



An  
Bord  
Pleanála

## Inspector's Report ABP 310559-21

### Development

Mixed Use Development: Demolition of existing warehouse buildings and associated structures, construction of primary health facility with roof plant and photovoltaic arrays. facility (7.020 square metres), retail unit GFA 115 square metres, café/coffee shop GFA 115 square metres, on site car and cycle parking, additional parking with public carpark access outside operating hours and at weekends, associated signage, substation and gas grid, landscaping and ancillary signage and site works.

### Location

Braids Mill, Station Rod, Old Gaol Road, Ennis Co. Clare.

### Planning Authority

Clare County Council

### P. A. Reg. Ref.

19 - 231.

### Applicant

Glencar Health Care.

### Type of Application

Permission

### Decision

Grant Permission.

### Type of Appeal

Condition No 18 (Section 48 Development Contribution - Point of detail.)

### Appellant

Glencar Healthcare.

### Inspector

Jane Dennehy

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## 1.0 Background.

- 1.1. The appeal by Glencar Healthcare is solely in respect of Condition No 18 attached to the Final grant of permission, to Valley Health Fund Infrastructure Investment Fund ICAV on 13<sup>th</sup> January, 2020 for a Mixed-Use Development at a site at Braid's Mill on Station Road and Old Gaol Road in Ennis. The permitted development comprises demolition of existing warehouse buildings and associated structures, construction of primary health facility with roof plant and photovoltaic arrays. facility (7.020 square metres), a retail unit GFA 115 square metres, a café/coffee shop GFA 115 square metres, on site car and cycle parking, additional parking with public carpark access outside operating hours and at weekends, associated signage, substation and gas skid, landscaping and ancillary signage and site works.
- 1.2. The total stated floor area of the development as proposed in the application and finally permitted is €7,250 square metres. The planning authority calculated the amount payable based on the total gross floor area being reckonable to be €130,500.00 (€21,750 amenities, €7,250 Flood relief and €101,500 Transport). As a result, according to Condition No 18, a Section 48 Development Contribution is payable in the amount of €130,500 in respect of the costs of public infrastructure and facilities benefitting development in the area of the planning authority in accordance with the terms of the adopted scheme.
- 1.3. The HSE issued a letter to the planning authority on 2<sup>nd</sup> August, 2019 stating that HSE Estates had issued a letter of Intent to the applicant, (Valley Healthcare) as to the development of a Primary Care Centre on the site as part of the Primary Care Infrastructure Strategy along with details of the services to be based at the centre.
- 1.4. After the Final grant of permission of 13<sup>th</sup> January, 2020 had been issued the agent for the developer's (Glencar Healthcare) in a letter to the planning authority dated 25<sup>th</sup> June, 2020 requested a reduction in the amount payable on similar grounds to those set out in the appeal. The planning authority in a written reply dated 14<sup>th</sup> August, 2020 stated that it did not agree that a reduction in the amount payable is applicable. The planning authority issued a further letter to the applicant's agent on

30th October, 2020 requesting the applicant to arrange for payment of the full amount of €130,500 in accordance with the requirements of Condition No 18.

- 1.5. Given that the appeal is solely in connection with Condition No 18, and that the Final Grant of Permission has been issued, a *de novo* assessment and review of the application and the planning merits of the proposed development is not required. As such relevant outline details only in respect of the development are provided and considered below in that the matter before the Board is solely confined to consideration of the appeal for a reduction in the amount payable under Condition No 18 attached to the final grant of permission.

## 2.0 The Appeal

- 2.1. An appeal was lodged by PAMES Development Ltd. on behalf of the applicant on 15<sup>th</sup> June, 2021. The appeal is solely in relation to Condition No 18 attached to the grant of permission according to which a development contribution is payable in the amount of €130,500 in respect of the costs of public infrastructure and facilities benefitting development in the area of the planning authority in accordance with the terms of the adopted section 48 development contribution scheme. The applicant seeks a reduction in the amount payable.
- 2.2. The reduction in the amount payable is sought because:
- the HSE has charitable status. (It is a registered charity.) It is in agreement with the developer to lease seventy one percent of the development.
  - The development was designed to the HSE's, the end user's specification and requirements. It will occupy an area equivalent to 5,166 square metres or 71.25% of the development.
  - There is provision in the Clare County Development Plan, 2017-2023, for reductions for developments, "*by or on behalf of an organisation that is not for profit and of a community nature*"
  - There is precedent, for the end user instead of the developer to be assessed with regard to liability for contributions, both in local authority and An Bord Pleanala determinations.

These precedents are: -

Primary Care Centre, Armagh Road, Dublin 12. (P.A. Reg. Ref 2881/12 PL 241889 refers.) The Inspector in his report states: “The *Board has consistently determined that it is the end user, rather than the developer that should be assessed in terms of liability to pay*”.

Ballyboden Primary Care Centre, Dublin 16. Amount payable reduced from €305K to c.30.5K based on proportion of HSE occupation. (P.A. Reg Ref SD13A/12 / PL 243622 refers.)

Edenmore Primary Care Centre, Dublin 5: Amount payable reduced from €243K to c.46K based on proportion of HSE occupation (P.A. Reg Ref 2865/12 / PL 241384 refers.)

- 2.3. It is therefore requested that the amount payable under Condition No 18 be reduced by €92,981.25 to €37,518.75 to provide for omission €5,166 square metres, (within the development to be occupied by the HSE) from the reckonable floor area for calculation purposes.
- 2.4. Attached to the appeal is a copy of the letter dated 25<sup>th</sup> June, 2020 lodged with the planning authority requesting a reduction in the amount payable. (See para 1.4 above.)

### **3.0 Planning Authority Response**

- 3.1. A submission was received from the planning authority on 16th July, 2021 in which it is confirmed that the planning authority had calculated the amount payable correctly before the Final grant of permission was issued. It is stated that the amount payable based on a floor area of 7,250 square metres at a rate of €18.00 per square metres results in an amount payable of €130,500. It is also stated that planning authority refused the applicant’s request for a pro-rata reduction in the contributions.

3.2. According to the planning authority submission:-

- There is no justification for application of the exemption within the Development Contribution' scheme provided for development, *“by or on behalf of an organisation that is not for profit and of a community nature”*:
- At application stage the planning authority was never advised that the building was being designed specifically to the HSE's requirements and/or that the HSE would lease the majority of the building.
- The planning authority has now been advised that the HSE would lease part of the building. The HSE's occupation may be a temporary arrangement following which the space would revert to private use.
- It is the planning authority's view that the development is a private development and that the leasing of the accommodation to the HSE is a commercial arrangement. The application was not lodged on behalf of the HSE.

**4.0 Assessment.**

4.1. The assessment is set out under the three following subheadings.

Nature of lessee's occupancy.

Precedent.

Application of the terms of the Clare County Council Development Contributions Scheme, 2017-2023

Conclusion and Recommendation.

**4.2. Nature of lessee's occupancy.**

4.2.1. There is no dispute between the parties as to the gross floor area of the permitted development which is the same as for the original proposal in the application.

4.2.2. Further, to review of the documents on file it is noted that the HSE (Block B Merlin Park University Hospital) did issue a letter directly to the Planning Department Clare

County Council, prior to the determination of the decision on 2<sup>nd</sup> August 2019, and it is date stamped, 23<sup>rd</sup> October, 2019 by the planning authority.

4.2.3. The availability of this correspondence prior to the determination of the decision is not consistent with the statement in the submission of the planning authority in response to the appeal according to which the HSE had not advised the planning authority of its intention to lease the space within the development or of any agreement with the developer regarding a design specification for the HSE requirements.

4.2.4. It is considered that the development of the Primary Care Centre is part of the overall HSE's Primary Care Infrastructure Strategy and is not for profit and is a community service having regard to the letter of intent to lease the space within the proposed development issued by the HSE on 2<sup>nd</sup> August, 2021 and 25<sup>th</sup> June 2020 to the planning authority. According to this correspondence:

- the aim of the Primary Care Infrastructure Strategy is for a 'one stop shop' for delivery of primary care services within local communities.
- The proposal for the HSE facility at the Braids Mill development is to address the accommodation needs of four primary care teams and that it is to serve as a hub for specialist services for the county. A detailed summary of wide-ranging multidisciplinary services to be provided for primary health care and specialised services within the community. It is also the intention of the HSE to develop a second primary care centre in Ennis

4.2.5. It is considered that the HSE is a public service body although its charitable status as advised in the appeal is also noted. The *bone fides* of the agreement by the HSE to lease circa seventy percent of the accommodation with the development and as to design and layout to the HSE specific requirements is accepted and is not at issue in determining the appeal.

#### 4.3. **Precedent**

4.3.1. The reports of the inspectors and the Board orders in respect of the three permitted developments for which it is contended in the appeal that precedent can be taken have been reviewed.

- 4.3.2. With regard to the permitted developments at Ballyboden and at Edenmore in respect of which it is advocated in the appeal that precedent should be taken for omission of primary health centre use from reckonable floor areas for calculation purposes it is not evident based on the inspector's reports and board orders that there are any relevant material considerations which provide a basis from which precedent could be taken to support the case made in the current appeal. (PL 243622 and PL 241384 refer.)
- 4.3.3. With regard to the permitted development at Armagh Road, there are similar first party appeal grounds to the those in the current appeal. The adopted Development Contribution scheme the terms of which were applicable was the Dublin City Council Development Contribution Scheme, 2013-2015. The inspector in her report determined that the terms of the adopted scheme had been incorrectly applied in that she was satisfied that a primary care centre did not constitute a "hospital or similar development" (which provides accommodation) in respect of which there was no provision for exemptions or reductions in the amounts payable in the adopted scheme. She accepted the case made in the appeal as to the written evidence of intent to lease the space by the HSE and, its charitable status and recommended that the appeal be upheld and the Board determined the First Party appeal in accordance with her recommendation. The amount payable under the condition was therefore revised accordingly.

#### **4.4. Application of the terms of the Clare County Council Development Contributions Scheme, 2017-2023**

- 4.4.1. It should be borne in mind that for each local authority administrative area Section 48 individual development contribution schemes are drawn up and adopted by the Members. As such the terms and conditions, including the range of exemptions and reductions within adopted schemes may vary amount local authorities. This should be borne in mind in consideration of the scope for taking precedent. The adopted Section 48 development contributions scheme, applicable at the time of the determination of the decision on the current application is the Clare County Council Development Contributions Scheme 2017-2023 (the adopted scheme) . As such in adopting such a scheme, it is for the members to determine as to whether an 'end user' or a developer is liable for payment of development contributions.



- 4.4.2. Section (D), Table 2 Exemptions, Category 3 of the adopted scheme provides for exemption in entirety for *“Development by or on behalf of an organisation that is not for profit and of a community nature. For the purposes of this scheme, this does not include third level institutions and associated student accommodation, fee paying schools and hospitals and similar developments. eg. Nursing homes.”*
- 4.4.3. However, having reviewed the terms of the adopted scheme, it is considered that the HSE Primary Care Centre which is described in the HSE’s letter of 2<sup>nd</sup> August, 2019 and subsequent correspondence to the planning authority as being part of the HSE’s Primary Care Infrastructure Strategy and, which is to serve as a hub offering a wide range of services along with staff facilities does come within the scope development that is *“by or on behalf of an organisation that is not for profit and of a community nature”*. It is also considered reasonable to concur with the view of the inspector in her report on the Primary Care Facility at Armagh Road, that a primary care centre is distinct from a hospital (or similar development) in that it does not include accommodation. (PL 241889 refers.)

#### 4.5. **Conclusion and Recommendation**

- 4.5.1. Given the foregoing it can be concluded that the planning authority did not correctly the terms of the Clare County Council Development Contributions Scheme 2017-2023 in including the gross floor area of the part of the development to be occupied by the HSE within the reckonable gross floor area for the purpose of calculation of the amount payable. It is therefore recommended that the planning authority be directed to attach a revised condition in substitution for Condition No 18 with a requirement for payment in the amount of €37,518.75 as provided for below.

#### **Revised Condition.**

*The developer shall pay to the planning authority a financial contribution in the amount of thirty seven thousand, five hundred and eighteen euro and seventy five cent (€37,518.75) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and*

*Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.*

**Reason:** *It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.*

**Jane Dennehy**  
Senior Planning Inspector  
5<sup>th</sup> November, 2021.