



An
Bord
Pleanála

Inspector's Report ABP-315637-23

Development

Construction of 13 no. warehouse/light industrial units in 3 no. buildings with ancillary two storey offices internally and associated site works (part of previously permitted development under PA. Ref. 06/6741 and extension of permission PA. Ref. 11/5459).

Location

Titan Container Storage Facility,
Fotapoint Enterprise Park, Killacloyne,
Carrigtwohill

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

217424

Applicant

Cruachan Investments Limited
Partnership

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

First Party v Conditions

Appellant

Cruachan Investments Limited
Partnership

Observer(s)

None

Date of Site Inspection

Not Applicable

Inspector

Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site is located within Fota Enterprise Park, on the southern side of the L-3004, c. 2km west of the centre of Carrigtwohill, Co. Cork. The appeal site has a stated area of 1.042 Ha. and is used as a storage compound for containers. The appeal site is south of Fota Retail and Business Park and west of Cobh Cross Retail Park. The appeal site is located c. 600 metres west of Cobh Cross junction, which connects to the N25.

2.0 Proposed Development

- 2.1. The proposed development comprises 13 no. warehouse/light industrial units (within 3 no. buildings); ancillary two storey offices; and associated site works.
- 2.2. The floor area of the proposed development is stated as 4,335 sqm. (comprising Block D - 1,215 sqm; Block F - 1,560 sqm and Block J - 1,560 sqm).

3.0 Planning Authority Decision

3.1. Decision

Prior to granting permission for the proposed development the Planning Authority requested Further Information in respect of traffic impact; mobility management; access/sightlines; road safety audit; car parking; Appropriate Assessment; drainage; and landscaping/boundaries.

The Planning Authority subsequently granted permission for the proposed development on the 19th of December 2022 subject to 24 no. conditions. The following planning conditions relate to development contributions and are the subject of this appeal.

Condition no. 22 –

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a contribution of €24,276.00 to Cork County Council in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority. The value of this contribution

is calculated in accordance with the Council's Development Contributions Scheme on 01/12/2022 and shall be 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.

Reason: It is considered appropriate that the developer should contribute towards the cost of public infrastructure and facilities benefiting development in the area of the Planning Authority, as provided for in the Council's Development Contributions Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act, and that the level of contribution payable should increase at a rate which allows both for inflation and for phasing in of the target contribution rates, in the manner specified in that scheme.

Condition no. 23 –

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a supplementary contribution of €100,572.00 to Cork County Council in respect of the Cobh/Midleton – Blarney Suburban Rail Project. The value of this contribution is calculated in accordance with the Council's Supplementary Development Contributions Scheme in respect of this project on 01/12/2022 and shall be 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. If no substantial works have been carried out, or have been commenced, by a date 10 years after the receipt of a contribution or final instalment thereof, the contribution shall be returned to the developer, but less an amount corresponding to 75% reduction in the roads element of the contribution charged under the Council's General Contributions Scheme, together with payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council.

Reason: It is considered appropriate that the developer should contribute towards the cost of this project which will benefit the development to which this permission relates when carried out, as provided for in the Council's Supplementary Development Contributions Scheme, made in accordance with

Section 49 of the 2000 Planning and Development Act, and that the level of contribution payable should increase at a rate which allows both for inflation and for phasing in of the target contribution rates, in the manner specified in that Scheme.

Condition no. 24 –

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a special contribution of €134,786.77 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out, for the provision towards measures proposed at Cobh Cross and Infrastructure to connect to the planned sustainable travel measures proposed by Cork County Council. The payment of the said contribution shall be subject to the following: : - (a) where the works in question— (i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment), (ii) have commenced but have not been completed within 7 years of the date of payment of the contribution (or final instalment if paid by phased payment), or (iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the applicant together with any interest which may have accrued over the period while held by the Council. (b) Where under subparagraphs ii) or (iii) of paragraph (a) above, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out. (c) payment of interest at the prevailing interest rate payable by the Council's Treasurer on the Council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council.

Reason: It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the Planning Officer generally reflects the issues raised in the request for Further Information.

The second report of the Planning Officer notes that the issues raised in the request for Further Information have been satisfactorily address and recommends a GRANT of permission consistent with the Notification of Decision which issued.

Of relevance to development contributions, the second report of the Planning Officer notes the following –

- that the proposed development, as noted in the Traffic and Traffic Assessment (TTA) submitted by the applicant, estimates a 7% increase on the L-3004 approach to Cobh Cross northern roundabout, and that the Housing and Infrastructure Implementation Team (HIIT) recommend a Special Development Contribution towards the approved Part 8 measures to improve capacity at this junction.
- in the context of the applicant's Mobility Management Plan (MMP), it is noted that Cork County Council is currently constructing a high quality pedestrian/cycle route from Dunkettle to Carrigtohill, which will link to the run adjacent to the L-3004 immediately north of the proposed development, and that the route is consistent with the inter-urban cycle route IU-1 identified in the Cork Metropolitan Area Cork Cycle Network Plan and the adopted Cork Metropolitan Area Transport Strategy. This, and the associated bus stop to the north will provide for a sustainable travel option for staff at the proposed development, and as the applicant has not put forward proposals to connect to this route as part of the submitted MMP, the Transport and Traffic Section recommend a Special Development Contribution of €39,069.77 for provision of the connection.
- in the context of the applicant's response to the Further Information request relating to car parking, instead of reducing car parking within the site, the recommended inclusion of a condition requiring the payment of a Special Development Contribution of €39,069.77 will facilitate connection to the

planned sustainable travel measures currently being progressed by Cork County Council.

3.2.2. Other Technical Reports

Area Engineer – recommends conditions.

Public Lighting – recommends conditions.

Engineering Section – recommends conditions.

Ecology Section – Further Information recommended. Subsequent report notes no objection.

Traffic and Transport Section - Further Information recommended. Subsequent report recommends conditions.

Cork National Roads Office – report notes no objection.

DoHLGH – issues raised in respect of Appropriate Assessment.

Housing and Infrastructure Implementation Team (HIIT) – report in respect of FI, recommends special development contribution towards sustainable travel infrastructure locally, and a separate amount towards Cobh Cross junction interim measures.

3.3. Prescribed Bodies

Transport Infrastructure Ireland (TII) – report notes that development is at variance with National Policy.

Irish Water (now Uisce Éireann) – recommends conditions.

Iarnród Éireann – report notes no objection.

3.4. Third Party Observations

None noted in report of Planning Officer.

4.0 Planning History

Appeal Site/Overlaps with:

PA. Ref. 06/6741 & ABP. Ref. PL04.218710 – Permission GRANTED for 42 no. light industrial/warehousing units. This permission was extended under PA. Ref. 11/5459 and has since expired. The appeal related to a number of planning conditions, including a Section 48 Development Contribution. This permission was partially implemented and has expired.

PA. Ref. 17/5589 – Permission GRANTED for container storage facility. This permission was a 5 year temporary permission and has expired.

5.0 Policy Context

5.1. Ministerial Guidance

- 5.1.1. The following Section 28 Guidelines are pertinent to this appeal.

Development Contributions, Guidelines for Planning Authorities (Department of the Environment, Community and Local Government 2013).

The Guidelines advise that a special development contribution may be imposed under section 48(2)(c) of the Act where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution.

The Guidelines note that the *'practice of "double charging" is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing "planning gain" in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution'*.

Development Management Guidelines (Department of the Environment, Community and Local Government 2013).

Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act), advising that Development contribution conditions may only be attached if they accord with the provisions of either section 48 or section 49 of the Planning Act and these are based on the application of the terms of one or more development contribution schemes which have been formulated and adopted in accordance with those sections of the Act, or on the need for a special financial contribution. The Guidelines also advise a requirement for a special contribution may be imposed under Section 48(2)(c), where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. Section 7.12 of the Guidelines states, in respect of special contribution conditions: -

‘A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.’

5.2. **Legislative Provision**

Planning and Development Act, 2000, as amended:

S. 48 (1) – provides for a Planning Authority to include conditions requiring the payment of a contribution in respect of public infrastructure and facilities.

S. 48 (2) (a) – provides that the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme.

S. 48 (2) (c) – provides that 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.

S. 48 (10) (a) – no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme.

S. 48 (10) (b) – an appeal may be brought to the Board where an applicant for permission under *section 34* considers that the terms of the scheme have not been properly applied.

S. 48 (12) (a) where payment of a special contribution is required, the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates.

S. 49 (1) (a) – provides for a Planning Authority to include conditions requiring the payment of a supplementary development contribution.

S. 49 (3) (a) – provides for an appeal to the Board in relation to a supplementary development contribution where the applicant considers that the service or project will not benefit the development.

S. 49 (5) – the payment of a supplementary development contribution will not be required where the person concerned has made a contribution under Section 48.

5.3. Cork County Council Development Contribution Scheme, adopted 23rd February 2004

- 5.3.1. The Cork County Council Development Contribution Scheme 2004 is the applicable development contribution scheme. Revisions to rates were subsequently made and apply from the 1st of January 2014. Page 7 of the Contribution Scheme sets out development types to which reductions apply. Page 8 of the Contribution Scheme notes that developments which are liable for supplementary contributions under Section 49 of the proposed Cork Suburban Rail Project will be eligible for a conditional 75% reduction in roads contributions. Pages 10 – 14 inc. of the Contribution Scheme sets out the Supplementary Development Contribution Scheme – Cobh/Midleton – Blarney Suburban Rail Project.

5.4. Natural Heritage Designations

Not relevant.

5.5. EIA Screening

Not relevant.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first-party appeal¹ against Condition No.'s 22, 23 and 24 of the Planning Authorities Notification of Decision to Grant Permission.

- Permission has been granted in the area for developments with larger floor areas which generate greater traffic volumes compared to the proposed development (list provided in submission) which have not been subject to contributions, or have had lesser amounts applied.
- Contributions were levied and paid in respect of PA. Ref. 06/6741, and extension of duration PA. Ref. 11/5459 for development contributions and supplementary development contributions. No expenditure on infrastructure has taken place and these contributions have not been spent.
- Insufficient consideration has been taken of zoned, undeveloped lands in the area. Figures referred to by the Planning Authority fall significantly short of the actual zoned lands in this area, in particular -
 - Under PA. Ref. 06/6741 c.16,000 sqm of warehousing was permitted, of which only 3,000 sqm was developed.
 - Adjoining lands to the west have been recently zoned Town Centre and will benefit from the infrastructure contributions applied to the appellant's proposed warehouse development.
 - Lands to the east have been developed recently and have not been taken into consideration in the calculation figures, nor has this development been subject to similar contributions.
 - Lands to the north (Fotapoint Business Park) are zoned commercial and have not been considered.

¹ The development was the subject of a previous invalid appeal (ABP. Ref. 315586-23 refers). The appeal lodged in respect of the current appeal retains reference to the previous invalid appeal i.e. ABP. Ref. 315586-23. This is considered to be a typographical error on the part of the appellant.

- Section 48 and Section 49 contributions have been applied disproportionately/incorrectly, are excessive for the proposed development, affecting the viability of the proposal.

6.2. Planning Authority Response

The response from the Planning Authority notes;

Re. Section 48 2 (c) Special Development Contribution/Condition no. 24 – i.e. the element towards 'sustainable travel measures' amounting to €39,069.77.

- The purpose of the contribution is for pedestrian infrastructure to serve the area to the south of the L-3004 including the proposed development, connecting it to the wider pedestrian and cycle network currently under construction. The route, identified in the Cork Metropolitan Area Transport Strategy, will connect Cork City to Middleton and includes links to Little Island, Carrigtwohill, and Great Island, and associated public transport infrastructure. The costing was based on the construction of a controlled pedestrian crossing recently completed locally by the Local Area Office at a cost of €40,000. This figure was extrapolated for the requirements of the new crossing, resulting in a requirement of €78,139.53 for the construction of a new crossing at this location. The levy has been sought in the context of the overall zoned land likely to benefit from the development. A 50% contribution was applied to cost of €78,139.53 resulting in the Contribution of €39,069.77.
- The response notes that whilst the new crossing would connect to the Dunkettle to Carrigtwohill Pedestrian and Cycle Route (which is currently under construction) no contribution is sought from the applicant in relation this this.

The response from the Planning Authority includes a separate submission from the Housing Infrastructure Implementation Team (HIIT). This submission relates to the element of the Section 48 (2) (c) contribution towards 'Cobh Cross Interim Measures' amounting to €95,717.

- The proposed development benefits significantly from the Part 8 'Carrigtwohill Urban Regeneration and Development Fund (URDF) Initiative - Public Realm Infrastructure Bundle²,' which was approved in June 2022.
- Cobh Cross Interim Measures include an increase in the size of the existing northern roundabout (N25 - Junction 3), pedestrian crossings, and the widening and realignment of roundabout arms.
- A Strategic Traffic and Transport Assessment was undertaken as part of the Carrigtwohill URDF initiative project, and comprised an extensive assessment of the impacts of development in Carrigtwohill on the surrounding road network (including the N25). Results from the traffic modelling show that Cobh Cross junction will exceed capacity (at peak times) by 2025, resulting in queuing and increased journey times. The interim measures at Cobh Cross Junction (N25 - J3) will reduce traffic and improve journey times and reduce queuing to acceptable levels (with the network operating within capacity). The interim measures at Cobh Cross will allow development to continue within Carrigtwohill (including the proposed development) until a full upgrade of Cobh Cross can be delivered by TII. Cork County Council are in the process of preparing a detailed design brief for the Cobh Cross Interim Measures.
- Based on land use assumptions of the transport assessment, the quantum of the development in Carrigtwohill that can continue and is therefore directly benefiting from this interim measure amounts to c. 1,650 residential units and 45,000 sqm non-residential. The overall preliminary design cost estimated for the construction of the Cobh Cross Junction Interim Measure is €4.8M (cost estimate attached).
- The upgrade proposed to Cobh Cross is an interim measure and therefore not included as infrastructure within the Council's General development Contributions Scheme contributions, is not funded by the scheme, and is not funded under URDF.
- Based on 1,500 residential units (reduced by 150 no. for Part V) and 45,000m² non-residential, and based on c.115m² average floor area per residential unit, the current contribution for residential/non-residential (assuming equivalent

² Cobh Cross Interim Measures form part of the 'Carrigtwohill Urban Regeneration and Development Fund (URDF) Initiative - Public Realm Infrastructure Bundle'.

rate/m²) would be c. €22.08/m. The applicant should be required to contribute €22.08/m² x 4,355m²= €95,717 towards the cost of the interim measures at Cobh Cross.

- The special development contribution amount is considered appropriate and proportionate.

6.3. Further Responses

The appellant has submitted a response to the submission of the Planning Authority which notes –

- it is difficult to understand the differences between General, Supplementary and Special Contributions. The information on Cork County Council's website is not clear in relation to dates in respect of the Schemes.
- contributions were paid under PA. Ref. 06/6741 & ABP. Ref. PL04.218710 but the appellant is not aware of upgraded sewerage works having been undertaken to serve the site and the site remains served by a temporary service. Under PA. Ref. 06/6741 & ABP. Ref. PL04.218710 the Board reduced the amount required under Condition no. 2 in respect of a Section 48 contributions as the upgrade of a sewer was required. The Board is requested to take into account the non-provision of services (i.e. €31.50 per sqm) in consideration in this appeal.
- specific exceptional costs do not arise which benefit the proposed development and there is no justification for a Special Contribution. Should a Special Contribution be deemed necessary by the Board the appellant notes that the proposed development has an insignificant impact on existing and proposed surrounding transport infrastructure; that benefits accruing to the proposed development will be minimal; and that any Special Contribution should be proportionate.
- Cork County Council's approach to the costing of Cobh Cross Interim Measures is unclear. The project would be more appropriately funded from National Government, an updated General Development Contribution Scheme, or a Supplementary Development Contribution Scheme.
- the basis for calculating the Special Contribution is queried in the context of how the public has been informed of its scope and implications. The

'equivalence of rate' approach in respect of residential and non-residential development is queried and the appellant notes the relatively low value of their proposal and low demand on transport infrastructure.

- ABP's request to Cork County Council (dated 25th January 2023) in relation to the justification for the Special Contribution has not been adequately addressed. The appellant contends that the Special Contribution is unjustified, unfair and disproportionate.
- the basis used for the calculation of the Special Contribution is incorrect when changes to land use zonings, which likely alter densities in Carrigtowhill and increase future development potential, is considered. Additional development potential would reduce the level of contributions sought and this has not been taken account of. The appellant has undertaken an assessment (attached to submission) of future development potential in the area and estimates the potential for 198,000 sqm non-residential land, significantly in excess of the 45,000 sqm referred to by Cork County Council.
- the Transport Assessment report referred to by Cork County Council as being the basis on which the Special Contribution is calculated is not publicly available. Additionally, there is no reference to Development Plan zoning to substantiate the 45,000 sqm.
- Cork County Council have not justified why 50% of the cost of pedestrian facilities for Cobh Cross Interim Measures should be covered by Special Contribution.
- the appellant requests the Board, to consider whether the calculation of the development contribution required under Condition no. 22 and 23 are correct noting the previous error in calculating development contributions under PA. Ref. 06/6741, and to clarify the order of events in relation to the General and Supplementary Contribution Schemes, specifically whether these schemes had regard to the most recent Development Plan and Interim Part 8 Works at Carrigtowhill Interchange and Retail Outlet Centre.

6.4. Observations

None.

7.0 Assessment

7.1. This is an appeal against Condition no. 22 (General Contribution), 23 (Supplementary Development Contribution) and 24 (Special Contribution). I address each condition in turn below.

7.2. Section 48 Development Contribution – Condition no.22

- 7.2.1. Section 48(10)(b) of the Planning and Development Act 2000, as amended, provides that *'an appeal may be made to the Board by an applicant for permission where the applicant considers that the terms of the adopted development contribution scheme have not been properly applied by the Planning Authority'*. I note that that Board in considering the appeal is required under the provisions of the legislation to apply the scheme as adopted by the Planning Authority. The Board has no legal jurisdiction to interpret or evaluate the merits of any financial contribution scheme as adopted by the Planning Authority.
- 7.2.2. Condition no. 22 requires the payment of a financial contribution towards public infrastructure and facilities in accordance with the Cork County Council's Development Contribution Scheme, made in accordance with Section 48 of the Planning and Development Act, 2000, as amended. The condition requires the payment of **€24,276**. The Cork County Council Development Contribution Scheme 2004 (page 7) sets out development types to which reductions apply. I note that the proposed development is not a type of development to which a reduction would apply. Page 8 of the Cork County Council Development Contribution Scheme 2004 provides that developments which are liable for supplementary contributions under Section 49 for the proposed Cork Suburban Rail Project will be eligible for a conditional 75% reduction in roads contributions. I note that Condition no. 23 of the Notification of Grant of Permission issued by Cork County Council requires the payment of a Supplementary Development Contribution towards the Cobh/Midleton – Blarney Suburban Rail Project and therefore this reduction applies.
- 7.2.3. Rates set out in the Cork County Council Development Contribution Scheme 2004 for 'non-residential developments (specific) – warehousing (enclosed storage) – applicable rates from 1/3/2012' are €14.29 per sqm towards Roads and €2.03 per sqm towards Amenity. Applying a reduction of 75% to the 'Roads' element of the calculation

(see above) results in a €3.57 per sqm contribution towards Roads, and therefore a total of €5.60 (i.e. €3.57 Roads + €2.03 Amenity). The stated floor area of the proposed development is 4,335 sqm, therefore €5.60 x 4,335 = €24,276. The amount stipulated under Condition no. 22 is therefore correct, as per the Cork County Council Development Contribution Scheme 2004. I recommend that this condition is attached.

- 7.2.4. The appellant notes that contributions were levied and paid in respect of PA. Ref. 06/6741 however, expenditure on infrastructure (i.e. sewerage) has not taken place. I note that the existing site/development is served by a temporary treatment system. Based on the report from Uisce Éireann it appears that there is a foul sewer available in the area and this will serve the proposed development. Under PA. Ref. 06/6741, Condition no. 2 required the payment of €1,272,449 under Section 48. A Supplementary Development Contribution under Section 49 of €283,543 was also required under Condition no. 3. The Board, under ABP. Ref. PL04.21871, increased³ the amount under the Section 48 contribution to €1,333,337, rectifying an error in calculation on the part of the Planning Authority. The amount required under Condition no. 3 remained the same. The appellant requests that the Board take into account the non-provision of services (€31.50 per sqm⁴) in consideration of this appeal. I note that Condition no. 22 of the current permission issued by Cork County Council does not include payment towards sewerage. The Cork County Council Development Contribution Scheme 2004, which has been prepared in accordance with Section 48 of the Planning and Development Act, 2000, as amended, requires a contribution towards Roads and Amenity only. I note that there is provision in the Planning and Development Act 2000, as amended, for reimbursement of monies paid in respect of Special Contributions (see Section 48 12 (b)), but not in respect of contributions paid under Section 48. Under PA. Ref. 06/6741/ABP. Ref. PL04.218710 no conditions were attached to the grant of permission requiring the payment of a financial contribution under Section 48 (2) (c). As there is no provision in legislation for the reimbursement of monies paid in respect of development contributions under Section

³ The appellant referred to the amount required under Condition no. 2 of PA. Ref. 06/6741 having been reduced on appeal. I note however that the amount was in fact increased.

⁴ This figure was the amount payable in respect of sewerage under the Cork County Council Development Contribution Scheme 2004 prior to the coming into effect of the revised rates in 2014, reflecting the establishment of Irish Water (now Uisce Éireann).

48 I submit to the Board that the issue raised by the appellant in this regard is outside the scope of this appeal.

- 7.2.5. Condition 22 provides for the amount payable to be increased monthly at a rate of 8% per annum in the period between the date on which the value is calculated and the date of payment. I recommend that should the Board attach Condition no. 22 that the amount to be increased is finalised at the time of payment with the Planning Authority. The recommendation to 'attach' Condition no. 22 will encapsulate this.

7.3. Section 49 Supplementary Contribution – Condition no. 23

- 7.3.1. Condition no. 23 requires the payment of a Supplementary Contribution of **€100,572** towards the Cobh/Midleton – Blarney Suburban Rail Project in accordance with the Council's Supplementary Development Contribution Scheme, made in accordance with Section 49 of the Planning and Development Act, 2000, as amended.

- 7.3.2. The Cork County Council Development Contribution Scheme 2004 (pages 10 – 14 inc.) sets out the Supplementary Development Contribution Scheme – Cobh/Midleton – Blarney Suburban Rail Project. Page 11 of the Cork County Council Development Contribution Scheme 2004, which incorporates the Council's Supplementary Development Contribution Scheme, states that the scheme applies to areas, which are:

(a) within 1 kilometre of the Cork-Blarney, Cork-Cobh and Cork-Midleton lines, or of Cobh Station and (the disused) Blarney Station, or of the point where the disused Cork-Youghal line crosses the eastern boundary of Midleton Town, and

(b) in the functional area of Cork County Council.

The appeal site is located c. 330 metres south of the Cork to Midleton rail line, is within the functional area of Cork County, and as such the provisions of the Council's Supplementary Development Contribution Scheme applies to the site. Page 13 of the Cork County Council Development Contribution Scheme 2004, incorporating the Council's Supplementary Development Contribution Scheme, provides reduced contributions for specific types of development. I note that the proposed development

does not fall within any type of development listed as being liable for a reduced contribution.

7.3.3. The Cork County Council Development Contribution Scheme 2004, which incorporates the Council's Supplementary Development Contribution Scheme sets out rates for Supplementary Contribution Scheme (Rail Corridor Only) of €23.20 for 'other non-residential'. The stated floor area of the proposed development is 4,335 sqm, therefore €23.20 x 4,335 = €100,572. The amount stipulated under Condition no. 23 is therefore correct, as per the Council's Supplementary Development Contribution Scheme. I recommend that this condition is attached.

7.3.4. Condition 23 also provides for the amount payable to be increased monthly at a rate of 8% per annum in the period between the date on which the value is calculated and the date of payment. I similarly recommend that should the Board confirm this condition that the amount to be increased is finalised at the time of payment with the Planning Authority. The recommendation to 'attach' Condition no. 23 will encapsulate this.

7.4. Section 48 (2) (c) Special Contribution – Condition no. 24

7.4.1. Condition no. 24 requires the payment of **€134,786.77** as a Special Contribution. The reason is stated as follows: 'it is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development'. The special contribution is in respect of works proposed to be carried out at Cobh Cross (i.e. Cobh Cross Interim Works), and infrastructure to connect to the planned sustainable travel measures proposed by Cork County Council.

7.4.2. The Special Contribution is comprised of two separate amounts, €95,717 towards Cobh Cross Interim Measures and €39,069.77 towards infrastructure to connect to planned sustainable travel being progressed by Cork County Council.

7.4.3. The crux of the appellant's appeal in respect of Condition no. 24 is that it is unjustified with reference to the nature of their proposal, and that the basis used for its calculation is flawed when future development potential in the area is considered (i.e. in respect of the Cobh Cross Interim Works), as it would reduce the level of contribution required.

The appellant has undertaken their own analysis and estimate of lands in the area in this regard.

7.4.4. Section 48 (2) (c) of the Planning and Development Act, 2000, as amended, provides that 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. Section 48 (12) (a) of the Planning and Development Act, 2000, as amended, further provides that the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates. Accordingly, three essential requirements or characteristics are necessary to justify attachment of a 'special contribution' condition. Under this subsection of the Act, 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) of the Act.

7.4.5. Further guidance is contained in the Development Management Guidelines for Planning Authorities (DoEHLG, 2007). This states that it is essential that the basis for the calculation of the special contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it.

7.4.6. Cobh Cross Interim Measures - are proposed on foot of a Part 8 which was approved in June 2022 under the Carrigtwohill Urban Regeneration and Development Fund

(URDF) Initiative - Public Realm Infrastructure Bundle. I am satisfied that Cobh Cross Interim Measures are not covered by Cork County Council's Development Contribution Scheme. Cobh Cross is located c. 600 metres east of the site of the proposed development. Capacity issues at Cobh Cross are outlined by the Planning Authority and the measures proposed as part of the 'Carrigtwohill Urban Regeneration and Development Fund (URDF) Initiative - Public Realm Infrastructure Bundle,' approved under the Part 8 process will address this. I note from the TTA submitted with the planning application that the proposal will result in an estimated 7% increase on the L-3004 approach to Cobh Cross northern roundabout. In the context of the wider urban area I note that traffic impact from the proposed development is negligible. Cobh Cross is a principle access point to Carrigtwohill and in my view benefits derived from works at the junction would accrue to a wide area. In my opinion, the Planning Authority have not adequately demonstrated how the proposed works at Cobh Cross, proposed as part of the 'Carrigtwohill Urban Regeneration and Development Fund (URDF) Initiative - Public Realm Infrastructure Bundle,' would benefit the very specific requirements of the proposed development, and it has not been shown that the costs incurred at Cobh Cross are directly as a result of, or in order to facilitate, the development in question, as provided in the Development Management Guidelines for Planning Authorities (DoEHLG, 2007). Having regard to the foregoing legislation and guidance on Special Contributions, I do not consider that the Planning Authority has established a case for Condition no. 24 as it relates to Cobh Cross Interim Works.

- 7.4.7. Cork County Council's calculation of the contribution towards Cobh Cross Interim Works is based on land use assumptions taken from a transport assessment which refers to an estimated quantum of development in Carrigtwohill that can continue and directly benefit from the interim measures, specifically c. 1,500 residential units and 45,000 sqm non-residential. The calculation of the contribution is based on c.115m² average floor area per residential unit, with an equivalent rate for 'non-residential' developments, that being c. €22.08 per sqm. Using the Planning Authorities calculation methodology I note that the rate per sqm is €22.07 and not €22.08 (i.e. 1,500 units x 115 sqm ave. = 172,500 sqm + 45,000 sqm = 217,500 sqm, which is divided into €4.8m⁵ (inc. VAT) to give 22.07, rounded to nearest decimal point). The

⁵ The costings provided by the Planning Authority to the Board in their submission dated 16th of February 2023 of €4.28 million appears to be exclusive of VAT.

overall preliminary design cost estimated for the construction of the Cobh Cross Junction Interim Measure is €4.8M and a cost estimate has been provided. I note that the transportation assessment upon which the Planning Authority have based their calculation on is not publicly available. In my opinion, should the Board be minded to attached Condition 24, specifically the element of the contribution towards Cobh Cross Interim Works, caution should be exercised as the calculation is based on a document which is not publicly available.

7.4.8. Planned Sustainable Travel - Condition no. 24 requires a contribution towards infrastructure to connect to planned sustainable travel being progressed by Cork County Council. The purpose of this element of the contribution is for pedestrian infrastructure to serve the area to the south of the L-3004, connecting it to the wider pedestrian and cycle network currently under construction. I note that Cork County Council's Development Contribution Scheme includes for 'Roads' and based on the information submitted by Cork County Council I am not satisfied that pedestrian infrastructure of the nature referred to would not be covered by Cork County Council's Development Contribution Scheme. Additionally, unlike the Cobh Cross Interim Measures the pedestrian infrastructure referred to is not part of a specific Part 8 development. The Development Contribution Guidelines 2013 provide that that the *'practice of "double charging" is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing "planning gain" in an equitable manner.* Improved pedestrian and cycle connectivity in the wider area, are not in my opinion required as a direct result of the proposed development, nor could they be considered to directly benefit the proposed development, additionally Condition no. 22 provided for a development contribution under the Council's General Contribution Scheme which includes roads. Additionally, I note that there is absence of detail in relation to how the amount required in respect of the sustainable travel measures has been apportioned to the proposed development. Reference is also made to a 50% reduction in the amount required however the basis for this is not explained. Having regard to the foregoing, I do not consider that the Planning Authority has established a case for a Special Contribution towards the planned sustainable travel measures.

7.4.9. In summation, I am not satisfied that the Planning Authority have demonstrated the requirement for a condition requiring the payment of a Special Contribution in

accordance with Section 48 (2) (c) of the Planning and Development Act, 2000, as amended. Accordingly, I recommend that Condition no. 24 should be removed.

8.0 Recommendation

I recommend that the Planning Authority be directed to;

- (i) ATTACH Condition no. 22,
- (ii) ATTACH Condition no. 23, and
- (iii) REMOVE Condition no. 24.

9.0 Reasons and Considerations

1. Having regard to the provisions of Section 48 of the Planning and Development Act 2000, as amended; the provisions of the Cork County Council Contribution Scheme 2004; together with the information provided by the Planning Authority in relation to the calculation of the Development Contribution under Section 48 and 49 of the Planning and Development Act, 2000, as amended, the Board considered that the Planning Authority have correctly interpreted the contribution scheme and that the imposition of Condition no. 22 and Condition no. 23 is in accordance with the requirements of Section 48 and Section 49 of Planning and Development Act, 2000, as amended.
2. Having regard to Section 48(2)(c) of the Planning and Development Act, 2000, as amended, the Development Contribution Guidelines for Planning Authorities (2013), the Cork County Council Development Contribution Scheme 2004, in respect of Condition no. 24, the Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered that the condition failed to meet the requirements of Section 48(2)(c) of the Act and should thus be removed.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought

to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ian Campbell
Senior Planning Inspector

27th November 2024