



An  
Bord  
Pleanála

## Inspector's Report RP28.RP2156

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<b>Question</b>	Point of detail regarding Point of detail regarding financial contribution no. 15 of PL28.245773
<b>Location</b>	Iona Road, Mayfield, Cork ()
<b>Planning Authority</b>	Cork City Council
<b>An Bord Pleanála Reg. Ref.</b>	PL28.245776 (Reg Ref 15/36427)
<b>Applicant</b>	Cormac O'Connor
<b>Type of Application</b>	Permission
<b>Referred Type</b>	Point of Detail Referral
<b>Referred By</b>	Cormac O'Connor
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	N/A
<b>Inspector</b>	Mary Crowley

## 1.0 Introduction

- 1.1. This case is a referral made under section 34(5) of the Planning and Development Act 2000, as amended. This provision provides for matters to be referred to the Board where a point of detail is in dispute between the applicant and planning authority. It was received by the Board from Gerald McCarthy, Architects on behalf of Cormac O'Connor, and concerns a point of detail regarding Condition No.15 attached to a grant of planning permission issued by An Bord Pleanála (PL28.245776 (Reg Ref 15/36427) refers). The condition relates to development contributions.

## 2.0 Site Location and Description

- 2.1. The subject site comprises the former TSB bank building located at the corner of Colmcille Avenue and Murmount Close opposite Iona Park in the Cork suburb of Mayfield. The general area is characterised by detached dwellings with a designated Neighbourhood Centre immediately to the north. The site was previously in commercial use.

## 3.0 Background

- 3.1. Cork City Council granted permission for the demolition of TSB bank building and construction of new retail premises at Iona Road, Mayfield, Cork subject to 10 conditions. The decision was appealed by a third party. An Bord Pleanála granted permission subject to 15 conditions. Condition No 15, the subject of this referral, set out the following:

*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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.*

**Reason:** *It is a requirement of the Planning and Development Act 2000 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.*

## 4.0 Referral

### 4.1. Referrers Case

4.2. A submission was made by the applicant to the Board on 6<sup>th</sup> September 2017. The Referrers case may be summarised as follows:

- The applicant and Cork City Council have failed to reach agreement in relation to Condition No 15 (financial contribution). The applicant has no objection to paying a financial contribution. However it is submitted that the financial contribution should be for the area of the proposed new building less the area of the existing building on site.
- Reference is made to the Local Authority Planners Report that states as follows:

*In cases of redevelopment projects, only net additional development will be charged unless in the opinion of the planning authority the proposed development and the intended use constitutes a substantial intensification of use or is likely to increase demands on services, where contributions will be charged at the applicable rate on the full development.*

*In this instance it is considered that there is likely to be significant increase in terms of water, drainage, waste management and traffic.*

- There has been no explanation given in the report as to why it is the local authority's opinion that there will be a likely increase in services. Cork City

Council in a letter dated 11<sup>th</sup> August 2017 to the Referrer state that the terms of the scheme has been applied in accordance with the rationale as laid out in the planners report dated 22<sup>nd</sup> October 2015. It is submitted that no rationale has been set out in this report only that *there is likely to be an increase in services*.

- Submitted that the former TSB bank employed 15 – 20 persons; hundreds of customers would have visited the building on a daily business, the applicant will employ no more than 8 – 10 people, the building will not be subdivided, there will not be the same number of customers visiting this new premises, there will be no increase to the existing foul and surface water sewer, the existing entrance has not increased in width, the existing water supply has been connected and the pressure is inadequate, no alterations have taken place to the footpaths or street lighting and the site area has not increased.
- The area of the former TSB Bank was 365.68 sqm (survey and photographs attached). Submitted that the financial contribution should be as follows:

Total Area of former bank building	365.68 sqm
Area permitted by An Bord Pleanála	551.05 sqm
Balance (difference)	188.92 sqm <sup>1</sup>

Therefore the area that should be levied is 188.92 sqm with a contribution of €7022.15 being owed to Cork City Council.

#### 4.3. The Referral was accompanied by the following:

- Letter from Cork City Council to the applicant dated 11<sup>th</sup> August 2017 noting that there had been no appeal against the level of contributions; the revised floor areas were used in the calculation of the General Development Contribution Scheme, the correct contribution scheme corresponding with the date of the Boards decision was applied, the terms of the scheme have been applied correctly and in accordance with the planners rationale as laid out in the report dated 22<sup>nd</sup> October 2015, as specified in the An Bord Pleanála decision the applicant can revert back to the Baoard if no agreement can be

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<sup>1</sup> 551.05sqm (area permitted) less 365.68sqm (area of TSB bank) gives a difference of **185.37sqm** and not 188.92 sqm as stated in the submission.

made and that the contribution scheme has been applied correctly and the outstanding balance for the development contributions is currently €30,067.99. Reference is made to the Economic Development Initiative but it is pointed out that the 25% waiver is targeted at new developments and not retention of change of use scenario.

- Letter from Applicant to Cork City Council dated 4<sup>th</sup> September 2017 similar to the applicants letter to the Board on 6<sup>th</sup> September 2017 above

#### 4.4. **Cork City Council**

4.5. Cork City Council in their submission to An Bord Pleanála dated 5<sup>th</sup> January 2018 set out the following as summarised:

- Reference is made to Table 5 of the Cork City Council Development Contribution Scheme 2015 – 2016 as set out in the Case Planners Report dated 21<sup>st</sup> October 2015
- New drawings were submitted on 26<sup>th</sup> July 2017 and the area was adjusted down accordingly to 551.08 sqm for the purposes of calculating the development contribution.
- The Development Contribution condition was not appealed to An Bord Pleanála
- Two reviews of the application of the development contribution was carried out and communicated to the applicant (see summary below)
- The General Development Contribution (GDC) Value at the date of ABP decision on 29<sup>th</sup> March 2016 is set out as follows:

Area x GDC price Q1/2016

551.08 sqm x 54.1196

€29,824.23

- GDC value at the current price as per date of letter (5th January 2018)

Area x GDC price Q1/2016

551.08 sqm x 54.3765

€29,965.80

- Noted that while a Supplementary Development Contribution was not applied by either Cork City Council or An Bord Pleanála it would have been an additional charge in the amount of €10,847.51

4.6. The submission was accompanied by two letters issued to the Referrer dated 27<sup>th</sup> July 2017 and 11<sup>th</sup> August 2017. See above for summary of correspondence dated 11<sup>th</sup> August 2017. The letter dated 27<sup>th</sup> July 2017 was in response to the letter from the Referrer dated 27<sup>th</sup> July 2017 that may be summarised as follows:

- The original Condition No 10 was not appealed
- ABP decided the case on 29<sup>th</sup> March 2016.
- Revised first floor plans were submitted on 26<sup>th</sup> July 2016 and re-measured by Cork City Council and the figures submitted by the applicant were accepted. The figures are as follows:

Ground Floor	431.14 sqm
First Floor	138.04 sqm
Total Area	551.08 sqm

- Development Contributions are calculated from the ABP decision date and adjusted by the Consumer Price Index on a quarterly basis.
- The contribution scheme has been applied correctly and the outstanding contribution is €30,067.99

#### 4.7. Further Responses

4.8. An Bord Pleanála cross circulated the above submission from Cork City Council dated 5<sup>th</sup> January 2018 to the applicant for consideration with any submissions or observations to be received before **5<sup>th</sup> March 2018**. A response was received from the Referrer on the 5<sup>th</sup> March 2018, the contents of which may be summarised as follows:

4.9. Cork City Council has given no explanation as to why they feel this development is likely to significantly increase the use of services in terms of water, drainage, waste management and traffic.

4.10. It is submitted that the fundamental question to be answered is – “has there been an increase in services of water, drainage, waste management and traffic”.

4.11. In terms of services it is stated that all existing connections have been used and increased. The existing connection to foul and surface water sewer has been used and not increased. The existing entrance to the property has been used and not increased in width. The existing water supply has been retained. No alterations have taken place to the footpaths or street lighting. The site area has not increased. There will not be the same number of customers visiting the new premises. The number of employees is substantially less than the former TSB Bank which in turn reduces the likely increase in traffic.

## 5.0 Policy Context

### 5.1. Cork City Council 2015-2021

5.2. The operative plan for the area is the **Cork City Council 2015-2021**. Map 3 Central Suburbs Zoning Objective identifies the site within an area zoned **Residential, Local Services and Institutional Uses** where the objective is *to protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3 (Objective ZO4 refers).*

### 5.3. Cork City Council Development Contribution Scheme 2015 - 2016

5.4. **Table 5 - % Reductions in respect of specified categories of development** states the following:

*In cases of redevelopment projects, only net additional development (e.g . a redevelopment totalling 200 m<sup>2</sup> of which 150 m<sup>2</sup> is replacing existing development , contributions to be levied on the net additional 50 m<sup>2</sup> ) will be charged , unless , in the opinion of the Planning Authority, the proposed development & the intended use constitutes a substantial intensification of use or is likely to increase demands on services, where contributions will be charged at the applicable rate on the full development.*

## 5.5. Natural Heritage Designations

- 5.5.1. The site is not located within a designated Natura 2000 site. The relevant European sites are the **Cork Harbour SPA (site code 004030)** and the **Great Island Channel cSAC (site code 001058)**.

## 6.0 Planning Guidelines

### 6.1. Development Contributions Guidelines for Planning Authorities (2013)

- 6.2. The principal aim of the new guidelines is to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since guidance last issued in 2007. 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.

## 7.0 Legislation

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

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; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination.*

### 7.2. 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.*

## **8.0 Assessment**

- 8.1. Cork City Council granted planning permission to Cormac O'Connor (the Referrer in this case) in October 2015 for the demolition of the former TSB Bank building and construction of new retail premises including butcher shop, meat preparation area, store, office, delicatessen and restaurant together with all ancillary site works subject

to 10 Conditions. Condition No 10 required the payment of a Development Contribution in the amount of €22,664.40. It was stated at the time that the gross floor area of the former TSB Bank to be demolished was 365.68 sqm and that the proposed gross floor area of the new building was as 609.75 sqm. This decision was appealed by a third party. An Bord Pleanála granted permission in March 2016 subject to 15 Conditions. Conditions of note and relevant to this referral are summarised as follows:

- **Condition No 2** Revised first floor plans shall be submitted to and agreed with the planning authority
- **Condition No 11** The entire development shall be operated as a single entity
- **Condition No 15** Financial Contribution (unspecified) to be paid with details to be agreed with Planning Authority or in default with An Bord Pleanála.

8.2. Cork City Council state that new drawings were submitted on the 26<sup>th</sup> July 2017 and that the area was adjusted down to 551.08sqm for the purposes of calculating the development contribution. The referrer in their submission to the Board dated 6<sup>th</sup> September 2017, state that the area permitted by the Board is 551.05sqm. There appears to be a small discrepancy in both figures in the amount of 0.03sqm. The discrepancy has not been raised by either party.

8.3. Nonetheless, based on these revised plans Cork City Council has determined in their submission dated 5<sup>th</sup> January 2018 that the Referrer is liable to pay €29,965.80 on the entire development. While the Referrer is not opposed to the application of the Development Contribution they are opposed to the amount of monies to be paid. The Referrer submits that a development contribution is applicable on the net additional development only and not the development in its entirety. Cork City Council based their calculation on the Case Planners Report dated 21st October 2015 where reference is made to the Cork City Council Development Contribution Scheme 2015 – 2016 and Table 5 - % Reductions therein where it states that in cases of redevelopment projects, only net additional development will be charged ,unless , in the opinion of the Planning Authority, the proposed development and the intended use constitutes a substantial intensification of use or is likely to increase demands on services. The Case Planner concluded that *in this instance it is*

*considered that there is likely to be a significant increase on services, in terms of water, drainage, waste management and traffic.*

- 8.4. Section 34(5) of the Planning and Development Act (as amended) states that “*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; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination*”. Accordingly, the Board, in this case, is limited solely to determining the details of the financial contribution to be paid in respect of public infrastructure and facilities benefiting the development in the area of the planning authority that is provided or intended to be provided by or on behalf of the Cork City Council.
- 8.5. As set out above An Bord Pleanála granted permission for this development in March 2016. Therefore the Development Contribution Scheme that is applicable in this case is the Cork City Council Development Contribution Scheme 2015 – 2016 (Appendix 1 refers). Table 5 of the scheme sets out the percentage of reductions that are applicable in respect of specified categories of development. The category relevant to this case is as follows:

*In cases of redevelopment projects, only net additional development (e.g . a redevelopment totalling 200 m2 of which 150 m2 is replacing existing development , contributions to be levied on the net additional 50 m2 ) will be charged , unless , in the opinion of the Planning Authority, the proposed development & the intended use constitutes a substantial intensification of use or is likely to increase demands on services, where contributions will be charged at the applicable rate on the full development.*

- 8.6. The scheme permitted by the Board is clearly a redevelopment project and therefore based on the available figures, should be entitled to a charge on the net additional development area only a sum in the order of 185.4sqm. However in order to qualify for this exemption it must be demonstrated that the proposed development and the intended use does not constitute a substantial intensification of use or is likely to increase demands on services. While the Planning Authority is of the opinion that the redevelopment will lead to an *intensification of use or is likely to increase demands on services* no details as to what informed this opinion has been provided.

- 8.7. As set out in Condition No 11 the entire development is to be operated as a single entity. Further Class 14 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended provides that where development comprising the change of use from financial services to use as a shop it is exempted development. While it may very well be the case that there may be some increased demands on public infrastructure and facilities benefitting the development it is my view that it falls to the Planning Authority to set out their reasoned judgement in this regard or at the very least seek relevant information and details from the applicant in order to present an informed, reasoned and balanced opinion. It is not sufficient in my view to offer an opinion without adequate validation.
- 8.8. As set out in the Development Contributions Guidelines for Planning Authorities (2013) *development contributions are not cash-cows: there is an important balance to be struck between the funding of public infrastructure and the need to encourage economic activity and promote sustainable development patterns.* The Guidelines further state that *while it is expected that planning authorities will ensure that developers make an appropriate contribution towards the costs of public infrastructure and facilities, the local authority must ensure that it avoids levying development contributions that are excessively high – development contributions are ultimately designed to offset only a portion of the costs of public infrastructure and facilities.*
- 8.9. Overall I agree with the Referrer that there has been no explanation given by the Local Authority as to why it is the local authority's opinion that there will be a likely increase in services. Therefore, based on the information available together with the nature of the previous use class and proposed use class, and with reference to Class 14 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, where the change of use from financial services to use as a shop it is exempted development, I recommended that the Cork City Council Development Contribution Scheme 2015 – 2016 be applied and that the exemption set out in Table 5 therein be applied in so far as the Development Contribution is only applicable to the net additional development as follows:

Total Area of former bank building	365.68 sqm
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Area permitted by An Bord Pleanála	551.08 <sup>2</sup> sqm
Balance (difference)	185.92 sqm

8.10. Therefore the area that should be levied is 185.92 sqm with a contribution of **€10,164.25** being owed to Cork City Council (185.92 x €54.67 = €10,164.25)

8.11. For clarity and completeness I have had due regard to the provisions of the Habitats Directive and conclude that having regard to the source-pathway-receptor model along with the nature of the proposed development (a continued use) I would not consider that an NIS or Appropriate Assessment is necessary in this case.

## 9.0 Recommendation

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

**WHEREAS** Condition No 15 of An Bord Pleanála decision PL28.245776 (Reg Ref 15/36427) required that prior to the commencement of development the developer to 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. In the event of a default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**AND WHEREAS** the developer and the planning authority failed to agree on the amount of development contribution to be paid in accordance with Condition 15.

**AND WHEREAS** the matter was referred by the developer to An Bord Pleanála on the 6<sup>th</sup> day of September 2017 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, the Development

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<sup>2</sup> Figure provided by Cork City Council

Contributions Guidelines for Planning Authorities (2013) and the Cork City Council Development Contribution Scheme 2015 - 2016

**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 15 should be altered on foot of this referral and the correct application of the Development Contribution Scheme results in a charge of **€10,164.25**.

## 10.0 Reasons and Considerations

10.1. Having regard to:

- a) Section 34(5) of the Planning and Development Act 2000, as amended,
- b) The provisions of the Cork City Council 2015-2021 and the Cork City Council Development Contribution Scheme 2015 - 2016
- c) Section 48 of the Planning and Development Act 2000 (as amended),
- d) the submissions on file, and the planning history of the site

10.2. The Board considered it appropriate that the Development Contribution be amended to apply to the permitted net additional development area only in line with the applicable exceptions as set out in Table 5 of the Cork City Council Development Contribution Scheme 2015 – 2016

## 11.0 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.

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**Mary Crowley**

**Senior Planning Inspector**

**6<sup>th</sup> April 2018**

**12.0 Appendix 1 - Cork City Council Development Contribution Scheme  
2015 - 2016**