



An
Bord
Pleanála

Inspector's Report

Development	Removal of disused farm buildings and construction of 61 no. dwellings and ancillary works at Annabella, Mallow, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	15/6119
Applicant	Hallmark Building Services Ltd.
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Appellant	Hallmark Building Services Ltd.
Type of Appeal	1st Party v. condition
Observer(s)	None
Inspector	Pauline Fitzpatrick
Date of Site Inspection	01/09/16

1.0 SITE LOCATION AND DESCRIPTION

- 1.1. The site, which has a stated area of 3.98 hectares, is within the townland of Annabella to the north-west of Mallow town centre. It is accessed from the L1203 - Kennel Hill Road. The local road connects with the L9000 and N72 to the south-east. The site is elevated to the north of the River Blackwater Valley with the rail line and the N20 to the east and the N72 to the south
- 1.2. The site forms part of a larger field currently in agricultural use with falls both to the south and north. The site is bounded by The Paddocks housing estate to the east with the boundary delineated by a hedgerow. A single storey dwelling adjoins the site in the south-eastern corner. The disused farm buildings to be removed are alongside the roadside boundary with the remainder of the boundary delineated by a hedgerow. Single dwellings and access to the Derville Housing Estate are on the opposite side of the road.
- 1.3. The 50kph speed limit of the town is positioned at the south-eastern corner of the site. Whilst the local road along the road frontage retains its rural character there are footpaths and street lighting noted to the east connecting the various housing estates developed on the intervening lands to the town.

2.0 PROPOSED DEVELOPMENT

- 2.1. The application was lodged with the planning authority (PA) on the **22/09/16** with further plans and details received **29/04/16** following a request for further information (FI) on the 13/11/15. Unsolicited FI was received **06/06/16**.
- 2.2. The application as lodged sought permission to:
 - remove derelict farm buildings
 - construction of 61no. dwellings of varying detached and semi-detached designs
 - New entrance from the local road

- Site services including provision of stormwater attenuation tank at Woodview Drive

The application is accompanied by:

- Planning Report
- Traffic and Transport Assessment
- Road Safety Audit – Stage 1
- Engineering Design Report
- Screening for AA Report
- Construction and Environmental Management Plan
- The proposal is to form Phase 1 of an envisaged 3-phase development on an overall holding of 13 hectares which could provide for in the region of 200 dwellings with a crèche proposed in phase 2.

2.3. A request for further information (FI) was issued on 13/11/15. An extension of time was granted until 22/08/16.

2.4. A response to the FI was received 28/04/16 with a reduction in the number of dwellings from 61 to 58. The submission is accompanied by:

- Revised AA –Screening
- Revised Construction and Environmental Management Plan
- Bat survey
- Report on Bio-security Measures during Construction Phase
- Traffic and Transport Addendum
- Photomontages

2.5. Unsolicited FI dated 06/06/16 pertains to the construction of the attenuation tank and outfall.

3.0 **PLANNING AUTHORITY DECISION**

3.1. **Decision**

The PA decided to grant permission subject to 70 conditions. Of note:

Conditions 13 – 28: Public lighting requirements.

Condition 65: Special contribution towards road improvement works, provision of public lighting and recreation and amenity facilities in compliance with Council policy.

Condition 70: Financial contribution in accordance with section 48 scheme.

3.2. **Planning Authority Reports**

3.2.1. The **Executive Planner's** report dated **12/11/15** notes that higher densities could be achieved in later phases on the overall holding. A greater mix of house types incorporating smaller units would be preferable. Given the elevated nature of the site the scheme would be prominent on the ridgeline when viewed from the south of Mallow town. It should be demonstrated how the proposal will integrate with the future developments to the west and north and associated amenities. A refusal of permission is in accordance with the recommendation of the Ecologist as summarised below is recommended. FI is recommended should the application be considered further. The issues cited include those as summarised in the technical reports below in addition to matters pertaining to visual impact, improved connectivity and permeability throughout the site, variation in house design and mix, landscaping, and compliance with Part V. The **2nd report** dated **02/6/16** following FI recommends clarification on protection of water quality during the construction of the attenuation tank and outfall. The **3rd report** dated **07/06/16** details a schedule of conditions following a request from management.

3.2.2. The **ASenior Planner** in a report dated **13/11/15** considers that the applicant should be afforded the opportunity to address the concerns with respect of AA. In terms of traffic, of concern is the fact that a considerable amount of land is zoned for

development off Kennel Hill. To achieve this level of development will necessitate an examination of the junction's capacity and exploration of alternative solutions. The issues relating to design as detailed in the Planner's report need to be addressed. The mix and range of design of houses is considered reasonable. A request for FI is recommended. The **2nd report** dated **07/06/16** following FI considers that the layout changes including reduction in the number of dwellings to be acceptable. The conclusions of the AA-Screening report are accepted in that the proposal will not give rise to negative effects on the SAC arising from nutrient loadings as the Mallow WWTP is functioning in accordance with license conditions, is not having negative effects on water quality and has available capacity. The outstanding issues regarding the Blackwater SAC are addressed in the unsolicited FI. A grant of permission subject to conditions is recommended.

3.3. Other Technical Reports

- 3.3.1. The **National Roads Office** in a report dated **10/11/15** considers the application to be premature. The junction of Kennel Hill and the N72 is an area of concern and the issue of access needs to be addressed. The TIA needs to be re-examined particularly at the Kennel Hill junction as the projected traffic volumes appear to be very low. The **2nd report** dated **02/06/16** following FI recommends a €1000 per dwelling contribution towards a roundabout at the Kennel Hill/N72 junction and the relocation and upgrade of the N20/N72 Annabella roundabout.
- 3.3.2. The **Area Engineer** in an undated report recommends FI on drainage, proposed attenuation tank, roads, traffic figures used, traffic analysis of the Kennel Hill – N72 junction, sightlines and footpaths. The **reports** dated **31/05/16** and **03/06/16** following FI have no objection subject to conditions.
- 3.3.3. **Public Lighting** report dated **09/10/15** has no objection and details conditions should permission be granted.

- 3.3.4. The **Ecologist's** report dated **10/11/15** notes that the water quality data at the Mallow WWTP indicates that the receiving river (River Blackwater) is not meeting standards required to maintain a population of Freshwater Pearl Mussel in the river and that the development would be likely to further contribute to increasing concentrations of nutrients. Any increase in nutrient levels to the river would interfere with the achievement of the conservation objective which has been set for the said species in the SAC and would be likely to have an adverse effect on the integrity of the SAC. It is considered that this issue will be difficult to overcome and a refusal of permission is recommended. FI is detailed should same be sought including need for a NIS. The **2nd report** dated **02/06/16** following FI recommends clarification of FI on procedures to be implemented to provide for the protection of water quality during construction of the attenuation tank and outfall, whether dewatering will be required in addition to clarification in relation to treatment disposal of wash down water from the site.
- 3.3.5. The **Estates** report dated **24/11/15** considers that the impact of traffic generated by the construction of the estate will be huge and additional traffic management systems will have to be incorporated into the area to regularise the traffic. There are also issues in relation to the provision of sufficient water services. A schedule of conditions is detailed should permission be granted. The **2nd report** dated **02/06/16** has no objection subject to conditions.
- 3.3.6. **Housing Officer** in a report dated **02/06/16** following FI has no objection to the transfer of 6 units under Part V.
- 3.3.7. **Inland Fisheries Ireland** in a report dated **11/01/15** is not opposed in principle to the development but that the Council should be satisfied that there is adequate capacity in the treatment works in Mallow. SUDS measures should be adequately addressed. Measures to be taken during the construction phase are detailed.
- 3.3.8. **Irish Water** in a report dated **29/10/15** has no objection.

3.4. Third Party Observations

Objections/observations received by the PA have been forwarded to the Board for its information. Issues raised relate to traffic, need for traffic calming measures and footpaths, impact on residential amenities of adjoining property and services.

4.0 PLANNING HISTORY

The planning history of the site and land in the vicinity are set out in the Planner's reports on file.

5.0 POLICY CONTEXT

5.1. Mallow Electoral Area Local Area Plan 2011 (amended December 2014)

The bulk of the site is within an area zoned R-05 – medium density residential development, subject to compliance with development boundary objectives, satisfactory access, servicing and landscape provision. Creche to be provided. Watercourses, woodland and riparian habitats on site shall be retained and protected. Field boundaries, hedgerows, and other features of biodiversity value should be protected where possible and integrated into new development.

The north-eastern section of the site is within the area zoned for residential development in the Mallow Town Development Plan 2010-2016

5.2. Cork County Development Plan

Objective HOU 4-1 – Medium density 'A' residential density will be applicable in city suburbs, larger towns over 5,000 population and rail corridor locations and should generally be between 20-50 dwellings per hectare for areas zoned medium density.

In terms of recreation and amenity:

Objective SC 5-2 - a) Public Open Space within Residential development shall be provided in accordance with the standards contained in 'Cork County Council Recreation & Amenity Policy', the 'Guidelines on Sustainable Residential Development in Urban Area' and 'Making Places: a design guide for residential estate development. Cork County Council Planning Guidance and Standards Series Number 2'.

b) promote the provision of high quality, accessible and suitably proportioned areas of public open space and promote linking of new open spaces with existing spaces to form a green infrastructure network.

Objective SC 5-4 -seek opportunities to improve the quality and capacity of existing recreation and amenity facilities, through initiatives with both public and private sector (sports governing bodies, local community partnerships and private development proposals) and where appropriate the Council will use its powers under Section 48 of the Planning and development Act 2000 to require development levies to achieve the enhancement of these facilities.

6.0 NATURAL HERITAGE DESIGNATIONS

The site is c. 450 metres to the north of the River Blackwater (Cork/Waterford) SAC (site code 002170).

7.0 THE APPEAL

7.1. Grounds of Appeal

The submission by McCutcheon Halley Walsh on behalf of the applicant against condition 65 attached to the PA's notification of decision to grant permission can be summarised as follows:

- The appellant is not contesting the special contribution charge sought for the provision of a roundabout at the N72/Kennell Hill (L1203)/L9000 junction and

the relocation and upgrade of the N70/N72 roundabout at Annabella referred to in the condition. The appeal is specifically against the contribution relating to recreation/amenity and public lighting.

- There is an onus on the PA to demonstrate that the provision of amenity facilities and works in Mallow Town Park and in the vicinity of Mallow Castle are exceptional in the sense that they could not have been envisaged when the general scheme was approved, that they would benefit the proposed development rather than the general area, and that the costs would not be incurred if the proposed development did not proceed.
- The application of the contribution is speculative towards ‘amenity projects in the town’ and not specific to the development. The extent and exceptional nature of the works are not specified or detailed in the PA’s decision. It is based on a loose recommendation from the Area Engineer only providing the overall cost of ongoing projects it could potentially be directed towards. This is exacerbated by the fact that the amenities relied upon to justify the special contribution are remote from the development (2.5km distant).
- The Town Park and Mallow castle are existing amenities. Tree trimming is a general maintenance duty which would still be incurred if the development did not proceed.
- The total cost of the projects outlined by the Area Engineer equals €530,000 of which the applicant is expected to contribute 20% (€110,400). This is disproportionate taking the scale of the proposed development.
- Taken in conjunction with general development contribution towards recreational amenity it constitutes a double charge.
- Condition 65 requires a special contribution towards public lighting provision whilst conditions 13-28 attached to the PA’s decision require the applicant to provide public lighting including lighting on the public road along the curtilage of the site.
- The Council has failed to identify the specific public lighting provision to justify the special contribution.

- There are a number of precedents where the Board has omitted special development contributions comparable to that subject of the appeal (PL04.234024, PL04.238720 & PL04.232458)

7.2. Planning Authority Response

The submission can be summarised as follows:

- The County Council adopted a Recreation and Amenity Policy in 2006. Reference is made to same in objectives SC5-2, SC5-5 and SC5-6 of the County Development Plan, 2014.
- It is an objective of the said policy to ensure that all new development make adequate provision for the full range of recreational and amenity activities sufficient to meet the needs of the development. It requires that recreation facilities be provided at a rate of 1 point per 6 housing units. A minimum of 30% must be provided on site, with the remainder provided on site or off site at an agreed location. Where deemed appropriate a cash equivalent may be accepted to enable the Local Authority provide some of the recreation facilities.
- There is an under provision of play area units/points on the appeal site. In order to deal with the shortfall of 6 points the PA has attached the charge of €110,400 (€18,400 x 6) by means of a special contribution in accordance with the terms of the policy.
- Given the scale of the development which will generate additional demand and the requirements of the Council's Recreation and Amenity Policy, which are not covered by the adopted general contribution scheme a special contribution is required.
- The funds will be allocated to contribute towards the provision of a network of amenity walkways to improve accessibility and recreational amenity resources in the town and to upgrade existing recreational facilities. The overall programme will facilitate pedestrian connectivity from a walk along the stream to the north-east of the site to the town park/Mallow Castle grounds. As part

of a current planning application (ref. 15/6970) on a site to the north east of the site there is provision for an amenity walk along the stream which will form part of this amenity walkway network. It is envisaged that this will be replicated on zoned lands further to the west.

- The contribution will be directed towards specific projects with direct links to the site in order to satisfy the additional demand for recreation and amenity facilities which are not covered by the general contribution scheme. The contribution complies fully with the requirements of the Recreation and Amenity Policy.
- The specific projects (map attached) and associated costs are:
 - Amenity walk to north-east of site to link with existing walkway to west of railway line €30,00
 - Extend existing riverbank walkway to north of Blackwater River within the town on a phased basis €95,000
 - Provide two pedestrian bridges over river €50,000
 - Project to upgrade the grounds of Mallow Castle to the east is currently at contract stage. The projected cost is €430,000
 - Project to upgrade existing walkways on north side of Blackwater River to east of the town with the projected cost being €100,000.
- Additional works are required to upgrade the public lighting infrastructure along the adjoining public road from the entrance to the Woodview housing development to the south-east up to the site. The developer will carry out public lighting works along the roadside boundary of the site. The costs are associated with groundworks, the provision of columns, brackets and LED lanterns, installation and reinstatement works. A detailed breakdown of the costs is provided.

7.3. Observations

None

8.0 ASSESSMENT

8.1. As the appeal is solely against condition 65 pertaining to the application of a special financial contribution, Section 48 (13)(a) the Planning and Development Act 2000, as amended, applies which requires that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal.

8.2. I note that Condition 70 attached to the PA's notification of decision requires a development contribution of €171,625.92 in accordance with the development contribution scheme made under Section 48 (2)(a) of the Act. This condition is not subject to appeal.

8.3. Condition 65 requires the payment of a special contributions as follows:

- €58,000 towards the provision of a roundabout at the N72/Kennell Hill/L9000 junction and relocation and upgrade of N20/N72 roundabout
- €110,400 compliance with the Recreation and Amenity Policy
- €25,000 towards provision of public lighting

8.4. The applicant has no objection to the contribution towards the road improvement works detailed above and is specifically appealing the contribution sought towards recreational amenities and public lighting. However as the condition in its totality is subject of review I consider it appropriate to comment on all matters arising.

8.5. 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 whereby demands likely to be placed on public services and facilities are deemed to be exceptional thereby incurring costs not covered by the General Development Contribution Scheme of the Council.

Any condition imposed under this section must '*specify the particular works carried*

out or proposed to be carried out by the local authority to which the condition relates'. This requirement to identify the nature / scope of the works, the expenditure involved and the basis for its calculation, including how it is apportioned to the particular development, is of relevance and includes a mechanism whereby special contributions can be refunded to the applicant in the event that the works in question are not commenced or are not completed within the required timescales.

- 8.6. The question in this appeal is whether the stipulated works can be taken to fall within the category for which a special contribution might be sought.

Recreation and Amenity

- 8.7. In terms of the contribution towards recreational amenities it appears that this condition has been imposed on the basis that the Planning Authority has determined that the proposed development fails to meet the minimum requirements of the Council's Recreation and Amenity Policy, 2006 as regards the provision of recreational and amenity facilities and, therefore, it is proposed to address this shortfall by way of a special development contribution in lieu of the provision of such facilities.

To put the matter in a policy context I note that the objective SC 5-2 of the current County Development Plan requires public open space within residential development to be provided in accordance with the standards contained in 'Cork County Council Recreation & Amenity Policy', the 'Guidelines on Sustainable Residential Development in Urban Area' and 'Making Places: a design guide for residential estate development. Cork County Council Planning Guidance and Standards Series Number 2'. It is also an objective (SC5-4) to seek opportunities to improve the quality and capacity of existing recreation and amenity facilities, through initiatives with both public and private sector (sports governing bodies, local community partnerships and private development proposals) and, where appropriate, the Council will use its powers under Section 48 of the Planning and

development Act 2000 to require development levies to achieve the enhancement of these facilities.

- 8.8. Accordingly, I would refer the Board to the Cork County Council Recreation and Amenity Policy, 2006 and, in particular, to Appendix A of same which sets out the minimum criteria with regard to the provision of recreational facilities as part of new housing developments. This states that recreational facilities are to be provided at a rate of '1 point per 6 no. housing units' with facilities such as neighbourhood play areas, tennis courts and playing pitches being awarded a points value. A minimum of 30% of the points value is required to be satisfied by the provision of local facilities on site with the remainder of the points requirement to be addressed by way of the provision of facilities either on site or off-site at an agreed location. Where deemed appropriate, a cash equivalent may be accepted to enable the Local Authority to provide some of the recreational facilities and, in these instances, the monies raised are only to be spent on the provision of recreational facilities to serve the development from which the cash equivalent has been raised.
- 8.9. As per the PA's response to the grounds of appeal the recreation and amenity space required by the proposed development would be the equivalent to 10 points. The allocation on site comprising of play areas total 4 points which meets the minimum 30% on site provision (4 points equivalent to 40%). The special contribution applied in this instance is for the shortfall of 6 points at a rate of €18,400 per point with no detail provided as to the source of this financial requirement.
- 8.10. The applicant has submitted that the inclusion of the special development contribution essentially amounts to double-charging on the basis that the contribution sought by Condition No. 70 pursuant to the General Development Contribution Scheme also includes for the collection of monies towards the provision of recreation and amenity facilities. It is claimed that the combination of the special and general development contributions towards recreation and amenity facilities is disproportionately high.

- 8.11. Having reviewed the submitted information, I would tend to concur with the applicant that the special development contribution could at least be perceived as ‘double-charging’ for the provision of recreational and amenity facilities. Notably, Appendix ‘A’ of the Recreational and Amenity Policy is clear that a minimum of 30% of the points requirement is to be satisfied through the provision of on-site facilities whereas the remainder could be met by the provision of facilities either on-site or off-site at an agreed location. It would appear that the option of a ‘cash equivalent’ towards any shortfall in the points allocation is intended to be the exception rather than the rule and in this respect I note that Section 5.5.9 of the Development Plan specifically states that a financial contribution to the Council, in order to enable it to make appropriate alternative arrangements in lieu of the provision of the required facilities by the developer, is only to be accepted in exceptional circumstances. I would also submit that the applicant was not afforded the opportunity to present alternative proposals to provide additional play facilities etc. either on site or off site especially in view of the larger landholding in its ownership and plans for future development.
- 8.12. 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.
- 8.13. 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.

Public Lighting

- 8.14. Much the same difficulty arises with the special contribution towards public lighting provision required. The PA notes that whilst the applicant is to provide the public lighting along the site boundary and that conditions 13 – 28 address provision along same and within the site additional, expenditure arises in upgrading the lighting from the site south-eastwards on Kennel Hill towards the town.
- 8.15. As noted the stretch of road referred to provides access to existing residential development including a number of housing estates including Dernville, Westbury Heights and Woodview and quite clearly the upgrade works would benefit more than just the proposed development. I submit therefore that the costs arising would not be specific to the proposed development nor exceptional as to warrant further contribution over and above that covered by the general contribution scheme. Any improvement works would be of general benefit to the wider community.

Road Improvement Works

- 8.16. A contribution is also required towards the provision of a roundabout at the junction of Kennel Hill and the N72 and upgrade works to the roundabout at the N72 and N20. Having regard to the Traffic Impact Assessment that accompanies the application which was revised by way of an Addendum, consequent to the Planning Authority's concerns as expressed in the further information request, it is acknowledged that as part of the long term strategy for the wider zoned lands in the applicant's ownership a 28 metre Inscribed Circular Diameter Roundabout at the Kennel Hill (L1203)/N72/L9000 is proposed. Whilst the PICADY analysis of the junction shows that, in isolation, the junction would work under capacity the queuing at the junction would be as a result of queuing at the Annabella roundabout (N70/N72) and the interaction of the two junctions. As such the proposed works

would benefit the proposed development and future development of other zoned lands in the vicinity.

8.17. I therefore consider the special contribution towards the detailed works to be acceptable. A figure of €1000 per dwelling unit is detailed. As noted above the applicant has no objection to the requirement.

9.0 RECOMMENDATION

Having regard to the information on the file, the grounds of appeal, the responses thereto and the assessment above I recommend that the Board directs the PA to **AMEND** condition 65 as follows for the reasons and considerations as detailed.

The developer shall pay the sum of € 58,000 (fifty eight thousand euro) (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), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of the provision of a roundabout at the L1203 (Kennell Hill) /N72 /L9000 junction and relocation and upgrade of the N70/N72 (Annabella) roundabout. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may 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 will benefit the proposed development.

REASONS AND CONSIDERATIONS

It is considered that the planning authority has not demonstrated that there are specific exceptional costs in terms of the provision of recreation and amenity facilities and public lighting arising from the proposed development that would benefit the proposed development in this instance. Therefore, it is considered that the special financial contributions as proposed by the planning authority for such facilities does not come within the scope of section 48(2)(c) of the Planning and Development Act, 2000, as amended, and accordingly, would be unwarranted.

It is considered that it has been demonstrated that there are specific exceptional costs in terms of road improvements arising from the proposed development that would benefit the proposed development in this instance.

Pauline Fitzpatrick

Inspectorate

September, 2016