



An
Bord
Pleanála

Inspector's Report ABP-318036-23

Development	Construction of a new filling station and all associated works
Location	Irishtown, bound by Glasslyn Road to the north, N71/Bandon Relief Rd to east, Connolly St to south, Cloghmacsimon (TD), Bandon, Co.Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	225800
Applicant(s)	Kevin O'Leary (Bandon) Limited
Type of Application	Planning Permission
Planning Authority Decision	Grant
Type of Appeal	First Party against Conditions
Appellant(s)	Kevin O'Leary (Bandon) Limited
Observer(s)	None
Date of Site Inspection	11 th December 2023
Inspector	Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1.464 hectares and is located within the town of Bandon, County Cork. The site is located to the east of the town centre and is bounded by the Glaslynn Road (R-586) to the north, the N-71 Bandon Relief Road to the east and Connolly Street to the south.
- 1.2. The subject site consists of a Centra convenience shop, fuel forecourt, car showrooms and a vehicle services/CVRT (Commercial Vehicle Roadworthiness Testing) facility.

2.0 Proposed Development

- 2.1. The proposal seeks permission for the following works, inter alia:
 - The demolition of an existing filling station and construction of a new filling station comprising of a convenience retail store with off-licence, 8 no. fuel pumps, canopy, car wash, outdoor seating area and ancillary external bin storage.
 - The demolition of an existing CVRT centre and vehicle servicing building and partial demolition of an existing car sales showroom.
 - Construction of a combined car sales showroom, vehicle servicing and CVRT centre in a single building.
 - Modifications to existing entrances onto the Glaslynn Road and the N-71 Bandon Relief Road.

3.0 Planning Authority Decision

3.1. Decision

Cork County Council (The Planning Authority) decided to grant permission by Order dated 22nd August 2023, subject to 41 conditions: The relevant conditions in relation to this appeal are the following:

- Condition No. 40 relates to the payment of a special contribution of €45,000 in respect of specific exceptional costs not covered by the general contributions

scheme, with regards to works for the provision of a new controlled pedestrian crossing on the N71 Bypass at a suitable location in the locus of the site.

- Condition No. 41 relates to the payment of a contribution of €77,617.45 in respect of public infrastructure and facilities benefiting development in the area.

3.2. Planning Authority Reports

Planning Reports

- There are a total of 2 no. Area Planner's reports which assessed the principle of the development, the design, the impact on residential amenity and traffic. The recommendation to grant permission was endorsed by the Senior Planner
- Further information was requested on a number of items including informing the applicant that a €45,000 contribution would be required towards the construction of two controlled pedestrian crossings to upgrade the pedestrian connectivity in the area. It was stated that two pedestrian crossings were intended to be located on the Glasslyn Road and N71 Bypass.
- The area planner calculated the general development contributions as:
 - (a) New shop and foodcourt 791sqm
Less 255sqm to be demolished – 536sqm X €48.97 = €26,247.92
 - (b) Car sales and service building 2,570sqm
Less 524sqm of car showroom to be retained and 997sqm of CVRT building to be demolished – 1,049sqm x €48.97 = €51,369.53Total calculated at: €77,617.45

Other Technical Reports

- Area Engineer (reports dated 21/09/22 and 21/07/23) – No objection subject to conditions. A special development contribution of €45,000 was calculated to allow for the construction of 2 no. pedestrian crossings. It was stated that the works would allow for all electrical underground ducting, overhead lighting upgrade where required, Belisha Beacon and controllers, tactile paving and footpath crossing points, traffic management supervision along with initial planning and design costs.

- Traffic and Transport (reports dated 21/09/22 and 21/07/23) – No objection subject to conditions.
- Public Lighting (reports dated 25/08/22 and 06/07/23) – No objection subject to conditions.
- Ecology (reports dated 23/09/22 and 26/07/23) – No objection subject to conditions.
- Environment Section (reports dated 22/09/22 and 26/07/23) – No objection subject to conditions.
- Conservation Officer (report dated 15/09/22) – No objection subject to condition.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland (TII) – No objection.
- Irish Aviation Authority – No observations.
- Uisce Éireann – They requested the diversion of a foul sewer line. They had no objection to the development subject to conditions.

3.4. Third Party Observations

None

4.0 Relevant Planning History

PA Ref. 08/5713

Permission was granted for the provision of an off licence to an existing supermarket.

5.0 Legislative Context

5.1. Planning and Development Act 2000, as amended

Section 48 Development Contributions

(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.

(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.

(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,

(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.

(b) Notwithstanding section 34(11), where an appeal referred to in paragraph (a) is received by the Board, and no appeal 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 furnishes to the planning authority, pending the decision of the Board, security for payment of the full amount of the special contribution as specified in the condition referred to in paragraph (a).

(17) “public infrastructure and facilities” means—

(c) the provision of roads, car parks, car parking places, surface water sewers and flood relief work, and ancillary infrastructure,

(d) the provision of bus corridors and lanes, bus interchange facilities (including car parks for those facilities), infrastructure to facilitate public transport, cycle and pedestrian facilities, and traffic calming measures,

(e) the refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, surface water sewers, flood relief work and ancillary infrastructure,

“special contribution” means a special contribution referred to in *subsection (2)(c)*.

6.0 Policy Context

6.1. Development Plan

Cork County Development Plan 2022-2028

Land Zoned ‘Existing Mixed/General Business/Industrial Uses’. Objective ZU 18-10 seeks to facilitate development that supports in general the employment uses of the Existing Mixed/General Business/ Industrial Areas. Development that does not support, or threatens the vitality or integrity of the employment uses of these areas shall not be permitted. Appropriate uses include vehicle sales outlets, service stations and servicing/maintenance garages.

The site is located opposite the Allman Quarter Mixed Use Opportunity Site where objective BD-X-02 seeks to encourage the co-ordinated redevelopment of this large site at the eastern approach to the town.

Bandon Transportation and Public Realm Enhancement Plan 2016

This plan includes for new and improved pedestrian crossings throughout the town.

6.2. Development Contribution Scheme

Cork County Council Adopted Development Contribution Scheme 2004 (DCS)

DCS Rate applicable from 1 st January 2014	
Type of Development	€ per square metre
Offices and Retail	€48.97
Other non-residential uses	€16.32

Reduced Contributions (pages 7 and 8 of DCS)

No exemptions provided for in relation to offsetting demolition / replacement development.

6.3. National Guidelines

Development Contributions Guidelines for Planning Authorities, January 2013

Development Management Guidelines for Planning Authorities , June 2007

- Section 7.12 Conditions requiring development contributions (Sections 48 and 49 of the Planning Act)
- Section 8.12 Contribution Conditions

Circular Letter PD 5/2007 Development Contributions

7.0 The Appeal

7.1. Grounds of Appeal

The Applicant appealed Condition Numbers 40 and 41 of the decision of the PA on 15th September 2023 on the following grounds:

- The terms of the General Contribution Scheme were not properly applied under Condition 41 in that the calculation is in error.
- The car servicing element of the development was calculated as a retail/office use at €48.97 per sqm and should have been calculated as other non-

residential uses at a rate of €16.28 per sqm. An updated floor plan has been submitted showing the use split.

- The imposition of a condition under Condition 40 requiring the payment of a special development contribution in this instance amounts to double charging, is not equitable, and is not supported by the legislation governing such planning conditions.
- The various planning authority reports completely fail to address the exceptionality of the intended new public controlled pedestrian crossings. The provision of such crossings are a basic norm of the proper planning and sustainable development of any urban area, are no way exceptional and their cost cannot be exceptional. No evidence provided that the cost is exceptional.
- The location of the crossings have not yet been identified by the Council and are to be carried out in any event and therefore cannot be considered specific to the subject site.
- Whilst the proposed development will benefit from the crossings, this is irrelevant as it is not an exceptional infrastructure requirement and no exceptional costs arise. Pedestrian facilities are captured within the General Development Contribution Scheme.
- The basis of the calculation of the financial contribution is not clearly explained in the decision.

7.2. Planning Authority Response

The Planning Authority issued a response on 16th October 2023 with regards to Condition No. 40. The response in full is the following:

- “The provision of pedestrian crossing on the Bandon Bypass will greatly improve safety in the location. The development under this planning will be more accessible and encourage more people to travel by walking to utilise this business or drop into the shop while walking to other facilities in the locus such as the playground, skate park etc. The facility will encourage people in the locus more now to travel by foot to the shop or meet people in the forecourt seated area, thus potentially reduce vehicle usage a little. The linking of safe

pedestrian routes from this business to resident/businesses growth to the east of the bypass will be beneficial now or in the future allowing for future development east of the bypass where lands are currently zoned for such development. As it currently stands this is the sole retail business in the immediate location gaining from the pedestrian crossing being put in place, thus the reason for adding the special contribution in order to fund the construction of the pedestrian crossing.”

No response to the grounds of appeal regarding condition no. 41 was issued.

7.3. Applicant Response

7.4. The Applicant issued a further response to the PA's response to the grounds of appeal on 8th November 2023:

- Proposed public infrastructure works within Bandon to enhance connectivity in the town will benefit the entire town and not just the proposed development.
- The provision of footpaths, traffic calming measures and road upgrades are already included within the Council's contribution scheme. The Council has not advanced the case to explain why the costs associated with the works are specific and exceptional.
- The subject development is clearly not the only current business that will benefit from the proposed crossing and therefore is incorrect to suggest that the subject development will be the sole beneficiary of the crossing. The Bandon retail park to the east of the bypass currently has not direct pedestrian connectivity from the town to the west. A map is provided showing existing residential and commercial uses that will benefit from the crossing.
- Again, it is respectfully requested that condition no. 40 is removed.

8.0 Assessment

- 8.1. The Board should note that there are two elements to this appeal. The first is in relation to the application of a special financial contribution under Condition No. 40, relating to the provision of a pedestrian crossing within the vicinity of the site. The second is in relation to the Applicant's assertion that the planning authority (PA) incorrectly applied the terms of the Cork County Council General Development Contribution Scheme (DCS) under Condition No. 41.
- 8.2. The first party appeal only relates to these development contribution conditions and there have been no third party appeals against the decision of the PA to grant permission for the proposed development. Therefore, having regard to Section 48 (10)(c), (13)(a) and (13)(b) of the Planning and Development Act 2000, as amended, the Board is only required to determine the matters under this appeal and not determine the application as if it had been made to the Board in the first instance.

Condition Number 40 (Special Development Contribution)

- 8.3. I note that under Section 48(2)(c) of the Planning and Development Act 2000, as amended, a special development contribution can be charged where specific exceptional costs, which are not covered by a scheme, are incurred by the local authority in respect of public infrastructure and facilities which benefit the proposed development. I note that Section 48(17) of the Act includes the provision of roads, cycle and pedestrian facilities and traffic calming measures as public infrastructure and facilities.
- 8.4. I note that the DCS for Cork County Council was adopted on 23rd February 2004 and is the relevant DCS in relation to this appeal. The DCS states that the general scheme contributions have been calculated for various types of developments to account for inter alia, roads and traffic management. I note that page 4 of the DCS states that *"expenditure on National Roads was excluded from the calculations because the benefit of these works is not limited to the local authority areas within which they are built"*.
- 8.5. I note that the PA originally stated that the €45,000 special development contribution was to cover two pedestrian crossings on the N-71 Bandon Relief Road and on the Glasslyn Road (engineering report dated 21/07/23). However, Condition No. 40 only

refers specifically to a crossing on the N-71 Relief Road. The engineer report also states that the €45,000 will cover a portion of the projected costs involved.

- 8.6. Therefore, whilst I consider that there is scope for works on the national road to fall under a Section 48(2)(c) special development contribution, as described on page 4 of the DCS, I am uncertain as to why the figure of €45,000 was not revised when the pedestrian crossing on the Glasslyn Road was not included for as part of Condition number 40. Furthermore, whilst the PA has provided an outline of the works associated with the installation of the pedestrian crossing, they have not provided a detailed analysis or breakdown of how they arrived at the cost of €45,000. Therefore, it is for this reason that I consider that Condition number 40 should be removed.
- 8.7. Additionally, I note the arguments of the Applicant regarding the cost associated with the proposed pedestrian crossing not being specific or exceptional to warrant a special development contribution. The Applicant states that the infrastructure will benefit the entire town, including the retail park east of the relief road, and not just the proposed development.
- 8.8. The PA's engineering report clearly states that the introduction of pedestrian crossings is necessary for the amenities and safety of the area, regardless of this development. Therefore, it is clearly not exceptional or specific to this development. Furthermore, I also note that the PA states that the works will provide a safe pedestrian connection for future development of zoned lands east of the relief road. I note that these zoned lands are allocated as the Allman Quarter Mixed Use Opportunity Site special policy area under the CDP. Objective BD-X-02 of the CDP seeks to encourage the co-ordinated redevelopment of this 13.35 hectare site at the eastern approach to the town.
- 8.9. Having regard to the above, I am in agreement with the Applicant in considering that the proposed pedestrian crossing is not specific to the proposed development. Furthermore, it is my view that the pedestrian crossing is not exceptional in terms of infrastructure or cost and is a typical traffic calming and pedestrian facility provided in any urban area, and thus is covered under the general development contribution scheme. Additionally, the Board should note that this is an existing commercial use being replaced and is not a greenfield development site.

- 8.10. To conclude, whilst I acknowledge the general benefits of such infrastructure, it is my view that it has not been demonstrated that it meets the requirements of Section 48(2)(c). Therefore, I consider that Condition number 40 should be removed for the reasons outlined above.

Condition Number 41 (General Development Contribution)

- 8.11. The Applicant asserts that the calculation of the general development contribution under this condition is in error and contrary to the Council's DCS. I note that an updated floor plan has been submitted as part of the appeal documentation illustrating the separate floor areas for both uses. The car sales use will be 1,428sqm and the CVRT facility will be 1,142sqm. Having regard to the net floor area after demolition, the car sales use is calculated by the Applicant at €44,268.88 (based on a net floor area of 904sqm at €48.97 per sqm) and the CVRT use is calculated by the Applicant at €2,366.40 (based on a net floor area of 145sqm at €16.32 per sqm). The total development contribution for the convenience shop is calculated by the Applicant at €26,247.92 (based on a net floor area of 536sqm at €48.97 per sqm). The total development contribution is calculated by the Applicant as €72,883.20. I note that the PA did not provide a response to this element of the appeal.
- 8.12. Having regard to this updated plan identifying the uses of the building, I am satisfied that the car sales use totals 1,428sqm and should be charged as 'offices and retail' at €48.97 and the CVRT use totals 1,142sqm and should be charged as 'other non-residential uses' at €16.32.
- 8.13. I note that the PA did provide for an offset in their calculation regarding the demolition/replacement element of the proposed development. Notwithstanding this, having reviewed the DCS and specifically pages 7 and 8 in relation to 'reduced contributions', I note that the scheme does not provide for such an offset. Therefore, I consider that the total contribution to be charged amounts to €127,301.87, which I have detailed under Table 1 below.

Table 1: General Development Contribution Calculation

Element of proposed development	Floor area	Contribution Rate	Contribution
New shop and food court use	791sqm	€48.97	€38,735.27
Car sales showroom use	1,428sqm	€48.97	€69,929.16
CVRT/servicing use	1,142sqm	€16.32	€18,637.44
Overall Total			€127,301.87

- 8.14. Therefore, I recommend that Condition number 41 is amended to replace the sum of €77,617.45 with the sum of €127,301.87.

9.0 Conclusion

Having regard to the Cork County Council Development Contribution Scheme 2004 (DCS) and to section 48(2)(c) of the Planning and Development Act 2000, as amended, I consider that a special development contribution towards the installation of a pedestrian crossing on the N-71 Bandon Relief Road has not been fully justified by the planning authority. Furthermore, I consider such infrastructure is not specific to the proposed development or exceptional in terms of infrastructure or cost and such infrastructure is already included for within the general development contribution scheme.

Furthermore, having regard to the updated plans and documentation submitted as part of the appeal and to the development contribution scheme rates applied under the DCS, which does not provide for an offset for demolition or replacement, I consider that the PA misapplied the terms of the DCS by incorrectly including floor space associated with the vehicle services/CVRT facility as 'offices and retail' instead of 'other non-residential uses' and for basing the calculation on the net floor area.

10.0 Recommendation

I recommend that the planning authority be directed to omit and amend the conditions as follows:

1. **Omit** Condition number 40 of PA ref. 22/5800
2. **Amend** Condition Number 41 of PA ref. 22/5800 to replace the sum of €77,617.45 with the sum of €127,301.87.

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.

Gary Farrelly
Planning Inspector

28th March 2024