



The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

15 March 2022

AN BORD PLEANÁLA	
LDG-	050288-22
ABP-	
15 MAR 2022	
Fee: €	220
Type:	Cheque
Time:	10.25
By:	hand

Re: Planning Reference: 20/6955. First party appeal under Section 48(13)(a) of the Planning and Development Act 2000 (as amended) against condition 28 of the decision made by Cork County Council to grant permission for the construction of a new agricultural fertiliser facility for use by Goulding Chemicals Limited and additional port operational use of the jetty to facilitate cargo vessels.

Dear Sir / Madam,

We act for the applicants, Goulding Chemicals Limited, Centre Park Road, Marina, Cork and Belvelly Marino Development Company, Tivoli Terminal Building, Tivoli Dock and Industrial Estate, Cork.

Under the provisions of Section 48(13)(a) of the Planning and Development Act 2000 (as amended), we wish to appeal condition 28 of the permission granted by Cork County Council under Planning Reference No. 20/6955, for the construction of a new agricultural fertiliser facility for use by Goulding Chemicals Limited and additional port operational use of the jetty to facilitate cargo vessels. The prescribed fee of €220 is enclosed.

All communication regarding this appeal should be directed to our office at 6 Joyce House, Barrack Square, Ballincollig, Cork, P31 YX97.

Condition 28 requires the developer to pay:

"At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the development shall pay a special contribution of €1079458.00 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council's General Contributions Scheme, in respect of works proposed to be carried out for the provision of (a) segregated pedestrian / cyclist route on R624 at Belvelly; (b) pavement replacement / resurfacing on R624; (c) interim upgrade works at Cobh Cross N25 Interchange..."

The rationale for the special contribution is provided in the Senior Planner's Report as follows:

A report is received from the Traffic & Transport Section. Vehicular access to this site will be via the Cobh Cross N25 interchange and along the R624 utilising Belvelly Bridge. The

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requirement to upgrade the R624 due to capacity concerns is identified in the Local Area Plan (paras 3.2.36, 3.2.66 and 3.2.81). The volume of HGVs is such that the design life of the road will be reduced significantly. A substantial contribution is calculated by the Road Design Office to address this (€477,520). In addition, the narrowness of the bridge is such that with the significant additional HGV traffic arising from the development, it is recommended that a separate cyclist/pedestrian crossing be provided as mitigation. This requires a special contribution of €596,938. A detailed estimate is provided in the report of T&T.

...

Para 3.6.29 of the Local Area Plan identifies that an improvement is required to the Cobh/Carrigtwohill junction. Cork County Council (under the HIIT team) are progressing a Part 8 to include interim measures to increase capacity at this interchange. It will be funded by development contributions. A calculation of a special contribution of €5000 is included in an email report from HIIT.

The report from the Traffic and Transportation section states the following justification for the special contribution:

The Traffic and Transport Section has some concerns regarding the capacity of the R624 / Belvelly Bridge to accommodate the proposed development, particularly given the clearly identified capacity issues outlined in the Cobh LAP 2017, carriageway width to accommodate HGV movements in particular and the need for extensive upgrading of this road to accommodate any large-scale development proposals. However, on balance, having regard to the further information submitted in particular to the applicants proposed Operational Traffic Management Plan and the reduction of HGVs at peak periods on the R624 as advanced in further information submitted 08/01/21, the proposed development is considered to be acceptable, subject to compliance with Conditions. The full details of any Operational Traffic Management Plan will need to be submitted and agreed with the Planning Authority prior to the coming into operation of the proposed facility.

Furthermore, given the increase in Heavy Goods Vehicles using the R624 and existing deficiencies / capacity considerations, it is considered appropriate to levy a special contribution on the applicants in the order of €596,938.50 to facilitate pedestrian and cycle infrastructure (Boardwalk) along Belvelly Bridge, allowing for increasing the available carriageway width on Belvelly Bridge, to improve geometric restrictions for heavy vehicles and to improve safety for vulnerable users.

We ask the Board to review the principle of Condition 28 and the amount levied on the basis of the following points established by precedent decisions:

- a) The planning authority shall specify the particular improvement works for which the special contribution is sought, and the amount levied shall be based on a detailed estimate of the cost of those specific works,
- b) There is an onus on the planning authority to demonstrate that the works are required to service the particular development for which permission is sought rather than of general benefit to the wider area,
- c) Special contributions shall not be used to fund improvement works which were envisaged in the County or Local Area Plan, as these works are assumed to be covered by General Development Contribution Scheme.

Please see attached summary of relevant precedent decisions by the Board.

Condition 28 covers three separate projects and the appropriateness of each is considered in turn. The condition also includes indexation which is discussed in section iv).

i) Separated Pedestrian / Cycle Lane at Belvelly Bridge.

The technical reports on the planning authority's file give no indication of the total cost of the proposed works to Belvelly Bridge, and it is not clear how the contribution of €596,938.50 has been calculated.

Improvement works to the bridge have been identified as required in the Cobh Municipal District Local Area Plan 2017 (2017 LAP), section 3.2.81, which notes in the context of proposed growth objectives for Cobh that *"...the most pressing upgrades involve improvements to Belvelly Bridge and the R624, which will require State funding for the necessary upgrades."* Significant additional population and employment growth is targeted for Cobh in the current County Development Plan, and 2017 LAP and strong growth is carried over into the Draft Cork County Development Plan due to come into effect on 7th June. The relocation of port related activity, including Gouldings' fertiliser facility, from Cork City quays is also of strategic importance and consistent with the objectives of the National Development Framework and the Regional Spatial and Economic Strategy for the Southern Region. Given the importance of upgrading Belvelly Bridge to facilitate the growth of Cobh, and support the redevelopment of Cork City Quays, works should primarily be supported by national level funding.

The applicants accept the principle of the Special Contribution for the provision of the boardwalk at Belvelly Bridge, but request that the Board review the level of contribution proposed, given the benefits of the works to the wider area, the level of additional population and employment growth targeted to Cobh and its environs, and the national and regional strategic objectives to relocate port related activity from the City Quays.

ii) Pavement Replacement / Resurfacing on the R624

The technical reports on the planning authority's file give no indication on how the Council arrived at the figure of €477,520, or the total costs of any maintenance works related to the pavement replacement / resurfacing on the R624. The contribution has been attached for potential future damage to existing infrastructure, rather than for specific exceptional works to facilitate the proposed development. It is considered that any work required to the public road can be more adequately funded by the General Development Contribution Scheme.

We ask the Board to review the appropriateness of applying a special contribution for works which are more appropriately address by the General Development Contribution Scheme.

iii) Junction Improvements at Cobh/Carrigtwohill junction

The junction improvements at Cobh/Carrigtwohill junction have, as noted in the Senior Planner's report, been identified as required in Para 3.6.29 of the 2017 LAP and are clearly identified as required to facilitate the growth of Cobh town. The Senior Planner's report notes that the Council is already actively progressing a Part 8 process to deliver the project. Given that the Part 8 process for

the works has been commenced prior to the applicants planning decision issuing it is difficult to see how the project can be for specific exceptional works to facilitate the proposed development.

We ask the Board to review the appropriateness of applying a special contribution for works which are more appropriately address by the General Development Contribution Scheme.

- iv) Condition 28 provides for monthly indexation in line with the Consumer Price Index. The Consumer Price Index is not the appropriate indexation to use for the construction sector. In line with Government Guidance (refer to GN 2.3.4 – Tender Price Indexation, office of Government Procurement, March 2022) any indexation to be applied should be linked to the Wholesale Price Index.

Should the Board consider that a Special Development Contribution is appropriate, it is requested that the condition is amended to refer to the Wholesale Price Index, rather than the Consumer Price Index.

The applicants have no objection to the payment of a special contribution, provided it is for specific exceptional costs to service the development which are not covered by the General Development Contribution, the method of calculation is approved by the Board in accordance with Section 48 (2) (c), and the appropriate indexation is applied.

Thank you for consideration of this appeal.

Yours faithfully



Mairi Henderson
McCutcheon Halley

First Party Appeal under Section 48(13)(a) of the PDA

Planning Reference 20/6955 – New Agricultural Fertiliser Facility for use by Goulding Chemicals Limited and Additional Port Operational Use of the Jetty to Facilitate Cargo Vessels.

Precedent Decisions

In considering this appeal, we ask the Board to have particular regard to the following precedent decisions where An Bord Pleanála has supported the omission of a special development contribution(s) in circumstances which are relevant to the current appeal:

An Bord Pleanála Ref. PL04.232458 (Howard Holdings PLC)

Under ABP Ref. PL 04.232465 the Board concluded that the works identified under the special contributions were not immediately associated with the development and were some distance from the site, as well as no evidence of costing being provided. The Inspector noted that the works did not relate to specific exceptional costs, and therefore the works did not come under the scope set out in S.48(2)(c) and recommended that the special contribution sought under condition no.5 be omitted entirely:

*"With regard to condition 5, having reviewed the application documents, the grounds of appeal and the planning authority's development contribution scheme, I conclude that the planning authority acted ultra vires in its powers under the Planning and Development Acts, 2000 as amended in attaching the requirement for a special contribution of €754,870. This element of the contribution does not accord with the provisions of Section 48(2)(c) of the Planning and Development Act, 2000 with reference to the payment of a special contribution. Furthermore, it is considered that an appropriate requirement to pay such a contribution could properly be included within a development contribution scheme made under this section."*¹

An Bord Pleanála Ref. PL04.246853 (Hallmark Building Services)

Under ABP Ref. PL 04.246853 the Inspector noted that a special development contribution should not apply where no information or justification has been provided in regard to the basis of the calculation or how it is apportioned to the proposed development/other developments that would benefit in the area:

*"In the appeal response details are provided by the PA as to the recreation and amenity projects in the town towards which the contribution is to be assigned. Whilst projected costs are detailed no information has been provided as to basis of the calculation including how it is apportioned to the proposed development and whether due cognisance has been given to the application of costs to other future development. Such an omission is contrary to the recommendations of the Development Management Guidelines (DOEHLG 2007) as set out in Section 7.12."*²

¹ An Bord Pleanála ref. PL04.232458, Inspector's Report, p.10, para. 10.2.

² An Bord Pleanála ref. PL04.246853, Inspector's Report, pp.16-17, para. 8.12.

The Inspector also noted that where projects (where a special development contribution has been sought) not specific to the proposed development and would be likely to benefit the wider community the appropriate mechanism to levy a contribution is under the general contribution scheme and not as a special development contribution:

*"I would also submit that the projects to be covered by the contribution are not specific to the proposed development and would be likely to benefit the wider community. It is reasonable to surmise that the said projects would be pursued whether the development was to proceed or not. I consider that such financial requirements would be better incorporated within the general contribution scheme and adopted in accordance with the procedures set out in Section 48 of the Act. In this regard I also note that there is provision for the adoption of further schemes in respect of different parts of the functional area of the Planning Authority under Section 48(2)(a) of the Act."*³

The Board accepted the Inspector's recommendation and amended the relevant condition to remove the requirement for a Special Development Contribution because they considered that compliance with policy is not an appropriate application of section 48(2)(c) of the Planning and Development Act, 2000 and that costs to be levied under this section are to be specific exceptional costs which are of specific benefit to the proposed development and that these costs should be properly apportioned.

An Bord Pleanála Ref. PL04.246477 (Forge Hill Recycling)

Under PL04.246477

As to when a planning authority may require the payment of a Special Contribution is covered in Section 48(2)(c) of the Planning and Development Act 2000, as amended, with Section 7.12 of the Development Management Guidelines, 2007, providing guidance with respect to same. It is clear that such a request should only be made in respect of a particular development, which is likely to incur specific exceptional costs not covered by the General Development Contribution Scheme of the Council. Such a contribution is in addition to the terms of the general scheme and might cover specific developments whereby the scale of the development and the demand the proposed development is likely to place on public services and facilities is deemed to be exceptional.

The Board concluded that the planning authority had not demonstrated that there are specific exceptional costs arising from the proposed development that would benefit the proposed development. They therefore concluded that the special financial contribution as proposed by the planning authority did not come within the scope of section 48(2)(c) of the Planning and Development Act, 2000, as amended, and accordingly, would be unwarranted.

Summary

The precedents outlined above, demonstrate that An Bord Pleanála tends to omit a special development contribution(s) in circumstances where the Planning Authority has either double charged or have failed to identify the 'specific exceptional' works towards which the special contribution for recreation and amenities have been attributed. As these precedents are very relevant to the consideration of our clients' appeal, we would ask the Board to have particular regard to these precedent decisions.

³ An Bord Pleanála ref. PL04.246853, Inspector's Report, p.17, para. 8.13.