section 48 and Section 49 of the Planning and Development Act, 2000 (as amended). Section 48 (general) schemes relate to proposed provision of public infrastructure and facilities which benefit development within the area of the Planning Authority, and are applied as a general levy on development.*

Objective MT44 seeks to: *Utilise, where appropriate, the provisions of Section 48 and 49 of the Planning and Development Act, 2000 (as amended) to generate financial contributions towards the capital costs of providing local and strategic transport infrastructure, services or projects in the County. This will be done in conjunction with adjoining Local Authorities where appropriate.*

Chapter 11 refers to the Land Use Zoning Objectives. The subject site is located within an area covered by the C1 zoning objective which seeks to: Provide for and protect civic, religious, community, education, health care and social infrastructure. All of the proposed uses are Permitted in Principle except for the retail uses which are Not Permitted.

6.2. Natural Heritage Designations

The Rye Valley/Carton cSAC (Code:001398) is located 8km to the SW of the site.

6.3. Relevant Legislation and Guidelines

Planning and Development Act 2000 (as amended). Under Section 34 (1) where (a) an application is made to a planning Authority in accordance with permission regulations for permission for the development of land, and (b) all requirements of the regulations are complied with, the authority may decide to grant the permission subject to or without conditions, or to refuse it.

Section 34(5) states that ‘...the conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination.’

6.4. Development Management Guidelines 2007

Section 7.13 relates to Conditions requiring security for completion: *It is essential that permissions for residential development are subject to a condition under which an acceptable security is provided by way of bond, cash deposit or otherwise so as to secure its satisfactory completion. The amount of the security, and the terms on which it is required to be given, should enable the planning authority, without cost to themselves, to complete the necessary services (including roads, footpaths, water mains, sewers, lighting and open space) to a satisfactory standard in the event of default by the developer. The condition should require that the lodgement of the security should be coupled with an agreement that would empower the planning authority to realise the amount of the security at an appropriate time and apply it to meet the cost of completing the specified works. Planning authorities should also*

ensure that the bond is of sufficient duration to allow them time to inspect the development after the expiration of permission and still call in the bond if necessary. A security condition could also provide for the recalculation of the amount specified in the condition by reference to the House Building Cost Index (or other appropriate Index) if the development to which the permission relates is not commenced within a specified period after the granting of the permission. The bond should be refunded on satisfactory completion of the development.

6.5. Fingal County Council Development Contributions Scheme 2016-2020

Regard is had to the Section 48 General Contributions Scheme and to the public infrastructure and facilities included and basis for determination of contribution.

Section 10 provides the Exemptions and Reductions. Section 10(i) provides a number of categories of development (a) – (r) will be exempted from the requirement to pay development contributions under the scheme or subject to reductions. This includes the following relevant categories which will be exempted i.e:

(c) Developments by organisations including registered charities having exemption from income tax and corporation tax under Section 207 of the Taxes Consolidation Act 1997 and currently holding an exemption certificate from the Revenue Commissioners. The development must be exclusively for the primary purpose of the organisation.

(e) Non – commercial community related developments by voluntary non-profit making groups, clubs or organizations.

7.0 The Assessment

7.1. Regard to Point of Detail Referral

- 7.1.1. Prior to addressing the issues arising, I note that this case is a point of detail referral under section 34(5) of the Planning and Development Act 2000, as amended, and not an appeal under section 48(10). The wording of S.48(10)(b) of the 2000 Act states that *‘an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the Planning authority’*. The

wording of this section is restrictive in so far as it limits consideration of such appeals to the application of the terms of the adopted development contribution scheme and the powers of the Board to consider other matters.

7.1.2. Section 34(5) of the Planning and Development Act 2000(as amended) is relevant to the issue of consideration of a point of detail. It states that *“the conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination”*.

7.1.3. Regard is had to the Board decision Ref. PL06F.249341. As per Section 7.8 of the Inspector’s Report it was noted that as the development is by the Shuhada Foundation, *a non- profit Registered Charity (CHY-18219), that the occupant of the residential unit will be a trustee of the Foundation who will also be the caretaker for the overall development, and that the unit will be exclusively used for the primary purpose of the organisation*. Therefore, based on the Exemptions provided in Section 10(i), (c) and (e) of the Fingal County Development Contributions Scheme 2016-2020 it was concluded that development contributions were not applicable for this proposed development and had then been incorrectly applied.

7.1.4. The point of detail arising from Condition no. 14 of Ref. PL06F.249341 relates in this case, to the lodgement and amount of a bond and this is applicable as noted in Section 7.13 of the Development Management Guidelines above relative to *Conditions requiring security for completion*. Section 34(4)(g) of the Planning & Development Act 2000 (as amended) relates i.e *Conditions for the satisfactory completion of the proposed development*. Regard is had to the submission made on behalf of the Referrer, that as per this condition the form and amount of the security has not been agreed between the planning authority and the developer and so in default of this agreement it is being referred to the Board for determination.

7.2. The Referrer’s Case

7.2.1. This has been noted in the Referral Section above. It is provided that the Shuhada Development Foundation (mosque, school and community centre) will be the owner

of the development. They had assumed that the bond required under the planning permission was to cover the works on the public road including the road opening licence and provide that if this is the case, then there would appear to be a duplication of the bonds. As noted in the Referral Section above, they include a sequence (timeline) of events and correspondence with the Council relative to costings and variations in these.

7.2.2. In any case, they consider that there is some confusion and lack of clarity and do not agree with the amount of €50,000 being sought for the planning bond under Condition no.14. They note that the Shuhada Foundation of Ireland is a charity. They are raising all the funding for this development themselves (including the school) without receiving any state funding and that this is a private development that will not be taken in charge. They do not agree with the €50,000 bond being sought relative to the charitable status.

7.2.3. They are concerned about double charging and believe that the amount of €18,000 as required for the road opening licence is more appropriate than €50,000. They consider that the bond of €18,000 is sufficient to cover the works external to the site and that there is no need to cover the works internally on the site. Accordingly, they request the Board to determine an appropriate amount for this planning bond, if indeed any bond is required over and above the road licence bond which has already been paid.

7.3. **Regard to the Planning Authority's Case**

7.3.1. They have regard to correspondence and documentation on file and provide that attached internal email correspondence outlines that the Road Opening Licence charges were substantially reduced taking into account the works to be carried out and the Planning & Strategic Infrastructure Bond of €50,000 in place.

7.3.2. They provide that the bonds in place for this development are as follows:

1. Planning & Strategic Infrastructure Bond of €50,000 – fully refundable subject to satisfactory completion of works affecting the public area.
2. Tree Bond of €20,000 – fully refundable subject to compliance with Condition 15 of Board Order Ref. PL06F.249341.

3. Road Opening Licence charges - €18,000 fully refundable subject to the satisfactory completion and reinstatement of the public roadway and works area, and €6,250 non-refundable fee.

7.3.3. They provide that in light of the above, the Council requests the Board uphold the bond of €50,000. They include a number of attachments, which provide some indication as to how these amounts particularly relative to the road opening licence charges, have been worked out.

7.4. Consideration of Level of Bond

7.4.1. An issue in this case is whether a Road Opening Licence is particularly relevant to Condition no.14 or should that be considered as a separate issue. The wording of the Condition does not specifically refer to a road opening licence, that is a matter for the Council – Attachment 2 of their submission refers relative to such calculations. It is noted that the Referrer also refers to document C *Amended Road Opening Fee* of their submission and provides that this amount has now been paid to FCC – document G refers.

7.4.2. As above this is not included in the €50,000 bond. Nor is the €20,000 included as this is separate as per Condition no. 15 of the permission. Therefore, consideration is had as to how the amount of €50,000 as a separate bond, was arrived at. The Referrer notes that originally the levy was assessed as €12,936 as was conditioned in Reg.Ref. FW16A/0134. As per this condition this was to be updated at the date of commencement of development, in accordance with changes in the Tender Price Index. However, this condition no. 22 was for the payment of a development contribution, rather than a bond, and as noted above, and in the previous Inspector's Report development contributions are not applicable to this proposal (registered charity). The Council's original permission did not include a condition relative to the lodgement of a bond.

7.4.3. Attachment 8 included as part of the Council's response provides that following consultation within the Building Control Engineer that this bond has been set at €50,000 in relation to the Planning & Strategic Infrastructure Bond imposed by the Board. Their explanation is that this is a significant development with quite a lot of public areas (including underground services). The bond is required as it is the

insurance that the public areas will be finished correctly and if they are not the Council will access the bond to complete these areas. Therefore, they do not recommend any reduction on the €50,000 bond.

7.4.4. While the need for the bond has been accepted, and an explanation has been given relative to the significant works required to facilitate the completion of the development, a breakdown relative to the details of this costing of €50,000 has not been given by the Council. However, as noted above, it does not fall under consideration similar to a Development Contribution to be considered under the terms of the Council's Development Contribution Scheme. Therefore, the Board cannot consider whether the Scheme has been properly applied.

7.4.5. The inclusion of Condition no. 14 is to provide a bond to secure the provision and satisfactory completion of a number of separate infrastructural issues associated with the development including open space. This is a relatively general condition that is regularly applied by the Board relative in particular to medium to larger sized developments that if left unfinished would have serious adverse impacts on the amenities of the wider surrounding area.

7.4.6. On this basis in view of the scale and nature of the development as permitted, I would not consider that it has not been demonstrated that the bond as specified by the Council in response to Condition no.14 of Ref. PL06F.249341 as a means of security for completion of the works, is excessive. It is refundable following completion of works to the satisfaction of the local authority. In this respect Section 7.13 of the Development Management Guidelines refers i.e. *The bond should be refunded on satisfactory completion of the development.* I would therefore consider, that this bond should be retained pending satisfactory completion of the development.

8.0 Recommendation

8.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS by order dated 8th of May 2018 made by An Bord Pleanála, under register reference number PL06F.249341 (FW16A/0134), granted subject to conditions permission to the Shuhada Foundation of Ireland for in summary the

construction of a mosque, primary school, community centre and all associated infrastructural and ancillary works at Warrenstown House, Blanchardstown Road North, Dublin:

AND WHEREAS condition 14 attached to said permission required:

Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

AND WHEREAS the developer and the Planning Authority failed to agree on the amount of the above details in compliance with the terms of the said condition and the matter was referred by the developer to An Bord Pleanála on the 12th day of December, 2019 for determination:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, hereby determines that the Board agrees that the amount payable within the terms and conditions of the permission under condition 14 is €50,000 as agreed by the Council applicable for this bond to be refunded upon satisfactory completion of the development.

REASONS AND CONSIDERATIONS

Having regard to the planning history, the submissions from the parties and the nature and scale of the development in question, the Board considered €50,000 to be appropriate as a development bond as per Condition 14 of register reference PL06F. 249341, refundable upon the satisfactory completion of the development.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations and observations received by it in accordance with statutory provisions.

Angela Brereton
Planning Inspector

9th of April 2020