



An
Bord
Pleanála

Inspector's Report

ABP-317238-23

Development	Point of detail in relation to condition no. 2 of planning register reference number 18/06762.
Location	Primary Health Care Centre, Old Fort Road, Ballincollig, Co. Cork.
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	1806762
Applicant(s)	Glencar Healthcare
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Appeal against Condition (point of detail)
Appellant(s)	Glencar Healthcare
Date of Site Inspection	None
Inspector	Gillian Kane

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1.0 Background

- 1.1.1. This is a first party appeal against a financial contribution condition which was attached to the Planning Authority's notification of intention to grant permission. As this is an appeal in respect of conditions requiring a financial contribution, the provisions of section 48 of the Planning and Development Act 2000 apply and the Board is restricted to considering this matter alone and cannot consider the matter de novo. I have therefore confined my assessment to the condition in question.
- 1.1.2. Having regard to the nature of the appeal before the Board (i.e. first party against condition) and the information available on file, a site inspection was not deemed necessary in this instance.

2.0 Planning Authority Decision

2.1. Decision

- 2.1.1. On the 24th September 2019, Cork County Council issued a notification of their intention to grant permission subject to 34 no. conditions. The board will note that while the decision issued from Cork *County* Council, Condition no. 2 refers to Cork *City* Council. This is addressed in section 5.2 below.
- 2.1.2. Condition no. states:
- 2 The developer shall pay to Cork City Council a financial contribution in respect of public infrastructure and facilities benefiting development in the area of Cork City Council that is provided or intended to be provided by or on behalf of Cork City Council in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as Cork City Council may facilitate, and shall be subject to any applicable indexation provisions of the scheme at the time of payment. Details of the application of the terms of the scheme shall be agreed between Cork City Council and the developer.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

development contribution scheme made under section 48 of the Act be applied to the permission.

3.0 Relevant Legislation

3.1. Planning and Development Act 2000, as amended

3.1.1. Section 48 of the Planning and Development Act 2000, as amended provides as follows:

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).

(2) (a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

(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.

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities,

except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

3.1.2. Section 48(10) provides:

(10) (a) Subject to paragraph (b), no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

(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 in respect of any condition laid down by the planning authority.

(c) Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal. provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

3.1.3. Section 34(5) provides:

The conditions under subsection (1) may provide that points of detail relating to a grant of permission be agreed between the planning authority and the person carrying out the development and, accordingly:

(a) where for that purpose that person has submitted to the planning authority concerned such points of detail, then that authority shall, within 8 weeks of those points being so submitted, or such longer period as may be agreed between them in writing, either:

(i) reach agreement with that person on those points, or

(ii) where that authority and that person cannot so agree on those points, that authority may—

(I) advise that person accordingly in writing, or

(II) refer the matter to the Board for its determination,

and, where clause (I) applies, that person may, within 4 weeks of being so advised, refer the matter to the Board for its determination,

or

(b) where none of the events referred to in subparagraph (i) or in clause (I) or (II) of subparagraph (ii) occur within those 8 weeks or such longer period as may have been so agreed, then that authority shall be deemed to have agreed to the points of detail as so submitted.

3.2. Cork City Council Development Contribution Scheme 2018-2021

- 3.2.1. On the 9th July 2018, Cork City Council adopted a General Development Contribution Scheme for 2018-2021.
- 3.2.2. Section 1.1 of the scheme provides that “A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.” and “Section 48(3A) allows for the provision of reduced contribution payments which are the subject matter of a planning condition”.
- 3.2.3. Section 1.6 of the scheme has a table (Table 5) which lists ‘exemptions and reductions’. Category 5.1 provides for a 100% reduction for the “provision of facilities by organisations which are considered to be exempt from planning fees as outline in Part 12, Article 157 of the Planning and Development Regulations 2001, as amended, except where specified below. The specification is as follows:
- 3.2.4. “ Where a planning application consists of development designed or intended to be used for social, recreational, educational or religious purposes by the inhabitants of a locality, or by people of a particular group or religious purpose denomination, and is not to be used mainly for profit or gain, Is designed or intended to be used as a workshop, training facility, hostel or other accommodation for persons with disabilities and is not to be used mainly for profit or gain”. (This 100% reduction to the payment of development contributions will not apply to: • Third level educational institutions and student accommodation. • Fee paying schools. • Hospitals, medical facilities, primary care centres and similar developments including any ancillary buildings.

4.0 The Appeal

4.1. Grounds of Appeal

4.1.1. An agent for the first party has appealed condition no. 2 of the decision of Cork County Council to grant permission. The grounds of the appeal can be summarised as follows:

- Planning permission was granted by Cork County Council in July 2019 under Planning Authority reg. ref. 18/06762, that condition no. 2 of the grant provided for a s48 development contribution of €297,394.
- In October 2020, the applicants agent made a submission to Cork City Council (who had taken over from Cork County Council) seeking a reduction of the amount payable as the HSE has agreed to lease approx. 92% of the development.
- The HSE has charitable status and so a pro-rata deduction was sought. This was refused by Cork City Council.
- The Board is requested to note the charitable status of the HSE (registered charity number 2005964) and LA and An Bord Pleanála precedents where it has been consistently upheld that the end user rather than the developer should be assessed in terms of liability.
- Examples of where such deductions have been accepted are:
 - PL29N.241384 Edenmore Primary Care Centre, contribution reduced from €243k to €46k based on the proportion of HSE occupation,
 - PL06S.243622 Ballyboden primary Care Centre, contribution reduced from €305k to €30.5k based on proportion of HSE occupation,
 - PL29S.241889 Armagh Road Primary Care Centre.
- A determination under s.34(5) of the Planning and development Act 2000, as amended is sought as there is a disagreement between the developer and the LA.
- The Board is requested to confirm the contribution payable as set out in a letter to Cork City Council of October 2020.

4.1.2. The appeal submission includes a copy of the letter sent from the agent to Cork City Council on the 7th October 2020. The letter can be summarised as follows:

- Gross floor area of the permitted scheme is 5,598sq.m. Original 6,386sq.m. was reduced following a request for further information.
- 5,128sq.m. (91.6%) of the space will be leased by the HSE, having being designed for use specifically as a primary care centre.
- HSE is a registered charity.
- Previous decisions of LA and An Bord Pleanála determined that the end user rather than the developer should be assessed in terms of liability to pay.
- As the HSE is the end user, the financial contribution should be reduced in line with the percentage of the space occupied by the HSE.
- The HSE will occupy 5,128sq.m. Therefore financial contributions should only apply to 470sq.m. (5,598sq.m. minus 5,128sq.m.).
- Based on the contribution rate of €53,3375 psq.m. the contribution payable should be €25,068.63.

4.1.3. The appeal also includes a copy of an email from Cork City to the agent stating that “the facility can not avail of a reduction in contributions under our scheme. I have attached a screen shot from the General and Supplementary Contributions Scheme 2018 to 2021 that states that Hospitals and Primary Care Centre are not eligible for a reduction”. The email also refers to a change in floor area and states that “the new contributions figure is €297,393.75, this was calculated using the floor area of 5,598sq.m. x by the current rate of 53.1250”.

4.1.4. The appeal also includes a letter from Solicitors confirms that they are in receipt of funds (€297,790.09) to discharge the contributions once the Board has made its determination.

4.2. Planning Authority Response

4.2.1. Cork City Council responded to the first party appeal on the 12th July 2021. The response refers to footnote 10 of the Cork City Council General and Supplementary Contribution Scheme which specifically excluded primary Care Centres from availing

of 100% discount allowed under 5.1 of the scheme. Cork City Council levied the contributions in accordance with the scheme.

5.0 Assessment

5.1.1. Having regard to the provisions of section 48(13)(a) of the Planning and Development Act 2000 as amended, this assessment and recommendation will only relate to the condition that is subject of the appeal.

5.1.2. On the 31st May 2019, the boundaries of Cork City and County Councils changed. Ballincollig, the area of the subject application moved from being within Cork County Council when the application was lodged (21/11/2018), to Cork City Council when the decision issued (19/08/2019). The Board will note that the decision issued under Cork County Council but refers to Cork City Council in condition no. 2.

5.1.3. Condition no. 2 of the Planning Authority decision to grant states:

2 The developer shall pay to Cork City Council a financial contribution in respect of public infrastructure and facilities benefiting development in the area of Cork City Council that is provided or intended to be provided by or on behalf of Cork City Council in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as Cork City Council may facilitate, and shall be subject to any applicable indexation provisions of the scheme at the time of payment. Details of the application of the terms of the scheme shall be agreed between Cork City Council and the developer.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the development contribution scheme made under section 48 of the Act be applied to the permission.

5.1.4. The applicant submits that as the end user of the primary care centre is a registered charity (HSE), that it is entitled to a pro-rata deduction in levies. The applicant provides details of three cases where the Board accepted such a submission and reduced the levies on appeal.

- 5.1.5. The Planning Authority, responding to the appeal state that the development contribution scheme expressly excludes Primary Care Centres from any deduction, in the scheme.
- 5.1.6. I draw the Boards attention to the 2018 development contribution scheme which was in place on the date of the Planning Authority's decision. Section 1.6, table 5, category 5.1 provides for a percentage reduction for the "*Provision of facilities by organisations which are considered to be exempt from planning fees as outlined in Part 12, Article 157 of the Planning and Development Regulations 2001 as amended, except where specified below.*"
- 5.1.7. The asterisk following on page 10 states "(This 100% reduction to the payment of development contributions **will not apply** to: • Third level educational institutions and student accommodation. • Fee paying schools. • Hospitals, medical facilities, primary care centers and similar developments including any ancillary buildings."
- 5.1.8. The Board will note that the scheme has underlined and bold text the 'will not apply' part of the cross reference. Therefore, even *if* the HSE was covered by article 157(1) of the regulations, it could not avail of an exemption, as the scheme is explicit: there shall be no reduction in development contribution levies for a primary care centre .
- 5.1.9. The three precedent examples provided are not relevant to the subject appeal as none were subject of the Cork City General Contribution Scheme 2018-2021.
- 5.1.10. I am satisfied therefore that the scheme was correctly applied. Noting that there is no query over the floor area that is the subject of the levy (5,598sq.m.) at the rate that was applicable when the decision of Planning Authority was made (53.1250), the contribution subject of condition no. 2 is deemed to be **€297,393.75** (5598 x 0.531250 = €297,393.75).

6.0 Recommendation

I recommend condition no. 2 of the Planning Authority's decision be amended to read as follows:

- 2 The developer shall pay to the planning authority a financial contribution of €297,393.75 (two hundred and ninety seven thousand, three hundred and ninety three euro and seventy five cent) in respect of public infrastructure and

facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.²

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.

Gillian Kane
Senior Planning Inspector

17 June 2024