



An  
Bord  
Pleanála

## Inspector's Report

### ABP-321526-24

#### Development

Point of detail in dispute regarding condition number 31 of previously permitted – ABP313827-22

#### Location

Castlelake, Terry's-land and Carrigtohill (Townlands), Carrigtwohill, Co. Cork. ([www.castlelakeshd.ie](http://www.castlelakeshd.ie))

#### Planning Authority

Cork County Council

#### Planning Authority Reg. Ref.

6033

#### An Bord Pleanála Reg Ref.

313827-22

#### Applicant(s)

Bam Property Limited

#### Referrer

Bam Property Limited

#### Date of Site Inspection

None

#### Inspector

Ronan O'Connor

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## 1.0 Introduction

- 1.1. It has been submitted that agreement cannot be reached between Cork County Council and Bam Property Limited in relation to Condition No. 31 of a decision made by An Bord Pleanála. The decision was to grant permission subject to conditions under case reference ABP-313827-22 on the 21<sup>st</sup> November 2023. In default of agreement, the matter has been referred to the Board for determination by HW Planning on behalf of Bam Property Limited.

## 2.0 Site Location and Description

- 2.1.1. The application site comprises seven distinct parcels of lands, with a stated area of some 18.126 ha, located at Castl lake, Terrylands and Carrigtwohill, Co. Cork. Carrigtwohill is located approx. 16 Km east of Cork city. The lands are bounded to the north by the railway tracks, to the east by Station Road and to the west by existing residential development. Carrigtwohill train station is located to the north of Station Road.

## 3.0 Proposed Development

- 3.1.1. In summary, under case reference ABP-313827-22 the applicant proposed the following Strategic Housing Development:

*A 10 year planning permission for a strategic housing development. The development will consist of the construction of a strategic housing development of 716 no. units comprising 224 no. houses, 284 no. duplex units and 208 no. apartments provided in 7 no. apartment building blocks. A 2 no. storey creche building is also provided. The 2 no. storey houses comprise of 48 no. detached, 126 no. semi-detached and 50 no. terraced houses consisting of 60 no. two bed units, 139 no. three bed units and 25 no. four bed units. The part-1 to part-3 storey duplex units are contained in 122 no. building blocks providing 82 no. one bed units, 142 no. two bed units and 60 no. three bed units. The 7 no. apartments building blocks range in height from part-1 to part- 5 no. storeys.*

- 3.1.2. The Board granted permission but via Condition 3, a total of 83 units were omitted from the proposal. The total number of units granted therefore was 633 no. units.

- 3.1.3. Of particular note, and which is the subject of this referral, is Condition 31 which states the following:

*The developer shall pay a financial contribution as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of infrastructure to upgrade station road and other junctions in the vicinity which will benefit the proposed development. The amount of the contribution shall be agreed between the planning authority and the development, or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development, and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.*

*Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.*

## 4.0 Planning History

ABP-313827-22- [as referred to above]

ABP Ref 301610-18 (PA Ref 17/5399) Construction of 277 residential units – Refuse permission [Decision Date 06/12/2018] for one reason as follows:

The "Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas" (Cities, Towns and Villages)" issued by the Department of the Environment, Heritage and Local Government in May, 2009, require a high quality approach to the design and layout of new housing. Having regard to the proposed site layout, and in particular the poor disposition and quality of public communal open space and future connectivity to Carrigtwohill Train station, it is considered that the proposed development would constitute a substandard form of development, would seriously injure the amenity for future occupants and, would, therefore, be contrary to the said Guidelines'.

Appeal Ref PL04.125446 (PA Reg Ref 00/7607) 771 dwellings – Grant Permission  
[Decision Date 31/05/2002]

Appeal Ref PL04.131129 (S/00/7674) – 813 dwellings – Grant permission [Decision  
Date 20/10/2003]

#### Other Relevant Projects

19/5707 Station Road Schools Campus: Permission granted [Decision Date: 28/04/2020] for construction of three no. new school buildings and the construction of a main link road with roundabout from Castlelake Housing Estate to Station Road and an additional link from the roundabout to Station Road. This campus comprises of two primary schools and one post-primary school.

#### Approved Part 8 Proposals

Carrigtwohill URDF – Public Realm Infrastructure Bundle: Part 8 proposal for Main Street and Station Road Public Realm Works including footpath widening, road re-alignment, resurfacing, signalisation, traffic calming measures, street lighting, demolition of buildings at the junction of Main Street and Station Road along with other small scale demolition works, and provision of new public spaces, upgrade of Wises Road junction, additional capacity measures at N25 Junction 3 (Cobh Cross) including widening and realignment of approach roads to the roundabout. This scheme was approved at Full Council Meeting on 27th June 2022.

Carrigtwohill – Midleton Inter-Urban Cycleway Phase 1: Part 8. This was approved by Cork County Council on 14th March 2022. - Strategic cycleway scheme proposal extending from Wises Road, north of the Cork to Midleton railway line at the western end of Carrigtwohill to the east of the Carrigane Road bridge at the eastern end of Carrigtwohill. The scheme will pass through the Carrigtwohill UEA, cross Wises Road, Station Road, Leamlara Road and Carrigane Road. It will connect to the Carrigtwohill Train Station and the new school campus on Station Road. The scheme will provide connectivity between the existing IDA Business Park to the west of Wises Road and the industrial zoned lands to the south of the Carrigane Road.

## 5.0 Referrer's Case

5.1.1. A referral made in accordance with Section 34(5) of the Planning and Development Act 2000, as amended (i.e. 'the Act'), was submitted by HW Planning on behalf of Bam Property Limited. The referral related to the special development contributions payable to Cork County Council specified by Condition no. 31 of ABP Ref 313827-22, the full text of which is set out above.

5.1.2. The grounds for the referral can be summarised under the headings below.

### Amount of Contribution and Justification for same

5.1.3. The applicant refers to correspondence dated 12<sup>th</sup> December 2023 from Cork County Council, to the applicant, which states that, in compliance with Condition no. 31, proposed special contributions of €2,309,167 were payable (Enclosure 3 of the applicant's submission refers). No breakdown of same was provided. However, the applicant points out that the figure quoted was as per that recommended in the Chief Executive's Report to the Board (Enclosure 4 refers), as submitted during the SHD application process (under ABP-313827-22). This is not refuted by the Council and, as such, I am proceeding to assess the referral on this basis.

5.1.4. Referring to the Chief Executive's Report, Section 5.4 of same refers to Special Contributions. The following breakdown of special contributions is set out:

- Cobh Cross interim measures – €2,333 per unit – Total €1,670,428
- Wise's Road/Oakbrook link junction – Total €33, 294
- Wise's Road/Main St junction – Total €77.570
- Station Road Upgrade – Total €228,295
- Station Road/Main St junction - Total €80,000
- Castlelake Avenue/Main St junction - Total €143,000
- Provision of an Underpass at Carrigtwohill – Total €143,000

### Total Special Contributions

€2,309,167 which equates to €3,225 per dwelling

- 5.1.5. As noted, the figure of €2,309,167 as quoted in the Council's correspondence to the applicant (dated 12<sup>th</sup> December) 2023 is as per the Chief Executive's report. However, it would appear that the figures above are based on the total number of units applied for (716 no. units) rather than on the total number of units granted (633 no. units), referring to the applicant's letter of 20<sup>th</sup> January 2022 and the Revised Accommodation Schedule/Site Layout Plan attached to same (Enclosure No. 5 refers).
- 5.1.6. Examining the applicant's submission, it would appear that the principle of providing a proportional amount of special contributions (i.e. in line with the number of units granted), in relation to the above road measures, is acceptable, save for the following works:
- Cobh Cross interim measures – €2,333 per unit – Total €1,670,428
  - Provision of an Underpass at Carrigtwohill – Total €143,000
- 5.1.7. It set out on page 4 of the applicant's referral that they are satisfied to contribute a total of €496,739 (based on the Planning Authority's Calculations).
- 5.1.8. Therefore, the total of the special contributions that are the subject of dispute is €1,812,428 noting that the applicant has set out that they have not been able to reach agreement with the Planning Authority on the above figures.
- 5.1.9. The applicant has set out that the total of the general, supplementary and special development contributions that the applicant is satisfied to pay amount to €2,654,284.38.

#### Interim Measures at Cobh Cross

- 5.1.10. The applicant has set out a description of the measures at Cobh Cross. In summary it is noted that the Cobh Cross (N25 Junction 3) is located approximately 1.6km southwest of Station Road. Works to same formed part of the Carrigtwohill URDF Initiative Public Realm Infrastructure Bundle. The applicant notes that within the Part 8 Planning application is set out that the stated objectives of the measures are as follows:
- Provide a safe route for pedestrians and cyclists through the junction between the planned Dunkettle to Carrigtwohill inter-urban cycle route and the proposed pedestrian/cycle link to the R624.

- To provide capacity at the junction to reduce the occurrence of traffic on the off-slips from backing up on the N25 mainline carriageway and to cater for future development.

5.1.11. The applicant is of the view that the Cobh Cross interim measures is not in accordance with Section 48(2)(c) of the 2000 Act, and not in accordance with 'Development Contribution Guidelines for Planning Authorities (2013)'. The applicant states that the interim works at Cobh Cross are not exceptional nor specific to the applicant's development.

5.1.12. The applicant also sets out that Cork County Council did not update their adopted Contribution Scheme, special or supplementary contribution scheme in advance of the adoption of the current Development Plan to reflect the costs or the future delivery of the Cobh Cross upgrade scheme. As the interim upgrades at Cobh Cross are neither exceptional nor specific to the subject development, the inclusion of a special contribution relating to 'roads and traffic management' upgrades constitute a 'double-charge'.

5.2. The applicant is of the view that they do not consider that s48(12) was intended to cover costs of Council and State funded projects and such projects should be funded via the General Contribution Scheme or via a Supplementary Development Contribution Scheme in accordance with s49 of the Act.

5.2.1. The applicant has also set out that at the tripartite pre-application meeting, it was indicated by ABP that the works to Cobh Cross could not be considered specific exceptional costs.

5.2.2. In any event, the applicant is not of the view that the junction in the vicinity of the subject site.

5.2.3. The applicant concludes that it is evident that Cobh Cross Measures are strategic in nature and will serve the wider settlement of Carrigtwohill and are neither specific nor exceptional to the subject scheme. It is further set out that there is no reference within the zoning objectives to the delivery of Cobh Cross measures.

#### Provision of an Underpass

5.2.4. In relation to the underpass, it is stated that this has been constructed for almost 20 years and is not new infrastructure in Carrigtwohill. It is stated that the inclusion of



same relates to an alleged unpaid previous special development contribution and reference is made to the comments of the of previous reporting Inspector when reporting on the SHD application ABP-313827-22 (in the interests of clarity I would note that I was also the previous reporting for same). The applicant has set out that the inclusion of same is not in accordance with s48(2)(c) of the Act.

#### Precedents

5.2.5. The applicant has referred to planning precedents including 315010-22 where it is set out that the Board agreed that Cobh Cross measures were strategic in nature and would benefit the town as a whole. During the consideration of 316557-23, the Board omitted Condition 21 which related to works at Cobh Cross. As such the applicant sets out that the Board has already concluded that the interim works at Cobh Cross should not be funded through the imposition of special development contributions on private developments.

5.2.6. The referral was accompanied by the following:

- Enclosure 1 – Correspondence from Cork County Council (CCC) dated 3<sup>rd</sup> December 2024.
- Enclosure 2 – Letter to PA dated November 12<sup>th</sup> 2024.
- Enclosure 3 – Correspondence from Cork County Council (CCC) dated 12<sup>th</sup> December 2023.
- Enclosure 4 – Chief Executive’s Report (on SHD Application) dated 11<sup>th</sup> August 2022.
- Enclosure 5 - Letter to PA dated 20<sup>th</sup> January 2024.
- Enclosure 6 – Correspondence from Cork County Council (CCC) dated 21<sup>st</sup> March 2024.
- Enclosure 7 – ABP Ref 315010-22 Order Dated 24<sup>th</sup> April 2022.
- Enclosure 8 – ABP Ref 316557-23 Board Direction dated 28<sup>th</sup> March 2024/Board Order.

## **6.0 Planning Authority's Response**

- 6.1.1. The submission from the Planning Authority received on 3<sup>rd</sup> January 2025 does not contain any specific comments or response to matters raised on the applicant's submission to ABP. However, the submission does include file correspondence between Cork County Council and the referrer in respect of the proposed development, including evidence of failure to reach agreement in relation to Condition no. 31. It is evident from correspondence on file that no agreement could be reached in relation to the amount of contribution payable under Condition No. 31. It would appear that the Council's view, or at least the view of the Senior Executive Engineer, is that the proposed Interim Measures at Cobh Cross would be of significant benefit to the development without which the development may not have been granted. (see email from the Senior Executive Engineer dated Tues 30<sup>th</sup> January, as contained within the correspondence from the PA). Within the same email, it is also set out that the purpose of the tripartite pre-application meeting on the proposed SHD was not to adjudicate on development contributions. The council's submission also includes a breakdown of the contributions payable, noting that the special contributions payable total €2,309,167, which equates to €3,225 per dwelling.

## **7.0 Policy Context**

### **7.1. Development Contributions Guidelines for Planning Authorities (2013)**

It is stated that the primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed. The Guidelines aim to assist planning authorities in achieving a balance between the costs of services provided and the need to support economic activity via Development Contribution Schemes.

In relation Special Development Contributions

'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’.

## **7.2. Planning Guidelines 13, Development Management Guidelines 2007**

Section 7.12 of the Guidelines provides guidance on planning conditions relating to development contributions. Section 8.12 of these Guidelines refers to appeals regarding development contribution conditions.

‘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.

## **7.3. Development Plan**

The current plan, which was also operative at the time of the decision to grant permission and impose condition no 31, is the Cork County Development Plan 2022-2028.

### Zoning

The northern portions of the site are zoned:

- Existing R - Existing Residential/Mixed Residential and Other Uses
- CT-R-01 – Residential - High density residential development. High quality pedestrian and cycle connectivity, particularly to adjoining schools campus and station quarter, to be provided
- There is a small portion of the site zoned - CT-X-01 – Special Policy Area. The specific policy objective relating to same refers to this area as ‘Station Quarter South’ and requires mixed used development to include enterprise development, high density residential, small scale retail and community uses.

The southern portions of the site are zoned:

- CT-T-02 – Town Centre/Neighbourhood Centres; Carrigtwohill North UEA. Medium A density residential development. Development on this site requires provision to be made for the delivery of the infrastructure described in Tables 4.2.6 and 4.2.7. (Volume 4 South Cork)
- CT-T-03 – Town Centre/Neighbourhood Centres - Carrigtwohill North UEA. Medium A density residential development. Development on this site requires provision to be made for the delivery of the infrastructure described in Tables 4.2.6 and 4.2.7. (Volume 4 South Cork)

The following Specific Development Objectives of the CCDP 2022 apply to the application site:

- CT-R-01 High density residential development. High quality pedestrian and cycle connectivity, particularly to adjoining schools campus and station quarter, to be provided. CT-T-02 Town / neighbourhood centre in line with the overall uses acceptable in town centre areas. Careful consideration shall be given to the overall design approach given the prominence of the site to both the entrance to Castlelake and the start of the Main Street. Opportunity to connect to adjoining green infrastructure north of this site is to be taken into consideration in the layout and design of development.
- CT-T-03 Town centre development in line with the overall uses acceptable in town centre areas.

- CT-X-01 Station Quarter South – Mixed use development to include enterprise development, high density residential, small scale retail and community uses.
- CT-U-12 Completion of the Northern Spine Link Road linking the Western Spine Link Road via the underpass to lands south of the railway.
- CT-U-01 Provision of a new link road connecting Castle Lake to Station Road.

#### Other relevant Provisions

#### Appendix D: Core Strategy Critical Infrastructure:

Table D2: Settlement Specific Key Infrastructure lists the improvement of Cobh Cross additional capacity upgrade as key infrastructure to support the delivery of zoned lands in the Carrigtwohill Urban Expansion Area (UEA) (Part 2 of Table D2)

Carrigtwohill - Cobh Road Junction Interim measures upgrade (Part 3 of Table D2)

Table D3: 'Residential Lands NPF Tiering' identifies the need for improvement of Cobh Cross Junction in Carrigtwohill Area within lifetime of plan.

#### Volume 4 South Cork – Section 2.4 Carrigtwohill

Section 2.4.116 relates to specific zoning objectives as described above.

Page 123 of this Volume contains the Zoning Map.

Section 2.4.70: During the lifetime of the plan, new development in the area and the need to provide additional capacity for future growth, are likely to necessitate the following major road network improvements:

- Cobh Cross Junction (Junction improvement and upgrade of northern roundabout) (relevant);
- Upgrades to the road network within Carrigtwohill itself;

Table 4.2.7: Carrigtwohill North Urban Expansion Area Core Off-Site Infrastructure Programme for phase 1 up to 1,390 units which includes Cobh Cross additional capacity upgrade;

#### 7.4. **Cork County Council Development Contribution Scheme**

Adopted 23<sup>rd</sup> February, 2004. Rates adjusted 01<sup>st</sup> January 2014. It was operative at the time of the Board's decision to grant permission and continues to be operative now.<sup>1</sup>

Stated scheme for period of twenty years in line with time periods of the Cork Area Strategic Plan (now replaced by Cork Metropolitan Area Strategic Plan)

The terms of the scheme such that '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, intended to be provided, by or on behalf of a local authority'.

The Cork County Council Development Contribution Scheme outlines three types of contributions provided for under the 2000 Act for which include:

General Contribution (under Section 48 - non-refundable): Indicates contribution paid in respect of the different classes of infrastructure and facilities which are provided, and make provision for payment of different contributions in respect of classes of development.

It is noted that the general scheme

- Indicates the contribution to be paid in respect of the different classes of infrastructure and facilities which are provided, and make provision for payment of different contributions in respect of different classes of development.
- Reflects the objectives as set out in the County Development Plan, namely:  
Sanitary Services, Roads and Traffic Management, Community and Recreational Amenity.

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<sup>1</sup> I would note that Cork County Council's website refers to a Draft Carrigtwohill Development Contribution Scheme 2025-2045 with Public consultation on the draft scheme taking place for a period of 6 weeks from Friday 31st January 2025 until Friday 14th March 2025.  
<https://www.corkcoco.ie/en/resident/planning-and-development/carrigtwohill-development-contribution-scheme> (accessed 18th March 2025).

- Responds to the differing demands arising from different scales of development. The Scheme differentiates between the various developments based on the relative demands imposed on the provision of services.

Supplementary Contribution (under Section 49). Provision of project must benefit development for which the permission is granted. Scheme is area specific. Proposed for scheme in relation to the Cork Area Strategic Plan Suburban Rail Project for which the Supplementary Development Contributions Scheme - Cobh/Middleton - Blarney Suburban Rail Project now exists with further stations planned. This includes all areas within 1 kilometre of a station (existing or new - applies to application site), and also areas served by main roads (including the new and old N20 and N25 routes)

Reductions: Developments which are liable for supplementary contributions under Section 49 for proposed Cork Suburban Rail Project eligible for conditional 75% reduction in Roads Contributions (recognises rail project may mitigate need for roads investment).

Special Contributions: A Special Contribution may also be required, under Section 48(2)(c) where specific exceptional costs not covered by the Cork County Council Development Contribution Scheme are incurred by any Local Authority in respect of public infrastructure (not covered by General Scheme).

Reduction: If no substantial works have been carried out, or have been commenced, by a date ten years after the date of receipt, contribution will be returned to developer, but less an amount corresponding to the 75% reduction in roads contributions under the General Contributions Scheme, which applies to developments liable to contribute to the Supplementary Scheme, together with the appropriate interest.

## 8.0 Legislative Context

### 8.1.1. Section 34(5) of the Planning and Development Act, 2000, as amended

### 8.1.2. The relevant section of the Act states:

*The conditions under subsection (1) may provide that points of detail relating to a grant of permission may 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.*

### **8.1.3. Section 48 Development Contributions**

**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)(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.*

**Section 48(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.*

**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 (or final instalment thereof, if paid by phased payment under subsection (15)(a)),*

*(ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under subsection (15)(a)), 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.*

## **9.0 Assessment**

9.1. Having regard to the foregoing and all the correspondence and submissions on file, I consider that the main issues for assessment in this case are as follows:

- The application of Section 48(2)(c) of the Act.
- The amount of special contribution payable.

### **9.2. The application of Section 48(2)(c) of the Act**

9.2.1. The referrer contends that the 'special contribution' provisions of s. 48(2)(c) of the Act do not apply to this case. The issues raised are discussed in the following paragraphs.

9.2.2. Section 48(2)(c) of the Act allows for special contributions where specific exceptional costs not covered by a development contribution scheme are incurred by a local authority in respect of public infrastructure and facilities which benefit the proposed development. Section 48(12) also outlines that any such condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates.

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

incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it.

- 9.2.4. The specific wording of Condition 31 is of relevance here and it is as follows:

*The developer shall pay a financial contribution as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of infrastructure to upgrade station road and other junctions in the vicinity which will benefit the proposed development (my emphasis). The amount of the contribution shall be agreed between the planning authority and the development, or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development, and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.*

*Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.*

- 9.2.5. To my mind, the issues are twofold. Firstly, it must be determined if the works that are the subject of the dispute fall into the category of s48(2)(c) contributions. Secondly, it must be determined if they relate to the specific works highlighted in the condition.

#### Underpass Works

- 9.2.6. In relation to the underpass works, it would appear that the PA are seeking €143,000 towards same. I refer to Paragraph 4.16.6 of the Chief Executives Report (Enclosure 4 of the applicant's submission -dated Aug 11<sup>th</sup> 2022) which considers both underpasses. It would appear from a reading of same that the underpass in question is that which facilitates the northern link services road and the Inter-Urban Cycle Link (I refer to 'Proposed Site Layout Plan -Overall – Drg. CHD-WIL-ZZ-ZZ-DR-A-070' on the parent permission file 313827-22).

- 9.2.7. This Chief Executive's report notes that the underpass has already been constructed by Cork County Council (CCC). It is stated that a legal agreement involving CCC, BAM (the applicant) and relevant landowners was entered into and as part of this, the applicant was to pay €147,000. It is set out that this has not been paid and a special contribution for this amount was recommended. An email from the Roads Design Office, as set out in the Appendix of the Chief Executive's Report is also referred to, which refers to the same amount.
- 9.2.8. It is evident, then, the underpass in question has already been completed. It could be the case, however, that additional works to same are required in the future to facilitate the proposed development, or that the proposed development would benefit from i.e. it may be a case that further upgrading works are planned. For instance, I would note that Table 4.2.7 'Carrigtwohill North Urban Expansion Area Core Off-Site Infrastructure Programme' refers to 'Existing underpass for provision of Pedestrian/Cycling Link to Interurban Greenway CT-U-03 (CT-U-07)' as an 'Off-Site Infrastructure Project'. In any case, I would highlight that s.48(12) of the Act refers to 'the particular works carried out, or proposed to be carried out,' which would indicate that the completion of works would not be an impediment in itself to applying a special contribution.
- 9.2.9. However, this is not the case as set out by the Planning Authority (I refer to the information contained in correspondence submitted by the PA, and within the Chief Executive's Report, noting that there is no specific response from the PA to the Applicant's Referral). Rather, it would appear that the seeking of the contribution would appear to relate to alleged non-payment of development contributions as relates to a separate unspecified legal agreement. As such, there is insufficient evidence on file that the unspecified underpass works would fall into the category of s48(2)(c) contributions, as the contribution sought towards same relates to another unspecified legal agreement. Furthermore, I would note that the Condition 31 is specific, in that it refers to the upgrade of Station Road and other junctions in the vicinity. In relation to the underpass at Carrigtwohill, to my mind, this piece of infrastructure would not appear to be a 'junction upgrade' and as such the cost of same is not covered by the specific wording of the appeal. All of which, I conclude, would result in no contributions being payable towards this particular piece of infrastructure.

### Cobh Cross Junction Interim Works

- 9.2.10. In relation to the Cobh Cross Junction, this would qualify by virtue of being junction upgrade works in the vicinity of the site, given the junction is located some 800m from the site, at its closest point (i.e. from the Castl lake South Site 01 – it is at a greater distance from other areas of the site). In this regard, I do not concur with the contention of the applicant in relation to same, in that the works are not in the vicinity of the site. It would appear, from correspondence on file that the Planning Authority are seeking a total of €2,333 per unit, and a total of €1,670,428 towards the Cobh Cross interim measures (i.e. the upgrade of Cobh Cross junction off the N25).
- 9.2.11. In summary, these works are part of the approved Part 8 Scheme as detailed in the Planning History above (Section 4 of this report). The measures involve the upgrade of Junction 3 (Cobh Cross) off the N25 including the roundabout to the north serving the R624 Cork to Fota Island/Great Island/Cobh Area, the settlement of Carrigtohill and environs including the IDA Ireland Carrigtohill Business and Technology Park.
- 9.2.12. I note that a description of same is set out in Section 13.4.4 of the Environmental Impact Assessment Report (EIAR) as submitted with the parent application (parent permission file 313827-22). It is set out therein that the works include an increase in the size of the roundabout, pedestrian crossing facilities and realignment of the roundabout road arms, to provide additional traffic capacity. Fig 13-16 of same illustrates said works.
- 9.2.13. The Housing Infrastructure and Implementation Team (HIIT) report, as contained on pages 55-68 of the Chief Executives Report, notes that the overall cost of the Cobh Cross upgrade is estimated at €5. It is stated also that the Cobh Cross Interim measures are NON-URDF funded and funding from contributions will have to be considered. It is further stated that the overall quantum of development proposed at this site is much greater than envisaged in previous planning applications on the site, and it is set out the quantum of development here would have significant impacts on the road network in terms of vehicular, pedestrian and cyclist traffic movement. It is set out that the measures at Cobh Cross Junction on the N25 will benefit this development substantially and this development should be required to contribute proportionately.

9.2.14. As per Section 6.5 in Policy Context above, the Cork County Council Development Contribution Scheme adopted in 2004 with rates most recently adjusted on the 01st January 2014 is the statutory document for the provision of development contributions. It summarises that Special Contributions may be sought under Section 48 (2)(c) where specific exceptional costs are incurred by local authority in respect of public infrastructure not covered by the general scheme.

9.2.15. The Board has specified in Condition 31 that special contributions are payable towards junctions in the vicinity of the development, and as noted above, I am of the view that the junction in question here would fall into this category. Furthermore, given the totality of the information on file, I am of the view that the proposed development would clearly benefit from the proposed interim works at Cobh Cross, and furthermore, said works would constitute a specific exceptional cost, in terms of facilitating the vehicular, cycle and pedestrian movements generated by the development, nothing in particular the nature and scale of the permitted scheme (633 no. residential units permitted). I would also note that Appendix D 'Core Strategy Critical Infrastructure' of Volume 1 of the Cork County Development Plan lists the Cobh Cross additional capacity upgrade as a key infrastructure project to support the delivery of zoned lands in the Carrigtwohill Urban Expansion Area (UEA) (Part 2 of Table D2). The subject development sits partly within this UEA. Table D3 'Residential Lands NPF Tiering' identifies the need for improvement of Cobh Cross Junction in Carrigtwohill Area within lifetime of plan, therefore indicating that the delivery of residential development, such as that permitted here, is also dependant on the improvement of the junction. Furthermore, the southern portions of the site are zoned CT-T-02 and CT-T-03 (Town Centre/Neighbourhood Centres), the zoning objectives of which state that development on these sites requires provision to be made for the delivery of the infrastructure described in Tables 4.2.6 and 4.2.7 of Volume 4 'South Cork'. Table 4.2.7: Carrigtwohill North Urban Expansion Area Core Off-Site Infrastructure Programme for phase 1 up to 1,390 units includes the Cobh Cross additional capacity upgrade as a listed project.

9.2.16. As such, the above considerations would infer that the development of these lands would be dependent on, and therefore benefit from, the proposed interim works at Cobh Cross junction. To my mind, then, it is evident that the development of these sites within Carrigtwohill are particularly dependant on a range of infrastructure

upgrades, including the Cobh Cross measures, and as such the development contributions payable towards same are both specific and exceptional. Given same, I am satisfied that the Cobh Cross measures are not already covered by the General Development Contribution Scheme and I am not of the opinion that the applicant has been the subject of 'double-charging' as set out in the applicant's submission.

#### Precedent Cases

- 9.2.17. The applicant has referred to planning precedents including ABP315010-22 and ABP316557-23. In relation to 315010-22, I note that this was both First Party Appeal against a financial condition and a third-party appeal, in respect of mixed-use development located on Main Street, Carrigtwohill. Permission was granted for same by Cork County Council, subject to conditions including Condition No. 46 which related to a special contribution for the Cobh Cross Interim Upgrade Project and other works. The Board, in granting permission, did not reimpose a s48(2)(c) condition specifically relating to the Cobh Cross interim works. In relation to same, I would note that each case is considered on its merits, and in line with the nature of the development in question, and having regard any particular policies and provisions that would relate to the particular site, and as such it is not always possible to draw a direct correlation between one appeal and another. However, it is of note that the development in question was of a far smaller scale (43 no. units, with a retail unit of 166 sq. m gfa) than that proposed here, and to my mind this would cast further doubt on the merits of drawing comparisons between the two developments in question.
- 9.2.18. In relation to 316557-23, this was a first party appeal against financial contributions, relating to a permitted development at IDA Ireland Carrigtwohill Business and Technology Park in Anngrove, Carrigtwohill, Cork c.1.7km west of Carrigtwohill town centre. The proposal related to an industrial development project within the business park (demolition and construction of modular buildings, including the construction of a permanent extension to production building of 1, 475 sq. m and 2 no. temporary modular buildings totalling 1,744 sq. m.). As per the discussion above, I am not satisfied that a relevant comparison can be drawn between the industrial type development cited by the applicant, and the large scale residential development permitted by the Board, suffice to note that a large scale residential scheme, with the

associated vehicular, cycle and pedestrian movements, would stand to benefit to a greater extent than an industrial project of the scale described above.

- 9.2.19. As such, I am not of the view that the 2 no. cases as cited by the applicant would serve as precedents that are directly relevant to the case under consideration here.

### Conclusion

- 9.2.20. In conclusion, therefore, and from the information I have on file, I do not consider that requirement for a contribution for the underpass works meets the legislative requirements under 48(2)(c). However, I do consider the requirement for a contribution to the Cobh Cross Interim Works do meet same. I have considered the amount of special contribution payable below.

### **9.3. The amount of special contribution payable**

- 9.3.1. The Board has previously included condition no. 31 as part of the decision to grant permission under ABP-313827-22. In that context, this is a Section 34(5) referral case for a determination on the amount of special contribution payable, rather than any appeal against the inclusion of the condition in the first instance.
- 9.3.2. The case has afforded the planning authority an opportunity to justify the amount of special contribution in accordance with the applicable legislation and guidance. However as noted above, the planning authority submission of 3rd January 2025 does not contain any specific comments or response to matters raised on the applicant's submission to ABP, although correspondence between the PA and the applicant has been submitted. I would also note that the Chief Executive's Report submitted in relation to the SHD application sets out a detailed justification for the development contributions recommended. Therefore, I am of the view that I have sufficient information on file to make a recommendation on this matter. The Board may, however, be of the view that a more specific response from the Council is required and the Board can use its powers under s131 of the Planning and Development Act 2000 (as amended), to request same from Cork County Council.
- 9.3.3. In conclusion then, and for the reasons outlined above, I consider the planning authority's basis for the special contribution as relates to the underpass falls short of the required criteria. Accordingly, I do not consider that justification for the special contribution for same has been demonstrated and, in such circumstances I do not



consider a special contribution is payable towards same. I do, however, consider the requirement for a special contribution towards the Interim Works at Cobh Cross meets the legislative requirements under 48(2)(c).

- 9.3.4. In order to calculate the total amount of special contributions payable, I have referred to the Planning Authority's breakdown of same on Page 66 of the Chief Executive's Report. Within same it is set out that a contribution of €2,333 per unit shall be payable towards the proposed interim measures at Cobh Cross. However, the apportioned amount towards the remaining measures is not broken down per unit. In order to calculate the appropriate amount, noting that 633 no. units were permitted. rather than the 716 no. units applied for, I have broken down same into a cost per unit, and calculated the appropriate amount accordingly.

<b>Measure</b>	<b>PA's Total Cost for 716 units (as applied for)</b>	<b>PA's Cost Per Unit</b>	<b>Total Cost for 633 no. Units (as permitted)</b>
Cobh Cross Interim Measures	€1,670,728	€2,333	€1,476,789
Wise's Road/Oakbrook link junction	€33, 294	€47	€29,751
Wise's Road/Main St junction	€77, 570	€108	€68,364
Station Road Upgrade	€228,295	€319	€201,927
Station Road/Main St junction	€80,000	€112	€70,896

Castlelake Avenue/Main St junction	€143,000	€200	€126,600
<b>Total Payable</b>			<b>€1,974,327<sup>2</sup></b>

9.3.5. As such, having regard to the Table above, I conclude that Condition 31 on foot of this referral results in a total special contribution payable of €1,974,327.

## 10.0 Recommendation

10.1.1. I recommend that the Board should decide this referral in accordance with the following draft order.

### **Planning and Development Acts 2000 to 2021**

#### **Planning Authority: Cork County Council**

#### **Planning Register Reference Number: 6033**

**WHEREAS** by Order dated the 21<sup>st</sup> day of November, 2023, An Bord Pleanála, under application reference number ABP-313827-22, granted subject to conditions a permission to BAM Limited care of HW Planning, 5 Joyce House, Barrack Square, Ballincollig, Cork for development comprising the construction of a strategic housing development of 716 no. units comprising 224 no. houses, 284 no. duplex units and 208 no. apartments provided in 7 no. apartment building blocks. A 2 no. storey creche building is also provided.

**AND WHEREAS** condition No. 31 of An Bord Pleanála decision ABP-313827-22, required that prior to the commencement of development the developer shall pay to

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<sup>2</sup> As per the specific wording of Condition No. 32, the contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development, and shall be subject to any applicable indexation provisions of the Scheme at the time of payment

the planning authority a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended 'in respect of infrastructure to upgrade Station Road and other junctions in the vicinity which will benefit the proposed development' and that 'the amount of the contribution shall be agreed between the planning authority and the development, or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination'.

**AND WHEREAS** the developer and the planning authority failed to agree on the amount of development contribution to be paid in accordance with Condition no. 31:

**AND WHEREAS** the matter was referred by the developer to An Bord Pleanála on the 11<sup>th</sup> day of December 2024, for determination:

**AND WHEREAS** the Board is satisfied that the matter at issue is the amount of development contribution to be paid:

**AND WHEREAS** the Board had particular regard to the provisions of Section 34(5) of the Planning and Development Act 2000, as amended; Section 48 of the Planning and Development Act 2000 (as amended); the Development Contributions Guidelines for Planning Authorities published by the Department of Environment, Community and Local Government in 2013; the Development Management Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government in 2007; the Cork County Development Plan 2022-2028; the Cork County Council Development Contribution Scheme, adopted by Council on 23<sup>rd</sup> February, 2014 (with rates adjusted 1<sup>st</sup> January 2014); and the documentation submitted by the referrer and the planning authority:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that Condition 31 on foot of this referral results in a total special contribution payable of €1,974,327.

## **Reasons and Considerations**

Having regard to:

- a) Section 34(5) of the Planning and Development Act 2000, as amended,
- b) The provisions of the Cork County Development Plan 2022-2028 and the Cork County Council Development Contribution Scheme, adopted by Council on 23rd February, 2014 (with rates adjusted 01st January 2014),
- c) Section 48 of the Planning and Development Act 2000 (as amended), and
- d) the submissions on file, and the planning history of the site.

the Board is satisfied that the proposed Cobh Cross Interim Works would constitute specific and exceptional works that would benefit the proposed development, and that the levying of a special contribution relating to same conforms to the provisions of Section 48 (2)(c) of the Planning and Development Act 2000, as amended. However, the Board was not satisfied that that the imposition of a special contribution relating to underpass works at Carrigtwohill conforms to the provisions of Section 48 (2)(c) of the Planning and Development Act 2000, as amended, noting that the levying of same would appear to relate to a previous legal agreement that is unrelated to the permitted development. The Board was satisfied that there was sufficient information on file to calculate the appropriate apportioned amount payable towards each of the specific infrastructure upgrade works that are the subject of Condition No. 31 of ABP313827-22 and it was determined that the appropriate quantum of monies due under said condition is, therefore, €1,974,327.

## **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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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Ronan O'Connor

Senior Planning Inspector

18<sup>th</sup> March 2025