

An
Bord
Pleanála

Board Order
ABP-309959-21

Planning and Development Acts 2000 to 2020

Planning Authority: Kerry County Council

Planning Register Reference Number: 20/762

Appeal by Homeland DAL Limited care of Coakley O'Neill Planning Limited of NSC Campus, Mahon, Cork against the decision made on the 18th day of March, 2021 by Kerry County Council to grant subject to conditions a permission in accordance with plans and particulars lodged with the said Council.

Proposed Development: Construction of eight number two bedroom semi-detached single storey dwellings, the completion of the associated estate road and services and all associated site works. The proposed dwellings replace eight number detached dwellings units 11-18 as previously permitted under planning register reference numbers 07404018 and 04404009, all at Clievragh, Listowel, County Kerry as amended by the revised public notice received by the planning authority on the 19th day of February, 2021 providing for significant further information.

Decision

Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to ATTACH condition number 2 and the reason(s) therefor, REMOVE condition number 3 and the reason therefor and AMEND condition number 4 so that it shall be as follows for the reason set out.

4. 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, in respect of the provision of a pedestrian crossing on the R552 Regional 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 An Bord Pleanála for determination. The contribution shall be paid prior to commencement of 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.



Reasons and Considerations

In respect of condition number 2 the attachment of this condition is based on the following. The imposition of a condition requiring the lodgement of a bond to secure the provision and satisfactory completion of roads and other services required in connection with the development is considered necessary and reasonable.

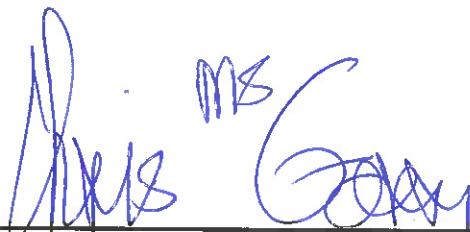
In respect of condition number 3 the omission of this condition is based on the following. The planning authority failed to apply the terms of the adopted Development Contribution Scheme correctly, and in this instance, the imposition of a condition would constitute double charging.

In respect of condition number 4 the amendment of this condition is based on the following. The imposition of a contribution under Section 48(2)(c) is considered reasonable in this case as a specific exceptional cost incurred by the planning authority which is not covered in the Development Contribution Scheme and which will benefit the proposed development, with regard to the provision of a pedestrian crossing of the R552 Regional Road. However the Board determined that the requirement to construct a public footpath 'from the main entrance to the pedestrian entrance/pedestrian crossing' was not reasonable in the context of the current proposed development and noting also that the location of the pedestrian crossing is yet to be determined and that even should a location further south along the R552 be chosen, that such a location would not require the above mentioned pedestrian crossing for the purposes of the proposed development, as a new pedestrian path from the proposed development to the R552 is provided towards the southern end of the subject site. In addition, the amended condition number 4 is unspecified in terms of the contribution payable for the pedestrian crossing as from the documentation on file, the Board is unable to determine the precise costing of such a pedestrian crossing.

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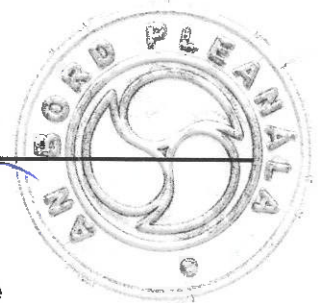
Matters Considered

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.



Chris McGarry

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



Dated this ^{30th} day of ^{September} 2021.