



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315776-23

<b>Development</b>	Demolition of buildings and the construction of 92 residential units, creche, 2 storey commercial/retail building etc.
<b>Location</b>	Old Odum's Mill Site, Main Street, Sallins, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	22110
<b>Applicant(s)</b>	Springwood Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	First Party v Conditions
<b>Appellant(s)</b>	Springwood Limited.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	4 <sup>th</sup> August 2023.
<b>Inspector</b>	Lucy Roche

## **1.0 Site Location and Description**

- 1.1. The appeal site is in Sallins, County Kildare. This is a brownfield site comprising several derelict / unused buildings associated with a previous industrial use - former Odlums Mill. The site is situated within the town centre, between the Grand Canal (pNHA) and the Dublin to Waterford rail line (200m south). Sallins Main Street lies to the east while the southern, western, and part of the eastern boundaries are bounded, predominantly, by residential development.
- 1.2. The site has a stated area of 1.621ha.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises:
- a) Demolition of existing buildings (offices, stores, warehouses, workshops, transformer buildings and grain silos).
  - b) Construction of 61 no. shared access apartment units in 3 individual blocks:
  - c) Construction of 16 no. own door apartment units in 2 individual blocks
  - d) Construction of 15 no. 1 and 2 storey terraced houses in 4 individual blocks –
  - e) Construction of a new 2 storey creche building
  - f) Construction of a new 2 storey commercial/retail building (Block Type “D”);
  - g) Provision of 2 vehicular access points to serve the site –
    - 1 will consist of upgrading the existing access from main street and
    - 1 will be a new access from the adjacent Osberstown Court housing development - with associated roadways, footpaths and car parking servicing the development.
  - h) Provision of a new shared pedestrian/cycle path fronting the Grand Canal with associated stepped connection point and public urban space at the eastern end of the site linking to main street
  - i) A foul holding tank and pumping station to service the development; and

- j) All associated site development works to include bin stores, bicycle stores, boundary treatments, landscaping, public spaces, connections to existing foul, surface water and water main networks, and all services.

Revised by Significant Further Information which consists of:

- The number of residential units proposed reduced from 92 to 86.
- The total proposed commercial space has been increased from 835m<sup>2</sup> to 1,003m<sup>2</sup>. This proposed increase has resulted from minor amendments to the commercial areas in Blocks "A" and "D" (a reduction of 5m<sup>2</sup> in block "A" and an increase of 2m<sup>2</sup> in block "D")

### 3.0 Planning Authority Decision

#### 3.1. Decision

Following an initial request for further information, Kildare County Council decided to grant permission for the development (as amended) subject to 45no. conditions. The following conditions are of note:

Condition 2: Omits the 3-storey duplex apartment, Block type 1.

Condition 3: Clarifies that the permission is for 74no residential units.

Condition 29: Requires that the development be set back 5m from the kerb line of the R407 to accommodate a future 3m wide two-way cycle tract and 2m wide footpath at the site frontage to link into the new footbridge to the west of the Canal Bridge. It also requires that the layout of the new pedestrian and cycle footbridge be accommodated within the proposed development.

Condition 31: Requires the Developer shall pay a Special Financial Contribution of €300,000 towards the cost of the future delivery of a new pedestrian and cycle footbridge to the west of the Canal Bridge.

Condition 44: Requires the Applicant/Developer to pay to Kildare County Council the Sum of €378,263.24 being the appropriate contribution to be applied to this development in accordance with the Development Contribution

Scheme adopted by Kildare County Council on the 19<sup>th</sup> of December 2022.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- The initial report of the Planning Authority (March 2022) has regard to the locational context and planning history of the site, and to the third-party submissions and departmental reports received.
- The report supports the redevelopment of the site for mixed use purposes; however, it raises various concerns in relation to the design and layout of proposed scheme. The report has regard to the issues raised in the departmental reports received.
- The report concludes with a recommendation for a request further information on 27 points, on issues relating to design/layout, open space, heritage and green infrastructure, Part V, Transportation, surface water drainage and attenuation, Flood risk and water and wastewater. Item 18 relates to the need for a footbridge accommodating both cyclists and pedestrians at the canal bridge.
- The second report of the Planning Authority (January 2023) considers the significant further information received on the 4<sup>th</sup> of January 2023. The submission includes proposals to facilitate a 5m wide footbridge over the Grand Canal, with two indicative design options presented. In the assessment, the Case Planner states that it not the responsibility of the applicant to construct this piece of infrastructure and that a special contribution condition towards the procurement of the bridge shall be attached to any grant of permission.
- The report concludes with a recommendation to grant permission subject to condition.

#### **3.2.2. Other Technical Reports**

Water Services:	Feb 22 – Requests further information Jan. 23 - No objection subject to conditions
Transportation:	Mar 22 – Requests further information. Item 5 of the request relates to the provision of a footbridge for pedestrians and cyclists over the Grand Canal.  Jan 23 – Recommends that permission be refused due to deficiencies in parking provision and acoustic treatment. Conditions are recommended in the event of a grant of permission including the application of a special contribution (€300,000) towards the cost of the future delivery of a new pedestrian and cycle footbridge.
Environment:	Mar 22 – Recommends approval subject to condition.
EHO:	Mar 22 – The proposal is acceptable subject to condition.
Heritage Officer:	Mar 22 – Requests further information Jan 23 – No objection subject to condition.
Conservation:	Mar 22 - Requests further information
CFO:	Mar 22 – requests further information. Jan 23 - No objection subject to condition
SPPR:	Mar 22 - requests further information Jan. 23 - No objection subject to addition planting and landscaping.

### 3.3. Prescribed Bodies

Irish Water:	Feb 22 – Requests further information Jan. 23 - No objection subject to condition.
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### **3.4. Third Party Observations**

The Planning Authority received several third-party submissions each of which have been summarised in the reports of the Case Planner (March 2022). The main issues raised can summarised as follows:

- Traffic: The proposal will result in an increase in traffic and congestion; there is a need for traffic calming measures in the area. The existing lack of parking in the area will be exacerbated by the proposal.
- There is a need for improved pedestrian / cycle facilities including crossings over the canal and pedestrian crossing at Railway Inn.
- The need for addition retail units and creche is queried. The removal of commercial units would reduce traffic and parking requirements.
- The height, scale and design of the proposed development is out of character within existing development in the vicinity and contrary to historic core.
- The proposed scheme would unduly impact the residential amenities of existing properties by way of overlooking, overshadowing, reduced security. Insufficient separation distances.
- Impacts during construction – noise, disturbance, vibration, vermin, asbestos removal, access to vessels.
- Impacts on the Canal and on flora and fauna
- The scheme should incorporate weather seating, mooring posts, public art.
- Lack of social / community infrastructure in Sallins.
- Development site includes part of Oberstown Court.
- EIA required.
- Legacy issues regarding taking in charge of neighbouring estates – should be resolved.

### **4.0 Planning History**

No relevant planning history associated with this site.

## **5.0 Policy Context**

### **5.1. Local Policy**

- 5.1.1. The application was assessed by Kildare County Council in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023 and the Sallins Local area Plan 2016 – 2022. The Kildare County Development Plan 2023 – 2029 was adopted by Kildare County Council on the 9th of December 2022 and came into effect on the 28<sup>th</sup> of January 2023, following the grant of permission.

### **5.2. Kildare County Development Plan 2023 – 2029**

- 5.2.1. Section 15.1.4 relates to Development Contributions and states that the Council, taking into consideration the capital expenditure necessary for the provision of public infrastructure and facilities, will require the payment of financial contributions in accordance with the Development Contributions Scheme. Developers may also be required to carry out works at their own expense to facilitate their development and these will be specified as a condition of their planning permission.

### **5.3. Sallins Local Area Plan 2016-2022**

- 5.3.1. The site is zoned 'A – Town Centre' with an objective to provide for the development and improvement of appropriate town centre uses including retail, residential, commercial, and civic uses.

The Town Centre zoning includes a number of Specific Objectives which pertain to the appeal site (Area A2) as follows:

- A. Areas A1, A2 and A3 -The development of these sites shall have specific regard to Section 10 Town Centre, Section 11 Design Briefs and Appendix 1 'Sallins Town Centre Urban Design and Public Realm Study' as set out in this Plan.

- C. A2 - This zoning objective seeks to encourage mixed use and residential development on this site. Development proposals should seek the retention and re-use (where possible) of the former industrial buildings for community, recreational and amenity uses as set in the 'Sallins Town Centre Urban Design and Public Realm Study'. Access to the site shall be via Main Street and via a possible new connection at Osberstown Court as indicated on Maps 1 and 2. Any commercial development on site A2 should reinforce the primacy of Sallins Main Street and should not undermine the vitality and vibrancy of the area.

5.3.2. Zone '*C New Residential*' includes the following specific objective:

- c. In accordance with the provisions of Section 49 of the Planning and Development Acts 2000-2015, a Special Development Contribution Scheme may be required for zonings A1, **A2**, A3, K1, C4, C5 and C6 to contribute to the strategic objective of delivering 3 no. pedestrian footbridges over the Grand Canal in accordance with Objective PCO 8.

5.3.3. Section 5.2 Regeneration of Former Odlums Mill:

The former Odlums Mill site represents a significant opportunity for the redevelopment of a strategic brownfield site in the town centre. The town centre zoning provides for a wide range of uses including employment, educational, community/recreation and residential uses. The location of the site in close proximity to the Grand Canal provides a unique opportunity to combine regeneration with the waterway. In order to realise this vision, a design brief is incorporated in the LAP to assist key stakeholders.

5.3.4. Section 10.3 Movement Patterns

Movement through the town is via the Main Street, which runs on a north-south axis. Connectivity within and around the town centre is relatively poor, particularly given that there is development on both sides of the canal, with only one bridge providing combined vehicular and pedestrian access to the other side. Footpaths are narrow



and footfall is low. A greater variety of uses within this central area will encourage greater movement. To increase permeability, new streets are proposed in specific areas as part of the design briefs while a number of new and improved streets and connections, including 3 new bridges over the Canal, are outlined on Map 2

#### Movement Objectives

#### 5.3.5. Section 11.0 Design Briefs - Section 11.1 Odlums Mill

The LAP includes a design brief for the Odlums Mill site which is designed to assist the different parties involved in the planning process – landowners, developers, agents, design teams, residents, and the Council. The brief is based on an appraisal of the area and its urban context. This analysis is used to form a vision for the area based on three key principles of urban design: a) built form b) landscape/urban space c) connectivity/movement.

#### 5.3.6. Section 17.6 Green Infrastructure

The spatial concepts around which the green infrastructure and landscape strategy include the following:

- New pedestrian bridges over the Grand Canal to link communities with key services and facilities in the town and surrounding areas.

#### 5.3.7. Noted Policies and Objectives:

*It is the Policy of the Council to:*

TC 8: To investigate sources of funding for the provision of the public infrastructure objectives of this plan including the provision of pedestrian and cyclist bridges over the Grand Canal through the Capital Works Programme assisted by the Section 48 Development Contribution Scheme and other funding stream.

*It is the Objective of the Council to:*

PCO 7: To improve pedestrian and cycle infrastructure at the following bridges: • Main Street (Rail) • **Main Street (Canal)** • Osberstown (Canal)

PCO 8: To seek to provide for new bridge crossings over the Canal east and west of the existing town centre bridge. Such crossings should be cognisant of views to/from the existing Canal bridge at Main Street and must enhance the urban setting. Indicative locations shown on Maps 1 and 2

5.4. **The Kildare County Council Development Contribution Scheme 2023 – 2029** is the relevant development contribution scheme for the area. This scheme came into effect on the 1<sup>st</sup> of January 2023.

5.5. **Planning and Development Act 2000 (as amended)**

Section 48(1) - A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

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.

Section 48(12) - Where payment of a special contribution is required in accordance with subsection (2) (c), the following provisions shall apply - (a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates, (b) where the works in question—

- (i) are not commenced within 5 years of the date of payment to the authority of the contribution,

- (ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution, or
- (iii) where the local authority decides not to proceed with the proposed works or part thereof.

the contribution shall, subject to paragraph (c), be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority,

(c) where under subparagraph (ii) or (iii) of paragraph (b), 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.

(13) (a) Notwithstanding sections 37 and 139 , where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.

- 5.6. **The Development Management Guidelines for Planning Authorities (2007)** are issued under section 28 of the Planning and Development Act 2000, as amended, and provide guidance in relation to development contribution schemes. At paragraph 7.12. the Guidelines, inter alia, make the point that a contribution scheme under Section 48 should clearly set out how the relevant terms are interpreted and applied to the proposed development.
- 5.7. 'Special' contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act 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. 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. 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. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g., extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.

- 5.8. **Development Contributions Guidelines for Planning Authorities (DoEHLG 2013)** are issued under section 28 of the Planning and Development Act 2000, as amended.

Section 48 of the Planning and Development Acts, provides that planning authorities must draw up a development contribution scheme in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority.

A special development contribution may be imposed under section 48(2)(c) 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 make the point that a key aim for development contribution schemes must be to promote sustainable development patterns, secure investment in capital infrastructure and encourage economic activity. To bring this about, planning authorities are required to include (inter alia) in their development contribution schemes, provision to charge only net additional development in cases of redevelopment projects (e.g. a redevelopment totalling 200m<sub>2</sub> of which 150m<sub>2</sub> is replacing existing development, contribution should only be levied on the additional 50m<sub>2</sub>).

In respect of double charging, the guidelines state that this practice 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.

5.9. **Circular Letter PL04/2023 from the Minister for Housing, Local Government and Heritage** sets out mechanisms whereby in certain cases contributions payable by developers can be paid instead to the local authority by the Minister for Housing, Local Government and Heritage.

5.10. **Natural Heritage Designations**

5.11. The appeal site is not located on or within proximity to any designated Natura 2000 site, the closest site being the Ballynafagh Bog SAC (Site Code 000391) c8km to the northwest. The Grand Canal NHA borders the site to the north.

5.12. **EIA Screening**

Not relevant.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. This is a first party appeal lodged on behalf of the applicants, Springfield Limited, against the decision of Kildare County Council to grant permission for the development at Old Odium's Mill Site, Main Street, Sallins. The appeal does not question the overall principle of the Planning Authority's decision to grant permission but instead relates to the conditions attached to the grant of permission and the Councils requirements set out in same. The appeal as originally lodged with the Board on the 10<sup>th</sup> of February 2023, is set out in two parts. Section (A) deals with financial requirements under Conditions 31 and 44. Section (B) addresses the physical planning stipulations set out in Condition no's 2, 3, 5 and 33.
- 6.1.2. In correspondence received on the 20<sup>th</sup> of March 2023, the first party appellants withdrew their appeal against condition no's 2, 3, 5 and 33 (Section B) and requested the Board to consider the appeal against Financial Condition no's 31 and 44, only.
- 6.1.3. The applicants appeal in respect of Condition no's 31 and 44 has regard to the legislative provisions in the Planning and Development Act 2000 (as amended), to the guidance set out in the Development Contributions Guidelines for Planning Authorities (2013) and the Development Management Guidelines for Planning Authorities (2007); to the policies and objectives of the Sallins LAP 2016-2022, and to the current Kildare County Council Development Contributions Scheme. Note is also had to a number of previous Board decisions concerning S48 conditions (presented as precedent cases).

The grounds of appeal in respect of Conditions 31 and 44 can be summarised as follows:

#### **Condition 31**

- The Sallins LAP envisages the possibility of three new pedestrian/cycle crossing points over the Grand Canal. These are not needed for the

development of the appeal site but as part of the general expansion of the town.

- Regard is had to Part C, Land Use Zoning of the Sallins LAP, which under zoning objective 'C- New Residential', includes a Specific Objective for the preparation of a Contribution Scheme under Section 49 of the Planning and Development Act to contribute to the delivery of 3 no. pedestrian footbridges over the Grand Canal. While the noted text also uses the phrase '*Special Development Contribution Scheme*', no such instrument exists under Section 48-49 of the Act and it would be somewhat inappropriate, for the Board to interpret this policy as implying that the proposed bridges will be funded through a series of special contributions.
- The estimated cost of the new bridge as being in the *region of €1.5m to €2m*, does not provide a sufficient degree of financial certainty. The council appears to be taking a 'best guess' rather than a monetary calculation approach.
- It is unclear how the applicant's contribution to the cost of the footbridge was calculated.
- The appeal site fronts onto the main road which bisects Sallins and is served by the same pedestrian and cycle infrastructure which has served this centre for a considerable time, and it is impossible to conclude that a set of specific exceptional circumstances exist to justify this considerable payment.
- The appellants invite the Board to seek information from the Council on a number of items including details of the public infrastructure /facilities concerned, details of costs / calculations involved, details of how the works would benefit the proposed development; what other developments would benefit from these works and how the costs incurred are apportioned; details of funding received for the works and whether the works are covered under a Development Contribution Scheme (S48) or Supplementary Development Contribution Scheme (S49).

#### Condition 44

- The appellant is of the view that, the contribution scheme, adopted by the Council, seeks to levy a charge for new floorspace and that it does not require

a payment in respect of any changes of use.

- It is contended, with reference to previous Board decisions, that in calculating the development contribution applicable to the permitted development, the Council should have had regard to the existing 3,474sqm of industrial floorspace which is to be demolished.
- As this area would be charged at a rate of €62 per square metre it is contended that the total sum sought by the Council should be reduced by €215,288 (3,474sqm x €62 per square metre)

## 6.2. Planning Authority Response

The Planning Authority's response to the issues set out in the first party appeal is set out in correspondence received on the 10<sup>th</sup> of March 2023. The comments made in respect of condition 31 and 44 can be summarised as follows:

### Condition 31

- The existing facilities for vulnerable road users at the site frontage and at the Canal Bridge do not comply with the current standards. The width of the footpaths is too narrow in places and there are no offline cycle tracks in place.
- The installation of a new pedestrian and cycle footbridge beside the Canal Bridge is required to ensure that proper and safe facilities are provided for vulnerable road users from the proposed development.
- KCC confirmed that the width of the R407 Main Street should remain at 7m at the site frontage and over the Canal Bridge in view of the high volume of HGV traffic movements. KCC advised that the site frontage should include a setback of 5m from the kerbline of the R407 to accommodate a future 3m wide 2-way cycle track and a 2m wide footpath which would link to a future pedestrian and cycle footbridge 5m in width to the west of the existing Canal Bridge and to the roadway/ towpath on the north side of the canal.
- The initial position of KCC was that the Developer should install the new pedestrian and cycle footbridge and that the development was deemed to be premature prior to the footbridge being installed. It was recommended that the



Developer engage with neighbouring developer to share costs. However, no agreement was reached.

- In view of this and following meetings with the Developer and KCC, KCC agreed to install the new pedestrian and cycle footbridge beside the Canal Bridge as a KCC Project subject to the initial design being carried out by the Developer, enough room being made available by the Developer for the construction of the footbridge and a proportional Special Financial Contribution being made by the Developer to KCC.
- The lack of proper and safe facilities for VRU's in the vicinity was a cause of concern for the KCC Roads, Transportation & Public Safety Department and the PA was mindful to recommend refusal.
- The pedestrian and cycle footbridge options were examined by Donnachadh O'Brien Consulting Engineers for the Applicant which included input from Waterways Ireland. The design of the footbridge has been integrated into the scheme design and layout to ensure that this can be accommodated within the proposed development.
- The estimated cost of a new 5m wide pedestrian and cycle footbridge was in the region of €1.5m to €2m (assuming no land costs). This estimate was based on other footbridge projects being examined by KCC. KCC recommending that the Applicant pays a Special Contribution of €300,000 towards the cost of the new footbridge which in our opinion was fair and reasonable taking into account the scale of the development and the location beside the Canal Bridge and that other neighbouring developments at the Canal Bridge Area would contribute accordingly and proportionately.
- Source of Funding for the new pedestrian and cycle footbridge

Developer Springwood Ltd	€300,000
Neighbouring Developer (2 sites nearby)	€600,000
KCC Funding (with possible NTA funding)	€600,000 to €1,100,000
Total Estimate of Costs	€1.5m to €2m

#### Condition 44

- The Planning Authority has reviewed the calculation of the development contributions imposed on condition no.44 and are satisfied that the calculation is correct and in accordance with Kildare County Council's Development Contribution Scheme 2023 – 2029 (Sections **8.1** Residential Developments, **8.2** Non-residential developments and **10.3** Supporting Town and Village Centre Development).

### 6.3. Further Responses

The applicant's response to the submission of the Local Authority is set out in correspondence received on the 23<sup>rd</sup> of May 2023.

#### Condition 31

- It is contended that in cases involving special contributions the onus is on the Local Authority to show that any such requirement is reasonable and indeed accords with planning law. The key question in the current case compromises whether sufficient information has been provided to the board to warrant the implementation of this hefty charge.
- The Local Authority's reply does not address the items raised in the grounds of appeal. The letter does not adequately detail the costs involved, other than providing a guess as to the cost of the infrastructure. It fails to detail how the infrastructure works benefit the proposed development or how the costs are apportioned, etc.
- The Council has not provided sufficient information to allow the Board to conclude that this payment is reasonable or indeed, that it complies with Planning Law.

#### Condition 44

- The appellants remain of the opinion that the existing structures to be demolished (and whose removal forms part of this development) should be taken into account in any assessment of a fair and reasonable contribution.

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. This is a first party appeal against development contribution conditions attached to Kildare County Council's decision to grant planning permission for the development proposed under planning reference 22/110, namely, Condition No. 31 which requires the payment of a Special Financial Contribution of €300,000 towards the cost of the future delivery of a new pedestrian and cycle footbridge to the west of the Canal Bridge and Condition No. 44 which requires the payment of a general development contribution of €378,263.24.
- 7.1.2. No appeal has been brought by any other person against the planning authority decision in this case. Therefore, in accordance with Section 48(13), this report shall confine itself to the consideration of the Condition No's 31 and 44 and shall not consider the application de novo.
- 7.1.3. At the outset it should also be borne in mind that the remit of the Board, in determining an appeal against a development contribution, is confined, according to Section 48 10 (b) of the 2000 Act, as to whether the terms of the development contributions scheme, as adopted by the Council has been properly applied. As such it is not within the scope of the Board power to determine the merits of the scheme or to incorporate allowances, at its discretion.

### 7.2. Condition No.31

- 7.2.1. Condition No.31 as attached to the grant of permission is as follows:

Condition 31.

*In accordance with Section 48(2)(c) of the Planning and Development Act 2000 (as amended), the Developer shall pay a Special Financial Contribution of €300,000 towards the cost of the future delivery of a new pedestrian and cycle footbridge to the west of the Canal Bridge.*

*From our analysis the estimated cost of a new 5m wide pedestrian and cycle footbridge is in the region of €1.5m to €2m which assumes that there are no land*

*costs as lands are within the control and ownership of Kildare County Council and Developer. Kildare County Council is recommending that the applicant pays a Special Contribution of €300,000 towards the cost of the new footbridge which in opinion is fair and reasonable taking into account the scale of the development and the location beside the Canal Bridge and that other neighbouring developments at the Canal Bridge Area contribute accordingly and proportionately.*

**Reason:** *In the interests of proper planning and sustainable development*

- 7.2.2. As set out in the Development Contributions Guidelines, a special development contribution may be imposed under section 48(2)(c) of the Planning and Development Act (as amended) 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.
- 7.2.3. In this case, the planning authority are seeking a Special Contribution of €300,000 towards the cost of a new footbridge over the Grand Canal which borders the appeal site to the north. They note, in their submission to the appeal, the substandard nature of existing pedestrian and cycle facilities at the site frontage (frontage onto main street) and at the Canal Bridge and they are of the view that the installation of a footbridge at this location is necessary to ensure that proper and safe facilities are provided for vulnerable road users (VRUs) from the proposed development. They consider that the payment of a special contribution in respect of this development, towards the costs of the new footbridge is fair and reasonable.
- 7.2.4. Conversely, it is the contention of the first party appellant, as set out in the grounds of appeal, that new pedestrian / cycle crossing points over the Grand Canal are not needed for the development of the appeal site (which is centrally located within the urban core of Sallins and is served by the same pedestrian /cycle infrastructure as the remainder of the town) but as part of the general expansion of the town. It is also argued that Condition No. 31 fails to comply with the requirements of the

Development Management Guidelines (2007), in that the basis for the calculation of the constitution has not been adequately explained.

- 7.2.5. On the issue of compliance with the Development Management Guidelines (2007), the guidelines state under Section 7.12, that a condition requiring a special contribution must be amenable to the implementation of the terms of Section 48(12) of the Planning Act (referring to refund of contributions paid) and therefore it is essential that the basis for the calculation of the contribution 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.
- 7.2.6. In this instance I am satisfied that the nature and scope of the works have been identified. The Board will note that the application was amended at further information stage to include proposals to facilitate the provision of a 5m wide footbridge over the canal, with two indicative design options presented by the applicant. As detailed in the condition, the planning authority estimate the cost of the works as being in the region of €1.5m to €2m. In their submission to this appeal, the planning authority clarify that this estimate is based on other footbridge projects being examined by the Council. Also included in their appeal submission is a breakdown in costs, which have been apportioned between the applicant, the neighbouring landowner and the Local Authority. While the information provided by the planning authority does not include for a detailed costing of the works, in my opinion the information provided is sufficient for the purpose of implementing the terms of Section 48(12) of the Planning Act.
- 7.2.7. Having visited the area, I accept that existing facilities for VRUs at the site frontage and at the Canal Bridge are deficient, and I agree that the provision of a footbridge at this location would benefit future occupants of and visitors to the appeal site; however, I am not satisfied that the provision of this piece of infrastructure is specifically required to facilitate the proposed development but rather to address existing identified deficiencies, to the benefit of existing and future development in the area. I consider that my position in this regard is supported by the Sallins Local Area Plan (LAP).

- 7.2.8. Objectives PCO 7 and PCO 8 of the Sallins LAP, seek to improve pedestrian and cycle infrastructure at the Canal Bridge and to provide for new bridge crossings over the Canal east and west of the existing town centre bridge, respectively. The LAP envisages three new pedestrian / cycle bridges including one at the appeal site, to the west of the Canal Bridge. The LAP under Section 10.3 Movement Patterns, notes that connectivity within and around the town centre is relatively poor. This is attributed in part to the fact that development occurs on both sides of the canal, with only one bridge providing combined vehicular and pedestrian access to the other side. It notes that footpaths in the area are narrow, and that footfall is low. The planned new bridge crossings are identified as a possible means of increasing permeability within the town centre, they are also identified, under section 17.0, as one of the '*spatial concepts*' of the LAP's green infrastructure and landscape strategy.
- 7.2.9. Having regard to the above, it is evident that the new pedestrian and cycle footbridge to the west of the Canal Bridge, comprises part of the planned public infrastructure for Sallins. Therefore, I do not consider that the works can be regarded as specific exceptional costs, that can be attributed to the proposed development, which comprises the redevelopment of a serviced Brownfield site within the urban core of Sallins. In my opinion the works could have been reasonably foreseen and are capable of incorporation within the terms of a development contribution scheme formulated in accordance with this section of the Act. In this regard, I refer the Board to LAP Objective TC 8 which seeks *to investigate sources of funding for the provision of the public infrastructure objectives of this plan including the provision of pedestrian and cyclist bridges over the Grand Canal through the Capital Works Programme assisted by the Section 48 Development Contribution Scheme and other funding streams*. Regard is also had to Specific Objective C, under the '*New Residential*' Land use zoning which states that, *in accordance with the provisions of Section 49 of the Planning and Development Acts 2000-2015, a Special Development Contribution Scheme may be required for zonings A1, A2, A3, K1, C4, C5 and C6 to contribute to the strategic objective of delivering 3 no. pedestrian footbridges over the Grand Canal in accordance with Objective PCO 8*. As neither Section 48 nor Section 49 of the Act provide a mechanism for the preparation of a *Special Development Contribution Scheme*, I consider it reasonable to assume that

the intention of this Specific Objective was to facilitate the preparation of Supplementary Development Contribution Scheme under Section 49 of the Act, to support the delivery of the footbridges.

- 7.2.10. A Supplementary Development Contribution Scheme has not yet been prepared nor have the pedestrian and cyclist bridges over the Grand Canal been included in the Capital Works Programme 2022-2024. Notwithstanding, I conclude that condition no. 31 would not meet the requirements, or come within the scope of, S.48(2)(c) as the Special Contribution is not required in respect of a particular development, in circumstances where specific exceptional costs are incurred. I therefore recommend that Condition 31 be omitted.

### 7.3. Condition No. 44

- 7.3.1. Condition No. 44 as attached to the grant of permission is as follows:

*The Applicant/Developer to pay to Kildare County Council the Sum of €378,263.24 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on the 19<sup>th</sup> of December 2022 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 34 of the Development Contributions Scheme adopted by Kildare County Council on 19<sup>th</sup> December 2022.*

*Note: Please note water and wastewater development contribution charges now from part of the water connection, if applicable, with Irish Water.*

**Reason:** *it is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.*

- 7.3.2. The contribution was calculated on the basis of the total gross floor area of the development permitted (c9,106sqm) and a levy rate of €62 per square metre. The contribution was reduced by 33% due to its location on town centre lands in accordance with section 10.3 of the scheme. The calculation is as follows:

$$(9,106\text{sqm} \times €62 \text{ per square metre}) - 33\% = €378,263.24$$

- 7.3.3. It is the opinion of the first-party appellant, as set out in the grounds of appeal, that the terms of the scheme were incorrectly applied by the Council in that they failed to have regard to existing floor area on site (totalling 3,474sqm) which is to be demolished as part of the proposal. They contend that, in line with the adopted scheme, the Council only seek to levy a charge for new floor space and do not require a payment in respect of any changes of use.
- 7.3.4. As previously noted, the Kildare County Council Development Contribution Scheme 2023 – 2029 (KDCS 2023-2029) is the relevant development contribution scheme for the area. Section 8 of the scheme sets out the level of contribution applicable on planning permissions granted. As per sections 8.1 and 8.2, the applicable rate for both residential and non-residential development is €62 per square metre. Neither the GFA of the permitted development (9,106sqm) nor the levy rate applied, has been disputed.
- 7.3.5. Section 10 of the KDCS 2023-2029 sets out exemptions / reduced contributions for various forms and types of development. The scheme provides that only one discount or waiver determined under Section 10 may be applied on any contribution. In this instance, the Council applied the discount permissible under Section 10.3 which allows for a 33% reduction for all development (including commercial, retail, and residential) on designated town centre lands. I agree with the Council that the exemption permissible under Section 10.3 applies to the permitted development.
- 7.3.6. Section 10.6 allows for a 100% reduction on contributions for *change of use* permissions where in the opinion of the planning authority, the development does not lead to the need for new or upgraded infrastructure or services or significant demand placed on existing infrastructure. However, as the proposed scheme comprises the demolition of existing structures and the redevelopment of the site rather than the '*change of use*' of existing structures, it does not in my opinion qualify for the exemption under section 10.6.



- 7.3.7. Section 10.10 of the scheme provides an exemption for 'replacement buildings'; however, this exemption relates specifically to cases where the original buildings (buildings to be replaced) have been damaged by subsidence, flood, or fire, which is not the case in this instance.
- 7.3.8. I have reviewed the Kildare County Development Contributions Scheme 2023-2029, and I am satisfied that there are no other exemptions / weavers applicable to the permitted development. It may be of relevance to note, that the previous development contribution scheme - Kildare County Development Contributions Scheme 2015- 2021, did include a reduced charge for redevelopment projects, whereby the relevant contribution levy was to be applied to the additional floor area only, however this provision was not extended to the current scheme.
- 7.3.9. I therefore conclude that the planning authority correctly applied the terms and conditions of the adopted Kildare County Development Contributions Scheme 2023-2029 in attaching Condition No 44 to the grant of permission.

## **8.0 Recommendation**

- 8.1. I recommend that the planning authority be directed under section 139 (1) of the Planning and Development Act, 2000, as amended, to
- (a) Remove Condition 31 and
  - (b) Attach Condition 44 as per the Planning Authority's decision.

## **9.0 Reasons and Considerations**

- (a) It is not considered that the special contribution condition, Condition No.31, would come within the scope of Section 48 (2) (c) of the Planning and Development Act 2000 - 2018, as the development referenced in the condition is not exceptional or specific to the proposed development. In the absence of any evidence that specific exceptional costs would be incurred by the planning authority in providing public infrastructure and facilities directly as a

result of, or in order to facilitate that particular development, the application of such a contribution would be inappropriate.

- (b) It is considered that the payment of a development contribution in accordance with Condition 44 would accord with the requirements of the adopted Kildare Development Contribution Scheme 2023-2029, which came into effect on the 1<sup>st</sup> of January 2023.

*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.*

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Lucy Roche  
Planning Inspector

26 April 2024