Inspector's Report ABP-321951-25

Question	Point of Detail referral on Condition 4 of ABP-301458-18
Location	Harristown, Silloge and Ballymun Townlands, South Parallel Road, Dublin Airport Co. Dublin and Stockhole, Cloghran, and Toberbunny Townlands, Dublin Airport, Co. Dublin
Planning Authority	Fingal County Council
Applicant	DAA
Type of Application	Appeal against condition (point of detail)
Date of Site Inspection	None
Inspector	Gillian Kane

1.0 Background

1.1.1. Under section 37(G)(10) of the Planning and Development Act 2000, as amended, the first party; the DAA has requested the Board to determine a point of detail regarding a financial contribution condition which was attached to the An Bord Pleanála decision to grant permission under ABP-301458-18.

1.1.2. As this is an appeal in respect of a condition requiring a financial contribution, the provisions of section 37 of the Planning and Development Act 2000, as amended, apply and the Board is restricted to considering this matter alone and cannot consider the matter de novo. I have therefore confined my assessment to the condition in question.

1.1.3. Having regard to the nature of the appeal before the Board (i.e. first party against condition) and the information available on file, a site inspection was not deemed necessary in this instance.

2.0 An Bord Pleanála Decision

2.1.1. Following an application for permission under section 37E of the Planning and Development Act 2000, as amended, for a development comprising the permanent continuance of use of the existing 8,840 space long-term car park known as Holiday Blue on a site at Harristown, Silloge and Ballymun Townlands, South Parallel Road, Dublin Airport, County Dublin, on the 08/10/2018 An Bord Pleanála granted permission under section 37G of the Planning and Development Act 2000, as amended subject to four conditions.

2.1.2. Condition no 4 of the decision states:

> 4 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of

the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

3.0 Policy Context

3.1. Development Contributions - Guidelines for Planning Authorities 2013

3.1.1. The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in performance of their functions under the Planning Acts.

3.1.2. The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed. Development contributions have enabled much essential public infrastructure to be funded since 2000 in combination with other sources of, mainly exchequer, funding.

3.2. Planning and Development Act 2000, as amended

3.2.1. Section 37 of the Planning and Development Act 2000, as amended provides as follows:

37(G)(7) Without prejudice to the generality of the Board's powers to attach conditions under *subsection (3)* the Board may attach to a permission for development under this section—

(*b*) a condition requiring the payment of a contribution or contributions of the same kind as the appropriate planning authority could require to be paid under *section 48* or *49* (or both) were that authority to grant the permission (and the scheme or schemes referred to in *section 48* or *49*, as appropriate, made by that authority shall apply to the determination of such contribution or contributions),

37(G)(10) The conditions attached under this section to a permission may provide that points of detail relating to the grant of the permission may be agreed between the planning authority or authorities in whose functional area or areas the development will be situate and the person carrying out the development; if that authority or those authorities and that person cannot agree on the matter the matter may be referred to the Board for determination.

3.3. **Fingal County Development Contribution Scheme 2016-2020**

3.3.1. The Fingal County Council Development Contribution Scheme 2023 – 2026, (under Section 48, Planning & Development Act, 2000 as amended) provides for

1. Sub-section (1) of section 48 of the Planning and Development Act 2000 as amended, enables a planning authority, when granting a planning permission under Section 34 of the Act, to include conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority, and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

2. (a) Subsection (2) of Section 48 requires that the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section. (b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

3. (a) Subsection (3) of Section 48 specifies that 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 to be paid, the scheme must 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 costs 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 provision of the scheme.

3.3.2. **Section 9** of the scheme provides the Level of Contribution

Class of Public Infrastructural Development	€ per square metre of Residential Development	€ per square metre of Industrial/Commercial class of Development
Class 1: Roads infrastructure & facilities	€53.30	€41.62
Class 2: Surface Water (incl. Flood Relief Infrastructure)	€5.33	€4.16
Class 3: Community & Parks facilities & amenities	€17.51	€13.68
Total of Contributions Payable	**€76.14**	**€59.46**

3.3.3. **Note 2** of the scheme states: The floor area of proposed development where buildings are involved shall be calculated as the gross floor area. This means the gross floor area determined from the internal dimensions of the proposed buildings, including the gross floor area of each floor including mezzanine floors.

3.3.4. **Section 10** of the scheme provides for exemptions and reductions. Raised in the appeal are the following:

10(j) Ancillary, surface and underground car parking is exempt. (i.e. Councils Development Plan standards). Stand-alone commercial car parks are subject to a 50% reduction in the commercial rate.

10(q) Temporary Planning Permissions

- Exempt up to 5 years duration
- 50% reduction for 5 – 10 years duration.
- Full rate when permission or combination of permissions exceed 10 years (less any previous payments under the 5-10 year reduction).

10(r) Change of use applications are exempt unless the revised usage constitutes a substantial intensification of use of the building or services.

10 (ii) For clarification purposes;

(a) Exemptions and reductions shall not apply to permissions for retention of development

(b) Exemptions and reductions shall not apply to Special Development Contributions under Section 48.2 (c).

(c) Private medical centres, primary care centres, consultant rooms and similar developments, including ancillary buildings, are not exempt.

4.0 The Appeal

4.1.1. The DAA seeks to refer condition no. 4 of the An Bord Pleanála decision PA06F.301458 to the Board for determination. Points of consideration are:

- Formal consultation between the two parties did not result in consensus so the Board is requested determine the matter.
- FCC position is that €6,293,575 is owed by DAA, calculated by reference to the terms of the 2016 Development Contribution Scheme.
- DAA's position is that there is no basis for the imposition of the contribution and / or the calculation of this figure when viewed against the terms of the scheme
    - There is no lawful basis for in the 2016 scheme for the levying of the contribution in relation to the development,
    - The development comprises no additional works and no intensification of use, no further public infrastructure or facilities are required and no further contributions to the cost of public infrastructure are owing,
    - Notwithstanding the above, the development is exempt from such contributions under the terms of the 2016 scheme.
- The appeal submission provides details of the subject planning permission PA06F.301458-18, including Table 1.1 Development Areas relevant to the calculation of planning contributions.

- Notes that the development was in respect of the continued use of the car parks, that no physical works were proposed. No additional parking spaces, new floorspace or intensification of use were proposed. All necessary infrastructure to operate both car parks was already in place. This was noted in the Inspectors Report. The Board added condition no. 4.
- Addressing the policy and legislative context, the appeal notes section 48(2) of the Planning and Development Act 2000, as amended, and pages 11, 21-22 of the Development Contributions Guidelines for Planning Authorities 2013. The submission refers to the need for clarity and transparency in schemes, and that development contributions shall not be disproportionate and not double-charged.
- Section 3.1 of the appeal states that there is no lawful basis in the 2016 scheme for levies to be imposed.
    - The scheme provides a rate of contributions for gross floorspace only, not car spaces or gross external area of car parking spaces provided as part of a development,
    - If FCC wanted to charge the same levy for centrally located commercial floorspace, or a commercial multistorey as a long-term car park the scheme would expressly state this.
    - This is supported by the Board Order for ABP-312476-22, which concerned a new apron area for parking aircraft. The Board found that the 2021 scheme only provided categories of contributions based on gross floor area, meaning floorspace was a prerequisite for the application of contributions. It is submitted that if contributions are to be applied, the terms of the scheme require that they must only be calculated by reference to this gross floor area.
- The 2016 scheme does not provide any basis upon which they may lawfully be levied. The Board are legally obliged to make ‘like decisions in a like manner’ unless there is a material change in facts or circumstances.
- Should the Board consider that there has been a material change in facts or circumstances, there are no contributions owing as the subject development

did not involve any new infrastructure, or change or intensification of use which would trigger a cost to FCC. Therefore there is no requirement for a contribution to such infrastructure. This was accepted by the Inspector assessing the application. The Board did not give any reason for disagreeing with the Inspector

- Notwithstanding the above, the 2016 scheme expressly provides a levies exemption for certain qualifying car parks – page 5-6, paragraph 10(j) "ancillary, surface and underground car parking is exempt". A car park must fulfil only one of these criteria, not all three, as can be seen by the use of a comma between. Case Law provides that "the presence or absence of the comma is crucial and changes the meaning" and also that a "comma after each of the phrases…in my view strengthens the interpretation that they are sui generis and are intended to be taken together to signify different types of this commitment".
- An illustrative precedent is the Planning Authority reg. ref. FW23A/0278 for a warehouse and 44 no. ancillary surface car parking spaces. Levies were charged only on the gross floorspace of the warehouse, not the car parking spaces. The spaces were not required to be 'underground' to be exempt.
- The subject long-term car parks are surface, and are ancillary to the main use of the airport. This is clear from the planning application, the Inspectors Report, the Board Decision, and definitions of airport under the Air Navigation & Transport (Amendment) Act, 1998 and the Planning and Development Regulations 2001, as amended. The land is owned and occupied by DAA as the airport operator. The car parks are functionally linked with DAA providing staff, services, maintenance, buses and security. The revenue generated from the car parks is used to invest in the Airport. A full exemption is provided under the 'Exemptions and Reductions' as set out in section 10(j) of the Scheme.
- The appeal concludes with the levies are unlawful as they are contrary to the express terms of the 2016 Development Contribution Scheme.
- Appendix 1 to the appeal: 2016 development contribution scheme,

- Appendix 2: FCC development contribution calculation. Appellant comments that the calculation is not clear.
- Appendix 3: FCC Letter referring to €2.1m Historic levies
- Appendix 4: 2021 Fingal Development Contribution Scheme

4.2. Planning Authority Response

4.2.1. The response of Fingal County Council can be summarised as follows:

- Background to SID application, including reference to section 37G of the Planning and Development Act 2000, as amended,
    - Background to planning history of site, noting that the concept of 'temporary permission' is outlined in case law. States that the change from temporary to permanent use is a material change in use in terms of comprising 'development', as defined by section 3 of the Planning and Development Act 2000, as amended,
    - Application was accompanied by an EIAR and AA Screening Report.
    - Application was considered by reference to Fingal Development Plan 2017-2023, noting that non-ancillary car park is permitted in principle under the zoning objective,
    - In granting permission Board referred to development as a 'long-term car park'
    - Refers to outline of Inspectors Report on the application, noting that the Inspector accepted the position of the DAA with regard to financial contributions and did not recommend that a condition be attached.
- The Planning Authority note that the DAA rely on the Inspectors Report in their appeal but do not refer to the Board Direction or decision. Note 2 of the Board Direction states that the Board consider it appropriate to attach condition no. 4 having regard to policy of the Council in respect of development contributions payable for temporary permissions. It is submitted that the Board stated very clearly that the development contribution that the temporary SID permission was at reduced contributions and the permanent

permission was liable for contributions. This is clearly new development which requires a contribution.

- It is clear the Board did not agree with the position of the DAA or the Inspector. The Board Order and Direction should be read together. Case law provides that the Direction and Order 'comprise the process which explains how and why the Board arrived at its decision'. The Board Order dated 8 October 2018 attached condition no. 4.
- The permitted SID comprises a material change to the permanent long-term use of the car-parks, as opposed to temporary use. It is observed that s3 of the Planning and Development Act 2000, as amended, defines development as including a material change in use of land. The SID comprises development for the purposes of interpreting the development contribution scheme. It is noted that Case Law interprets 'use' in the context of a development plan, in a similar way.
- It is not open to the DAA to submit that the levy was unlawfully imposed. The DAA did not seek a judicial review under s50, which according to case law provides procedural exclusivity to challenge decisions of the Board.
- The DAA submission fails to set out the appropriate principles of interpretation applicable to a development contribution scheme, instead it provides case law that is only relevant to the interpretation of statute. The correct approach is that a development contribution scheme is to be interpreted, like a planning decision, documents or policy, in their ordinary meaning as would be understood by members of the public. Other case law provides that the exercise of interpreting same 'is not to be undertaken in the same way in which Acts of the Oireachtas or subordinate legislation would be construed'.
- The Board is required to interpret the scheme as would be understood by an ordinary reasonably intelligent member of the public.
- It is submitted that the DAA appeal selectively refers to only parts of the scheme and takes others out of context.
- It is submitted that it is not open to the DAA to take issue with the terms of the scheme by reference to Ministerial Guidelines.

- Interpretation of the scheme is a matter of law, not precedent. Different schemes, different Inspectors, different contexts are not relevant.
- The reference to ABP-312476-22 is misplaced. The Inspector expressly rejected the DAA submission that the apron was exempt from the scheme on the basis that it provided for the parking of airplanes and was comparable to car parking. While the wording is similar to Note 2, no attempt was made to interpret the scheme in light of same.
- The scheme does not distinguish between 'works development' and 'use development' and there is no basis for reading in such a distinction. There is no basis to question the lawfulness of the Boards decision.
- The level of contribution is detailed in section 9 of the scheme. Note 2 provides detail where buildings are proposed. The obvious insinuation is that, that same can apply where no buildings are proposed. Gross floor area is not used where buildings are not proposed. Note 2 does not mean that the development contribution scheme has no application other than buildings. The scheme was made under s48 of the Act and applies to development and not simply buildings.
- The attempt by the DAA to limit the scheme to only development with a floor area is misconceived and advanced without any reference to article / section 9 or Note 2 of the scheme. This is inconsistent with any other aspects of the scheme.
- Section 6 of the scheme provides that development contributions are payable per square metre of industrial / commercial development.
- If the scheme applied only to gross floor space, there would be no need to exclude development which is incapable of having floor area such as section 10 – outdoor developments such as golf courses, broadband infrastructure and renewable energy development.
- The Board expressly noted the exemption for temporary planning permissions provided for in section 10(p) of the scheme, when it rejected the DAA argument that no contribution should be applied.

- The DAA submission that the exemption provided for under 10(j) is the wrong interpretative approach, not in keeping with the principle of the case law.
- It is submitted that the second sentence in section 10(j) provides that 'stand-alone' car parking is separate from the car parking referred to in the first sentence. It is submitted that any reasonably intelligent reading of the section would read the two sentences together. It is submitted that the second sentence makes no sense, if all surface and underground car parking was exempted. It lacks rationale why standalone commercial surface car parking would be exempted.
- It is submitted that the DAA have ignored the second part of the first sentence which refers to development plan standards. It is clear that the exemption in operative part invokes the development plan standards.
- Chapter 12 of the development plan refers to car parking. The standards do not apply to a stand-alone commercial car park and clearly apply to car parking required as part of a proposed development.
- Appendix 4 of the development plan, the Technical Guidance Note defines 'car-park non ancillary' as " a building or land for the purposes of stand-alone car parking e.g. long-term car parking. Such use would not include a public road used for the parking of vehicles or use of a car park which is ancillary to the principal use". It is submitted that this definition is in clear alignment of the exemption under the scheme, where ancillary is being contrasted with stand-alone car parking.
- The SID does not comprise "ancillary, surface or underground" car parking as understood by reference to the development plan standards. It is clearly apparent that the car park is operated by the DAA for commercial benefit. The DAA fail to note the distinction between 'car parking' by reference to development plan standards and the concept of 'car-park non ancillary' which the SID clearly is.
- While the DAA seek to have the extrinsic document the development plan excluded from consideration, it nonetheless seeks to include other extrinsic documents such as the Inspectors Report, a subsequent Board decision for a

different development and a different scheme, the Air Navigation & Transport Act and various provisions of the Planning Regulations.

- The reliance of the DAA on the definition of 'airport' is an incorrect interpretation. The definition does not encompass commercial car parks. The former Quickpark Car Park (SID/04/18) is a commercial car park, not owed by the DAA and on which contributions were paid.
- A recent decision by the Board (ABP-319290-24) for planning retention and continued use of a privately owned car park to serve the airport was refused on the grounds that that 'car-park-non ancillary' was not permitted as a use class for the zoning objective.
- The rate applied to the permission was calculated as €8,387,005.00 in November 2018. This was calculated as follows:
    - Blue car park: 20,855sq.m. @ €33.55 (50% of standalone rate) = €6,997,895.23
    - Red car park: 41208sq.m. @ €33.55 = €1,382,734.44
    - red car park building: 95sq.mm. @ €67.11 (full commercial rate) = €6,375.45
- By email of 6/12/2019, it was clarified that the amount of the contribution for the red car park and building was not due. This leaves €6,997,896 with a credit of €704,321 due, total €6,293,575.00.
- The DAA refute this levy and state only €2,413.19 is due, taking an account of an agreement in May 2013.
- The Council invite the Board to confirm that the development contribution scheme has been properly applied.

5.0 Assessment

5.1.1. I note the submission of the DAA that there "is no lawful basis for the imposition of the contribution". Section 37(G)(7) of the Planning and Development Act 2000, as amended, provides that without prejudice to the generality of the Board's powers to attach conditions under subsection *(3)* the Board may attach to a permission for development under this section, (*b*) a condition requiring the payment of a

contribution or contributions of the same kind as the appropriate planning authority could require to be paid under section 48 or 49 (or both) were that authority to grant the permission (and the scheme or schemes referred to in section 48 or 49, as appropriate, made by that authority shall apply to the determination of such contribution or contributions). As provided for in section 34(5) of the Planning and Development Act 2000, as amended, the Board has been requested to determine a point of detail. The remit of the Board in such a determination is solely on the proper application of the terms of the Scheme. The decision of the Board to attach such a condition cannot be revisited under this provision.

5.1.2. I note that the DAA position that no contribution was due as no additional development was occurring was considered in the Inspectors Report. This argument was not accepted by the Board and condition no. 4 was attached to the Board Order. I draw the Boards attention to Note 2 in the Board Direction wherein the Board refers to the policy of the planning authority in respect of reductions in the amounts of development contributions payable in the case of temporary permissions, and therefore considered it appropriate to attach condition 4. As noted above, condition no. 4 states that in default of agreement between the Planning Authority and the developer, the matter shall be referred to the Board *to determine the proper application of the scheme.* (my emphasis)

5.1.3. The appellant submits that the scheme has been improperly applied as the scheme applies to gross floorspace only. The appellant submits that as there is no gross floor space involved in the proposal, there are no contributions due. I draw the Boards attention to Note 2 of the scheme which states that "The floor area of proposed development where buildings are involved shall be calculated as the gross floor area" (my emphasis). I do not accept the submission of the appellant that this infers that the scheme does not apply to the subject development. Section 9 of the scheme and the Table within section 9 is clear that contributions are payable *per square metre of industrial / commercial class of development*. There is no reference to floor area in the section or the table, only square metre.

5.1.4. The appellant submits that the Board accepted this argument in ABP-312476-22 wherein the Board removed condition no. 11. The reasons and considerations in the Board Order for that decision state that the proposed development comprises an open apron extension and servicing area within the airport complex and does not

include any building or associated floor area, and in the absence of any other category or rate that does not contain floor area within the scheme, it was considered that the Planning Authority had not correctly applied the scheme. I note that this was an appeal of a decision by a Planning Authority to attach a financial contribution, rather than a point of detail following a SID decision. Further, that decision referred to the 2021-2025 development contribution scheme. I do not consider that this provides a direct comparison by which the Board must be bound, particularly where the Board was explicit in its decision on the subject SID that the scheme *does* apply.

5.1.5. The appellant submits that section 10(j) of the 2016 scheme provides for an exemption for ancillary, surface and underground car parking and a 50% reduction for stand-alone commercial car parks. The Planning Authority disagree. Both parties enter into long discussions about the wording of the section, with comments about the importance of commas, case law, links to other documents etc. What is clear is that, there is a significant disagreement about wording of this section of the scheme, which benefits no-one. A development contribution scheme must be clear and be able to be understood 'by a reasonably intelligent person'. It is clear that is not the case here. It should not be the Boards job to decide if a comma exempts a particular form of car park and not another.

5.1.6. I admit that it is not immediately clear to me what the relevance of the reference to 'Council Development Plan Standards' is in the first sentence of section 10(j).

> *(j) Ancillary, surface and underground car parking is exempt. (i.e. Councils Development Plan standards). Stand-alone commercial car parks are subject to a 50% reduction in the commercial rate.*

5.1.7. The Planning Authority state (section 35 of their response) that "the exemption, in operative part, invokes the development plan standards". Table 12.8 of the 2017 Development Plan, the operative plan during the assessment of the SID, provides details of the number of off-street parking spaces required for new developments (chapter 12 refers). None of the uses listed in Table 12.8 refer to surface car parking and so its application to a development that is exempt from levies in the first part of the sentence is not clear to me. I fail to see how this bracketed addition furthers the argument that the subject development is not exempt?

5.1.8. The Planning Authority refer to the Technical Guidance note in Appendix 4 of the development plan. This appendix defines 'car-park non-ancillary' as "A building or land for the purposes of stand-alone car parking e.g. long term car parking. Such use would not include a public road used for the parking of vehicles or use of a car park which is ancillary to the principal use". The Planning Authority submit that the subject development is clearly a "commercial car park operated by the DAA for a commercial benefit" based on that definition. The Planning Authority note the decision of the Board under ABP-319290-24 wherein a long-term car park at the Holiday Inn Dublin Airport hotel was refused retention and temporary permission on the grounds that it was a 'car-park non-ancillary' and not in keeping with the zoning objective for the site. The Board will note that this decision referred to a privately owned and run car park and so is not comparable to the subject development.

5.1.9. Taking the bar of 'a reasonably intelligent person' as the threshold, my reading of section 10(j) is that surface and underground car parking that is 'ancillary' is exempt and stand-alone commercial car parking is subject to a 50% reduction. The subject car parks clearly serve Dublin Airport, that they are available to non-airport users is not widely known and unlikely to form a large percentage of users.

5.1.10. I draw the Boards attention to section 6.3.4 of the Inspectors Report on the SID (ABP-301458-18), the Inspectors summary of the Planning Authority Report notes that the Planning Authority stated that "In the assessment of the proposed development (section 7 of the report) the Planning Authority state that the proposed development is considered to be an essential component for the continued and successful operation of the airport as part of a wider mobility plan that encourages and facilitates the provision of an integrated public transport network to serve Dublin Airport – inclusive of Metro North when operational". Section 6.3.9 of the Inspectors report notes that "The Planning Authority support the principle of long-term car parking for the following reasons: the particular requirements of airports, the parks are ancillary to the terminals and were taken into consideration when granting Terminal 2, and the parks do not contribute to car-borne commuting and the success of the mobility management measures." I note that the issue of the passenger cap, modal share and future infrastructure for the airport formed part of the assessment of the SID application. Further, the Board Order clearly refers to the strategic role of Dublin Airport, the zoning objectives on the application site which

include an objective to ensure the efficient and effective development of the airport and the parent permission for the Airport Terminal and the requirement that the total number of long-term public car parking spaces serving the Airport shall not exceed 26,800

5.1.11. I therefore consider the car parks to be ancillary to Dublin Airport, in the ordinary understanding of the word. Noting the definition of 'car-park non ancillary' as outlined above, it is considered the subject car parks do not fall under this definition as the use of the car park is clearly ancillary to the principle use of the Airport. I am satisfied that this means that the subject development is exempt under section 10(j) and that the calculation of the levy due under the section 48 development contribution scheme is ZERO.

5.1.12. Should the Board disagree, and consider the car park to be a 'stand-alone commercial car park, then the development plan provides for a 50% reduction in the commercial rate. As per the table under section 9 of the development contribution scheme, the rate per square metre of commercial development is €67.71 as of 1 January 2016.

5.1.13. The Planning Authority states that the blue car park has 208550sq.m., the red car park has 41208sq.m, both of which are liable at 50% of the rate, and a 95sq.m. building in the car park which must be the full commercial rate. This calculation would result in a total due of €8,385,756.35, calculated as follows:

- 208550 @ €33.55 = €6,996,852.50
- 41208@ €33.85 = €1,382,528.40
- 95@ €67.11 = €6,375.45

5.1.14. The Board will note that the Planning Authority (section 43(i) of the submission) consider the amount owed on the blue car park to be €6,997,895.23 and the red car park to be €1,382,734.44 (total €8.387,005.12) as they use a commercial rate of €33.555 rather than my calculation which uses a monetary figure to two decimal points.

5.1.15. The Planning Authority states (sections 44 and 45) that 'by email of 6 Dec 2019' it was clarified that the amount owed on the red car park and building was 'not due and owing'. No information on that email or the reason for the levy on the red car park

and building not being due has been submitted to the Board by the Planning Authority. The Planning Authority states that the amount owed is €6,293,575.00.

5.1.16. The DAA submission to the Board includes details of correspondence between the two parties in trying to reach agreement on complying with condition no. 4. A letter on file contains a 'Statement' which appears to relate to an invoice paid for 'development at Harristown, Co. Dublin' for the amount of €704,321.00, which corresponds with the credit referred to by the Planning Authority in their submission. A further letter on file dated 17 May 2013 from the then FCC Director of Services states that the figure ' covers all Section 48 development contributions in respect of the existing Harristown Blue Car park….within the timeframe of the existing Scheme, save in respect of a planning application for re-development of a material change of use of the site or part of the site. In any event, the figure of €704,321 can be credited against future development contributions levied in respect of the site".

5.1.17. A letter from FCC to the DAA dated 20th November 2023 contains a table which refers to an invoice of €8,387,005.00 which is then reduced by a figure of €1,389,109.00 due to a restructure – CE Order PCN/245/19, then further reduced by the 'credit' of €704,321 leaving a total due of €6,293,575.00. A DAA letter dated 29th April 2021 states that the amount due is €2,413.19 but no elaboration of how that figure was calculated is provided.

5.1.18. The position of the Planning Authority is that a development contribution levy of €6,293,575.00. The position of the DAA is that there are no levies applicable and nothing is owed to FCC.

5.1.19. As stated above, the Board decision provides for the imposition of a development contribution levy on the subject development. As stated above, I am satisfied that the subject development is exempt under section 10(j) and that the calculation of the levy due under the section 48 development contribution scheme is **ZERO.**

5.1.20. Should the Board disagree, I refer to my calculations above wherein I consider the levy applicable to be **€8,385,756.35.** The Board may wish to accept the FCC position that there is a credit of €704,321 on the subject site, and that restructuring of the invoice by €1,389,109.00 (although no reasoning for this has been provided and this has not been addressed by the DAA) which would then reduces the levy due to €6,292,332.35.

6.0 Recommendation

Whereas by Order dated 8th October 2018, An Bord Pleanála under planning register reference number ABP-301458-18, granted permission under section 37E of the Planning and Development Act 2000, as amended for the permanent continuance of use of the existing 8,840 space long-term car park known as Holiday Blue on a site at Harristown, Silloge and Ballymun Townlands, South Parallel Road, Dublin Airport, County Dublin, that is currently used for the same purpose under and in accordance with temporary planning permission register reference number 06F.PA0022, and the existing 2,040 space long-term car park known as Express Red Zones Y and Z (Express Red) on a site at Stockhole, Cloghran and Toberbunny Townlands, Dublin Airport, County Dublin that is currently used for the same purpose under and in accordance with temporary planning permission register reference number 06F.PA0030. The proposed development of 10,880 long-term car parking spaces is provided for under condition number 23 of the Terminal 2 planning permission, register reference number PL06F.220670 (F06A/1248). The proposed development includes all ancillary infrastructure and facilities, such as the accesses from the R108 and R132 for the Holiday Blue and Red Express (Y and Z) respectively, existing internal circulation roads, including bus turning circles, bus shelters, car park building (including public toilets and staff break room); two number security huts, car park administrative portacabin, three number substations, lighting, boundary fencing, car park barriers, car charging points, CCTV cameras, internal car park signage, existing drainage network, including existing surface water attenuation areas, and all landscaping works.

AND WHEREAS condition number 4 attached to this permission required the developer to pay to the planning authority a financial contribution, being the appropriate contribution to be applied to this development in accordance with the Fingal County Council Development Contribution Scheme in accordance with section 48 of the Planning and Development Act, 2000, as amended

AND WHEREAS the developer and the planning authority failed to agree on the amount of the contribution to be paid pursuant to condition number 4, and on the application of the terms of the relevant Development Contribution Scheme in

compliance with the terms of this condition and the matter was referred by the developer to An Bord Pleanála on the 10th day of February, 2025 for determination

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 the development contribution condition cannot be removed retrospectively but that the amount payable under condition no. 4 is ZERO

Reasons and Considerations

Having regard to:

(a) sections 34(5) and 48 of the Planning and Development Act, 2000, as amended,

(b) the Fingal County Council Development Contributions Scheme 2016-2020

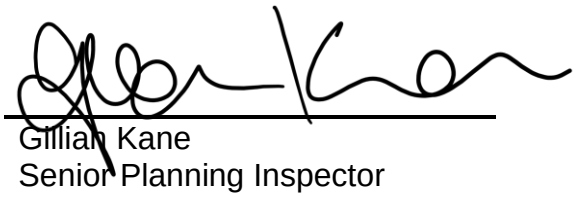
(c) the submissions on file, and the planning history of the site,

the Board considered it appropriate that the development contributions be retained as stated in the Board Order of the 8th day of October 2018 but that the amount payable is ZERO.

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.



Gillian Kane
Senior Planning Inspector

26 May 2025