



An
Bord
Pleanála

Inspector's Report ABP 310664-21.

Development	Four storey over part basement primary care centre complex.
Location	Old Fort Road, Ballincollig, Co. Cork.
Planning Authority	Cork City Council,
P.A. Reg. Ref.	18/06762
Applicant	Glencar Healthcare
Type of Application	Permission
Type of Appeal	Condition No 2 (Section 48 Development Contribution - Point of detail.)
Appellant	Glencar Healthcare.
Inspector	Jane Dennehy

1.0 Background.

- 1.1. The appeal by Glencar Healthcare is solely in respect of Condition No 2 attached to the Final grant of permission to Varsovian No 2 Limited Partnership for a development comprising a Primary Care Centre complex. Condition No 2 is an unspecified Section 48 development contribution condition.
- 1.2. The original proposal with a stated floor area of 6,848 square metres. (6,386 excluding a play area.) and included offices consulting rooms including specialist consultant rooms and associated offices, HSE offices and associated facilities, two retail units (440 square metres) switch room (22 square metres) gas skid, landscaping and associated facilities and works.
- 1.3. In a further information submission to the planning authority on 11th December, 2018 the proposed development was modified and the total stated floor area was reduced to 5,598 square metres and that the scheme was designed in conjunction with HSE Estates specifically for the use by the HSE as a Primary Care Centre.
- 1.4. After the final Grant of Permission had been issued on 19th August, 2019, the agent for the developer's (Glencar Healthcare) in a letter to the planning authority dated 7th October, 2020 requesting a reduction in the amount payable. In it, it is submitted that the gross floor area of 5,128 square metres which is equivalent to the floor area to be occupied by the HSE is not reckonable for the purpose of calculation of the amount payable because the HSE with registered charitable status is the end user.
- 1.5. It is therefore requested that the amount payable under Condition No 2 be reduced to €25,068.63 to provide for omission €5,166 square metres, (the total area within the development to be occupied by the HSE) as a result of which the reckonable floor area for calculation purposes is 470 square metres. (5,598 square metres less 5,128 square metres.)

2.0 The Appeal

2.1. Grounds of Appeal

2.2. An appeal was lodged by PAMES Development Ltd. on behalf of the applicant on 28th June, 2021. The appeal is solely in relation to Condition No 2 attached to the grant of permission according to which a development contribution is payable 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 amount payable was subsequently calculated to be €297,394.00

2.3. The applicant seeks a reduction in the amount payable because.

- The HSE is in agreement with the developer to lease ninety two percent of the development.
- The HSE has charitable status. (It is a registered charity.)
- 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 Pleanála 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.)

Attached to the appeal is a copy of the letter dated 7th October, 2020 lodged with the planning authority requesting a reduction in the amount payable. (See para 1.4 above.)

2.4. **Planning Authority Response**

A submission was received from the planning authority on 12th July, 2021 in which reference is made to City Council General and Supplementary Development Contributions Scheme according to which it is stated that Primary Care Centres are excluded from availing of the 100 per cent discount allowed for under section 5.1 of the scheme and that the contributions required were levied accordingly. Reference is also made to the exclusions allowed for, according to a note on page 10 of the scheme to development “*designed or intended to be used for social recreational, educational or religious purposes by inhabitants of a locality and is not to be used mainly for profit or gain.*”

3.0 **Assessment**

3.1. The assessment is set out under the following subheadings.

Nature of lessee’s occupancy.

Precedent.

Application of the terms of the Cork City Council Development Contributions Scheme, 2017-2023.

Conclusion and Recommendation.

3.2. **Nature of lessee’s occupancy**

3.2.1. It appears, based on review of the written submissions lodged in connection with the application that it was clear that the HSE would, as lessee, be ‘end user’ of the development. The details in the development description and on the floor plans provided to the planning authority clearly show an internal layout and range of accommodation commensurate with the requirements for a primary care centre

providing a considerable range of services to the community and primary health care staff.

3.3. Precedent

- 3.3.1. 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.
- 3.3.2. 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.)
- 3.3.3. 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.

3.4. Application of the terms of the Cork City Council Development Contributions Scheme, 2018-2021.

- 3.4.1. It is understood that the adopted scheme the terms of which are applicable is the Cork County Council Development Contributions Scheme, 2004 it should be borne in mind that for each local authority administrative area Section 48 development contribution schemes are drawn up and adopted by the Members, with rates payable

being subject to regular review. 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. As such in adopting a scheme, it is open to the Members to determine as to whether an 'end user' or a developer is liable for payment of development contributions.

- 3.4.2. Details of fees paid are not available within the Board's file or among application documents which have been viewed on the Council's website, the application having been lodged on behalf of Varsovian No 2 Limited Partnership. However, the HSE is a public service body with registered charitable status as advised in the appeal *The bone fides* of the agreement by the HSE to lease the accommodation with the development and as to design and layout to the HSE specific requirements is accepted.
- 3.4.3. In reviewing the criteria for "Reductions" (P 8 of the adopted scheme) it is noted that a one hundred per cent reduction is allowable for "*Provision of facilities by organisations which are considered to be exempt from planning fees as outlined in Part 12 Article 157 (1a-c) of the Planning and Development Regulations, 2001*"
- 3.4.4. It is clearly apparent from review of the development description on the statutory notices and from correspondence lodged with the application that the developer, is a commercial entity or private company but on the other hand, the purpose of the project is for social purposes benefiting the community and not for the purpose of profit or gain with the lessee, the HSE a registered charity providing public services to this end. It is therefore considered to interpret the terms of the adopted scheme as providing for a reduction for the proposed development
- 3.4.5. It is arguable that the "end user" of the development would come within Article 157 (1) (a) in that it is "*designed or intended to be used for social..... purposes and is not to be used mainly for profit or gain.*" Although it is the planning authority's case that the developer's status only should be assessed in this regard it is considered reasonable to interpret the terms of the adopted scheme as providing for a one hundred percent reduction for the proposed primary care centre use in that the end user is the HSE.

- 3.4.6. There is no dispute between the parties as to the gross floor area of the permitted development and the elements thereof.

4.0 Conclusion and Recommendation

- 4.1. On the basis of the foregoing, it can be concluded that the planning authority did not correctly the terms of the Cork City Council Section 48 Development Contributions Scheme 2018-2021 by including the area within the development to be occupied by the HSE as 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 2 with a requirement for payment in respect of a total gross floor area of 470 square metres, in the amount of €25,068.63. in accordance with the contribution rate at 1st January, 2020 of €53,3375 pr square metres providing for nine per cent of the total floor gross floor area as provided for below.

Revised Condition.

The developer shall pay to the planning authority a financial contribution in the amount of twenty five thousand, sixty eight euro and sixty three cent (€25,068.63) 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
9th November, 2021.