



An
Bord
Pleanála

Inspector's Report ABP 310687-21.

Development	Change of use of two buildings, a mill building and an office building to Primary Care Centre, Construction of extension, refurbishment of protected structure, reconfiguration of carpark and erection of signage.
Location	Island Mills, Mill Road Fermoy Co. Cork. (Protected Structure).
Planning Authority	Cork County Council
P. A. Reg. Ref.	18/4750 (& PL 303233)
Applicant	Glencar Healthcare
Type of Application	Permission
Decision	Grant Permission.
Type of Appeal	Condition No 43 (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 42 attached to the Final grant of permission to UHPC International for a development comprising a change of use of two buildings, a mill building and an office building to Primary Care Centre, Construction of extension to an existing building, refurbishment of protected structure, reconfiguration of carpark and erection of signage at Island Mills, Mill Road, Fermoy. In the development description on the statutory notices, it is stated that the use proposed is a primary Healthcare Centre for the HSE and general medical doctors, a dispensary and medical aid centre along with a coffee shop in an entrance lobby and, ancillary accommodation.
- 1.2. In the written submission accompanying the original application it is stated that the existing buildings which were in office use were unoccupied and that previous occupants had been BUPA Healthcare, Quinn Healthcare and Metropolitan Life.
- 1.3. The planning authority's decision to grant permission was upheld following appeal. (PL 303233 refers.) Condition No 21 attached to the Board's order dated 10th February, 2019 is a Section 48 development contribution condition in which the amount payable is unspecified. Condition No 41 which had been attached to the decision of the planning authority to grant permission is a Section 48 development contribution condition in which the amount payable is €43, 534.33, "calculated in accordance with the Council's development contribution scheme on 1/01/15 and increased monthly at a rate of 8% per annum in the period between the date on which this value was calculated and the date of payment.
- 1.4. The total stated floor area of the development as proposed in the application and finally permitted for existing and new build is 4,112 square metres, that of the existing being 3,223 square metres.

2.0 The Appeal

- 2.1. An appeal was lodged by PAMES Development Ltd. on behalf of the applicant on 28th June, 2021. Attached to the appeal is a copy of a letter dated 14th September, 2020 which was issued by the applicant's agent to the planning authority.

2.2. The appeal is solely in relation to Condition No 21 attached to the grant of permission according to which a development contribution is payable in the amount of €43,534.00 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 based on the following grounds: -

- The HSE has charitable status. (It is a registered charity.) It is in agreement with the developer to lease ninety one percent of the development. Space with a gross floor area of, 3,871 square metres within the permitted development is to be leased to the HSE which will be the end user. The space has been designed to the HSE'S requirements for the Primary Care Centre. The amount payable should be reduced to €3,918.09 to correspond to the remaining nine percent of the development
- 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.

2.3. Also attached to the submission is a letter to the applicant's agent dated 8th October, 2020 in reply to its letter to the planning authority dated, 14th September, 2020. According to this letter, the applicant is a private developer and in order for an exemption to be applied it would have been necessary for a registered charity to lodge the application its own name. It is stated that the HSE is to be a tenant and that contributions are required from the HSE when it is an applicant. It is also stated in the letter that the applicant has also benefited from exemption applied in respect of protected structures.

2.4. In addition, attached to the appeal are:

a copy of a statement by the Financial Contributions Section at South Dublin County Council dated 21st March, 2021. It is stated in this letter that the Council, via a Chief Executive Order had decided to reduce a development contribution required by condition in respect of a development of a Primary Care Centre to €30,500.30

a copy of a statement by Dublin City Council in relation to a grant of permission on 30th April, 2013 development at Tonlague Road Dublin 5 in

which it is confirmed that a development contribution in the amount of €46,369.45 is required.

3.0 Planning Authority response.

3.1. A submission was received from the planning authority on 22nd July, 2022 according to which:

The rate of contribution is €48.97 per square metres

The total gross floor area is 4,112 square metres.

In accordance with the adopted scheme, no amount is payable in respect of the protected structure element, the GFA of which is 3,003 square metres. A further 220 square metres in GFA is to be demolished and new build is 1,109 square metres in GFA. The planning authority, taking the floor area of the demolition into account, determined that the net floor area for which a contribution is payable to be 889 square metres.

3.2. It is the planning authority's case that there is no basis for the reduction sought in that: -

- The development is commercial; the application was lodged by a private company, the development is commercial, occupancy by lease is irrelevant and, the development was not purpose built for the HSE's purposes.
- The development was not purpose built for the HSE's purposes.
- Occupancy by lease is irrelevant.

4.0 Assessment

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

Nature of lessee's occupancy.

Precedent.

Application of the terms of the Cork County Council Development Contributions Scheme, 2004

Conclusion and Recommendation.

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

- 4.2.1. It appears based on review of the written submissions lodged in connection with the application and reports of the planning officer that it was clear that the HSE would, as lessee, be 'end user' of the development. The details 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.

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 Cork County Council Development Contributions Scheme, 2004.**

- 4.4.1. 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.
- 4.4.2. The application form lodged with the application has been viewed on the Council's website along with correspondence confirming calculation of a total fee in the sum of €15,168.76 and correspondence confirming consent by John McCarthy, in receivership who had negotiated the sale of the property to Medic X Properties Ltd in association with the applicant to the lodgement of the application for the purposes of converting the building to a primary care centre.
- 4.4.3. 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 the accommodation with the development and as to design and layout to the HSE specific requirements is accepted.
- 4.4.4. In reviewing the criteria for "Reductions" (P 7 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*"
- 4.4.5. 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.
- 4.4.6. It is apparent from review of the correspondence lodged with the application in conjunction with the application form 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.

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

5.0 Conclusion and Recommendation

- 5.1. On the basis of the foregoing, it can be concluded that the planning authority did not correctly the terms of the Cork County Council Section 48 Development Contributions Scheme 2004 in including the gross floor area of the new build, (less the area of structures to be demolished) 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 43 with a requirement for payment in the amount of €3,918.09, 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 three thousand, nine hundred and eighteen euro and nine cent (€3,918.09) 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
10th November, 2021.