



An
Bord
Pleanála

Inspector's Report ABP 310774-21.

Development	Three storey over basement level Primary Care Centre.
Location	Maginn Avenue, Adararavan, Buncrana, Co. Donegal.
Planning Authority	Donegal County Council.
P. A. Reg. Ref.	19/50237
Applicant	Glencar Healthcare.
Type of Application	Permission.
Type of Appeal	Condition No 16 (Section 48 (2) (c) Special 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 16 attached to the Final grant of permission to Valley Healthcare for a development comprising a Primary Care Centre complex to be constructed at Maginn Avenue, Ardaran, Buncrana, Co. Donegal. The permitted development is a three storey over basement Primary Care Centre building with a total stated floor area of 8,332 square metres. The HSE is in agreement to a lease for 6,346 square metres (76.16%) of the area within the development which will be occupied a primary care centre.
- 1.2. Condition No 15 is a Section 48 development contribution condition as provided for in the Adopted Development Contributions Scheme for Donegal County Council according to which there is a requirement for payment of €36,160.00 in respect of public infrastructure and facilities benefiting development in the area of the planning authority. The rates for commercial development had been applied. However, the amount payable was subsequently reduced to €8,620.54 having regard to the agreement to lease space within the building by the HSE, in that it is a publicly funded state health provider. The reduced amount payable was calculated on the basis of a reckonable floor area of 23,608 square metres reflecting 23.84% of the total floor area within the building not being leased by the HSE.
- 1.2.1. Condition No 16 is a Section 48 (2) (c) special development contribution condition according to which there is a requirement for payment of €120,000 towards the cost of junction realignment and upgrade works at Maginn Avenue, McCarter Road, Hillhead Road, Cluan Mhuire Junction at the centre of the town of Buncrana which will facilitate the development. There are provisions, within Section 48 (3) (c) of the Act whereby there are entitlements to refunds in circumstances where works towards to cost of which the contribution is required have not been commenced and/or completed within specified timeframes. The reasoning for the attachment of the condition is that the developer should contribute to the specific exceptional costs incurred (in the improvement upgrade works) and which benefit the development but are not included in the development contributions scheme.

2.0 The Appeal

2.1. An appeal was lodged by PAMES Development Ltd. on behalf of the applicant on 6th July, 2021. Included in the attachments to the appeal is a copy of a letter dated 6th July, 2020 which was issued by the applicant's agent to the planning authority and a copy of a letter dated 20th July, 2021 issued in reply to the applicant's agent.

2.2. In the appeal it is requested that the amount payable under Condition No 16 be reduced from €120,000 to €28,608.00 (reflecting the floor area of the space not included in the lease to the HSE) to bring the payment in line with the reduction that has been applied to the amount payable under Condition No 15 on grounds that there is no rationale for the differences with regard to the HSE occupation in the two conditions under section 48 of the Act.

2.3. The applicant also 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 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.)

- 2.4. In the letter dated 6th July, 2020 issued to the planning authority after the Final Grant of Permission had been issued requesting a reduction in the amount of special development payable under Condition No 16 having regard to section 48 (2) (c) of the Act on the basis that a similar rationale on which the reduced amount is payable under Condition No 15, in accordance with the terms of the Adopted Development Contributions Scheme should be applied.
- 2.5. In the letter issued to the applicant's agent dated 20th June, 2021 the planning authority confirms that it accepts the exemption providing for the amount payable under Condition No 15, having regard to the adopted Development Contribution's Scheme in respect of the HSE in that it is a registered charity with a 'not for profit' function. However, it is also stated that it is not accepted that a similar rationale would apply in respect of the special development contribution, in accordance with section 48 (2) (c) to be paid under condition No 16 because: -

The development would have been deemed premature due to the lack of the specific roads' infrastructure towards the cost of which the contribution is required.

The planning authority considers the levy required to be reasonable, fair and fully appropriate.

3.0 Planning Authority Response

- 3.1. A submission was received from the planning authority on 3rd August, 2021 according to which: -
- The planning authority had considered the request by the applicant's agent for a reduction in respect of the reckonable area to be leased to the HSE. (See para 1.3 above.) In reaching this decision in respect of Condition No 15, it had regard to the requirement for payment, of a special development contribution under Condition No 16 in accordance with Section 48 (2) (c) of

the Act when it made its decision to reduce the amount payable under Condition No 15 in respect of public infrastructure and facilities benefiting development in the area of the planning authority, in accordance with the exemptions and reductions within the adopted Development Contributions Scheme.

- The same rationale cannot be applied for reduction in the amount payable in respect of the application of a requirement for payment of the special development contribution in accordance with Section 48 (2) (c) of the Act, as amended payable under Condition No 16. This application of this requirement is outside the terms of the adopted Development Contributions Scheme. The contribution required under Condition No 16 was applied in accordance with Section 48 (2) (c) of the Act which allows a planning authority, in addition, to require payment of a special development contribution in respect of a particular development where specific exceptional costs not covered by a Scheme but incurred by a local authority in respect of public infrastructure and facilities which benefit the proposed development.
- The planning authority considers the amount payable to be both reasonable and fair. The existing road junctions towards the cost the contribution is required are considered inadequate and deficient in capacity to accept the additional traffic generated by the proposed development. The proposed development would therefore be deemed premature due to the inadequacies of the roads infrastructure if the critical improvement works at a critical transport node in roads infrastructure at the town centre of Buncrana are not implemented.

4.0 **Assessment**

- 4.1. The planning authority in its correspondence correctly clarified the distinction between the terms of Section 48 of the Act on the basis of which Condition Nos 15 and No 16 were attached. The provisions of Section 48 (2) (c) were applied in attaching Condition No 16, the condition subject to the appeal whereas the terms of the Generation Development Contributions Scheme adopted by the Council were applied in attaching Condition No 15. The rationale for the reduction in the amount

payable, under Condition No 15 based on a 100 percent reduction allowed for calculation purposes having regard to the reckonable floor area to be occupied by the HSE is not applicable. It should be noted in this regard that development contributions required in accordance with the terms of a Section Development Contributions Scheme adopted by the Council are towards the cost of public infrastructure and facilities benefitting development in the area of the planning authority in which the scheme applies, irrespective of whether the proposed development directly benefits from the services and facilities provided for in the adopted scheme which are to be funded.

4.2. According to the provisions of Section 48 (2) (c) “

“A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development”.

4.3. A development should satisfy three essential requirements or characteristics to justify attachment of a of a “special contributions” condition to a grant of permission. The payment must be required (a) in respect of a particular development, (b) specific exceptional costs must be incurred as a result of or in order to facilitate it and, (c) such costs cannot be covered by a Development Contribution Scheme made under Section 48 (2) (c) of the Act. In the course of the application process, the planning authority concluded that the traffic generation, as predicted in the applicant’s Traffic Impact Assessment demonstrated that the upgrade and improvement works would be required in order to permit the development. It is confirmed that these upgrade works were not being considered by the Council and, that therefore the payment of the special development contribution would be necessary to facilitate the provision of the required road improvement and upgrade works. The Road’s Design Office’s

report, dated, 13th January, 2020 in which a figure of €120,000 for the cost of the project is provided refers.)

- 4.4. The contribution, the payment of which is required under Condition No 16 is in respect of a particular development for which specific exceptional costs would be incurred to facilitate it. It is noted from review of the adopted scheme, 2016 which is available that the projects described in the planning authority's correspondence and Condition No 16 are not included in the "Schedule of Potential Capital Projects" (to be covered by the scheme) in Appendix 1. Finally, the planning authority had concluded that in the absence of the roads improvement and upgrade works described in its correspondence and response to the appeal a decision to refuse permission on grounds of premature development because the existing roads infrastructure would not have capacity to accept the additional traffic generation that would be attributable to the development.

As previously stated, the rationale for the application of Section 48 (2) (c) in attaching the condition is not comparable to the rationale for application of the terms of the development Contribution Scheme in attaching Condition No 15 in respect of which the reduction in the amount payable providing for exemption for the HSE occupancy was allowed. It is therefore agreed with the planning authority that there is basis within the appeal grounds to support the case for a reduction in the amount payable under Condition No 16 in that the terms of the adopted, Development Contributions Scheme, including its provisions for reductions and exemptions are irrelevant.

Finally, the case for "precedent" as asserted in the appeal with reference prior appeals in connection with development contribution conditions, is irrelevant with regard to consideration of Condition No 16 in that the contribution is a special development contribution provided for under Section 48 (2) (c) of the Act as distinct from adopted Development Contributions Scheme the terms of which do not apply as discussed above.

Recommendation

In view of the foregoing, it is recommended that it be decided that the planning authority should be advised that that it correctly applied the provisions of section 48 (2) (c) of the Planning and Development Act as amended in requiring payment of a special development contribution in the amount of one hundred and twenty thousand euro, (€120,000.00) under Condition No 16 attached to the final grant of permission and that a reduction in the amount payable is not required.

Jane Dennehy

Senior Planning Inspector

10th November, 2021.