



An
Bord
Pleanála

Inspector's Report

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| Development | Demolition of 4 no industrial units and construction of discount food store and all ancillary site development works at Daly's Lane, Tralee, Co Kerry. |
| Planning Authority | Kerry County Council |
| Planning Authority Reg. Ref. | 15/1029 |
| Applicant(s) | Lidl Ireland GmbH |
| Type of Application | Permission |
| Planning Authority Decision | Grant |
| Appellant(s) | Lidl Ireland GmbH |
| Observer(s) | None |
| Date of Site Inspection | None |
| Inspector | Mary Crowley |

1.0 SITE LOCATION AND DESCRIPTION

1.1 The appeal site with a stated area of approx. 1.07 ha is located along Edward Street and adjacent to its intersection with McCowan's lane, and bounded by Slatt's carpark, Tralee, Co Kerry. The plans and particulars together with site photos that were lodged with the application and further information are available to view on the appeal file. I would also draw the Boards attention to the site photos accompanying the local authority planners report.

2.0 PROPOSED DEVELOPMENT

2.1 This is an application for planning permission for the demolition of 4 no. disused light industrial/commercial buildings and associated structures (totalling 4,805 sq.m gross floor area and ranging in height between one and two storey) and the construction of a licensed discount food store with ancillary infrastructure (all totalling 2,767 sq.m gross floor area ranging in height equivalent from 1 to 2 storeys), and associated site development works.

2.2 The applicant submitted a response to a request for **further information** request on 5th April 2016. This submission was accompanied by interalia Site Access and Egress Report, Urban Design Statement together with a Silt / Hydrocarbon Interceptor, SUDS, Certification and Waste Response Document.

3.0 TECHNICAL REPORTS

3.1 The **County Archaeologist** states that no mitigation is required. **Fisheries Ireland** has no stated objection to the scheme subject to the conditions as set out in their report. The **Building Control Officer** (Fire Services Department) has no objection to the scheme. The **Kerry County Council Biodiversity Officer** concurs with the findings of the Stage 1 AA Screening Report that the development is unlikely to significantly affect Natura 2000 sites. Also requested that the proposed mitigation provided in the bat survey report be conditioned in any grant of planning permission.

3.2 The **Area Engineer** requested the following further information:

- Concerns raised in relation to the vehicle access/egress from this proposed development onto Edward Street. Detailed layout drawing for this access/egress to be submitted
- Concerns raised in relation to the additional vehicles that will access/egress from this proposed development through Slatt's car park onto John Joe Sheehy Road. Revised layout drawing for this access/egress be submitted.

- Detailed design drawing of the proposed pedestrian access from the proposed development onto O’Sullivan’s Lane to be submitted.
- Parking regulations to be carried out within the proposed development.

3.3 The **HSE** has no objection to the scheme.

3.4 Having considered the further information submitted the **Kerry County Council Environment Section** does not object to a grant of permission subject to conditions set out in their report. The **Kerry County Council Tralee Municipal District Office Operations Department** has no stated objection to the development subject to conditions set out in their report.

3.5 The **Local Authority Planner** in their first report requested further information relating to delivery times, vehicle access / egress, provision of pedestrian access from the proposed development onto O’Sullivan’s Lane, Urban Design Statement and SUDS. The Local Authority Planner in their second report and having considered the **further information** recommended that permission be granted subject to conditions including financial conditions. The levies set out in the Planners second report are as follows:

Proposed floor space - 2,767 square metres

Amenity €16.62 / sq.m x 2,767sq.m = €45,97.54

Arts / Heritage €2.3 / sq.m x 2,767 sq.m = €6,364.10

Tralee Ring Roads €29.31 / sq.m x 2,767 sq.m = €81,100.77

Town Centre Amenity €132.39 linear metre road frontage
Edward Street 62m = €8,208.18

Special Contribution €37,000

3.4 The notification of decision to grant permission issued by Kerry County Council reflects this recommendation.

4.0 OBJECTIONS / OBSERVATIONS TO THE PLANNING AUTHORITY

4.1 None recorded on the file.

5.0 PLANNING AUTHORITY DECISION

- 5.1 The planning authority issued notification of decision to **grant** planning permission subject to **18 conditions**. Condition No 2, 3 and 5 are relevant to this appeal as follows:

Condition No 2 – *The developer shall pay the sum of €52,351.64 (update, from a base index at October 2006, at the time of payment in accordance with the changes in the Wholesale Price Index - Building and Construction (Capital Goods), published by the Central Statistics Office) to the planning authority as a contribution towards the expenditure that was and / or is proposed to be incurred by the Plannign Authority in respect of amenity (€45,987.54) and arts / heritage (€6,364.10) benefitting development in the area of the Authority, as provided for in the **Development Contribution Scheme for Tralee Town Council made by the Town Council**. The phasing of payments and the giving of security to ensure payment shall be agreed in writing with the plannign authority prior to the commandment of development.*

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefitting development in the area of the planning authority and that is provided r that is intended will be provided by or on behalf of the Local Authority.

Condition No 3 – *Prior to the commencement of development, the developer shall pay a contribution of €81,100.77 to Kerry County Council (the Planning Authority) as a contribution to the cost of the provision of Tralee Ring Roads Project. The amount of the contribution is calculated in accordance with the Council **Supplementary Development Contribution scheme for Tralee Ring Roads Project** and will be increased annually in line with the Wholesale Price Index from Capital Goods, Buildings and Construction as published by the Central Statistics Office from 1st January 2017.*

Reason: It is considered appropriate that the developer should contribute towards the cost of facilities as provided for in the Councils prevailing Supplementary Development Contribution Scheme made in accordance with Section 49 of the Planning and Development Act 2000 and the level of contribution payable should increase at a rate and in the manner specified in the scheme.

Condition No 5 – *Prior to the commencement of development the developer shall pay a contribution of €37,000 to Kerry County Council (Planning Authority) in respect of public infrastructure and facilities benefitting the proposed development as a **special contribution** within the meaning of Section 2(2)(c) of the Planning and Development Act 2000 towards the cost of implementation of the following schedule of works:*

Proposed Infrastructure and Facilities **Estimated Cost (EUR)**

- *Public Footpaths* €15,000
Upgrade concrete footways in area: 100m x 2m x €75 per sq.m
- *Public Car Park* €20,000
Resurface Slatt's Car Park Entrance: 1000 sq.m x €20 per sq.m
- *Road Markings* €2,000
Upgrade of existing road markings in the area

The amount of this contribution is calculated in accordance with the Council prevailing Development Contribution Scheme and will be increased from January 1st 2017 and annually thereafter (unless previously discharged) in line with the Wholesale Price Index for Capital Goods, Buildings and Construction as published by the Central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefitting the development, in accordance with the provisions of Section 48 of the Planning and Development Act 2000.

6.0 PLANNING HISTORY

6.1 There is no evidence of any previous planning application or appeal on this site.

7.0 POLICY CONTEXT

7.1 The operative plan for the area is the **Kerry County Development Plan 2015 – 2021** and the **Tralee Town Council Development Plan 2009 – 2015**.

7.2 The **Kerry County Council Development Contributions Scheme 2011** was adopted on the 21st of March 2011. The **Tralee Town Council Development Contribution Scheme 2007** was adopted on the 8th May 2007. The **Kerry County Council Supplementary Development Contribution Scheme for the Tralee Ring Roads Project** was adopted on the 22nd March 2010.

8.0 GROUNDS OF APPEAL

8.1 The first party **appeal against the Financial Contributions only as attached under Conditions No 2, 3 and 5** has been prepared and submitted by The Planning Partnership on behalf of the applicant Lidl Ireland GmbH.

The Board is requested to remove Conditions No 2, 3 and 5 in their entirety. The detailed appeal may be summarised as follows:

- 8.2 **General Development Contribution (Condition No 2) & Supplementary Development Contribution (Condition No 3)** – Kerry County Council failed to have regard to the existing development on site to be demolished whereby the General Development Contribution and Supplementary Development Contribution should be based on the net increase in residual Gross Floor Area, i.e. the existing floor space should be credited to the permitted new floor area. This ‘crediting’ is an implicit requirement on the basis of precedents established by the Board and does not have to be explicitly stated in the scheme in that it follows logically from the stated purpose of the scheme which is to impose a contribution where development will benefit from the public infrastructure facilities, project or service.
- 8.3 **Special Development Contribution (Condition No 5)** - Kerry County Council has levied a Financial Contribution for works which are required to be undertaken by the applicant at the applicant’s expenses, as per Conditions No. 15 and 16 and further the special development contribution does not constitute ‘*specific exceptional costs not covered by a scheme*’ in that the works specified comprise maintenance related works.
- 8.4 Reference is made to the following appeals in the submission; 236363, 233031, 230257, 228456, 226507, 224486 and 208301.
- 8.5 **Note:** The appeal was accompanied by a copy of the notification of decision to grant permission, Tralee Town Councils Development Contribution Scheme (2007) and Kerry County Council Supplementary Development Contribution Scheme (Tralee Ring Roads Project) (2010).

10.0 RESPONSE OF KERRY COUNTY COUNCIL

- 10.1 **Condition No 3** – This requires the payment of a contribution of €81,000.77 to the cost of the Tralee Ring Roads Project. This contribution is based on a Supplementary Development Contribution Scheme under Section 49 of the Planning and Development Act 2000 which was adopted by both Kerry County Council and Tralee Town Council. The Scheme applies to both (a) residential and (b) retail and non-residential development within the Tralee Environs Local Area Plan and Tralee Town Development Plan boundaries.
- 10.2 **Condition No 5** – This requires the payment of a contribution of €37,000 in respect of public infrastructure facilities benefitting the proposed development as a special contribution within the meaning of Section 48(2)(c) of the Planning and Development Act 2000. The details of the proposed works and

the associated costs are set out in report dated 29th April 2016 from Operations Department, Tralee Municipal District Office. **NOTE** the report of the Operations Department, Tralee Municipal District Office dated 29th April 2016 and available on the appeal file does not provide details of the proposed works and the associated costs.

11.0 OBSERVATIONS

11.1 None received.

12.0 ASSESSMENT

12.1 This is a first party appeal, lodged on 26th May 2016, solely against the financial conditions attached to the decision by Kerry County Council on 29th April 2016 to grant permission for the proposed development. Further to my examination of the planning file and the grounds of appeal I note that the first party appeal is confined to the development levy set out in Condition No 2 (Section 48 Development Contribution), Condition No 3 (Section 49 Supplementary Development Contribution) and Condition No 5 (Section 48(2)(c) Special Development Contribution) of the notification of decision of the planning authority to grant permission.

12.2 Section 48 (13) of the Planning and Development Act 2000 states that an appeal that *relates solely to a condition dealing with a special contribution and no appeal is brought by any other person under Section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance but shall determine only the matters under the appeal.* I consider that it is therefore appropriate that this appeal should be confined to the consideration of whether or not the terms of the Tralee Town Council Section 48 Development Contribution, the Kerry County Council Section 49 Supplementary Development Contribution for the Tralee Ring Roads Project and the specific exceptional costs as set out in Condition No 5 only

12.3 Therefore having regard to the information presented by the parties to the appeal and in the course of the planning application I consider the key issues relating to the assessment of the appeal are:

- General Development Contribution (Condition No 2)
- Supplementary Development Contribution (Condition No 3)
- Special Development Contribution (Condition No 5)

- Appropriate Assessment

12.4 The applicant has raised similar issues in their appeal against condition No 2 and 3 however for clarity they are dealt with separately below.

13.0 GENERAL DEVELOPMENT CONTRIBUTION (CONDITION NO 2)

13.1 Condition No 2 requires the developer to pay the sum of €52,351.64 to the planning authority as a contribution towards the expenditure that was and / or is proposed to be incurred by the Planning Authority in respect of amenity (€45,987.54) and arts / heritage (€6,364.10) benefitting development in the area of the Authority, as provided for in the Development Contribution Scheme for Tralee Town Council. Section 48 (general) schemes relate to the existing or proposed provision of public infrastructure and facilities benefitting development within the area of the planning authority and are applied as a general levy on development.

13.2 The applicant submits that Kerry County Council failed to have regard to the existing development on site to be demolished whereby the General Development Contribution should be based on the net increase in residual Gross Floor Area, i.e. the existing floor space should be credited to the permitted new floor area. It is submitted that this 'crediting' is an implicit requirement on the basis of precedents established by the Board and does not have to be explicitly stated in the scheme. The effect is that there is an overall net reduction in residual Gross Floor Area associated with the proposed development site.

13.3 It is considered that Condition No. 2, in its current format offends Section 48(3)(b) of the Planning and Development Act, 2000-2015 which states *inter alia* that "any benefit which accrues in respect of existing development may not be included in any such determination". Tralee Town Council's *Development Contribution Scheme* is subject to the provisions of Section 48 of the *Planning and Development Act, 2000-2015*. It is submitted that the principle of allowing a 'credit' where light industrial/commercial buildings floor space are to be demolished is well established, and evidenced in a variety of An Bord Pleanála Appeal cases, including PL25.226507, PL25.230257 and PL84.233031. It is stated that the existing development to be demolished is in essence serviced light industrial/commercial use buildings and any subsequent permission should benefit from their existence. Therefore it is requested that Condition No. 2 should be deleted in its entirety.

13.4 All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority. Further, the Development Contributions Guidelines for Planning

Authorities (2013) state that all planning authorities are required to include a number of exemptions, waivers and other provision in their development contribution schemes including a *provision to charge only net additional development in cases of redevelopment projects (e.g. a redevelopment totaling 200m₂ of which 150m₂ is replacing existing development, contribution should only be levied on the additional 50m₂)*. I have considered the Tralee Town Council Development Contribution Scheme 2007 and note that it provides no categories of exemptions from the requirement to pay development contributions that are applicable in this instance. However it is noted that the 2007 Scheme pre-dates the 2013 Guidelines.

13.5 With regard to the precedent referred to by the applicant it is noted that under PL25.226507, where planning permission was sought for the demolition of two habitable dwellings and the construction of 17 houses in Mullingar, County Westmeath, the Board did give credit for the demolition of the two existing houses and the financial contribution condition was amended accordingly. It is also noted that under PL25.230257 the Board likewise gave credit for the demolition of existing commercial development in granting planning permission for retail warehousing and office development in Mullingar. The financial contribution condition was revised downwards based on the calculation of discounting the commercial floor area to be demolished for the purposes of calculating the financial contribution. Under PL84.233031, where planning permission was sought for the demolition of an existing habitable dwelling and the construction of a mixed use residential scheme at Lodge Road, Westport, County Mayo the Board gave credit for the demolition of the existing house and the floor space associated with the gym for the purposes of calculating the financial contribution downwards.

13.6 It is apparent that a precedent has been set by the Board in giving credit for certain existing developments on site in calculating financial contributions that is in line with the requirements of the Development Contributions Guidelines for Planning Authorities (2013). The scheme before the Board as set out in the public notices involves the demolition of “disused light / industrial” buildings and the construction of a discount food store. It is noted that the Tralee Town Council Development Contribution Scheme 2007 makes no distinction in its “Classes of Development” between retails and commercial / industrial. It would appear that retail is categorised under commercial / industrial. Therefore under the terms of the scheme it would appear that the development use being proposed is replacing like with like. It is therefore my view that it would be appropriate in this instance to give credit for the demolition of the light industrial/commercial buildings on-site in calculating the Development Contribution Scheme as adopted by Tralee Town Council Development Contribution Scheme 2007 in line with the precedent set by the Board.

13.7 As set out by the applicant the resulting calculation associated with Condition No. 2 should be as follows resulting in an overall net reduction in gross floor area:

| | | |
|----|-------------------------------------|------------|
| A: | Total Proposed Gross Floor Area - | 2,767 sq m |
| B: | Total Demolition Gross Floor Area - | 4,805 sq m |

A – B = Residual Gross Floor Area to be Utilised

2,767 sq m – 4,805 sq m = -2,038 sq m

13.8 Having regard to the overall net reduction in residual Gross Floor Area associated with the proposed development site, the established precedent set by the Board together with the Development Contributions Guidelines for Planning Authorities (2013) it is recommended that Condition No. 2 be deleted in its entirety.

14.0 SUPPLEMENTARY DEVELOPMENT CONTRIBUTION (CONDITION NO 3)

14.1 Condition No 3 requires the developer to pay the sum of €81,100.77 to Kerry County Council as a contribution to the cost of the provision of Tralee Ring Roads Project in accordance with the Council Supplementary Development Contribution scheme for Tralee Ring Roads Project. Section 49 (supplementary) schemes relate to separately specified infrastructural services or projects – such as roads, rail or other public transport infrastructure – which benefit the proposed development.

14.2 The applicant submits that Kerry County Council failed to have regard to the existing development on site to be demolished whereby the Supplementary Development Contribution should be based on the net increase in residual Gross Floor Area, i.e. the existing floor space should be credited to the permitted new floor area. It is submitted that this ‘crediting’ is an implicit requirement on the basis of precedents established by the Board and does not have to be explicitly stated in the scheme.

14.3 The applicant sets out that Section 49 of the *Planning and Development Act, 2000-2015* provides that a Planning Authority may adopt a Supplementary Development Contribution Scheme in respect of a particular “*public infrastructure service or project... that will benefit the development to which the permission relates when carried out*”. The *Department of Environment, Heritage and Local Government Circular PD4-2003* also states in relation to Supplementary Development Contributions that “*they should only be used where the project will bring a direct benefit to the developments which it serves*”.

- 14.4 Similar to the appeal against Condition No 2 it is submitted that the proposed development comprises a total proposed gross floor area of 2,767 sq. m and that the proposed development comprises the demolition of an obsolete light industrial/commercial buildings with total demolition gross floor area of 4,805 sq. m. Therefore the effect is that there is an overall net reduction in residual Gross Floor Area associated with the proposed development site.
- 14.5 It is considered that Condition No. 3, in its current format offends Section 48(3)(b) of the *Planning and Development Act, 2000-2015* which states *inter alia* that “*any benefit which accrues in respect of existing development may not be included in any such determination*”. *Kerry County Council Supplementary Development Contribution Scheme* is subject to the provisions of Section 49 of the *Planning and Development Act, 2000-2015* and acknowledged that “*any benefit that accrues in respect of existing development*” has been excluded. It is submitted that the principle of allowing a ‘credit’ where light industrial/commercial buildings floor space are to be demolished is well established, and evidenced in a variety of An Bord Pleanála Appeal cases, including those as referenced under PL25.226507, PL25.230257 and PL84.233031. It is stated that the existing development to be demolished is in essence serviced light industrial/commercial use buildings and any subsequent permission should benefit from their existence. Therefore it is requested that Condition No. 2 should be deleted in its entirety.
- 14.6 Kerry County Council submits that this payment of €81,000.77 is towards the cost of the Tralee Ring Roads Project and is based on a Supplementary Development Contribution Scheme under Section 49 of the Planning and Development Act 2000 which was adopted by both Kerry County Council and Tralee Town Council. It is stated that the Scheme applies to both (a) residential and (b) retail and non-residential development within the Tralee Environs Local Area Plan and Tralee Town Development Plan boundaries.
- 14.6 As stated previously all planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority. Further, the Development Contributions Guidelines for Planning Authorities (2013) state that all planning authorities are required to include a number of exemptions, waivers and other provision in their development contribution schemes including the a *provision to charge only net additional development in cases of redevelopment projects (e.g. a redevelopment totaling 200m₂ of which 150m₂ is replacing existing development, contribution should only be levied on the additional 50m₂)*. I would add that while the Guidelines focus predominantly on General Development Contribution Schemes and Special Development Contribution Schemes (Section 48 and 48(2)(c) it is stated that the *general principles of the guidance also apply to Supplementary (Section 49) Contribution Schemes*. I

have considered the Kerry County Council Supplementary Development Contribution Scheme for the Tralee Ring Roads Project (2010) and note that it provides no categories of exemptions from the requirement to pay development contributions that are applicable to this scheme. However it is noted that the 2007 Scheme pre-dates the 2013 Guidelines.

- 14.7 With regard to the precedent referred to by the applicant it is noted that under PL25.226507, where planning permission was sought for the demolition of two habitable dwellings and the construction of 17 houses in Mullingar, County Westmeath, the Board does not appear to have given credit for the demolition of the two existing houses in its calculation and application of the Supplementary Development Contribution Scheme. Under PL84.233031, where planning permission was sought for the demolition of an existing habitable dwelling and the construction of a mixed use residential scheme at Lodge Road, Westport, County Mayo the Board does not appear to have given credit for the demolition of the existing house and the floor space associated with the gym for the purposes of calculating the Supplementary Development Contribution. It is noted that under PL25.230257 the Board likewise did not give credit for the demolition of existing commercial development in terms of the Supplementary Development Contribution Scheme when granting planning permission for retail warehousing and office development in Mullingar.
- 14.8 While there is a precedent for the Board giving credit for certain existing developments on site in calculating S48 Financial Contributions it appears that there is no similar precedent for giving credit for the purposes of calculating the S49 Supplementary Development Contribution. As set out previously, the 2013 Guidelines recommend that development contribution schemes include the *provision to charge only net additional development in cases of redevelopment projects*. However unlike the S48 Development Contribution Scheme the Section 49 Supplementary Development Contribution Scheme is to be *used where the project will bring a direct benefit to the developments which it serves*.
- 14.9 The S49 Scheme states that a *supplementary scheme is needed for the implementation of the Tralee Ring Roads Project as it is critical to the development and implementation of an integrated traffic management plan for the town and its environs and will facilitate the co-ordinated growth of the town into the future*. Kerry County Council has determined, under the terms of the S49 Scheme that this supplementary development contribution applies to all lands within the development boundary of the Tralee Environs Plan and the Tralee Town Development Plan. It is my view that its application in this case is reasonable particularly as the Tralee Ring Roads Project is a public infrastructure project benefitting development in the area and is separate from

and in addition to the contributions levied under the General Development Contribution Scheme. Accordingly I would have reservations in applying credit for the existing structure in place in this instance.

14.10 The development scheme before the Board as set out in the public notices involves the demolition of “disused light / industrial” buildings and the construction of a discount food store. It is noted that the Section 49 Scheme makes no distinction in its “Development Types” and therefore Table 2 “Level of Contribution Payable” is applicable as follows:

Total Proposed Gross Floor Area 2,767 sq.m m x Retail and other non-residential development @ €29.31 = €81,100.77

14.9 Overall I am satisfied that the terms of the Section 49 Supplementary Development Contribution for the Tralee Ring Roads were properly applied in this instance. I therefore recommend that the planning authority be directed to attach Condition No 3 without amendment.

15.0 SPECIAL DEVELOPMENT CONTRIBUTION (CONDITION NO 5)

15.1 Condition No 5 requires the developer to pay a special contribution of €37,000 towards the cost of implementation of the following schedule of works:

| Proposed Infrastructure and Facilities | Estimated Cost (EUR) |
|--|----------------------|
| Public Footpaths (Upgrade concrete footways in the area: 100m x x2m x €75 per sq.m) | €15,000 |
| Public Car Park (Resurface Slatt’s Car Park Entrance: 1000 sq.m x €20 per sq.m) | €20,000 |
| Road Markings (Upgrade of existing road markings in the area) | €2,000 |

15.2 The applicant submits that the special development contribution does not constitute ‘*specific exceptional costs not covered by a scheme*’ in that the works specified comprise maintenance related works. It is stated that that the actions and applicant’s responsibilities imposed by Conditions Nos. 15 and 16 attached to Kerry County Council’s *Notification of Decision to Grant Permission* are in line with the requirements associated with the requirement to pay a total Special Development Contribution of €37,000 as conditioned under Condition No. 5. However as the applicant will be undertaking the works (roadway, footpaths and road marking) required under Condition No. 15 at their own expense, as well as being liable for the expense incurred

associated with Condition No. 16, it is submitted that this would constitute 'double charging'. It is requested that Condition No. 5 be deleted in its entirety.

- 15.3 Kerry County Council states that they require the payment in respect of public infrastructure facilities benefitting the proposed development as a special contribution within the meaning of Section 48(2)(c) of the Planning and Development Act 2000. It is stated that the details of the proposed works and the associated costs are set out in report dated 29th April 2016 from Operations Department, Tralee Municipal District Office. I have considered this report available on file and note that it does not provide for the specific details of the *proposed works and the associated costs* as set out in Condition No 5. Rather, it would appear that the details and costs pertaining to this Special Development Contribution are set out in the Local Authority Planners second report only.
- 15.4 The Operations Department sets out the general engineering works to be carried out by the developer to ensure the satisfactory completion of the proposed development and to ensure that any damage to public infrastructure as a direct result of the construction process is repaired and / or refurbished to the satisfaction of the Planning Authority; Condition No 15 refers. This is considered to be a reasonable and widely accepted approach for dealing with such matters. I consider the works outlined in Condition No 15 to be distinct and separate from those outlined in Condition No 5.
- 15.5 With regard to Condition No 5 the Board will be aware that a special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition and only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution.
- 15.6 While I am satisfied Special Contribution Condition No 5 outlines the works to be carried out by the local authority to which the contribution relates i.e. upgrade public footpaths, resurface Slatt's Car Park and upgrade existing road markings I am not satisfied that these works are precise or that a clearly specific exceptional costs, which is not envisaged in the Tralee Town Council General Development Contribution Scheme has been demonstrated. It is my view that upgrading concrete footways *in the area*, resurfacing Slatt's car park entrance and upgrading existing road markings *in the area* are not a specific exceptional cost that has not been covered by the general contribution

scheme for the area or that will be incurred by the local authority in the provision of public infrastructure or facilities which will benefit the very specific requirements of the proposed development. It is my view that only development that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution. In this case I am not satisfied that it has been demonstrated that only this development will benefit from works in question or that the developer should be liable to pay the special development contribution.

- 15.7 Overall I do not therefore consider these particular works to be a specific exceptional cost over and above that already covered by the General Development Contribution Scheme. It is recommended that the Board directs the Council to omit Condition No 5.

16.0 APPROPRIATE ASSESSMENT

- 16.1 For clarity and completeness I have had due regard to the provisions of the Habitats Directive. The Screening for Appropriate Assessment Report prepared by Scott Cawley accompanying the planning application found no records of any species for which European Site area designated within or immediately adjacent to the proposed site. European Sites within 15km of the appeal site are as follows:

- Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070)
- Ballyseedy Wood SAC (002112)
- Slieve Mish Mountain (002185)
- Lower River Shannon SAC (002165)
- Akeragh, Banna and Barrow Harbour SAC (000332)
- Castlemaine Harbour SAC (000343)
- Magharees Islands SAC (002261)
- Tralee Bay Complex SPA (004188)
- Stacks to Mullaghareirk Mountains, Wet Limerick Hills and Mountain Eagle (004161)
- Castlemaine Harbour SAP (004029)

- 16.2 The report further identified that a number of European Sites in Tralee Bay lie within the potential zone of influence of surface and foul effluent discharges from the proposed development. Tralee Bay contains two European Sites namely Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070) and Tralee Bay Complex SPA (004188). The report concluded that no European Sites were deemed to be at risk of likely significant effects from construction or operation of the proposed development. It further states that the contribution of other potential projects in the same area was also assessed in the screening exercise.

16.3 It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Tralee Bay and Magharees Peninsula, West to Clohane SAC (002070) and Tralee Bay Complex SPA (004188), or any other European site, in view of the site's Conservation Objectives, and that a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

17.0 CONCLUSION & RECOMMENDATION

17.1 Having regard to the nature of the conditions the subject of the appeal and based on the reasons and considerations set out below, I am 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 recommend that the Board directs the Council under subsection (13) (a) of Section 48 of the Planning and Development Act, 2000 (as amended) to **OMIT** Condition No 2, **ATTACH** Condition No 3 and **OMIT** Condition No 5 so that they shall be as follows:

18.0 GENERAL DEVELOPMENT CONTRIBUTION (CONDITION NO 2)

18.1 Having regard to Section 48 of the Planning and Development Act, 2000 and, based on the reasons and considerations set out below, the Board directs the said Council to **OMIT** condition number 2 and the reason therefore

18.2 **Reasons and Considerations** - Having regard to the provisions of the Tralee Town Council Development Contribution Scheme it is considered appropriate to take into consideration the existing disused light / industrial buildings on site which are to be demolished in the calculation of the relevant General Contribution Scheme. As a result there is an overall net reduction in residual Gross Floor Area associated with the proposed development site and therefore the General Development Contribution Scheme would not be applicable to the scheme.

19.0 SUPPLEMENTARY DEVELOPMENT CONTRIBUTION (CONDITION NO 3)

19.1 Having regard to Section 48 of the Planning and Development Act, 2000 and based on the reasons and considerations set out below, the Board directs the said Council to **ATTACH** condition numbers 3 and the reasons so that they shall be as follows for the reasons stated.

***Condition No 3** – Prior to the commencement of development, the developer shall pay a contribution of €81,100.77 to Kerry County*

Council (the Planning Authority) as a contribution to the cost of the provision of Tralee Ring Roads Project. The amount of the contribution is calculated in accordance with the Council Supplementary Development Contribution scheme for Tralee Ring Roads Project and will be increased annually in line with the Wholesale Price Index from Capital Goods, Buildings and Construction as published by the Central Statistics Office from 1st January 2017.

Reason: *It is considered appropriate that the developer should contribute towards the cost of facilities as provided for in the Councils prevailing Supplementary Development Contribution Scheme made in accordance with Section 49 of the Planning and Development Act 2000 and the level of contribution payable should increase at a rate and in the manner specified in the scheme.*

19.2 **Reasons and Considerations** - Having regard to the provisions of the Tralee Town Council Development Contribution Scheme and the Kerry County Council Supplementary Development Contribution Scheme for the Tralee Ring Roads Project it is considered that the Supplementary Contribution Schemes do not duplicate schemes applicable under the General Development Contribution Scheme. It is also considered that the Supplementary Contribution Scheme for the Tralee Ring Roads Project was properly applied.

20.0 SPECIAL DEVELOPMENT CONTRIBUTION (CONDITION NO 5)

20.1 Having regard to Section 48 of the Planning and Development Act, 2000 and, based on the reasons and considerations set out below, the Board directs the said Council to **OMIT** condition number 5 and the reason therefore

20.2 **Reasons and Considerations** - The Board considers that condition number 5 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' and that the said condition is not amenable to being applied in accordance with the provisions of section 48 (12) of the Act. 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.

Mary Crowley,

Senior Planning Inspector
8th September 2016