



An  
Bord  
Pleanála

## Inspector's Report ABP 311162-21.

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<b>Development</b>	Community Primary Healthcare Centre and Pharmacy for HSE services.
<b>Location</b>	Ard Daire Ferrybank. Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council
<b>P. A. Reg. Ref.</b>	17/686
<b>Applicant</b>	Glencar Healthcare
<b>Type of Application</b>	Permission
<b>Decision</b>	Grant Permission.
<b>Type of Appeal</b>	Condition No 2 (Section 48 Development Contribution - Point of detail.)
<b>Appellant</b>	Glencar Healthcare
<b>Inspector</b>	Jane Dennehy

## 1.0 Background

The appeal by Glencar Healthcare is solely in respect of Condition No 2 attached to the Final grant of permission to Action Enterprises for a development comprising a Primary Care Centre facility for HSE' primary healthcare services incorporating a Pharmacy on land in the ownership of Waterford County Council.

- 1.1. Condition No 2 which was attached to the Final grant of Permission for the development is an unspecified Section 48 Development Contribution Condition providing for a contribution 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 Kilkenny County Council Development Contributions Scheme. The amount payable was calculated to be €90,100.

The total stated floor area for the permitted development is 3,604 square metres of which 2,812 square metres is to be leased by the HSE for use as a primary care centre.

## 2.0 The Appeal

- 2.1. An appeal was lodged by PAMES Development Ltd. on behalf of the applicant on 17<sup>th</sup> August, 2021. The appeal is solely in relation to Condition No 2 attached to the grant of permission. The planning authority calculated the amount of the development contribution 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 to be €90,100. 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 eight 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 seventy-eight per cent of the development.

- It is the end user and not the developer that should be assessed for the purposes of liability to pay development contributions as has been determined in relation similar developments. In a letter submitted to the planning authority a copy of which is attached to the appeal it is stated that the total gross floor area of the permitted development is 3,604 square metres. Within the permitted development, space equivalent to 2,812 square metres to be leased to the HSE and that this space was designed in conjunction with HSE Estates specifically for the HSEs exact primary care centre requirements. The remaining gross floor area reckonable for the purposes of calculation of the contribution payable is therefore 792 square metres and it is requested that the amount payable under Condition No 2 be reduced accordingly. Based on a rate of €25,00 per square metres, the amount payable would be €19,800.00
- 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.)

- 2.3. Attached to the appeal is a copy of the letter dated 29th July,2021 issued by the applicant’s agent to the planning authority, the contents of which are similar to those within the appeal submission and a letter from the planning authority to the applicant’s agent dated, 3rd August, 2021 in which it is stated that the planning authority considers that it applied the terms of the Development Contributions Scheme correctly in attaching the condition with requirement for payment of

€90.100.00 lodged with the planning authority requesting a reduction in the amount payable and a written response issued to the applicant's agent by the planning authority

### **3.0 Planning Authority Response**

3.1. A submission was lodged by the planning authority on 16th September, 2021 in which it is confirmed that the planning authority considers that it calculated the amount payable under Condition No 2 correctly and in accordance with the Council's Development Contribution Scheme.

3.2. According to the submission: -

The applicant was Acton Enterprise Ltd and Primary Care Centres are developed on a Tender basis. As the development was initiated and implemented on a commercial basis and it is the view of the planning authority that the end user, the HSE does not fulfil the description of a voluntary organisation as defined in the Council's Contribution scheme.

Development contributions have been applied for primary care developments elsewhere in the county. Details and contribution sheets are provided in respect of two previously permitted Primary Care Centre developments the amount payable being calculated on the same basis is for Condition No 2 attached to the grant of permission for the subject permitted development Ferrybank.

It is requested that it be determined that the contribution payable in the amount of €90.100.00 under Condition No 2 should remain unchanged.

### **3.3. Further Submission of the applicant**

3.3.1. A submission was lodged by PAMES Development Ltd. on behalf of the applicant on 11<sup>th</sup> October, 2021 according to which the Board has consistently held that the end user is the HSE, a registered charity which will lease 78 percent of the building. It is also stated that the developer for the developments in Kilkenny and Callan referred to in the planning authority submission may have been unaware of the precedents.

## 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 Kilkenny County Council Development Contributions Scheme, 2016-2017.

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, in compliance submissions in connection with conditions attached to the final grant of permission and available to the Board 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 Kilkenny County Council Development Contributions Scheme, 2016-2017.**

- 4.4.1. 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. The inclusion of the reference to the HSE in relation to primary care centre use in the descriptions in the statutory notices are of relevance in this regard. It is apparent from review of the correspondence lodged with the application in conjunction with the application form that the developer Acton Enterprises is a commercial entity or private company but on the other hand, there is no dispute that the end user of seventy eight per cent of the development, the HSE’ for the primary care centre 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
- 4.4.2. However, further to review the criteria for, “Exemption from the payment of Development Contributions” and “Reduced Development Contributions” (Pages 6 and 7 of the adopted Kilkenny County Council Development Contributions Scheme it is noted that there is no provision for an exemption or reduction in the amount payable in respect of the space to be leased to the HSE and occupied by the Primary Care Centre as an end user.

- 4.4.3. Contrary to the exemptions provided for in several other development contribution schemes adopted by other local authorities there are no references in the adopted scheme for Kilkenny to “*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”*. If this were the case, it would be arguable that the HSE as end user would come within Article 157 (1) (a) in that the primary care centre is “*designed or intended to be used for social..... purposes ..... and is not to be used mainly for profit or gain.*”
- 4.4.4. Given the foregoing and taking into account the application by the planning authority of an amount payable based on the full floor area as being reckonable for calculation purposes, on grounds that the developer as a commercial entity with regard to primary care centre developments involving the HSE as end user it is considered that the planning authority correctly applied the terms of the adopted development contributions scheme in including the gross floor area for the primary care centre use as reckonable for calculation of the amount payable.
- 4.4.5. 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 correctly applied the terms of the Kilkenny County Council Section 48 Development Contributions Scheme 2016-2017 in including the gross floor area 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 2 in which the amount payable is unspecified with a requirement for payment in the amount of €90,100.00, ninety thousand and one hundred euro in respect of public infrastructure and facilities benefiting development in the area of the planning authority as provided for below.

**Revised Condition.**

*The developer shall pay to the planning authority a financial contribution in the amount of ninety thousand, and one hundred euro (€90,100.00) 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  
10<sup>th</sup> November, 2021.