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**Planning and Development Acts 2000 to 2018**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 17/980 (Killarney)**

**Appeal** by Xdev Real Estate Limited care of Diarmuid Mangan and Associates Limited of Bohereen Na Goun, New Street, Killarney, County Kerry in relation to the inclusion of special contribution condition number 3 by Kerry County Council in its decision made on the 15<sup>th</sup> day of February, 2018.

**Proposed Development:** (as revised by further public notices received by the planning authority on the 19<sup>th</sup> day of January, 2018). Completion of unfinished development commenced under planning register reference number 05/2462. Permission to (1) construct 72 number two-storey semi-detached houses of varying layouts, (2) construct two blocks of three unit, two-storey houses (six number houses in total), (3) construct a new pedestrian access onto the R570, (4) construct a creche; (5) construct an all-weather surface play area. Outline planning permission to construct five detached two-storey houses. Permission to retain and complete the construction of eight number semi-detached houses and boundaries (commenced under planning register reference number 05/2462) at sites numbers 23 to 30. Permission to retain, modify and complete the construction of access roads, services and ancillary works commenced under planning register reference number 05/2462 and including the construction of an

additional storm connection and retention permission for an ESB substation as constructed, all at Shronedarragh, Barraduff, Killarney, County Kerry.

## Decision

**The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010, based on the reasons and considerations under, directs the said Council, under section 48 (13) of the 2000 Act, to AMEND condition number 3 so that it shall be as follows for the reason stated.**

3. The developer shall pay the sum of €77,150 (seventy seven thousand, one hundred and fifty euro) (updated at the time of payment in accordance with changes in the Wholesale Price – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of the following works:-

Provision of pedestrian crossing of N72	€50,000
Contribution towards upgrade of public footpath along R570 from adjacent to number 1 Coill Darrach to junction with N72 (circa 70 metres)	€22,750
Contribution towards upgrade of public lighting along R570 between proposed development and junction with N72 (one light)	€4,400

This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority might facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**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 benefit the proposed development.

## **Reasons and Considerations**

It is considered that the planning authority has demonstrated that the provision of a pedestrian crossing of the N72 and the upgrading of the public footpath and public lighting north of the development along the western side of the R570 as far as the junction with the N72 would amount to specific exceptional costs in terms of facilitating pedestrian access to the centre of the village arising from the proposed development that would benefit the proposed development in this instance. However, it is considered that the planning authority has not clearly justified the method by which the contribution was calculated in terms of the length of footpath and number of public lights required to be upgraded/provided. Therefore, it is considered that the special financial contribution as proposed by the planning authority should be amended to reflect the presence of the existing footpath and the inclusion of two public lights in the permitted development in order to comply with section 48(2)(c) of the Planning and Development Act 2000, as amended.

## **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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**Michelle Fagan**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

**Dated this            day of            2018.**