



Development

The development will consist of the demolition of all existing buildings (1,985sq.m) on site and the construction of a 4 storey Primary Care Centre and General Practitioner (GP) Surgery with a gross floor area of 4,267sq.m. The accommodation will consist of treatment rooms, consultation rooms, meeting rooms, staff facilities, ancillary offices and ancillary accommodation over 4 floors, with a maximum height of 16.955m. The building also includes an own door pharmacy (101sq.m) at ground floor. Permission is also sought for an ESB substation and switch room (35sq.m), bin store (19sq.m), a vehicular drop off area the main building entrance, 61 no. surface carparking spaces, 4 no. motorcycle parking spaces, landscaping, lighting, external signage and all associated site and development works. Vehicular access/egress to the proposed development is via two points off

	Loughlinstown Drive (one existing access to be retained and one proposed access point).
Location	Lands at Loughlinstown Drive, Loughlinstown, Co. Dublin comprising Loughlinstown Industrial Estate and part of HSE health centre site.
Planning Authority	Dún Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D19A/0797
Applicant(s)	Melcorpo Commercial Properties Unlimited Company
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	First Party v. Conditions
Observer(s)	None.
Date of Site Inspection	None required.
Inspector	Robert Speer

1.0 Introduction

- 1.1. This report relates to a first party appeal made under S.48(10)(b) of the Planning and Development Act, 2000, as amended, in respect of Condition Nos. 15, 16, 17 & 19 as attached to the notification of the decision to grant permission for the proposed development.

2.0 Site Location and Description

- 2.1. The proposed development site is located at Loughlinstown Drive, Loughlinstown, Co. Dublin, approximately 400m northeast of the N11 National Road and 350m southeast of the R118 Regional Road (Wyattville Road), in a predominantly residential area interspersed with a variety of other land uses, including a number of local schools, a neighbourhood centre, community facilities, a health centre, and Loughlinstown municipal leisure centre with its swimming pool and playing pitches. It has a stated site area of 0.5685 hectares, is irregularly shaped, and comprises the Loughlinstown Industrial Estate (which is presently occupied by a series of industrial / storage / warehousing units) and part of the adjacent Health Service Executive lands. It is bounded by the public road to the north, east & west, and by a local playground and an HSE health centre to the south and southeast respectively.

3.0 Proposed Development

- 3.1. The proposed development, as initially submitted to the Planning Authority, consists of the demolition of all the existing industrial / storage / warehousing buildings on site and the construction of a four-storey primary care centre with a general practitioner (GP) surgery (gross floor area: 4,267m²). The proposed building will accommodate various treatment rooms, consultation rooms, meeting rooms, staff facilities, offices and ancillary areas, as well as an own-door pharmacy. Associated site development works will include an ESB substation and switch room, bin store, a vehicular drop-off area at the main building entrance, car & motorcycle parking, landscaping, lighting, external signage, and all ancillary site development works. Vehicular access / egress will be obtained via two points off Loughlinstown Drive (one existing access to be retained and one proposed access point). Water and sewerage services are available via connection to the public mains.

- 3.2. In response to a request for further information, amended proposals were subsequently submitted to the Planning Authority which altered the extent / configuration of the site area (reduced to 0.5124 hectares) and included for a revised layout with the proposed building having been moved forward (northwards) closer to the public road thereby severing the previously continuous internal circulation route through the site and allowing for the creation of a public plaza. Minor amendments were also made to the elevational treatment (concerning the location / positioning of selected windows) to reflect interim changes to the internal room configuration.
- 3.3. It was also noted that a typographical error had previously misrepresented the floor area of the proposed primary care centre building (as 4,267m²) and that the correct floor area is 4,307m².

4.0 Planning Authority Decision

4.1. Decision

- 4.1.1. Following the receipt of a response to a request for further information, on 28th July, 2020 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 19 No. conditions. These conditions are generally of a standardised format whilst Condition Nos. 15, 16, 17 & 19 (the subject of this appeal) state the following:

4.1.2. *Condition No. 15:*

The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €8,114.20 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of Surface Water Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSI Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018.

Contributions shall be payable at the index adjusted rate pertaining to the year

in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

4.1.3. Condition No. 16:

The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €185,997.05 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSl Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

4.1.4. Condition No. 17:

The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €120,698.73 to the Planning Authority as a contribution towards expenditure that was/or is

proposed to be incurred by the Planning Authority in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

4.1.5. Condition No. 19:

That a financial contribution shall be paid by the proposer to the Council towards the cost of the extension of Luas Line B from the Sandyford Depot to Cherrywood, namely Luas Line B1. This contribution to be paid prior to the commencement of the development or in such other manner as may otherwise be agreed with the Planning Authority. The rate of contribution payable shall be that pertaining to the particular year in which implementation of the Planning Permission is commenced. The Supplementary Development Contribution Scheme provides for an annual increase in the levels of contribution payable, as outlined in the scheme, by a factor of 5% compound interest per annum. The levels of contribution will be reviewed annually on the 13th of January of each year during which the scheme is in force to take account of the aforementioned increase. The rate of contribution payable in respect of this development, at current contribution rates, is €455,963.72, and is subject to increase as outlined above. It should be noted that contributions assessed in accordance with the Supplementary Development Contribution

Scheme cannot be appealed to An Bord Pleanala unless the applicant considers the levy referred to in this condition has not been properly applied in accordance with the terms of the Scheme.

Reason: To part finance the extension of the Luas Line B1 from Sandyford Depot to Cherrywood, as provided for in the Supplementary Development Contribution Scheme adopted by the Council of Dun Laoghaire-Rathdown on the 13th of January, 2003. (incorporating amendments to Clause 13 as adopted by the County Council at its meeting on 13th May, 2013 – to be effective for all decisions from 14th May, 2013).

4.2. Planning Authority Reports

4.2.1. Planning Reports:

An initial report states that the principle of the proposed development is generally acceptable having regard to the applicable land use zoning, the surrounding pattern of development, and the policy objectives of the County Development Plan in support of the provision of appropriate healthcare facilities. It is also considered that the inclusion of the proposed pharmacy will not undermine the role of the nearby neighbourhood centre or the vitality of other core retail areas. Furthermore, no concerns arise as regards the residential amenity of surrounding properties. Whilst the overall design, height and scale of the proposal is considered to be acceptable, it is suggested that further consideration should be given to the relationship of the proposed building / construction with Loughlinstown Drive and the adjacent HSE lands to the immediate south. The report thus concludes by recommending that further information be sought in respect of a number of issues, including the manner in which the proposal addresses the public realm along Loughlinstown Drive and the lands to the south, the submission of a Workplace Travel Plan, a revised Preliminary Demolition & Construction Management Plan, and the surface water drainage arrangements.

Following the receipt of a response to a request for additional information, a further report was prepared which recommended a grant of permission, subject to conditions.

4.2.2. *Other Technical Reports:*

Transportation Planning: An initial report recommended that further information be sought in respect of a variety of issues, including revised proposals for the provision of a new footpath along Loughlinstown Drive, the submission of a Quality Audit to demonstrate that consideration had been given to all relevant aspects of the proposed development in accordance with the Design Manual for Urban Roads and Streets, a Workplace Travel Plan, and a revised Preliminary Demolition & Construction Management Plan.

Following the receipt of additional information, a further report was prepared which recommended that clarification be sought as regards a number of issues, including the entry treatment for pedestrian priority at the proposed entrances, the consent for the pedestrian link with the adjacent HSE facility, the potential need for a pedestrian crossing in the vicinity of the development (as identified in the Quality Audit), and bicycle parking provision.

Drainage Planning, Municipal Services Dept.: An initial report recommended that further information be sought with regard to the surface water drainage and attenuation arrangements.

Following the receipt of additional information, a further report was prepared which recommended a grant of permission, subject to conditions.

Waste Section: States that the Preliminary Demolition & Construction Management Plan, the Preliminary Construction & Demolition Waste Management Plan, and the Preliminary Operational Waste Management Plan, are all acceptable.

Parks Dept. No objection, subject to conditions.

4.3. **Prescribed Bodies**

None.

4.4. **Third Party Observations**

None.

5.0 Planning History

5.1. On Site:

None.

6.0 Policy and Context

6.1. National and Regional Policy:

- 6.1.1. The '*Development Contributions, Guidelines for Planning Authorities*' published by the Department of the Environment, Community and Local Government in January, 2013 aim to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since guidance was last issued in 2007.

6.2. Development Contribution Schemes:

- 6.2.1. The *Dún Laoghaire-Rathdown County Council Development Contribution Scheme, 2016-20* was adopted on 14th December, 2015 and includes an indicative list of public infrastructure / services (please refer to Appendix 2) which is considered to comprise those projects that can be progressed with the funding which it is projected will be received under the Scheme (regardless of other sources of funding for the infrastructure and facilities). The Scheme sets out the basis for the determination of the relevant development contributions, including those instances where a reduction / exemption in the contribution rate may apply, with Section 9 detailing the rates of contribution applicable in respect of the various classes of infrastructure for specified categories of development within certain areas.
- 6.2.2. The *Section 49 – Supplementary Development Contribution Scheme for Extension of Luas Line B1 – Sandyford to Cherrywood* was adopted by Dún Laoghaire-Rathdown County Council on 13th January, 2003 (incorporating amendments to Clause 13 as adopted by the County Council on 13th May, 2013 – to be effective for all decisions from 14th May, 2013) and provides for the payment of financial contributions towards the extension of the Luas Line B from the Sandyford Luas Depot to Cherrywood. This light rail project will consist of light railway works c. 7km in length which are defined in the Alignment Map (Drg. No. PL-02-084). Line B1 will run from the Line B LRT depot at Sandyford Industrial Estate, with stops at Central Park, Glencairn, The

Gallops, Leopardstown Valley, Ballyogan Wood, Racecourse, Carrickmines, Laughanstown and the terminal stop at Cherrywood. The scheme shall apply within an area of 1,992 hectares, which is a catchment area approximately 1km on either side of the proposed Luas B1 line (as identified on Drg. No. PL-02-084), on the basis that this represents a reasonable walking distance to stops along the proposed line. The SDCS shall apply to all planning permissions granted for development within this area as and from the date of adoption of the scheme by the Planning Authority. Section 13 of the SDCS details the contribution rates applicable for commercial and residential development per gross site hectare and also clarifies the reckonable site area for certain circumstances as well those instances where a reduction / exemption in the contribution rate may apply.

7.0 The Appeal

7.1. Grounds of Appeal

- With respect to the development contributions sought under Condition Nos. 15, 16 & 17 pursuant to the Section 48 Development Contribution Scheme, the Planning Authority has calculated the applicable levies on the basis of a gross floor area of 4,248m² (seemingly based on a floor area of 4,267m² less 19m² for the bin store), however, for the purposes of clarity, it should be noted that the scheme as permitted has a total floor area of 4,307m² and that the following calculations are based on this figure.

The primary issue requiring review is that the Planning Authority has failed to take into account the existing buildings on site proposed for demolition which would serve to reduce the amount of the contributions owed by reference to Clause (e) of the Development Contribution Scheme which states the following:

'Replacement dwellings or replacement commercial developments will be charged 50% on a like for like basis. In the case of demolition of development, 50% of the demolished floor area is offset against the countywide element of the levy'.

(N.B. The Board is advised that the applicant would appear to have referenced Section 10(e) of the Development Contribution Scheme in error and should instead have referred to Section 10(g) of the Scheme).

Although the planning application has stated that the floor area of the existing buildings on site is 1,985m², it appears that this figure only relates to the building footprint / ground floor level. When account is taken of the offices at first floor level (531m²), the actual gross floor area of the existing buildings is 2,516m² which should have been used in the calculation of the applicable development contributions (please refer to the survey details included in Appendix C of the grounds of appeal). Accordingly, the basis for the calculation of the development contributions should be derived from the following:

$$\text{Existing Floor Area: } 4,307\text{m}^2 - 1,258\text{m}^2 \text{ (i.e. } 2,516\text{m}^2 \text{ @ } 50\%) = 3,049\text{m}^2$$

Therefore, on the basis of the floor area of the permitted scheme (i.e. 4,307m²), and by applying the reduction provided for under Section 10(e) / (g) of the Scheme, the development contributions sought by Condition Nos. 15, 16 & 17 can be correctly calculated as follows:

- *Condition No. 15 (Surface Water):*

$$\begin{aligned} \text{Reckonable Floor Area: } & 3,049\text{m}^2 \text{ (} 4,307\text{m}^2 - 1,258\text{m}^2 \text{ i.e. } 2,516\text{m}^2 \text{ @ } 50\%) \\ \text{x } \text{€}1.191 / \text{m}^2 & = \text{€}5,823.59 \end{aligned}$$

- *Condition No. 16 (Roads):*

$$\begin{aligned} \text{Reckonable Floor Area: } & 3,049\text{m}^2 \text{ (} 4,307\text{m}^2 - 1,258\text{m}^2 \text{ i.e. } 2,516\text{m}^2 \text{ @ } 50\%) \\ \text{x } \text{€}43.78 / \text{m}^2 & = \text{€}133,485.22 \end{aligned}$$

- *Condition No. 17 (Community & Parks):*

$$\begin{aligned} \text{Reckonable Floor Area: } & 3,049\text{m}^2 \text{ (} 4,307\text{m}^2 - 1,258\text{m}^2 \text{ i.e. } 2,516\text{m}^2 \text{ @ } 50\%) \\ \text{x } \text{€}28.41 / \text{m}^2 & = \text{€}86,622.09 \end{aligned}$$

- Condition No. 19 of the grant of permission requires payment of a development contribution in the amount of €455,963.72 pursuant to the Section 49 Supplementary Development Contribution Scheme for Extension of Luas Line B1 – Sandyford to Cherrywood. While it is accepted that the application site is within the relevant catchment area, it is queried whether a

development of the type proposed should reasonably be subject to the levy sought having regard to the overall provisions of the SDCS.

Paragraph 13 of the SDCS exempts certain categories of development from the requirement to pay a levy and in this respect it is submitted that the proposed '*Primary Care Centre*' constitutes a '*public utility*' which is exempt under the terms of the Scheme. While primary care centres / medical centres are not expressly included in the list of '*public utilities*' set out in the Scheme (i.e. schools, community centres, youth centres etc.), it is submitted that the clear spirit and intention of this provision is that essential public services are not to be levied. The subject application was lodged with the clear intention that the proposal would operate as a public health centre as evidenced by the supporting correspondence provided by the Health Service Executive as the intended occupant of the facility.

While the practice of applying Section 48 contributions to such developments is established, the applicant is unaware of any comparable situation having arisen within the catchment of the Section 49 SDCS (where similar facilities have been proposed the issue did not arise as they formed part of a mixed-used commercial development where a levy calculated on a per hectare basis would have applied in any event).

The subject application has been prepared in consultation with the HSE and the proposal provides the opportunity to develop a new facility with minimal disruption to its existing day-to-day services. The HSE has sought to emphasise the importance of the development as '*a vital piece of infrastructure for the provision of health services in the greater catchment area of Loughlinstown*' and as a '*priority location for [the] delivery of Primary Care Services*'. In this context, it is submitted that an open-ended definition of '*public utilities*' in the Section 49 SDCS can be interpreted to allow for the discretion to exclude the proposed development from the requirement to pay a Section 49 contribution.

- The SDCS is intended to reflect the benefit accruing to new residential and commercial development arising from the Luas line extension. Moreover, the spirit and intention of the Scheme is clear and Paras. 10, 11 & 14, in

particular, support the position that the levy is intended to capture “uplift” in development yield arising from the extension of the Luas and that *‘any benefit which accrues to existing development shall not be included in the determination of any contribution pursuant to the supplementary development contribution scheme’*.

- While not disputing the site location within the catchment area of the SDCS, the Board is requested to note the peripheral siting relative to the Luas as well as the very limited scope or potential for the primary care centre to accrue any benefit from the Luas. In this regard, whilst the Scheme applies to an area of 1,992 hectares, it should be noted that *‘Some 530 hectares of land situated within this catchment area is potentially available for development’* which suggests that the Scheme was primarily intended to apply to undeveloped areas (the development of which would substantially benefit from the Luas) as opposed to existing development areas such as the subject site.

Referring to the scope for increased residential densities and commercial plot ratios within certain parts of the catchment area (please refer to Para. 11), the SDCS is to be applied to all planning permissions granted for development within the said area. Although the wording and precise meaning could be clearer, it is submitted that the intention is to capture ‘uplift’ accruing to new development within the areas identified i.e. the c. 530 hectares of available development land. Para. 12 of the Scheme refers to the wider benefit of the Luas, but also significantly states that *‘any benefit which accrues to existing development shall not be included in the determination of any contribution pursuant to the supplementary development contribution scheme’*.

- Para. 14 of the Scheme follows the allowable exemptions and reiterates that the driver of the rates is to reflect *‘the benefits the LUAS B1 extension will bring to the area’* for both residential and commercial development which *‘will result in significant added value to property and land’*. It is considered that no tangible benefit or value arises from the Luas in the subject instance where the closest stops are at Cherrywood / Brides Glen. Furthermore, it is unfair to suggest that anybody visiting the proposed primary care centre will travel by Luas.

- Without prejudice to the submission that the proposed primary care centre is exempt from the requirement to pay a supplementary development contribution, if the proposal is classified as a 'commercial' development, the levy can only apply to the '*net additional development (in hectares)*'.

Within the first bullet point set out at Para 10. of the SDCS, it is clearly stated that '*only net additional development (in hectares) in the case of commercial development projects will be levied*'. Therefore, if the proposed development is deemed to be '*commercial*' rather than a '*public utility*', existing development sites can be exempted.

Bullet Point No. 1 can be interpreted in a number of ways, all of which eliminate or significantly reduce the amount of the levy:

- *Option 1:* The existing application site amounts to '*commercial development*'. Therefore, there is no '*net additional development (in hectares)*' and no levy should apply.
- *Option 2:* That part of the application site within the Loughlinstown Industrial Estate is being redeveloped and the site is being increased by an additional 0.0607 hectares i.e. the remainder of the site comprising the HSE lands is the only area that could be interpreted as '*net additional development (in hectares)*'. The application of a rate of €802,047 per hectare to this area would yield €48,684.25.
- *Option 3:* The footprint of the existing buildings on the site is 2,516m² whilst the footprint of the proposed structure is 1,200m². Therefore, in terms of hectares, the proposed development is less than the existing and no levy should be applied.

Bullet Point No. 2 of Para. 10 facilitates the change of use from commercial to an alternative commercial use and is clearly intended to allow established unsuitable / defunct uses to be replaced by newer more suitable uses which is, in effect, what is involved in the subject application.

Bullet Point No. 3 of Para. 10 allows for the change of use from commercial to residential '*where the change of use does not lead to significant intensification of demand for the Luas service*'. In this regard, it is submitted that the spirit of

the SDCS is that replacement of existing development can be exempted from any requirement to pay a supplementary contribution.

7.2. **Planning Authority Response**

- In the matter of the calculation of the conditions applied pursuant to the Section 48 Development Contribution Scheme, the Planning Authority accepts that it did not implement the scheme correctly and agrees with the calculations of the applicant.
- In the matter of the implementation of the Section 49 Luas Supplementary Development Contribution Scheme, it is considered that this scheme was implemented correctly.

7.3. **Observations**

None.

7.4. **Further Responses**

7.4.1. *Response of the Applicant to the Circulation of the Planning Authority's Submission:*

- No justification has been provided for the imposition of the Section 49 contribution and the applicant remains of the opinion that the Planning Authority has not applied the SDCS in accordance with the enabling provisions of the Planning and Development Act 2000, as amended.
- Given the unique and unprecedented circumstances of the subject application, and in the absence of any direct precedent, there is an onus on the Planning Authority to provide a considered justification for its decision-making with reference to the enabling provisions of the Act, the SDCS itself, and any other relevant aspect of the planning code, including the Development Plan.
- Section 49 of the Act states that the application of contributions pursuant to that provision is discretionary in nature. It continues by referring to the nature of the scheme or project, however, Section 49(1)(c) clearly stipulates that the development must benefit from the infrastructural project or service. This is a

matter which is required to be taken into account by the decision-maker when considering whether to impose a Section 49 contribution.

- Section 49 of the Act was amended by the insertion of subsection 3A which provides that:

‘ . . . the Board shall consider an appeal . . . in relation to a condition requiring the payment of a contribution in respect of a public infrastructure service or project specified in a supplementary development contribution scheme, where the applicant considers that the service or project will not benefit the development to which the permission relates . . . ’

Moreover, as evidenced by the *‘Development Contributions, Guidelines for Planning Authorities, 2013’*, it is clear that the beneficial impact on the development has always been a significant matter requiring consideration.

The legislature clearly intends that the decision-maker assess instances where no benefit ensues to the development in question. Therefore, the beneficial relationship between a development and the Luas project is of vital importance to the operation of a Section 49 development contribution and the Board is thus required to assess this link in the context of the subject appeal.

The proposed development is only just within the catchment area of the SDCS and is peripheral to the Luas project. It is located c. 1.7km from the Cherrywood / Brides Glen Luas stop whilst the walking route to same is not pedestrian-friendly and necessitates traversing several busy road crossings, including the N11 National Road. Furthermore, the catchment of the proposed development will be predominantly to the east of the N11 (the opposite side of the Luas) whilst the site itself is well served by Dublin Bus services with a terminus for several bus routes situated within a 2-minute walking distance. The subject proposal is not intended for the benefit of the catchment to the west of the N11 as a separate HSE primary care centre is planned for the Cherrywood development to serve that area. Indeed, the likelihood is that people travelling by the Luas will not pass by other primary care centres situated closer to the Luas line and then undertake a 25-minute walk to the proposed centre on the opposite side of the N11 National Route.

- The proposed development site is not located within any of the areas specifically listed in Para. 11 of the SDCS as benefiting from the Luas improvements. Furthermore, Para. 12 of the Scheme states that:

‘in addition to the primary catchment area which is defined by an approximate one kilometre distance from the LRT line and which constitutes a reasonable walking distance to stops along the proposed line, and to which this supplementary development contribution scheme will apply, the project will provide additional service and associated resulting public and private benefit to the entire administrative area of the County . . .’

Having regard to the foregoing (i.e. the 1km distance), it is submitted that although the SDCS references the primary catchment areas to which the Scheme applies and the yardstick by which it will operate, it is apparent that no benefit accrues to the proposed development. The County Development Plan is also illustrative in this regard as it sets a specific standard in terms of car parking for non-residential development as follows:

‘For non-residential developments a separate package of parking standards . . . have been set for certain specific lands uses in designated areas alongside public transport corridors. This applies to developments located within a 1km catchment of a Priority 1 Quality Bus Corridor, a Luas, Bus Rapid Transit or DART station / stop and within a 500m catchment of an existing bus priority scheme’.

This 1km distance from transport infrastructure accords with the primary catchment area referenced in the SDCS and the application of such a standard is consistent with the assertion that the proposed development will not benefit from the Luas extension due to its peripheral location.

- It is reiterated that the Planning Authority has failed to take proper account of the nature of the proposed development as a *‘public utility’*. The SDCS exempts such developments from contributions and it is notable that the definition of *‘public utilities’* is left open-ended by the inclusion of *‘etc.’* at Para. 13 i.e. *‘schools, community centres, youth centres, etc.’*

The Development Plan supports the development and provision of a wide range of community facilities throughout the county, including civic centres,

youth centres, schools, further & higher education facilities, and health centres. More specifically, the Plan categorises health centres as community facilities and, therefore, it would be consistent to apply the same interpretation to the SDCS.

By way of analogy, Class 8(a) Part 4: '*Exempted Development – Classes of Use*' of Schedule 2 of the Planning and Development Regulations, 2001, defines a health centre or clinic for the provision of any medical or health services and, therefore, the planning code already provides an exemption status for such developments and thus the categorisation of the subject proposal as a public utility would be consistent with the Regulations.

- The statutory framework of a SDCS presupposes that the decision-maker has, in the first instance, correctly and definitively defined the relevant operable terms. In this respect, it is submitted that the provisions of the Scheme afford discretion to the Planning Authority in its interpretation of public utilities in line with its Development Plan. Furthermore, given the open-ended nature of the definition in the Scheme, it is open to the Board to take a practical approach to the term '*public utilities*' as it might apply in this instance. Whilst the Planning Authority has acknowledged that the subject situation has not previously arose and may not arise again, the object of the provision is to facilitate the exemption of '*public utilities*', and in the context of the planning code, as well as the Development Plan, a Primary Care Centre is within the Planning Authority's definition of a public utility.

In summary, in interpreting the SDCS, the Planning Authority has failed to have regard to the status of the development as a '*public utility*'. Therefore, the Board should interpret the term '*public utilities*' in a manner consistent with the Development Plan and the SDCS.

- Without prejudice to the foregoing, it is submitted that the Planning Authority has not applied the SDCS correctly by reference to the express wording of Para. 13 which states that '*only net additional development (in hectares) in the case of commercial redevelopment will be levied*'. Moreover, no justification or reasoning has been provided for the decision not to apply this provision.

Both the Planning Authority and the Board are required to have regard to the *'Development Contributions, Guidelines for Planning Authorities, 2013'* in performing their statutory functions. In this regard, Chapter 2 of the Guidelines requires certain provisions to be included in development contribution schemes, including:

- Provision to charge only net additional development in cases of redevelopment projects (e.g. a redevelopment totalling 200m² of which 150m² is replacing existing development, contribution should only be levied on the additional 50m²).

Therefore, a SDCS is required to make provision to charge only net additional development in hectares in relation to redevelopment projects (which must refer to site measurement as opposed to floor area).

Within the subject SDCS, it has been stipulated that only net additional development in hectares will be levied with regard to commercial redevelopment and, therefore, by giving the wording its ordinary meaning, a supplementary contribution can only be applied in respect of any net additional development (in hectares).

- The SDCS clearly prevents the application of any supplementary contribution to the subject site. Any reasonable reading of the Scheme only provides for three possible interpretations as to the operable land:
 - 1) The existing development, including Loughlinstown Industrial Estate and the HSE site, comprises existing development which is to be commercially redeveloped and thus no levy applies;
 - 2) The Loughlinstown Industrial Estate site is being redeveloped and the additional 0.0607 hectares is the net additional development to be levied;
or
 - 3) By reference to the footprint of the existing and proposed buildings in terms of hectares, no levy applies.

In the absence of any meaningful attempt to rationalise the decision to levy the supplementary contribution, and without prejudice to the foregoing, the

Board is requested to implement the SDCS in the manner commended pursuant to the net additional development criteria.

Clearly, the express terms of the SDCS inform the above determination and for that purpose it must also be highlighted that Para. 12 of the Scheme refers to the provisions of Section 48(3) in mandatory terms:

‘However, and in accordance with the provisions of Section 48(3)(c) of the Act, any benefit which accrues to existing development shall not be included in the determination of any contribution pursuant to the supplementary development contribution scheme’.

The SDCS disavows any discretion in this regard and any benefit accruing to an existing development shall not be included in the determination of the supplementary contribution. Section 48(3)(b) states ‘. . . any benefit which accrues in respect of existing development may not be included in any such determination’. Section 48(3)(c) states ‘A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme’.

In applying the express wording of the SDCS, any additional benefit accruing to the existing site cannot be included in the determination.

- The admission by the Planning Authority that the Section 48 contributions have been incorrectly applied is welcomed and the Board should correct these accordingly.
- In relation to the Section 49 supplementary contribution, in accordance with the planning code, and by specifically applying the provisions of Section 49(3A), the subject development does not come within the parameters of the SDCS as it does not benefit from the infrastructure project. In the alternative, in applying the provisions of the SDCS, the proposed development is either exempt or has been incorrectly levied.

8.0 Assessment

- 8.1. This is an appeal made under the provisions of Section 48(10)(b) of the Act and therefore the Board is restricted to considering Condition Nos. 15, 16, 17 & 19 and

cannot consider the proposed development *de novo*. I have therefore confined my assessment to the conditions that have been appealed.

8.2. Condition Nos. 15, 16 & 17:

8.2.1. Following a review of the grounds of appeal it is clear that the key issue in respect of Condition Nos. 15, 16 & 17 concerns whether or not the Planning Authority has properly applied the terms of its Development Contribution Scheme in seeking the payment of development contributions in the amounts of €8,114.20, €185,997.05 & €120,698.73 respectively. More specifically, the issue arises as to whether or not the Planning Authority has determined the correct floor area reckonable for the purposes of calculating the applicable development contributions by reference to the exemptions / reductions provided for under Section 10 of the Development Contribution Scheme.

8.2.2. The principle argument put forward in the grounds of appeal is that the Planning Authority's calculation of the applicable development contributions has not taken account of the floor area of the existing buildings to be demolished and the associated reduction in the reckonable floor area provided for under Section 10(g) of the Scheme which states:

'The following categories of development will be exempted from the requirement to pay development contributions under the Scheme, or will be required to pay a reduced contribution:

g) Replacement dwellings or replacement commercial development will be charged 50% on a like for like basis. In the case of demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy'.

8.2.3. In this regard, the applicant has sought to clarify the following points:

- The existing buildings proposed for demolition have a gross floor area of 2,516m².
- The development as permitted has a stated floor area of 4,307m².

8.2.4. By extension, the case has been put forward that the floor area reckonable for the purposes of calculating the applicable development contributions can be determined by offsetting 50% of the floor area of those buildings proposed for demolition against

the floor area of the new development by reference to Section 10(g) of the Scheme as follows:

$$4,307\text{m}^2 - 1,258\text{m}^2 \text{ (i.e. } 2,516\text{m}^2 \text{ @ } 50\%) = 3,049\text{m}^2$$

8.2.5. In turn, it has been asserted that the actual development contributions required by Condition Nos. 15, 16 & 17 can be correctly calculated as:

- Condition No. 15: $3,049\text{m}^2 \times \text{€}1.191 / \text{m}^2 = \text{€}5,823.59$
- Condition No. 16: $3,049\text{m}^2 \times \text{€}43.78 / \text{m}^2 = \text{€}133,485.22$
- Condition No. 17: $3,049\text{m}^2 \times \text{€}28.41 / \text{m}^2 = \text{€}86,622.09$

8.2.6. Notably, in its response to the grounds of appeal, the Planning Authority has acknowledged that it did not correctly apply the terms of the Development Contribution Scheme in its calculation of the applicable development contributions and has also agreed with the applicant's revised calculations.

8.2.7. From a review of the available information, in my opinion, the redevelopment of the subject site as proposed, which involves the demolition and replacement of existing commercial buildings, satisfies the qualifying criteria for a reduction in the applicable development contribution by virtue of Section 10(g) of the Development Contribution Scheme. In this regard, the floor area reckonable for the purposes of calculating the necessary contribution is required to take account of 50% of the existing floor area proposed for demolition and thus I would draw the Board's attention to the applicant's assertion that the gross floor area of the existing buildings on site amounts to 2,516m² as supported by the accompanying floor plans provided with the grounds of appeal. Accordingly, by deducting 1,258m² (i.e. 2,516m² @ 50%) from the permitted floor area (clarified as 4,307m²), the reckonable floor area is 3,049m² and thus the applicable development contributions would accord with the applicant's calculations as set out above. Therefore, on the basis of the foregoing, and in light of the admission by the Planning Authority that it did not correctly apply the terms of the Development Contribution Scheme and thus accedes to the applicant's revised calculations, there is no dispute as regards the need to amend Condition Nos. 15, 16 & 17 and thus the matter does not warrant further examination (although I note that the contributions are payable at an index adjusted rate and that the rates applied by both the applicant and the Planning Authority in this instance would not appear to

reflect the updated rates which took effect from 1st January, 2020 in accordance with the SCSi Tender Price Index).

8.3. Condition No. 19:

8.3.1. This condition requires the payment of a supplementary development contribution in the amount of €455,963.72 pursuant to the provisions of the '*Section 49 Supplementary Development Contribution Scheme for Extension of Luas Line B1 – Sandyford to Cherrywood*'. In this respect, whilst the applicant has accepted that the application site is located within the boundary of the SDCS (as detailed on Drg. No. PL-02-084 of the Scheme itself), it has been submitted that the proposed development should not be subject to the levy sought for any one of the following reasons as summarised below:

- The proposed development is a 'public utility' and is therefore exempt from a supplementary development contribution pursuant to Section 13 of the SDCS.
- No benefit accrues to the proposed development from the project matter of the SDCS and thus the Board is afforded the discretion not to impose a contribution in this instance.
- Only net additional development (in hectares) is subject to the requirement to pay a supplementary development contribution.

8.3.2. Regrettably, the report of the case planner does not provide any detailed explanation for the imposition of Condition No. 19 or for the calculation of the levy whilst the response of the Planning Authority to the grounds of appeal similarly fails to account for the manner in which the Supplementary Development Contribution has been applied.

8.3.3. Prior to my assessment of the subject matter of this aspect of the appeal, I would advise the Board that the Planning Authority's calculation of the supplementary development contribution would seem to have utilised the updated / indexed 'Commercial Contribution Rate' of €802,047 per Gross Site Hectare as shown on its website (as distinct from the lesser figure of €570,000 detailed in Section 13 of the SDCS as adopted) as well as a site area of 0.5685 hectares as follows:

$$\text{Gross Site Area: } 0.5685 \text{ Ha} \times \text{€}802,047 / \text{Gross Site Hectare} = \text{€}455,963.72$$

8.3.4. However, the overall extent of the site area was reduced to 0.5124 hectares in response to a request for further information and, therefore, should the Board decide to attach Condition No. 19 and to employ the same calculation methodology, it should determine the applicable contribution on the basis of this lesser site area as follows:

$$\text{Gross Site Area: } 0.5124 \text{ Ha} \times \text{€}802,047 / \text{Gross Site Hectare} = \text{€}410,968.88$$

8.3.5. With respect to the appeal against the inclusion of Condition No. 19 in the first instance, I initially propose to review the merits of the applicant's proposition that the proposal can avail of certain reductions / exemptions from the requirement to pay a supplementary development contribution as set out in Para. 13 of the SDCS.

8.3.6. At the outset, the case has been put forward that the subject proposal amounts to the commercial redevelopment of an existing site and, therefore, *'only net additional development (in hectares) in the case of commercial redevelopment projects will be levied'* as per the SDCS. In this regard, it is notable that the SDCS only differentiates between 'residential' and 'commercial' development and makes no further distinction in terms of individual development types e.g. retail, office, industrial, recreational etc. This would broadly correspond with the Council's Section 48 General Development Contribution Scheme wherein only 'residential', 'domestic extension' and 'industrial / commercial' are identified as classes of development. Therefore, for reasons of consistency, I am inclined to conclude that it would be reasonable to categorise the proposed primary care centre as a 'commercial' development as has seemingly been the case with respect to Condition Nos. 15, 16 & 17.

8.3.7. Having established the nature of the proposed development, it is notable that the SDCS differs from the general county-wide development contribution scheme in that the applicable development contribution rate is calculated on the basis of 'gross site hectare' as opposed to floor area. Given that the subject proposal involves the redevelopment of an existing 'brownfield' site, which comprises the Loughlinstown Industrial Estate (presently occupied by a series of industrial / storage / warehousing units) and part of the adjacent HSE health centre lands, and as such does not provide for any extension of the site area into previously undeveloped 'greenfield' lands, it is my interpretation of that proposed development does not result in any *'net additional development'* area (in gross site hectares) and thus could reasonably be

held to be exempt from any supplementary development contribution pursuant to the first bullet point set out in Para. 13 of the SDCS. Whilst the rationale for the use of 'gross site hectares' as opposed to 'floor area' in the calculation of supplementary contributions is not entirely clear in the SDCS, I am inclined to suggest that it derives from an acknowledgement of the need to make an allowance for the existing use of previously developed sites and any structures proposed for demolition as part of wider redevelopment proposals, although I would caution that any such reasoning is somewhat speculative. In the absence of any alternative explanation, I would concur with the applicant's analysis that the subject proposal amounts to a commercial redevelopment project of existing developed lands which does not give rise to any net additional site area (gross site hectares) and thus would be entitled to avail of the exemption pertaining to such development set out in Para. 13 of the SDCS.

8.3.8. The Board's remit with regard to the assessment of appeals made pursuant to the provisions of S.48 of the Planning and Development Act, 2000, as amended, is simply to determine whether or not the terms of the Scheme have been properly applied by the Planning Authority. Indeed, it has been established in case law (*Cork City Council v. An Bord Pleanála [2006] IEHC 192*) that the Board has no entitlement to consider or review the merits of the Scheme under which the contribution is required, nor to read into the Scheme wordings that are not there. Therefore, it is my opinion that a rational reading of Para. 13 of the SDCS would allow for the subject development to be exempt from any requirement to pay a supplementary contribution.

8.3.9. In the event the Board concurs with the foregoing analysis, the remaining grounds of appeal (i.e. a determination as to whether the primary care centre would constitute a 'public utility' or whether it would accrue any benefit from the Luas B1 line extension given its location relative to same) are moot (although should the Board consider it necessary, an assessment of these issues can be carried out by way of supplementary report).

9.0 Recommendation

- 9.1. On the basis of the foregoing, I consider that the Planning Authority has incorrectly applied the terms of its Section 48 Development Contribution Scheme and its Section 49 Supplementary Development Contribution Scheme for Extension of Luas Line B1 – Sandyford to Cherrywood and, therefore, it is my recommendation that the Planning Authority should be directed accordingly to **AMEND** Condition Nos. 15, 16 & 17 and to **REMOVE** Condition No. 19 for the reasons and considerations set out hereunder:

10.0 Reasons and Considerations

- 10.1. The Board considered that in calculating the amount to be paid with respect to public infrastructure and facilities benefiting development in the area of the planning authority, the relevant terms of the Dún Laoghaire-Rathdown County Council Development Contribution Scheme, 2016-2020, as adopted, had been improperly applied in respect of condition numbers 15, 16 and 17 in that the proposed development does come within a specified category of development subject to an exemption or reduction in the amount payable pursuant to the Scheme.
- 10.2. The Board further considered that in calculating the amount to be paid with respect to the extension of the Luas Line B1 from Sandyford to Cherrywood in the area of the planning authority, the relevant terms of the Section 49 – Supplementary Development Contribution Scheme for Extension of Luas Line B1 – Sandyford to Cherrywood, as adopted, had been improperly applied in respect of condition number 19 in that the proposed development does come within a specified category of development subject to an exemption in the amount payable pursuant to the Scheme.

11.0 Conditions

15. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €5,823.59 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of Surface Water

Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1st January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018.

Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

16. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €133,485.22 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1st January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that

is provided, or that is intended will be provided, by or on behalf of the Local Authority.

17. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €86,622.09 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1st January each year during the life of the Scheme in accordance with the SCSl Tender Price Index (See Article 12 of the Scheme) commencing from 1st January, 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

Robert Speer
Planning Inspector

11th November, 2020