



An
Bord
Pleanála

Inspector's Report

ABP-319115-24

Development

Construction of 20 apartments including partial demolition of single storey extension to existing brewery and demolition of two storey extension and ancillary structures to rear. Construction of replacement three storey extension. Provision of vehicular and pedestrian access and all ancillary site works.

Location

Watergate Street, Knockbrogan,
Bandon, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

234015

Applicant(s)

Bandon Co-Operative Society Limited

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

First Party

Appellant(s)

Bandon Co-Operative Society Limited

Observer(s)

None

Date of Site Inspection

03/07/2024

Inspector

Lorraine Dockery

1.0 Site Location and Description

- 1.1 The site, which has a stated area of 0.29 hectares, is located on the northern bank of the River Bandon at the Old Brewery complex, Watergate Street, approximately 318m to the east of Bandon town centre, Co. Cork. The site forms part of an old brewery complex and is designated as a National Monument SMR C0110-025001 (Brewery). It appears vacant at the present time.

2.0 Proposed Development

- 2.1 The proposal comprises the construction of 20 apartments including partial demolition of single storey extension to existing brewery, demolition of two-storey extension and ancillary structures to rear and construction of replacement three-storey extension. The proposal also includes the provision of vehicular and pedestrian access from Watergate Street and all ancillary site works.
- 2.2 In total, 19 residential units were permitted by the planning authority.

3.0 Planning Authority Decision

3.1 Decision

Permission GRANTED, subject to 64 no. conditions

Further Information was requested by the planning authority in relation to (i) archaeology/layout concerns (ii) estates engineer concerns (iii) public lighting (v) engineering matters relating to traffic/transport/parking, stormwater, demolition works, hazardous material removal, Road Safety Audit (vi) Ecology including bat survey (vii) CoF from Uisce Eireann (viii) flooding and (ix) environment including CWMP and Surface Water Management Plan.

Further Information was received on 08/08/2023.

Clarification of Further Information was requested by the planning authority relates to further retention of main elements of Malt House and design alterations including materials, together with submission of CoF from Uisce Eireann. A response was

received on 07/11/2023, together with Unsolicited Further Information received by the planning authority on the 18/12/2023 and 02/01/2024

The information submitted was deemed significant and revised public notices were received by the planning authority on the 07/12/2023.

Condition No. 63 requires the applicant to pay a Special Development Contribution to Cork County Council 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 of car parking spaces. The stated amount of €21,000 is subject to annual revision with reference to the Wholesale Price Index (Building and Construction). The reason being that it is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development.

Condition No. 64 requires the applicant to pay prior to the commencement of development a contribution of €32,330.49 to Cork County Council in respect of public infrastructure and facilities benefiting development in the area in accordance with the terms of the development contribution scheme made under Section 48 of the Planning and Development Act 2000, as amended.

All other conditions are generally standard in nature.

3.2 Planning Authority Reports

3.2.1 Planning Reports

- Case Planner- Reflects decision of planning authority; recommends grant of permission
- Senior Planner- endorses report of Case Planner; recommends grant of permission

3.2.2 Other Technical Reports

Engineering Report- No objection, subject to conditions. Recommends attaching a special contribution as a levy on deficit car parking spaces (19/01/2024)

Environment Section- Applicant to comply with all conditions recommended (dated 29/11/2023)

Archaeologists Report- Clarification of Further Information required (30/08/2023). No further report on file

Estates Section- No objection, subject to conditions (17/08/2023)

Conservation Officer- No objections, subject to condition (17/08/2023)

Public Lighting- No objection, subject to conditions (15/08/2023)

Housing Officer- No objections (02/02/2023)

Ecology Section- No objections; conditions recommended (29/11/2023)

3.3 Prescribed Bodies

Uisce Eireann: Confirmation of Feasibility has issued. Water and wastewater connections feasible without infrastructure upgrade by Uisce Eireann (01/11/2023)

Inland Fisheries Ireland: Requests that Uisce Eireann signifies that there is sufficient capacity in existence to dispose of effluent from the proposed development.

Condition recommended (07/02/2023).

Department of Housing, Local Government and Heritage: Detailed bat survey recommended and recommendations for mitigating any potential negative impacts of the proposed development on roosting bats (if relevant) (02/03/2023). No further report

3.4 Third Party Observations

The planning authority received observations which raised issues relating to design, flooding safety and historical significance.

4.0 Planning History

The most recent relevant history is as follows:

21/663

Permission REFUSED for the construction of 28 apartments and all associated site works for 4 reasons relating to flood risk, archaeology, conservation and scale of development.

06/13880 (PL04.228460)

Permission GRANTED on appeal to for 12 no. residential units and ancillary works.

5.0 Policy Context

5.1 National Planning Policy

Section 28 Ministerial Guidelines

The following list of section 28 Ministerial Guidelines are considered to be of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities
- Urban Development and Building Heights, Guidelines for Planning Authorities
- Design Manual for Urban Roads and Streets
- The Planning System and Flood Risk Management (including the associated Technical Appendices)
- Childcare Facilities – Guidelines for Planning Authorities
- Architectural Heritage Protection, Guidelines for Planning Authorities
- Appropriate Assessment Guidelines for Planning Authorities
- Climate Action Plan
- Development Contributions Guidelines for Planning Authorities, 2013
- Development Management Guidelines for Planning Authorities, 2007

Other policy documents of note:

- National Planning Framework

- Regional Spatial & Economic Strategy for the Southern Region

5.2 Local Planning Policy

Development Plan

The Cork County Development Plan 2022-2028 applies.

- Bandon is designated as a 'Main Town' on the operative Plan, which requires the delivery of 694 residential units for the plan period
- Site is a National Monument SMR C0110-025001 (Brewery)
- Site is located within the Knockborgan East Architectural Conservation Area (ACA)
- The site bounds NIAH building on western side (Ref. 20844058)
- Zoning: Existing Residential/Mixed Residential and Other Uses
- Objective ZU 18-9: Existing Residential/Mixed Residential and Other Uses
- There are a number of policies and objectives in support of residential development on brownfield/infill sites within the operative Plan.
- Objective BD GA-02 Open Space Active for informal public recreation including the provision of an amenity walk. Opportunities to enhance biodiversity by creating links to the pNHA Bandon Valley West of Bandon which contains Ancient Woodland habitats directly to the west of the zoning are encouraged.
- Site is located within Flood Zones A and B

General Contribution Scheme 2023-2029 & Supplementary Development

Contribution Scheme 2023-2029 applies

Section 1.9 Special Development Contributions

'A special contribution may be imposed under Section 48(c) of the Act where exceptional costs, not covered by the Scheme, are incurred by the Council in the provision of a specific infrastructure or facility (the particular works will be specified in the planning conditions when special contributions are levied). Only developments which will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to the An Bord Pleanála ("the Board")'.

5.3 Natural Heritage Designation

The nearest designated site, the Bandon River SAC (Site Code: 002171) is located approximately 20km distant.

5.4 EIA Screening

Under the provisions of section 48 (13) (a) the Board shall determine only the matters relating solely to a condition dealing with a special contribution. Preliminary examination and/or EIA, therefore, is not required.

5.5 Appropriate Assessment Screening

Under the provisions of section 48 (13) (a) the Board shall determine only the matters relating solely to a condition dealing with a special contribution. As such, the requirements S177U of the Planning and Development Act 2000, as amended, do not apply.

6.0 The Appeal

6.1 Grounds of Appeal- First Party

The applicant is appealing condition No. 63, 'special contribution', of the decision to grant permission and contends that:

- Relates to a perceived shortfall in car parking at the subject site
- Considers condition is not necessary to permit the development having regard to governing policy, the nature of the development permitted and its location proximate to the town centre
- The special contribution charges sought under Condition No. 63 for the provision of car parking in line with the maximum standards as set out in Cork County Development Plan are not exceptional to the applicant's development and are therefore not in accordance with the requirements of section 48(2)(c) of the Planning and Development Act 2000 (as amended). Not necessary to permit the proposed development given its nature, location and proximity to Bandon town centre. Notes section 12.12.13 of the CDP which states that the *'County Council will not normally seek the provision of on-site parking or a*

monetary contribution in lieu of car parking where the development involves the re-use/refurbishment of an existing occupied or vacant building, any change of use, or where small scale infill developments (including residential) are proposed within the town centre or village centre'

- Proposed development will make use of an existing vacant historic structure, which is currently in a state of disrepair for housing. Site is located a short walking distance of the town centre (approximately 3-4 mins). National policy clearly states that that car parking should be relaxed in apartment schemes and may be relaxed in part or whole for building refurbishment schemes
- No basis for the calculation of the special contributions in question has been provided by the Council, which is contrary to the legislation and the Development Management Guidelines for Planning Authorities, 2007. PA need to be explicit about specific exceptional costs they will incur as a result of or in order to facilitate a development. Condition No. 63 does not specify what particular works or exceptional costs are required to facilitate the development. No satisfactory case has been presented to justify the imposition of the special development contribution on that basis. Absence of justification is underlined by a clear conflict with national and local policy
- Perceived shortfall of 4 no. spaces determined by planning authority, based on a perceived need of 1 no. space for each apartment. No policy basis for this given that maximum car parking standards apply in the CDP and that the car parking strategy at this location is supported by significant local and national guidance.
- No basis for the €5,250 per space rate has been provided and notes that PA previously applied a €2,000 car parking rate for additional parking related to a new convenience store (PL88.247100)
- Contribution levied by the planning authority does not accord with the principles of reasonableness or proportionality, as they relate to the permitted development, having regard to the Development Contributions Guidelines for Planning Authorities, 2013

- Clear planning precedent where ABP have omitted/modified special planning contributions for infrastructure circumstances similar to the appeal (PL88.247100 and ABP-301156-18).
- Auto track analysis submitted to demonstrate that car parking No. 16 can be utilised

6.2 Planning Authority Response

- Would accept 4 no. additional car parking spaces within the lands owned by the applicant (within blue line) contiguous to the site in lieu of the Special Contribution
- Given that proposal is for redevelopment of brownfield site, planning authority did not request the maximum number of car spaces for the quantum of development permitted which would be 24 no. car parking spaces, instead looking for 1 no. car parking space per unit (19 spaces)
- Noted that 15 no. car parking spaces are achievable on site, therefore the shortfall of 1 space per unit is 4 no. additional spaces
- Considered that to provide these additional 4 spaces in the green area would erode the riverside setting of the minimal public open space provided in this scheme
- Attaches Council policy document (2004) and cites extract from page 16 of same. Application of €5250 per car parking space appears fair considering inflation and the distance from the town centre.

6.3 Observations

None

6.4 Further Responses

Further to the Planning Authority's response the applicant has submitted further comments, which reiterate the points made in appeal submission.

- Response does not alter terms of appeal; it does not provide any justification that the special contribution charges sought are exceptional to the applicant's development and are therefore not in accordance with section 48(2)(c) of Act

- Corroborates argument that there is no basis for calculation of special contribution; contingent on PL to provide clear and evidence-based calculation method for any special development contributions levied
- Rely on a 20 year old document as a means to justify the imposition of special contribution, produced at a time when it was Council policy to apply minimum car parking standards.

7.0 Assessment

7.1 I highlight to the Board that it is the **General Contribution Scheme 2023-2029 & Supplementary Development Contribution Scheme 2023-2029** (adopted February 13th, 2023) which applies in this instance. The date of planning authority decision to grant permission was 26th January 2024.

7.2 Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, the reports of the local authority and having inspected the site, and having regard to the relevant local, regional, national policies and guidance, I consider that the substantive issue in this appeal to be considered is:

- Whether the condition meets the essential requirements or characteristics to justify attachment of a 'special contribution' condition.

Essential requirements or characteristics to justify attachment of a 'special contribution' condition.

7.3 The planning authority in the decision to grant permission for 19 apartments attached two financial contribution conditions namely:

Condition No. 63 for a Special Development Contribution of €21,000 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 of car parking spaces, with reference to the Wholesale Price Index (Building and Construction). The reason being that it is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development.

Condition No. 64 for a contribution of €32,330.49 in respect of public infrastructure and facilities benefiting development in the area in accordance with the terms of the development contribution scheme made under Section 48 of the Planning and Development Act 2000, as amended.

- 7.4 The attachment of the special development contribution, under Condition No. 63, is the core ground of appeal by the applicant, as detailed in section 6.1 above.
- 7.5 In summary, it is noted that 15 parking spaces have been provided (the 16th space is considered by the planning authority not to be appropriate as such), with the planning authority of the opinion that there is a shortfall of 4 no. spaces. I highlight to the Board that the Plan sets maximum car parking standards as per Table 12.6. It could therefore be argued that 15 spaces for 19 residential units, on a brownfield site within 3-4 minutes walk of the town centre zoning is appropriate and that no such shortfall exists. Section 12.12.13 of the operative Plan states that ‘Given the requirement to deliver 30% of all new urban development on infill/brownfield sites within the built footprint of existing settlements, and in order to encourage and incentivise those wishing to invest in and develop town/village centre locations, the County Council will not normally seek the provision of on-site parking or a monetary contribution in lieu of car parking where the development involves the re-use/refurbishment of an existing occupied or vacant building...’. The proposed development would fall within this category as it involves the re-use/refurbishment of an existing vacant building.
- 7.6 The Development Management Guidelines (2007), issued under Section 28 of the Planning and Development Act 2000, as amended, (hereafter referred to as ‘the Act’) state that a condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act, and it is essential that the basis for the calculation of the contribution should be explained in the planning decision. 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.
- 7.7 Similarly, the Development Contributions Guidelines for Planning Authorities (2013), issued under Section 28 of the Act, state that where a special development

contribution is imposed under section 48(2)(c), such particular works should be specified in the condition.

- 7.8 Section 48(2) (c) of the Planning and Development Act 2000, as amended sets out the special requirements that justify the imposition of special contribution conditions as follows:

“A planning authority may, in addition to the terms of the 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”.

- 7.9 Accordingly, three essential requirements or characteristics are necessary to justify the imposition of a ‘special contribution’ condition. Under s48(2)(c) the payment must be required:

- a) In respect of a 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 or 49 of the Act.

- 7.10 Under the **first test (a)** I am of the opinion that a payment is required in respect of a development and meets with this test.

- 7.11 Under the **second test (b)**, I note that with regards to ‘specific exceptional costs’, the planning authority are vague/general in this regard. They reference car parking levies of between €2500 to €7500 shall apply, as they consider a standard charge to be inappropriate as there are major variations in the cost of providing car parking. A cost of €5,250 per space has been applied (based on 15 spaces and a shortfall of 4 spaces), and the planning authority response states that this appears ‘fair considering inflation and the distance from the town centre’. I do not consider this to be specific and I consider it to be quite subjective depending on one’s definition of ‘fair’. There appears to me to be a massive difference between €2500 and €7500 per space and the justification put forward by the planning authority as to the applicable rate in any particular case is not adequate in my opinion. The

Development Management Guidelines 2007 states that 'it is essential that the basis for the calculation of the contribution should be explained in the planning decision'. I consider that this has not been adequately explained in this instance. These Guidelines further state that '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'. This has also not been adequately done in this instance. While distance from town centre is cited in planning authority's response, I highlight to the Board that it is stated by the applicant's that the site is located 3-4 mins walk from the town centre zoning. There are no details as to the nature/scope of works, the exact location of the cited car parking spaces nor the expenditure involved in their provision. In addition, no details of how any expenditure is to be apportioned to this particular development have been included.

7.12 On the basis of the information on file in respect of the planning authority's decision regarding the special contribution, I consider that that the detail of the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development, are not set out in the planning authority's decision. No details have been provided for a specific costed parking scheme design. Section 1.9 of the adopted Development Contribution Scheme states that 'only developments which will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution'. No specific details relating to the intended public infrastructure or facility in question are put forward by the planning authority. I am of the view that the condition relating to an uncosted project does not pass the 'specific test'.

7.13 Under the **third test (c)**, whether such costs are already covered by a Development Contribution Scheme I refer to Appendix 1 of Cork County Council's Development Contributions Scheme 2023-2029 (adopted 13th February 2023) which sets out the capital programme. Under the 'Roads, transportation infrastructure and facilities' class, the following are listed as covered under the general contribution scheme:

- Car parks
- Transport and mobility
- Streets/public realm

7.14 I also note that Section 48(17) of the Act gives the following meaning to "public infrastructure and facilities

(c) the provision of roads, car parks, car parking places, sewers, waste water and water treatment facilities, drains and watermains.

7.15 It could therefore be argued, that in the absence of specific details of where exactly this car parking is to be located nor details of its specific nature, that it may already be provided for in the General Contribution Scheme and therefore Condition No. 63 could in fact be considered as double-charging. As such, I consider the provision of parking in this context is provided for under the General Contribution Scheme and fails to pass the test under (c)

Conclusion

7.16 Having regard to all of the above, I consider that the provision of parking should, therefore, not be included for as a special contribution and it fails to meet the essential requirements or characteristics to justify attachment of a 'special contribution' condition.

8.0 Recommendation

8.1 I recommend that Condition No. 63 should be REMOVED

9.0 Reasons and Considerations

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that condition number 63 relates to an uncoded project, no details have been provided for a specific coded design for the provision of car parking spaces, and fails to meet the 'specific exceptional costs test' and furthermore, the intention of the special contribution to provide funding for car parking is already provided for under the Cork County Council's General Development Contribution Scheme (2023-2029) therefore directs the said Council to remove condition number 63 and the reason therefore.

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.

Lorraine Dockery
Senior Planning Inspector

05th November 2024