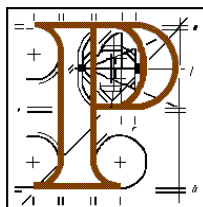


**An Bord Pleanála Ref.:** RP29N.RP2119

## **An Bord Pleanála**



## **Inspector's Report**

**Development:** Point of detail regarding financial contribution condition  
No. 13 of PL.29N.242757.

**Site Address:** Swords Road, Santry, Dublin 9

### **Planning Application**

Planning Authority: Dublin City Council  
Planning Authority Reg. Ref.: 32646/13  
Applicants: LIDL Ireland  
Type of Application: Permission  
Planning Authority Decision: Grant

### **Planning Appeal**

Appellant: First Party  
Type of Appeal: Point of Detail Condition 13 (Financial  
Contribution)  
Observers: None  
Date of Site Visit: N/A

**Inspector:** **L. Dockery**

## **1.0 INTRODUCTION**

1.1 This appeal pertains to a First Party appeal regarding a point of detail in respect of condition No. 13 of PL.29N.242757.

## **2.0 SITE DESCRIPTION**

2.1 The appeal site is located on the Swords Road, Santry, Dublin 9.

## **3.0 DESCRIPTION OF PROPOSED DEVELOPMENT**

3.1 The development permitted under PL29N.242757 pertains to permission for a licenced retail unit (Phase 1) and 3 no. retail units (Phase 2) associated parking and other works including demolition of existing building and upgrading of Santry Industrial Estate Road, at Omni Park Centre, Swords Road, Santry, Dublin 9.

## **4.0 APPEAL GROUNDS**

4.1 The grounds of appeal regarding this point of detail are summarised as follows:

- Acknowledges that the figures are at considerable variance, however submits that the balance is largely made up of a small number of specific elements
- Significant portion of the variance in amount sought and offered is explained by seeking that common principles of application of special contributions are applied- maintenance costs should be excluded - cost should be apportioned in accordance with the level of benefit accruing to the subject planning permission
- Outlines timeframe of discussions with planning authority
- Proposes to pay DCC a total of €14,868.95, payable over two phases in amounts €7583.17 and €7285.79

- Considers that maintenance of completed works should not be payable by developer- inclusion of maintenance costs is considered inappropriate and counter to requirements and spirit of Section 48(2)(c) of Planning and Development Acts
- Figure put forward by DCC is an estimate only and has not been tendered- appellants costings are comprehensive and prepared by quantity surveyor
- Costing estimates have been submitted with a total projected costs of €44,606.86 cited- propose that ABP accept this costing as valid and sufficient
- Public Infrastructure and Facilities, as referred to in Section 48(2)(c) is defined under Section 48(17) of the Planning and Development Act 2000, as amended and based on this definition appellant considers that proposed pedestrian crossing falls under (d) ie the provision of cycle and pedestrian facilities- this category refers only to provision and not the ongoing maintenance of same- submits that maintenance is not ancillary to provision
- Refers to DoE,H&LG Circular PD4-2003 which states that development contributions can only be levied as capital funding for public infrastructure and facilities and as such cannot be used to pay for current costs- contends that there is no legal basis for which to charge for maintenance of infrastructure
- Refers to PL25C.218517 relating to a housing development in which ABP omitted Special Contributions on the basis that they were for maintenance purposes
- Enclosed costings include for full completion of work to become operational- accordingly requests ABP to accept that maintenance cost should not be included- divergence in estimates would be significantly reduced by removing the €20,000 maintenance costs

- With regards issue of apportioning costs, contends that benefit of proposed pedestrian crossing to the subject development is considered to be limited having regard to indicative location of same and the nature of the location of the subject development
- The planning authority's choice of location can have significant effect on the potential benefit of the crossing
- The costing provided by DCC does not appear to have any regard to the issue of apportionment to reflect the benefit of the works to the wider area, contrary to the Development Management Guidelines 2007
- Proposed pedestrian crossing will not facilitate residents of Magenta Crescent for instance given its location to the north of same, away from desire line to the subject development
- Outlines details of existing, proposed and potential pedestrian routes
- Contends that whether or not there is another pedestrian crossing provided would appear to have little difference to potential customers of the subject development, in any case they must walk to the main Omni Park entrance and any pedestrians on the wrong side of the road would be able to avail of the existing pedestrian crossing at this location
- Contends that the proposed pedestrian crossing would be of benefit to surrounding area rather than benefit to the subject/proposed development – Special Development Contributions are applicable only where they benefit the development in question
- Having regard to the planning authority's choice of location for crossing and existing links to the subject development, appellants are willing to pay towards the provision of the infrastructure but not the entire cost of same.

- Note the reason given by the Bord to the condition which states that the 'the developer should contribute towards the specific exceptional costs...'- does not refer to covering the entire costs of the works
- Propose therefore that a portion of the overall costs of €44,606.86 inc VAT be applied to the subject planning permission
- In calculating the appropriate costs they request that regard be had to (a) existing availability of a pedestrian crossing at existing Omni Park entrance (b) distance of proposed pedestrian crossing from subject site (c) potential for future linkage through lands to east (d) benefit to wider Santry area
- Having regard to above, consider that no more than one third of the overall costs be apportioned to the subject development, namely €14, 868.95
- Explicitly stated in planning application that subject development is to be carried out in two phases- therefore propose that the contribution payable under Condition No. 13 be accepted on a phased basis- planning authority have agreed this in relation to Condition No. 14
- Propose €7,583.17 be paid immediately in respect of Phase 1 and a payment of €7,285.79 be made at a later date, in respect of Phase 2

## **5.0 RESPONSES**

5.1 The Planning Authority response to the grounds of appeal may be summarised as follows:

- Number of discussions with appellant in relation to details of appropriate amount-information not submitted to ABP by referrer

shows the DCC provided clarification on aspects/rejection of the offer

- Amount of contribution requested (€84,615.00) was based on estimates of a similar crossing which was constructed in 2014- Roads and Traffic Department contend that developer should be 100% of costs
- Nature of pedestrian crossings in city area, particularly where bus lane exists can be more expensive than a similar crossing at a different location- due to need for cantilever poles
- Without this contribution, DCC is not in a position to construct the crossing as there is no alternative funding available
- The need for the pedestrian crossing arises due to the development and will directly benefit the development- therefore considered reasonable that the developer pay for its provision
- Conditions such as that attached originally by DCC are attached in order to ensure that the costs of the alterations to the road network required as a result of the development are met by the developer- this is because generally there is no funding available within DCC budget for these additional works that facilitate the development- therefore requests ABP to repeat conditions as per DCC wording
- With regards issue of maintenance costs, in roads and traffic planning it is normal procedure to capitalise the operation and maintenance costs for a 10 year period and charge the cost to the developer- this procedure has been in place for a number of years and DCC would not like to set the precedent whereby this cost is optional. It has been charged and paid in a number of cases. DCC cannot be responsible for the ongoing costs associated with a crossing which is conditioned as part of a development

- The location of the crossing and its usefulness to the local people was carefully considered- agreed that the proposed location to the north of Magenta Crescent was the optimum location. While the distance from the new crossing to LIDL and the existing crossing is virtually the same, it is their experience that people never walk to a crossing beyond a development, rather they risk crossing the road unaided

5.2 The appellant responded to the above. New issues raised may be summarised as follows:

- Dublin City Council has not materially challenged or rebutted the rationale put forward for the reduced amount
- Reiterate position that amount sought by planning authority is not in accordance with legislative restrictions and parameters of Section 48 of Planning and Development Act
- Remains of the view that €14,868.95 is sufficient to discharge their responsibilities under this condition
- Have not been furnished with a copy of the Road Safety Audi which has been prepared for proposed crossing- therefore unable to comment on any relevance it may have
- Issue in question is the principle of the charge and not the pattern of application of any such charge in the past
- Their QS costing includes a quote from Elmore group covering all necessary equipment, confirms as conforming in fill to planning authority's specification
- Note that planning authority acknowledge their costing as an estimate based on another crossing built in 2014 whereas Lidl has submitted a detailed site specific costing based on DCC specification and design of crossing
- Concur with planning authority that different crossings can be more or less expensive depending on location and particular

circumstances- not appropriate to rely on estimates from previously constructed crossings

- Planning Authority do not appear to have challenged Lidl's costing specifically rather they have merely stated that their approximate costing should be upheld
- Cites examples where An Bord Pleanala have accepted developer costing in the past
- Planning Authority have not addressed the grounds raised in their referral as regards the removal of the maintenance fee rather stating that it is normal procedure for planning authority
- Considers that there is no legal basis on which to charge for maintenance of infrastructure- whether or not it has been used in past should not influence decision
- With regards location of proposed crossing, DCC do not state whether the location is optimum to serve the subject permission as opposed to the optimum for the surrounding area
- Submitted referral highlights that in the longer term a more direct access would be likely to be available- in interim submits that proposed crossing would be of limited benefit
- Proposed location of the crossing will require pedestrians to walk away from the subject site in order to use the crossing- undermines the argument put forward by planning authority- suggests that the primary beneficiary of the proposed crossing would be the surrounding areas of Santry Village and not Omni Park or the subject permission
- Acknowledge that the crossing is not a significant distance to the north, however travelling even a short distance in the opposite direction would in their opinion be counter intuitive and incongruous with the natural desire line
- Refer to High Court case Construction Industry Federation V Dublin City Council which found that in the event of a dispute in



respect of a Special Development Contribution, the burden of proof is on the planning authority to demonstrate that the condition is appropriate- submits that planning authority have not demonstrated that the amount sought is appropriate

## **6.0 PLANNING HISTORY**

6.1 The planning history pertaining to the appeal site is as follows:

PL.29N.242757

Permission GRANTED on appeal for development comprising the a licenced retail unit (Phase 1) and 3 no. retail units (Phase 2) associated parking and other works including demolition of existing building and upgrading of Santry Industrial Estate Road, at Omni Park Centre, Swords Road, Santry, Dublin 9.

## **7.0 PLANNING POLICY**

7.1 Dublin City Development Plan 2011-2017 is the statutory development plan for the area.

## **8.0 DEVELOPMENT CONTRIBUTIONS, GUIDELINES ISSUED BY DEPARTMENT OF ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT JANUARY 2013**

8.1 These Guidelines provide guidance for Planning Authorities in the preparation of development contribution schemes and promote sustainable development patterns, economic activity and to securing investment in capital infrastructure and economic activity.

8.2 Chapter 2 provides provide specific requirements that planning authorities are required to include in the development contribution schemes.

## 9.0 DEVELOPMENT CONTRIBUTION SCHEME

9.1 A copy of the adopted Development Contribution Scheme for Dublin City Council is attached to the file for reference. This Scheme is effective in respect of permissions granted from January 1<sup>st</sup> 2013.

9.2 Of note Paragraph 22 sets out the following:

*A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Dublin City Council Development Contribution Scheme 2013-2015 are incurred by the Council in the provision of a specific public infrastructure or facility. (The particular works will be specified in the planning conditions when special development contributions are levied). Only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to An Bord Pleanala*  
(my italics).

### Appendix II- Project Lists

#### *Roads*

10. Pedestrian Improvements

## **10.0 LEGISLATIVE PROVISIONS**

- 10.1 The proposed pedestrian crossing would fall under Class (d) of Section 5 of the Dublin City Development Contribution Scheme (adopted December 3<sup>rd</sup> 2012) relating to definitions, namely
- (d) the provision of bus corridors and lands, bus interchange facilities (including car parks for these facilities), infrastructure to facilitate public transport, cycle and pedestrian facilities and traffic calming measures
  - (h) any matters ancillary to paragraphs (a) to (g).
- 10.2 This is the exact wording for Section 48(2)(c ) of the Planning and Development Acts 2000, as amended.

## **11.0 ASSESSMENT**

11.0.1 As this appeal pertains to a point of detail, the Board will not determine the application as if it had been made to it in the first instance but will only determine the matters under appeal and will issue appropriate directions to the Planning Authority when it has determined the appeal. The referral to the Board has been made following a failure to reach agreement regarding the “amount of the contribution” payable to the planning authority. Thus in effect the implication is that it is being made as a referral on a ‘point of detail’ under Section 34(5) of the Planning and Development Act, 2000, as amended by Section 6 of the 2002 Act. It is noted that Section 34(5) states

*The conditions under subsection (1) may provide that points of detail relating to any grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination.*

11.0.2 It is clear from the correspondence that protracted negotiations have ensued in the intervening period with no prospect of agreement. I consider that the

Board is constrained to consideration of what amount of special contribution is reasonable as it relates to the development.

11.0.3 The current application seeks clarification regarding a point of detail regarding financial contribution condition No. 13 of PL.29N.242757. Condition 13 of PL.29N.242757 reads as follows:

The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000, as amended in respect of the provision of a pedestrian crossing in Santry Village across the Swords Road. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

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

11.0.4 There are a number of main issues pertaining to this point of detail

- Location of said pedestrian crossing
- Issue of payment of maintenance costs
- Apportioning of costs
- Phasing of payments

11.0.5 I shall examine each of the points individually but first will set out the calculation of the contribution payable, as set out by both parties.

## **11.1 CALCULATION OF CONTRIBUTION BY PLANNING AUTHORITY**

11.1.1 Dublin City Council are requiring a payment of €84,615, this figure being an estimate of cost based on previously tendered contracts for similar type crossing constructed in 2014. The breakdown of the cost of the installation is stated:

- Electrical Works (supply and Installation) €35,000 (€43,050 incl 23% VAT)
- 10 Year Maintenance (€20,000 incl VAT)
- Civil Works €19,000 (€21,565 incl 13.5% VAT)
- Total €84,615 incl VAT

11.1.2 It is stated in documentation attached to the file that these costs do not include for any potential unforeseen works associated with working in close proximity to existing services and/or restrictions due to works not being permitted on Swords Road during daytime.

11.1.3 A more detailed breakdown of costs is included in Appendix B- mail from Colin Murdock, Executive Engineer DCC.

## **11.2 CALCULATION OF CONTRIBUTION BY DEVELOPER**

11.2.1 Appendix C of the documentation received includes for a revised budget costs for the sum of €39,301.20 excl VAT for proposed pedestrian crossing at Swords Road, Dublin 9. This costing has been prepared by Noel Lawlor Consulting Engineers for installations of typical pedestrian crossing equipment and to advise on typical civil works that may be required. The costing excludes amongst other

items maintenance of pedestrian equipment but includes an 8% preliminary allowance.

11.2.2 The breakdown is as follows:

Civil Works (€8690.00) (€9863.15 incl VAT)  
Equipment Installation €27,700 (€31,439.50 incl VAT)  
Preliminaries €2911.20 (€3304.21)  
Total €44,606.86 incl VAT

11.2.3 It is their proposal to pay the planning authority a total of €14,868.95, payable over two phases in the amounts of €7,583.17 and €7,285.79- this being a third of the total amount, as costed by appellants.

## **12.0 LOCATION OF PROPOSED CROSSING**

12.1 In terms of location of proposed crossing, I refer the Bord to Figure 1 of the original submission, submitted with this file. Figure 1 shows the proposed location of the subject pedestrian crossing (as proposed by the planning authority), just north of the Magenta Crescent junction with the Swords Road with the blue dotted line showing the expected pedestrian access to the subject store. The black dotted line shows the existing pedestrian crossing further south, with existing pedestrian facilities to Lidl just south of the existing McDonalds, following the blue line described above. They also provide a third green line which shows a potential future pedestrian route, mid-way between the other two crossings through an area marked for future development (green line). An interim pedestrian route (Lilac line) is shown through the Santry Hall Industrial Estate access road. It is therefore envisaged that the provision of the pedestrian crossing, just north of Magenta Crescent would allow pedestrians travel along Swords Road on the western side

of the roadway and access Lidl at the same point as those crossing over Swords Road at the existing pedestrian crossing.

12.2 The Planning Authority stated in their response to this point of detail that the location of the crossing and its usefulness to the local people was carefully considered and it was agreed that the proposed location north of Magenta Crescent was the optimum location. They further state that while the distance from the new crossing to Lidl and the existing crossing is virtually the same, they have experience that people never walk to a crossing beyond a development, rather they would risk crossing the road unaided. This information is considered reasonable. I note that the location of the proposed crossing is nearer Santry village than that proposed (green line) as an alternative location. I do not give weight to the proposed option of the green line alternative location for the crossing. I consider it to be too close to the existing crossing and that the location as proposed by the planning authority further north is a superior location, thereby allowing pedestrians to cross the road at either end of the development site. It essentially gives an alternative choice. I consider that the proposed pedestrian crossing will benefit the permitted Lidl development, but inevitably will also have a benefit to the surrounding area and those wishing to cross the Swords Road at Magenta Crescent and head north towards Santry Avenue. While I accept that the application for Lidl did not envisage any customer or pedestrian access to the subject site via the Santry Hall Industrial access road, I do note that on the submitted Figure 1 there is an interim pedestrian route highlighted, which this pedestrian crossing would facilitate. To summarise therefore having regard to all of the above, I would be of the opinion that the location of the proposed pedestrian crossing, as suggested by the planning authority is the optimum location for such. This issue is examined further below.

## 13.0 MAINTENANCE

13.1 The issue of maintenance, whether it should be paid by the developer or not shall be dealt with next as it provides the foundation of all other figures. In summary, the planning authority wish the developer to pay €20,000 incl VAT to cover the costs of maintenance of the subject pedestrian crossing over a ten year period. The developer is contesting this and contends that such maintenance costs are outside the spirit of Section 48 of the Planning and Development Act 2000, as amended.

13.2 I would concur with the opinion of the referrer that the legislation provides only for the provision (my emphasis) of such infrastructure/facilities and does not explicitly include for their maintenance. I would again concur that the (h) above relating to any matters ancillary to paragraphs (a) to (g) would not include maintenance works.

13.3 I refer the Bord to DoE,H&LG Circular PD4-2003, cited by the appellant which states that:

*Development contributions can only be levied as capital funding for public infrastructure and facilities and as such cannot be used to pay current costs. For example, refurbishment, upgrading, enlargement or replacement referred to in (e) above should all involve adding value to a network, rather than simply the maintenance of a network that already exists. Any money accruing to the local authority under this section must be accounted for separately in the Capital account. In addition, the annual report produced by the local authority should indicate the monies paid and owed to it under this section and how this money was spent.*



13.4 The reference to (e) above, is that which forms part of the definition of public infrastructure and facilities, as defined under Section 48(17) of the Planning and Development Act 2000, as amended. This Section of the Planning and Development Act 2000, as amended, clearly defines public infrastructure and facilities as the provision of such infrastructure/facilities and does not refer to any on-going maintenance issues.

13.5 Having regard to all of the above, I would therefore consider that it is not appropriate for the planning authority to attach the cost of maintenance to the overall figure and that the 10 year maintenance of €20,000 should be omitted from the costings. This would therefore reduce the final costings of the planning authority for the subject project to €64,615.

#### **14.0 COST OF PEDESTRIAN CROSSING**

14.1 As is stated above, it is my opinion that maintenance costs should not be included in the overall costings of the pedestrian crossing and that the developer should not be obliged to pay such maintenance costs over as 10 year period. As stated above, Section 48(17) of the Planning and Development Act 2000, as amended, clearly defines public infrastructure and facilities as the provision of such infrastructure/facilities and does not refer to any on-going maintenance issues. Therefore omitting the €20,000 of maintenance fees over a 10 year period from the costings of the planning authority, reduces their estimate down to €64,615. The referrer has submitted costings of €44,606.86. Both figures are inclusive of VAT. There is therefore, a discrepancy of approximately €20,000 between the two parties in relation to the cost of constructing the said pedestrian crossing. I note that the referrer's costings include for an 8% preliminary while those of the planning authority do not.

- 14.2 The issue of apportioning of the costs has been raised by the referrer. It would appear from the documentation attached to the file that the planning authority wish the developer to pay the full costs of the provision of the said pedestrian crossing. The developer contends that the benefit of the proposed pedestrian crossing would be quite limited to their development having regard to its indicative location and the nature of the location of the subject development.
- 14.3 Condition No. 13 referred to the provision of a pedestrian crossing in Santry Village across the Swords Road but did not stipulate where exactly this crossing was to be located. Likewise an examination of the file, PL29N.242757 did not give any further guidance as to where this pedestrian crossing was intended to be located except to say that the proposed crossing would benefit the surrounding area as there are no crossing facilities across the Swords Road at present between the existing crossings at Omni and Santry Avenue.
- 14.4 With regards the issue of apportionment, the appellant cites Section 7.12 of the Development Management Guidelines, 2007 which state:  
*...it is essential that the basis for the calculation of the contribution should be explained in the decision. This includes identifying the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.*
- 14.5 The referrer also draws attention to the fact that the reason attached to Condition No. 13 states that 'it is considered reasonable that the developer should contribute *towards* the specific exceptional costs which are incurred by the planning authority' (my emphasis). I concur that the wording is such that it may give the implication, correct or otherwise, that the full amount of the costs not be payable by the

developer and possibly the wording of such conditions may need to be re-examined in future in order to eliminate any ambiguity.

- 14.6 The referrer has given four reasons why he considers only one third of the cost should be payable by them. The first relates to the availability of the existing pedestrian crossing at Omni Park entrance. This is considered irrelevant as it was determined by ABP that an additional crossing was required in this general location, under Condition No. 13 of PL29N.242757. The questioning of the need for an additional crossing is not open for discussion at this time. That has already been decided by An Bord Pleanala. The second point raised relates to the distance of the proposed pedestrian crossing from their subject site. I do not consider the distance to be excessive and consider it plausible that residents of Magenta Crescent and that general area would cross at this proposed point to access the Lidl store and the wider Omni complex. The third point relates to their proposal to provide a crossing (green Line) opposite lands earmarked for future development. Permission was granted under 6584/07 for development on these lands. This permission has now expired and I have no details as to if, or when any development may take place on these lands. Also, as I have stated above, I consider that a crossing at this point would be too close to that existing and a superior option would be to locate it further north. The fourth point raised relates to the benefit of the proposed crossing to the wider Santry area. I would concur with this statement to an extent and consider that any crossing at this location will inevitably be a benefit to the wider population, in addition to the subject Lidl store. However, the additional pedestrian movements associated with the proposed Lidl store must be factored in, together with the associated additional demands for a crossing, which would not be required if the store did not exist.

14.7 The referrer is requesting that they pay only one third of the cost of the provision of the crossing. The planning authority are looking for 100% of the cost to be borne by the developer. I note that of the four points raised above, I consider that three do not hold firm. While there is some merit in the fourth point, it does not tell the full picture. The condition was attached by the Bord in their grant of permission and the subject crossing was obviously intended to benefit the proposed development, or this condition would not have been attached. I accept that while the proposed pedestrian crossing will primarily facilitate customers of the Lidl store, it will also facilitate the wider community, particularly that to the north of the crossing. However, this could reasonably fall under the concept of planning gain. Permission has been granted to Lidl to provide a store at this location, with its associated traffic implications and as a gain to the community a pedestrian crossing is being provided. This crossing would facilitate the additional pedestrian movements generated as a result of the proposed development. Therefore I consider it reasonable that the developer pay the full cost of the provision of this crossing. It is required as both a safety and access measure to facilitate this development. If the development were not being provided, the crossing would not be required and the existing crossing would be sufficient to cater for existing demand. It would appear evident that the amount of pedestrian traffic being generated by the proposed development necessitates the provision of an additional crossing at this location.

14.8 I note that the developers costings are prepared by a qualified quantity surveyor while the costings of the planning authority are an estimate only for a similar type development in 2014. However, I also note the submission made by the planning authority which states that the nature of pedestrian crossings constructed in the city area, particularly where a bus lane exists, can be more expensive than a similar type crossing at a different location. I accept this information as being reasonable

and accept that the planning authority have a wide experience in providing such public utilities. I shall use the figures provided by the planning authority as being more accurate. The total stated cost by the developer is €84,615.00 incl VAT and maintenance charges of €20,000. Taking into account my recommendation to omit the maintenance charges, the total figure payable by the developer is calculated as being €64,615.00.

## **15.0 PHASING**

15.1 I note the referrer's comments in relation to the facilitation of phased payment arrangements. The Planning Authority in a mail attached to the file state that they do not have issue with this. Considering the development permitted allowed it to be constructed in two phases, I would not have issue with this detail and agree that such an approach is entirely reasonable.

## **16.0 CONCLUSION**

It is considered that the Planning Authority were correct in seeking 100% of the cost of the proposed pedestrian crossing, in respect of Condition 13 pertaining to PL.29N.242757. However, they were incorrect in seeking the costs of ten year's maintenance and it is considered that this maintenance cost should be omitted from the figure.

## **17.0 RECOMMENDATION**

It is recommended that the Board determine that Dublin City County Council incorrectly applied Condition No. 13 of PL29N.242757 in that any maintenance costs should be omitted from that amount payable by the developer.

## **REASONS AND CONSIDERATIONS**

It is noted that

- (1) the contributions sought in respect of File Ref. No. PL29N.242575 remain outstanding, and
- (2) the provisions of the Development Contribution Scheme adopted on the 3<sup>rd</sup> day of December 2012 specifically make reference in paragraph 22 to the fact that a special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Dublin City Council Development Contribution Scheme 2012 are incurred by the Council in the provision of a specific public infrastructure or facility. This does not specifically relate to maintenance costs
- (3) an existing pedestrian crossing exists which caters for existing demand

(4) as the proposed pedestrian crossing is required primarily to facilitate the additional pedestrian movements associated with the proposed development, apportionment of costs is not considered reasonable

(5) as the development was permitted over two phases, the phasing of payment of the special development contribution is reasonable

Having regard to the above, it is considered that the developer should pay €64,615.00 inclusive of VAT towards the cost of the provision of a pedestrian crossing on Swords Road, Dublin 9, payable in two equal phases in compliance with Condition No. 13 of PL29N.242575.

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Lorraine Dockery

Planning Inspector

11/02/2016