



An
Bord
Pleanála

Inspector's Report ABP-305600-19

Development	Construction of a two storey primary health care facility, external secure bin storage facility ,and associated building signage.
Location	Shannon Road / , Ashview Drive , Sixmilebridge, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	19137
Applicant(s)	Valley Healthcare Fund
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First V Condition No. 17 - Special Development Contribution
Appellant(s)	Valley Healthcare Fund
Observer(s)	None
Date of Site Inspection	31 st December 2019
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The site is a greenfield site located on lands between Shannon Road and Ashview Drive within the defined settlement of Sixmilebridge, Co. Clare. The site is a sloping site from front to back and is 0.62ha. in area.
- 1.2. The site is surrounded by existing houses on two sides (northeast and southeast). and by the R471 to the northwest and the access road to Ashview Drive to the southwest. The site boundaries consist of a fence to the roadside boundary, a blockwork wall to the rear and side and an overgrown hedgerow along the north western boundary.

2.0 Proposed Development

- 2.1. The development will consist of:
 - (i) a primary care health facility with a maximum gross floor area of 1644sqm
 - (ii) external secure bin storage facility
 - (iii) associated building signage
 - (iv) car and bicycle parking
 - (v) all associated site works
- 2.1.1. The scheme was revised following a request for further information and re-advertised as 'Significant Further Information'.

3.0 Planning Authority Decision

3.1. Decision

The decision to grant permission was subject to 17 no. conditions. Condition no. 17 is of relevance.

Condition No. 17

Before development commences a Special Development Contribution shall be paid to Clare County Council as a special contribution towards the improvements and provision of footpaths which are necessary to facilitate the development of the site and the overall area. The contribution payable will be based on the contribution rate applicable at the time of payment and not the rate in existence when permission granted. The amount of the development contribution is set out below and is subject

to annual revision with reference to the Wholesale Price Index (Building and Construction), and in accordance with the terms of the Council's Development Contribution Scheme.

The amount is currently €18,3000.00

Reason: In the interest of the proper planning and sustainable development of the area and in accordance with Section 48(2)(c) of the Planning and Development Act 2000 as amended.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

Further Information was requested on the 18th April 2019 regarding levels, boundary treatment, aspects of the design including overlooking, connectivity and drop off/collection facility.

- 3.2.2. The Area Planners report (17th September 2019) reflects the decision to grant permission and includes a reference to a report from the Road Design Office recommending a contribution of €18,300 for the construction of a 1.8wide footpath to the front of the site identified outside the site area.

3.2.3. **Other Technical Reports**

Road Design Office - Final report dated 16th September 2019 following request for further information note no objection subject to conditions to include €18,300 for the construction of a 1.8m wide footpath to the front.

Chief Fire Officer - Report dated 12th March 2019 raised no objection

3.3. **Prescribed Bodies**

Irish Water – Report dated 25th March 2019 raised no objection

Development Applications Unit – Report dated 25th March 2019 recommends the inclusion of a condition requiring archaeological monitoring.

3.4. **Third Party Observations**

A total of six submissions were made to Clare City Council. A further submission was received following receipt of 'Significant Further Information'. The following is a summary of the issues raised:

- Building Height – loss of sunlight and daylight
- loss of privacy
- Development will devalue property
- No lighting details
- Security
- Anti-social behaviour

4.0 **Planning History**

Site

None

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. Clare County Development Plan 2017-2023

The settlement is part of the Shannon Municipal District and specific objectives in relation to Sixmilebridge are contained in volume 3 Municipal District Written Statement and Settlement Plans.

Sixmilebridge is identified as a Small Town in the settlement hierarchy in County Clare.

The site is zoned for commercial development. Com 1 – The use of land zoned for 'commercial' purposes shall be taken to include the use of the lands for commercial and business uses including offices, service industry, warehousing and the facilitation of enterprise/retail park/office type uses as appropriate.

A Primary Care Faculty is 'Open for Consideration' on lands zoned Commercial.

Transport Objectives for Sixmilebridge include the following-

To improve pedestrian and cycle movement and linkages throughout the town, with particular attention to pedestrian and cycle movements over the bridge, within the central area and connecting existing and future developments to the town centre, the railway station and park and ride facility;

Policy CDP 5.21 Refers to *Health Services*

5.1.2. Clare County Development Contribution Scheme 2017-2023

Section 48 of the Planning and Development Act 2000, as amended, enables the 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). Planning Authorities are required to set out the basis for the determination of contributions in a Development Contribution Scheme

Special Contribution states:

In addition to the requirements of this scheme, Clare County Council may require the payment of a Special Contribution in respect of a particular development where specific costs are not covered by this Scheme or incurred in respect of public infrastructure and facilities which benefited the proposed development. Where payment of such a contribution is required, a planning condition shall be attached to specify the particular works carried out or proposed to be carried out by Clare County Council or any other local authority

5.1.3. Development Management Guidelines

Section 7.12 Conditions requiring development contributions (sections 48 and 49 of the Planning Act) states:

‘special’ contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where **specific exceptional costs** not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore, it is essential that the

basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal

5.2. Natural Heritage Designations

The Lower River Shannon SAC site code 002165, is the nearest Natura Site, located some 4.1km away

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- It is set out that the provision of a footpath along the R471 is not a 'specific exceptional cost' as the provision of the footpath is already provided for within the Shannon Municipal District Settlement Plan.
- The Contribution Scheme provides for the provision of such infrastructure as the scheme has regard to capital infrastructure planned within the Development Plan. It is set out that the condition amounts to double charging.

- Condition no. 16 of the decision of the planning authority includes transport infrastructure costs in accordance with the Contribution Scheme
- The Road Design Office provided no calculation/rationale to support the €18,300 levy.
- It is set out that while the footpath will service the site it would primarily benefit the residents of Ashview Drive which currently has no public footpath connections to the town centre.
- The legislation is clear that a special contribution should only be levied if it benefits the proposed development. No consideration as been given to the apportionment of costs.

6.2. Planning Authority Response

The planning authority's submission dated 25th October 2019 sets out that following:

- It is set out that in accordance with the Development Management Guidelines the costs incurred by condition no. 17 are directly as a result of and necessary in order to facilitate the development noting that the main entrance to the building faces the public road and it would be reasonable to assume access to the building would require a path and safe universal access rather than a grass verge having particular regard to the intended use.
- It is also set out that there is an existing footpath on the opposite side of the road linking the town centre, train station and the Ashview housing estate.
- It is set out that the site boundary as outlined in red does not extend to the west to allow the developer to provide for such a footpath and for the Planning Authority to condition accordingly.
- The submission includes a breakdown of the costs associated with the footpath.
- The submission sets out that reference to 'and the overall area' in the wording of condition no. 17 was an error was made in the wording. Standard wording included in the submission.

- The planning authority set out that the applicant is not being double charged and the monies levied under condition no. 16 apply to the general area in accordance with category 1 of the Development Contribution Scheme.

7.0 Assessment

- 7.1. This is an appeal made under the provisions of Section 48(10) (b) of the Planning and Development Act, 2000 (as amended), and therefore the Board is restricted to considered Condition No. 17 and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the terms of the Clare County Council Development Contribution Scheme, 2017-2023. I will also have regard to the relevant provisions of the Development Management Guidelines in so far as they related to 'special' contribution requirements in respect of a particular development.
- 7.2. Condition No. 17 required the applicant to pay a Special Development Contribution of €18,300.00 towards the improvements and provision of footpaths which are necessary to facilitate the development of the site as provided for in the approved Clare County Council Development Contribution Scheme 2017-2023 in accordance with Section 48(2)(c) of the Planning and Development Act 2000 (as amended).
- 7.3. The applicant argues that the Development Contribution Scheme provides for the provision of such infrastructure as the scheme has regard to capital infrastructure planned within the Development Plan and Condition no. 16 of the decision of the planning authority includes transport infrastructure costs in accordance with the Contribution Scheme and the imposition of condition no. 17 amounts to double charging. The applicant also argues that the Road Design Office provided no calculation/rationale to support the €18,300 levy. I will address this mater later in the report.
- 7.4. It is further argued that the provision of a footpath along the R471 is not a 'specific exceptional cost' as the provision of the footpath is already provided for within the Shannon Municipal District Settlement Plan. The applicant also states that the footpath will not expressly serve the development but would primarily benefit the residents of Ashview Drive to the rear of the site. Whilst, I note the plan seeks to encourage greater connectivity it does not specifically refer to the subject site and I

note that there is an existing footpath on the opposite side of the road linking the town centre, train station and the Ashview housing estate.

- 7.5. In response the planning authority set out that in accordance with the Development Contribution Scheme and the Development Management Guidelines the costs incurred by condition no. 17 are directly as a result of and necessary in order to facilitate the development noting that the main entrance to the building faces the public road and it would be reasonable to assume access to the building would require a path and safe universal access rather than a grass verge having particular regard to the intended use. It is further stated that the site boundary as outlined in red does not extend to the public road so as to allow the developer to provide the footpath and for the Planning Authority to condition accordingly.
- 7.6. The Clare County Council Development Contribution Scheme 2017-2023 and Section 7.12 of the Development Management Guidelines state that a 'special' contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development.
- 7.7. Currently there is no public footpath fronting the site and street front access is identified from the public road fronting the site in so far as the development has been designed to address the road, and while access from the car park is provided no direct pedestrian access path is proposed from the public road fronting the site. Accordingly, I agree with the planning authority and consider it appropriate and necessary to provide a footpath link from the public road to the building. I further note the planning authority had no other recourse in this instance but to impose a 'special contribution' condition as the site area identified by the applicant did not extend to the public road.
- 7.8. On the basis of the above. Furthermore, I am satisfied that the applicant is not being double charged and the monies levied under condition no. 16 apply to the general area in accordance with the provision of the Development Contribution Scheme in so far as these monies relates to 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.

7.9. A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore, it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. The applicant argues that the Road Design Office provided no calculation/rationale to support the €18,300 levy. I note that the planning decision did not include a breakdown of the contribution as is required in accordance with the Planning Act. However, the planning authority has provided a detailed breakdown of costs in their response to the appeal.

Breakdown of Costs - 130m of concrete footpath	
Works	Cost
Saw cut the existing road of 130m @ €3 / m	€390
Excavation rate (130m x 1.8m) x €2	€468
Supply and installation of 130m of precast kerb @ €30/m	€3,900
Install concrete footpath 130m x 1.8m @ €35	€8,190
Install buff paving at crossing points @ (1.8m x 2) x €50	€180
Allowance for works to underground services	€2000
Allowance for upgrade to public lighting	€1000
Total €16,128 + VAT @ 13.5% equates to €18,305.28	

7.9.1. I have reviewed the breakdown of the costs and I am satisfied that the amount is fair and reasonable.

Conclusion

7.9.2. I am satisfied that the planning authority has correctly applied the terms of the Clare County Council Development Contributions Scheme, 2017 -2023 in the imposition of a Special Development Contribution under Condition No 17 of the recommendation to grant planning permission. Having regard to the breakdown of costs identified by the planning authority, it is recommended that the planning authority be directed to amend the amount payable under Condition No. 17 by deleting the amount of €18,300 and substituting the amount of €18,305.28.

8.0 Recommendation

I recommend that Conditions no.17 be amended to read as follows:

Before development commences a Special Development Contribution shall be paid to Clare County Council as a special contribution towards the provision of a public footpath to the front of the site which is necessary to facilitate the development of the site. The contribution payable will be based on the rate applicable at the time of payment and not the rate in existence when permission is granted. The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction) and in accordance with the terms of the Council's Development Contribution Scheme. The amount is currently €18,305.28

Irené McCormack
Planning Inspector

4th February 2020