



An  
Bord  
Pleanála

## Inspector's Report PL04.247607.

---

<b>Development</b>	Construction of 88 number residential units and all associated works.
<b>Location</b>	Annabella, Mallow, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	15/6970
<b>Applicant(s)</b>	Canonbridge Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	First Party & Third Party
<b>Appellant(s)</b>	1. Canonbridge Ltd. 2. Dominic and Margaret McEntee
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	8 <sup>th</sup> February 2017
<b>Inspector</b>	Fiona Fair.

## 1.0 Site Location and Description

The site, with a stated area of 3.8ha, is located 600 meters west of Mallow town centre, in townlands known as Annabella, County Cork. The site comprises a large, grassed field which slopes steadily downhill from southwest to northeast – there being a fall of some 30m. The eastern section of the site (0.67 ha), which adjoins Woodview Drive to the east is in the ownership of Cork County Council, who have consented to the inclusion of said lands in the proposed development. There are some clumps of gorse and briars within the field and I evidenced some dumping of rubbish on the eastern part of the site, adjoining the boundary with Woodview Drive.

The site is accessed via the existing Annabella Park housing estate to the south. The cul de sac leading to the site culminates at a farm gate. This cul de sac serves four bungalows – each with its own separate driveway. The corner house was boarded-up on the date of site inspection. There is a footpath on the side of the road on which the houses are located. Leyland Cyprus trees on the opposite side of this road have become overgrown and are encroaching onto the carriageway, restricting its width. This restriction impacts on the ease with which two cars can pass simultaneously and can turn into and out of the driveways of the aforementioned four houses.

The Annabella Park housing estate comprises a single storey housing development of detached units, while to the east the Woodview Estate consists of two storey terraced dwellings. The southern boundary with Annabella Park comprises part concrete block wall, part concrete post and chainlink fencing and part hedge. To the west the site abuts agricultural land, the boundary of which comprises a hedgerow with some mature trees. To the north, the site abuts mature deciduous woodland and agricultural land – the boundary with which is a stream. To the east, the site abuts two-storey terraced housing in the Woodview Drive estate, the boundary with which comprises a 2.4m high concrete block wall which is capped but not plastered. Part of this wall is surmounted by 1m high palisade fencing.

There is a surface water outfall through this site discharging across the final 10m of open ground to the stream.

## 2.0 Proposed Development

The proposed development comprises a residential development of:

- 88 number residential dwellings
  - 58 two and a half storey four bedroom semidetached units
  - 14 two storey three bedroom semidetached units
  - 8 two storey three bedroom terraced units
- Vehicular access, parking, footpaths, foul and storm water drainage (including the provision of a surface water attenuation tank)
- Landscaping and amenity areas
  - Three large areas of public open space and a smaller area to the south east totalling 4,779 sq. m
  - Two playgrounds are proposed, one centrally positioned comprising 306 sq. m and one to the north comprising 589 sq. m
  - An amenity area is proposed along the stream
- Associated ancillary development works

The following reports were submitted with the application:

- A design statement
- Traffic & Transport Assessment-
- Appropriate Assessment Screening Report
- Engineers Report

The proposed development was amended by way of further information and clarification of further information. The total number of dwelling units proposed has been reduced to 86 number.

The following report were submitted by way of further information:

- Revised Screening Report for Appropriate Assessment

- Traffic & Transport Assessment
- Stage 1 Road Safety Audit
- Construction Environmental Management Plan
- Method Statement-Attenuation Tank
- Construction Environmental Management Plan

The primary planning report on file dated 24/02/16 sets out in detail the proposed scheme and the subsequent planning report, dated 03/06/2016, sets out in detail the main changes to the layout. Modifications were made to the layout and design of some dwellings. New house types include A1 (4 bed dormer detached), B1 (3 bed dormer detached), D (3 bed terrace - four units), E (3 bed semi-detached), F (4 bed semi-detached), F1 (4 bed detached). House types D1, D2, D3 have been omitted and house type E (terrace of 3) has been modified.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Following a request for Additional Information with respect to:

1. An up-to-date survey of childcare provision in the vicinity
2. (a) concerns about the excessive level of excavation
  - (b) concerns in relation to overlooking between the proposed two rows of dwellings to the north of the site
  - (c) Overlooking from no. 31 to the private rear garden of nos. 32 and 33
3. (a) Requests a clear site plan.
  - (b) Finished floor levels and finished ridge levels of the dwellings on adjoining sites to the east and south and site sections.
  - (c) Contiguous east/west sections showing the relationship with residences in Woodview Drive.
4. Plans for possible future connectivity with lands to the south west (Reg. Ref. 15/6119).

5. There are concerns about the significant variation in levels between dwelling nos. 41 and 42 to the west of the site. The cycle lane and boundary treatment, should also be reviewed.
6. Concerns about the proposed 5m wide footpath to the north east of the site.
7. Missing – in error?
8. (a) review the use of brick on the elevations. Also, the chimney stacks should be finished in render. (b) submit corrected plans re: rooflights
9. Increase the level of private open space serving house no. 44 to 60 sq m.
10. Review the Traffic and Transport Assessment (TTA), particularly in respect of the junction with Kennel Hill and the N72
11. Requests that a road safety audit (RSA) for the proposed development be prepared and for the connections of the estate road (L9002) with Annabella Park, Woodview Drive and the Paddocks and Kennel Hill (L1203).
12. (a) Details of the proposed connection between the subject site and the L9002. (b) Autotrack analysis in respect of the turning movements of large vehicles, (c) details of road lining drawing. (d) Details of the connection between the raised paved areas and the access roads.
13. Details of provision of pedestrian/cyclist connections within the scheme and how it will terminate at the north western boundary and clarify how it is proposed to connect with the adjoining development and a future amenity walk to the north east.
14. Details of boundary treatment
- 15 & 16. Concerns with respect to future access to the foul sewer and stormwater mains pipework for maintenance purposes along the rear of dwelling nos. 10 to 23 to the south of the site, surface water disposal and drainage.
- 17 & 18. Landscaping of attenuation tank and general landscaping, incl. children's play area and public open space landscape plan.
19. Accessibility for all, incl. access to playgrounds and public open space.
20. Compliance with Part V of the Planning and Development Act.
21. Public lighting.

22. Phasing

23. Habitats Directive Screening Assessment report required.

A Clarification of Further Information with respect to:

- (i) excessive level of excavation and incorporation of split level design,
- (2) revised proposal to address turning movements for trucks and autotrack analysis,
- (3) adequately address the issue of future access to foul sewer and stormwater mains pipework for maintenance purposes,
- (4) proposals for surface water disposal,
- (5) proposals to incorporate hydrocarbon interceptors into the drainage system,
- (6) revised CEMP and
- (7) proposals for treatment and disposal of washdown water.

And a further clarification of information with respect to CEMP on ecological issues and treatment and disposal of wash down water, consequently addressed to the satisfaction of the Heritage Unit, Planning Permission was granted subject to 61 number conditions. Conditions of note include:

Condition 1: ‘...This permission authorises the development of 86 no. dwellings only as shown in option 2 on the site layout plan, drawing no. P-S- 003, submitted on 09/08/16’.

Condition 59. ‘Before any development commences, or, at the discretion of the Planning Authority, within such further period or periods of time as it may nominate in writing, the developer shall provide, to the satisfaction of the Planning Authority, security for the provision and satisfactory completion, including maintenance until taken in charge at the discretion of that Authority, of roads, footpaths, sewers, road lighting, open spaces and other relevant services required in connection with the development. The security shall be a Bond in a form and amount approved by the

Planning Authority and provided by a Bank or Insurance Company acceptable to the Planning Authority’.

Condition 60. ‘At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a special contribution of €178000.00 to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the Council’s General Contributions Scheme, in respect of works proposed to be carried out, for the provision of provision of a roundabout at the N72/Kennell Hill (L1203)/L9000 junction and relocation and upgrade of the N20/N72 roundabout at Annabella (86,000) and compliance with the Recreation and Amenity Policy (92,000). The payment of the said contribution shall be subject to the following: : - (a) where the works in question— (i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment), (ii) have commenced but have not been completed within 7 years of the date of payment of the contribution (or final instalment if paid by phased payment), or (iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the applicant together with any interest which may have accrued over the period while held by the Council. (b) Where under subparagraphs n(ii) or (iii) of paragraph (a) above, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out. (c) payment of interest at the prevailing interest rate payable by the Council’s Treasurer on the Council’s General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council’.

Condition 61. 'At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a contribution of €187446.46 to Cork County Council in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority. The value of this contribution is calculated in accordance with the Council's Development It is considered appropriate that the developer should contribute towards the cost of public infrastructure and facilities benefiting development in the area of the Planning Authority, as provided for in the Council's Development Contributions Scheme, made in accordance with section 48 of the 2000 Planning and Development Act, and that the level of contribution payable should increase at a rate which allows both for inflation and for Contributions Scheme on 25/10/2016, and shall be increased monthly at a rate of 8% per annum in the period between the date on which this value was calculated, and the date of payment'.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- There are a number of planning reports on file, the final report prior to grant of permission by the A/Senior Planner's, 25/10/16, is summarised as follows:
  - It considers that the layout concerns which resulted in the previous refusal have been satisfactorily addressed. The layout features a significant number of split level houses to better address the level changes on site. Good quality open space is provided in well supervised locations. The layout is considerably less car-dominated than previously. The layout is considered a positive response to the previous refusal and performs well in terms of the Council's Estates Guidance document (Making Places) and the Urban Design Manual which accompanies the Guidelines on Residential Development.
  - Appropriate Assessment concerns are now satisfactorily addressed.
  - Accepted that a crèche is not required
  - A special contribution of €1000 per unit is recommended by the NRDO & Area Engineer towards the upgrade of the Kennel Hill and the N72 junction.



- Layout Option 2 is preferred. This allows restricted access at the rear of houses 10-23 to access the services at the rear of housing in Annabella Pk, which are positioned inside the southern boundary of the site.
- The general contribution is calculated as €187,446.46
- Special contributions are recommended in relation to deficiency in terms of the Council's policy requirement of recreation and amenity provision (shortfall of 5 points equates to special of €92000).

### 3.2.2. Technical Reports

- Ecologist: Final report indicates no objection subject to condition.
- Housing: No objection subject to condition.
- Public Lighting: No objection subject to condition.
- Estates Engineer: No objection subject to condition.
- Area Engineer: No objection subject to condition
- Cork National Roads Office: No objection
- Housing Officers Report: No objection

### 3.2.3. Other Technical Reports

- Irish Water: No objection subject to conditions

## 3.3. Prescribed Bodies

The file was referred by the Board to Cork County Childcare Committee and DAU – Department Arts Heritage Regional & Rural Gaeltacht Affairs. No reports forthcoming to date.

## 3.4. Third Party Observations

A number of third party submissions were received. The issues raised are similar to those raised in the third party appeal, summarised in detail, below.

## 4.0 Planning History

4.1. **PL04.244097 / Reg. Ref. 13/55023** Planning Permission refused by the County Council and on appeal (March 2015) for a mixed housing development of 102 units (revised to 86 units) and crèche on 3.15 ha of the subject site. The reasons for refusal, by the Board, are summarised as follows:

1. The development would be contrary to Ministerial guidelines issued to planning authorities under section 28 of the Planning and Development Act – ‘Sustainable Residential Development in Urban Areas’ issued by the Department of Environment, Heritage and Local Government in May 2009, in the following respects-

- Public open space at the Northern end of the site is of limited active recreational use owing to slopes on site;
- The proposed layout shows excessive domination by roads particularly in the area bounded by houses Nos. 18 and 19 through 46, due to excessive road width and failure to provide an attractive sense of place in the roadway enclosed by houses 19 through 46.
- The proposal fails to make effective use of land in that an excessive amount of land has been given to road creation,
- Connectivity with surrounding lands – particularly with the Woodview Drive estate to the east is limited

The proposed development would therefore be prejudicial to the amenities of future residents of the scheme, and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. May compromise the development potential of adjoining area of land immediately to the east of the site which is zoned residential.
3. The proposed development would be prejudicial to the amenities of future residents of the scheme, in respect of potential overlooking from houses having regard to the rear garden depths of the houses in question together with the level differences between the houses in question.

- 4.2. **PL70.220734 / Reg. Ref. 06/55020** Planning permission was granted by Mallow Town Council for a mixed-use housing development of 104 units on this site. On appeal by a 3<sup>rd</sup> party to the Board permission was granted, April 2007, subject to 18 no. conditions. No development was carried out on foot of this permission.
- 4.3. **Reg. Ref. 06/55020.** By Order dated October 2012, Mallow Town Council refused to extend the duration of permission.

#### **Adjoining Permission of Relevance**

- 4.4. **PL 04.246853 / Reg. Ref. 15/6119** Planning permission was granted by the planning authority and An Bord Pleanála to remove disused farm buildings and construct 61 no. dwellings and ancillary works. Appeal against application of a special financial contribution, only.

The Board Decision (26<sup>th</sup> October 2016) considered that the planning authority has not demonstrated that there are specific exceptional costs in terms of the provision of recreation and amenity facilities arising from the proposed development that would benefit the proposed development in this instance. The Board considered that compliance with policy is not an appropriate application of section 48(2)(c) of the Planning and Development Act, 2000 and that costs to be levied under this section are to be specific exceptional costs which are of specific benefit to the proposed development and that these costs should be properly apportioned. It is, therefore, considered that the special financial contribution 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 and accordingly, would be unwarranted.

## 5.0 Policy Context

### 5.1. Cork County Development Plan 2014

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.

### 5.2. Mallow Town Plan

The site is located within the defined town boundary of Mallow, as contained in the Mallow Town Plan 2010 – 2016. The plan establishes an overarching objective to accommodate population growth in the town to meet the strategic ‘hub’ settlement

objectives whilst ensuring an adequate supply of housing stock to facilitate growth.

Objective H2: Provides for the following:

‘Promote the concept of a ‘compact town’ by encouraging appropriate development on suitably zoned lands throughout the plan area in conjunction with available infrastructure.’

The appeal site is zoned UR-4, ‘New Residential’. Undeveloped residential zoned land, with Map 3 of the Plan also highlighting that it benefitted from an extant planning permission at the time of zoning.

Objective H4 of the Plan seeks to secure an appropriate housing mix in new residential areas including design and size to provide for a variety of tenures.

### **5.3. The Mallow Electoral Area Local Area Plan, second edition, 2015.**

The west of the site abuts the boundary of the Mallow Electoral Area LAP which is of relevance in relation to the subject proposal.

### **5.4. Natural Heritage Designations**

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

## **6.0 The Appeals**

### **6.1. Grounds of Appeal**

#### **6.1.1. A third party appeal has been submitted by Dominic McEntee and Margaret McEntee 45 Annabella Park Mallow. It is summarised as follows:**

##### **Road Network and Access**

- Proposed access via Annabella Park is too narrow

- The Boards Inspector in the case of 06/55020 stated that the access to the Kennel Hill junction from this proposed development is unsafe and recommended refusal.
- No account taken of the accumulative impact of planning permission for 61 dwellings granted in the adjacent property on foot of Reg. Ref. 15/06119
- Pavement is too narrow for safe passage of pedestrians
- Exacerbation of traffic problems on the road network
- Traffic flows to the southern roundabout at the N20 and N72 junction will increase due to traffic accessing Dairygold Plant
- When traffic turning right from the N72 to the Kennel Hill backs up to the roundabout, as currently happens at peak times, the roundabout will become gridlocked.
- Concern of sludge on access road
- Experience that wheel wash facility conditions attached to developments are not operated correctly or effective.

### **Sewer Capacity**

- The cumulative impacts of permitted developments in the area have not been adequately assessed in the Appropriate Assessment.

### **Ecology**

- The woodland to the north of the site is prime Bat habitat.
- Bat species, mainly Pipistrelle and Pygmy Pipistrelle have been identified in the field to be developed and use the trees to be removed for access to the site as a navigation feature.
- The construction of the site will prevent access to foraging areas to the west of the woodland.
- Potential pollution of water courses at the north of the site
- Negative impact to River Blackwater SAC

### **Construction Impact to adjoining property**

- Underpinning works to be carried out to walls of the appellant's property are a health and safety hazard
- Could lead to damage to property
- No consent to works to party boundary

### **Visual Amenity**

- Two storey house design not in keeping with the character of the area and existing bungalows adjoining the development and along the access road.
- Density is too high, given location of the site on the outskirts of the town

### **Residential Amenity**

- Diminution of light to the appellants rear garden
- Overlooking and loss of privacy
- Block view of the trees and fields
- Damaging enjoyment of property
- Conditions of zoning state that the eastern and southern boundaries in particular should be planted with trees and shrubs for screening purposes, this is not adhered to.

### **Surface Water Run-off**

- Excavation as proposed will cause soil erosion leading to pollution of adjoining watercourse at the northern boundary of the site.
- Sediment will impact upon the Blackwater River SAC

## **6.2. A first party appeal has been submitted by McCutcheon Halley Planning Consultants on behalf of Canonbridge Ltd. It is summarised as follows:**

### **6.2.1. Grounds of Appeal**

Appeal Against Condition, only.

- Request that the appeal be dealt with under the provisions of Section 48(10) (c) and section 139 of the Planning and Development Act 2000

- Specifically, an appeal against Condition 60
- Not contesting the special development charge sought for the provision of a roundabout at the N72/Kennell Hill L1203/L9000 junction and the relocation and upgrade of the N20 / N72 roundabout at Annabella.
- The special development contribution (60) is speculative
- The special contribution charge sought under Condition no. 60 for the provision of amenity facilities is neither exceptional nor specific to the development and is not therefore in accordance with the requirements of Sections 48(2) (c) and 48 (12) of the Act.
- There are a number of planning precedent where ABP have omitted special development contributions for recreation / amenities, in circumstances similar / identical to this report. Ref. PL04.246853 refers.
- The planners report generally lists five projects which could benefit from the special contribution, the projects are remote from the development site itself.
- The river bank walkway north of the Blackwater is c. 1.5Km from the appeal site, with identified linkages between the town park / Mallow Castle in excess of 2 Km
- The costs incurred in the provision of these amenity facilities and works are neither exceptional nor specific to the proposed development.
- Mallow town Park and existing park is over 13 ha of public amenity space with extensive walks and training grounds for a number of GAA, soccer, rugby clubs. Cork Co. Co. purchased the park in 2016 and are obliged to take care of the park and the stipulated landscaping and general improvements works are therefore 'not a specific exceptional cost, for works which will benefit the proposed development' but rather a general maintenance duty.
- Mallow Castle is over 10 ha of public amenity space and is highlighted as a 'key Opportunity Site' in the Mallow Town Development plan 2010 – 2016
- In relation to Item 1 – amenity walk north of Woodview, it is proposed to construct part of this walkway, as part of the proposal, which will provide for pedestrian and cycle linkages. Note the credit of one recreation and amenity



point applied by the planning authority. Given the financial outlay in completing these works, the levying of a second cost to provide further parts of the walkway is extremely onerous.

- Represent opportunistic use of Section 48 (2) (c) of the Act.
- The requirement to specify the works to be carried out, or proposed to be carried out, is so that where the works in question are not carried out within 5 / 7 years of the date of payment to the p.a. of the development contribution or where the p.a. decides not to proceed with all / part of the works, the contribution must be refunded to the applicant.
- No detailed information has been provided as to the 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.
- There is an onus on the p.a. to demonstrate that the provision of amenities in Mallow Town Park and the vicinity of Mallow Castle are 'exceptional' and 'specific' to this development and that they could not have been envisaged when the general scheme was approved.
- The requirement of a special contribution towards amenities in addition to a general development contribution also towards recreation/ amenity provision constitutes a double charge.
- Based on Table G4 of the Councils General Contribution Scheme the scheme includes costs towards 'Community and Recreational Amenity'.
- The Inspector in his assessment of PL04.238720 concluded that double charging occurred with respect to the provision of recreation and amenity facilities and was contrary to provisions of the 2000 Act.
- A number of planning precedents where ABP has supported the omission of a special contribution in circumstances similar / identical to the subject appeal case. Including PL04.234024, ABP PL.04238720, ABP PL. 04.232458, ABP. PL04.246853
- In the case of ABP PL04.246853, the Board Inspector commented that the 'projects covered by the contribution are not specific to the proposed

development and would be likely to benefit the wider community'. The suite of projects proposed included those identified by the council under the subject application

### 6.3. Planning Authority Response

Two number responses received. Summarised as follows:

#### **Condition number 60**

- It is an objective of the adopted recreational and amenity policy 2006 (SC5-2, SC5-5 and SC5-6 of the CDP 2014) to ensure that all new development makes adequate provision for the full range of recreational and amenity activities, sufficient to meet the needs of the development.
- The Council adopted this policy in the context of the DCS
- As stated in the recreational and amenity policy document the Council will continue to use its powers under Section 48 of the Local Government Planning and Development Act 2000 to impose development charges for recreational and amenity purposes.
- The recreational and amenity policy Appendix A: Provision of Facilities as part of new housing developments, requires that recreation facilities shall be provided as part of the housing development at a rate of 1 point per 6 dwelling units.
- Similarly, a min of 30 % of the required points shall be satisfied by the provision of on-site local facilities, with the remainder of the points requirement being satisfied by the provision of on-site, or off-site at an appropriate agreed location
- Where deemed appropriate by the p.a., a cash equivalent may be accepted.
- There is an under provision of play area units / points on-site, required 14 points.
- Over 60% satisfied on-site, which exceeds the 30% minimum

- In order to deal with the shortfall of five points, p.a. has attached a charge of €92,000 (€18,400 x 5 points) by means of a special contribution in terms of the policy.
- Given the scale of the development permitted it will generate additional demand for recreational and amenity facilities.
- The funds will be allocated to contribute towards the provision of a network of amenity walkways, in order to improve accessibility to recreational amenity resources in the town and to upgrade existing recreational facilities.
- Facilitate pedestrian connectivity from the proposed amenity walk along the stream to the north, to the town park / Mallow Castle grounds.
- Specific projects and the associated costs are outlined as follows:
  - The route and bridge locations are illustrated in Fig 1 submitted
  - Provide amenity walk way along the stream to the north of Woodbrook which will link with an existing walkway to the west of the railway line – projected cost A – B €30,000
  - Extend the existing riverbank walkway to the north of the Blackwater River within the town on a phased basis. This will form a continuous link between the walkway to the west of the railway line and the town park / Mallow Castle. Projected cost D- E €15,000 F-G €80,000
  - Provide two pedestrian bridges over the Blackwater River Projected cost €25,000 per bridge totalling €50,000
  - A project to upgrade the grounds of Mallow Castle to the east of the town is currently at contract stage, cost €430,000. There is also a concurrent project to upgrade existing walkways on the north side of the Blackwater River, to the east of the town, project cost €100,000
- The special contribution will be allocated towards specific exceptional costs associated with the provision and enhancement of recreational and amenity facilities in Mallow town which are not covered in the adopted general DCS
- The contribution will be directed towards specific projects with links to the subject site

### **Third Party Appeal**

- Traffic and Transportation Assessment was required and submitted.
- A programme of works incorporating the provision of a roundabout at the Kennel Hill / N72 junction and the relocation and upgrade of the N20/N72 roundabout will be carried out.
- Special contribution required towards proposed road improvements.
- Maintenance of the road is subject to condition. See condition 22, failure to comply would be subject to enforcement.
- The area engineer is satisfied with the footpath and pedestrian access.
- Irish water has no objection to the proposal or capacity of the wastewater disposal system.
- A Habitats Directive Screening Report assesses the potential for the development to give rise to negative effects on the River Blackwater associated with nutrient loading.
- The Ecologist has no objection to the proposal.
- The Mallow WWTP is functioning in accordance with license conditions.
- While the site supports limited areas of habitat that are preferred by bats these are located along the stream and the boundary hedgerows.
- Trees to be removed are to the south of the site. Hedgerow to the west to be retained. Additional landscaping is proposed.
- Construction stage would be subject to relevant health and safety legislation
- Density of 22.6 units per ha considered appropriate and acceptable.
- Difficult site with significant level changes. The proposal represents a far more sensitive design approach to the previous proposals.
- Having regard to separation distances and relationship between the proposed dwellings and the existing development, it is considered that the proposed development would not be injurious to the amenity of adjoining residences.

- A comprehensive landscaping plan was submitted, which is acceptable.
- Mitigation measures are proposed to protect water quality.
- A CEMP was prepared to ensure that water quality would be protected during the construction phase
- The Ecologist is satisfied that the risk of water pollution associated with the construction phase can be minimised and that potential for the works to give rise to significant negative effects on the Blackwater River SAC can be ruled out.
- The area engineer recommended that Option Two was the preferred approach in order to secure access to the mains pipework for maintenance purposes.
- Nature, scale and design of the proposed development considered appropriate given planning history, location and characteristics of the site and recommendations of both internal and external consultants.

#### **6.4. Further Responses**

6.4.1. Two number First Party Responses were received from McCutcheon Halley Planning Consultants on behalf of the applicants, new issues only are summarised as follows:

##### **Third Party Appeal**

- Much of the content of the 3<sup>rd</sup> party appeal is unsubstantiated and issues raised have been addressed in detail as part of the application.
- Option 1 is the preferred option – establishment of a 5m drainage wayleave (as per Drawing P-S-001 April 2016).
- The existing sewers are in place here over 20 years and have never been accessed.
- Inefficient use of land,
- There may never be a need to access the pipework at this location, particularly given the good fall in the line.

- Similar arrangements concerning foul and storm water exist in the local area at present, accommodated by wayleaves, through private property.
- Wayleave proposal accepted by the Council elsewhere and is very necessary in parts of Mallow, owing to site contours in the vicinity and the need to deliver efficiency of return on zoned land.
- Detailed traffic surveys submitted. The planned upgrade works at the Annabella Roundabout are likely to improve traffic operations at both junctions
- Special development contributions levied by the Council under Condition number 60 will contribute to associated upgrade works.
- The inclusion of Council owned lands in the proposal provides for resolution of issues with respect to the access road.
- Leyland cypress trees onto the road near the entrance are to be removed
- A road safety audit has been prepared
- A suite of traffic road safety improvements has been incorporated into the scheme in direct response to the audit findings.
- Under Reg. Ref. 13/55023 ABP considered it unreasonable to refuse permission at this located by way of traffic considerations
- Construction of a housing estate is not incompatible with the survival of the local bat population
- A number of mitigation design features have been incorporated including conservation of the existing linear habitat hedgerow treelines on adjacent boundaries and the maintenance of a riparian buffer zone to the north.
- The construction phase will be in full accordance with a CEMP and will not give rise to adverse impacts on the Blackwater River SAC
- No works are proposed outside the red line boundary of the site or on the third party appellant's lands. No damage to property would arise.
- Irish Water have no objection to the proposed development. It has been established that sufficient capacity for waste water is available to accommodate the development.

## Response to Cork County Council Submission

- Double charging has occurred
- The suggestion that the proportion of assigned monies from the GCS to recreation / amenity is 'small' relative to other infrastructure type is not justified in itself for the collection of a separate and second on same.
- The GCS dates to 2004 and it is within the remit of Cork County Council to revise this scheme at any stage to address any perceived imbalance.
- Over 60% of the required points will be satisfied on-site, double the stated minimum requirements.
- Council policy states specifically that a financial contribution in lieu of any points shortfall is, only, to be accepted in exceptional circumstances.
- At no stage during the pre-planning discussions or the assessment of the planning application itself did the Council seek proposals to provide additional play facilities either on – site or off site, elsewhere, locally.
- The Boards decision in respect of PL04.246853 is of direct relevance to the subject appeal case.
- The Board have also concluded elsewhere that the applied practice of the Council here has (i) become commonplace and (ii) is contrary to the provisions of the Planning and Development Act 2000 (as amended). Identified amenity facilities do not constitute 'exceptional nor specific' cost in relation to the proposed development.
- The general projects listed in the planning authority appeal response are speculative and non-specific to the appeal development.
- A robust case has not been put forward by way of concrete costings to substantiate the application of Condition 60 relative to the proposed development. – Non identification of specific project cost contrary to terms of Section 48(12(a) of the Planning and Development Act 2000.
- Note and agree with the planning authority response to the third party appeal.

#### 6.4.2. Third Party Response summarised as follows:

- The house numbering system used in Annabella Park does not correspond with the land registry maps for the area.
- Number 44 Annabella Park, the appellant's property, is located immediately next to the development and is not separated from the development by number 44 as stated.
- This error casts doubt on all other responses submitted by Cannonbridge Ltd which refer to other house numbers.
- The Boards Inspector in the case of Reg. Ref. 06/55020 found that the junction leading from Woodview Drive, The Paddocks and Annabella Park onto Kennel Hill was inadequate to support any increase in traffic volume.
- Sightlines at this junction inadequate especially taking into consideration permission granted on foot of Reg. Ref. 15/06119 which will further increase traffic.
- Traffic modelling does not take account of alterations to the N20/N72 roundabout which are about to commence or to traffic patterns.
- Modelling is unreliable. Do not believe traffic and access arrangement will be improved.
- The traffic entering the town from the west is funnelled through the rail bridge over the N20. No traffic control measures can increase the capacity of the road at this point.
- The pedestrian footbridge, under the bridge, is less than the 1.2m minimum that would be acceptable for safe pedestrian access.
- Photographs attached



## 7.0 Assessment

7.1.1. The subject appeal is twofold in that the first party have appealed specifically against Condition number 60 and a third party appeal has been brought under section 37 of the Planning and Development Act 2000, as amended. Given the foregoing and having regard to section 139 (1) of the Planning and Development Act, 2000, as amended, I consider that the Board are empowered to consider this application de novo.

7.1.2. The main issues in this appeal, however, are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- **Design, Layout and Visual Impact**
- **Traffic and Access Issues**
- **Ecological Impacts**
- **Water Supply and Wastewater Treatment Capacity**
- **Impacts Upon Residential Amenity of Adjoining Property**
- **First Party Appeal against Condition 60**
- **Appropriate Assessment (AA)**

### 7.2. Design, Layout and Visual Impact

7.2.1. The development of these lands for residential use is considered acceptable in the context of the site zoning and policy for release of residential land in the Cork County Development Plan 2014 – 2020 and the Mallow Town Development Plan 2010 - 2016. I note that the proposal has been soundly assessed by the planning authority with respect to planning policy, zoning objectives, density (23 units / ha is proposed), house types (three storey split level and two storey design) recreational amenity,

private open space, public open space, access, parking, compliance with Part V of the Planning and Development Acts 2000 – 2015 and provision of crèche facility.

- 7.2.2. The proposal is for a revised scheme of 86 residential units on lands zoned for residential development, which previously benefited from planning permission for 104 units. I consider the overall layout of the proposed dwellings, incorporating the changes as requested by the planning authority, by way of additional information and clarification, generally to be acceptable.
- 7.2.3. The proposed design has undergone significant modifications since the Board's refusal of PL04.244097 (March 2015). Modification have been subject to detailed consultation with the planning authority, as evidenced by the level of detail and information, sought by way of further information and clarification on the file. This has included the addressing of the site level issues to reduce cut and fill and the rationalisation and reorientation of the servicing road network, having regard to site contours and related constraints. Design concessions have also been incorporated which have resulted in a reduction in proposed house numbers from 104 (permitted under Reg. Ref. PL70.220734 / Reg. Ref. 06/55020) to 88 number units and then 86 residential units as currently proposed.
- 7.2.4. As part of the current application the applicant has submitted up to date information regarding crèche provision in the area. Of significance is the fact that an existing crèche recently closed down in the adjoining housing estate, Woodview. I agree with the p.a. given information on file that there is existing spare capacity indicated in the surrounding area. Accordingly, the omission of a crèche facility from the proposed development is appropriate in this instance.
- 7.2.5. Issues of physical access for maintenance purposes along with legal consent was raised, at further information stage, with respect to the foul sewer and stormwater mains services, located inside the southern boundary of the site, at the back of Annabella Park. I acknowledge the ground level constraints of the appeal site, the design considerations and layout improvements requested and provided for elsewhere and that two Site Layout Plan Options have been devised to address the Councils concerns. Option 2 (as per Drawing P-S-003 April 2016) is the preferred option by the planning authority and that which was granted permission under the

notification of decision to grant (Reg. Ref. 15/6970). It comprises a 5 m wide reservation area fenced off and reserved in perpetuity to provide for access to the rear of house numbers 10 – 23 inclusive along the boundary of Annabella Park. This would be assessed via 2m high secured gates from the east and include a turning area at the eastern boundary for easy access and egress of plant if required.

- 7.2.6. Option 1, however, which comprises establishment of a 5m drainage wayleave through private property (as per Drawing P-S-001 April 2016) is the preferred option by the first party. It includes secure removable entry / exit points to/from the east and west in the side gardens of nos. 10 and 23. Easily demountable timber post and rail fencing would subdivide the rear of each garden. It is submitted that a wayleave could exist as a legal burden over these lands on the title deeds to all individual properties alongside an order which prohibits planting or the erection of semi – permanent or permanent structures within the wayleave area.
- 7.2.7. It is argued that similar arrangements are accommodated by wayleaves through private property in the adjoining Woodview Drive development, that the existing sewers are in place here over 20 years and have never been accessed. Owing to particularly good fall in the line there may never be a need to access the pipework at this location and a 5m wide reservation area would give rise to inefficient use of land.
- 7.2.8. On balance, cognisance being had to the view that setting aside of an access lane or strip of open space at this location would give rise to potential anti-social behaviour. Also that the placement of a service road immediately behind the rear gardens of the Annabella Park properties would be undesirable and likely to face objection. I am of the opinion in agreement with the planning authority that Option 2, while not ideal, is more appropriate, in order to secure access to the mains pipework for maintenance purposes, subject to the lane being securely gated by way of 2.5m high solid gate to the reservation area. It is notable that the layout option as set out in Condition 1 of the draft decision was not appealed by the first party, but and was raised by way of response to the third party appeal.
- 7.2.9. I note concerns raised by the third party with respect to two storey / two and a half storey house design not being in keeping with the character of the area and the sites peripheral location on the outskirts of the town. Cognisance being had to existing permitted development on the ground, the appeal sites zoning and location within the

development boundary of the town of Mallow, also, proximity of the site to the train station less than 1km away, I consider the scale and design of the proposed development is acceptable. Regard is had to the design statement and cross sections submitted, I am of the opinion the house design, in particular, the split level designs incorporated at the request of the p.a. is visually acceptable.

- 7.2.10. The landscape character type is characterised as fertile plain with moorland ridge. The rectangular shaped site slopes down from southwest to the north and east. There is a steeper fall in levels at the north western section of the site towards the stream. There is a difference of almost 30m across the site from the southwest to the northeast. There is open access to the stream, with no vegetation on the southern side. There is woodland on the northern side of the stream, with rising landscape northwards. There are views over Mallow town and the surrounding area to the east.
- 7.2.11. When compared with the previous application, the alignment of the current scheme responds more to the existing adjoining developments with the rows of dwellings on the northern side offset more on a northeast/southwest alignment. This lower part of the scheme follows the alignment of the contours to a greater degree.

### **7.3. Traffic and Access Issues**

- 7.3.1. The third party raises concern with respect to traffic and access issues, it is contended that the existing road network is incapable of supporting the proposed development.
- 7.3.2. Good connectivity is proposed within the site and with surrounding lands, by way of two pedestrian and cycle path links, linking to both the existing Woodview Drive development to the east and new development lands to the west. The riverside pedestrian / cycleway to the north will also function as a connection point between the new residential areas on zoned land and the train station / town centre to the east. Pedestrians can transverse from the site entrance to the north of the site via footpaths and a five-meter-wide stepped passage which is passively overlooked.
- 7.3.3. The road layout has been designed in accordance with the Design Manual for Urban Roads and Streets (DMURS) 2013. The road width is 5.5m, the footpath / cycle lane is 3m in width.

- 7.3.4. The application is supported by a traffic and transportation assessment (TTA) carried out by MHL & Associates Ltd. Consulting Engineers and a Road Safety Audit (RSA). The TTA report was carried out following consultation with the area engineer. Following further information new seasonally adjusted traffic counts were carried out at the Kennel Hill / N72 junction. Picady analysis for the revised traffic scenarios was carried out for the current year 2016, base year 2018 and design year 2033. The results indicate a very minor impact on the junction with a maximum RFC of 51.9% in the design year 2033, with the maximum estimated queue expected to be 1.1 vehicles.
- 7.3.5. It is maintained that the actual queuing will arise from queuing on the Annabella roundabout and the interaction between the two junctions. It is submitted that the planned upgrade works at the Annabella roundabout is likely to improve traffic operations at both junctions. The TTA concludes that the Kennel Hill / N72 junction does not require any remedial improvements from a capacity point of view. The RSA advises works to the L9002 estate road / Annabella Park junction. This work includes removing Leyland Cyprus trees, providing a footpath along the L9002 within the site and providing a pedestrian crossing at the entrance.
- 7.3.6. The NRDO report on file indicates that they have no objection to the proposal, subject to a special contribution of €1000 per unit being applied to contribute towards the provision of a roundabout at the Kennel Hill/N72 junction and towards the relocation and upgrade of the N20/N72 roundabout.
- 7.3.7. The appellant has concern with respect to the existing access road via Annabella Park being too narrow to accommodate the development. I note previous concerns on this matter, raised in Reg. Ref. 13/55023, which stemmed from the encroachment of Leyland Cyprus trees onto the road near the entrance. I agree with the applicant that the inclusion of council owner lands and removal of the Leland Cyprus trees would overcome this issue. These trees are to be removed to provide for a more ordered arrangement of planting at this location. I note the applicant's response to the third party issues in this regard, a suite of traffic road safety improvements has been incorporated into the scheme in direct response to the audit findings which include the aforementioned removal and setting back of the Leyland Cyprus trees, new footpath linkages and a pedestrian crossing at the site entrance.

- 7.3.8. Cognisance is had to the special development contribution of €86,000 sought by way of Condition 60 for the provision of a roundabout at the N72/Kennell Hill (L1203) / L900 junction and relocation and upgrade of the N20/N72 roundabout at Annabella. Cognisance is also had that any grant of permission should be subject to a bond to ensure satisfactory completion of the development, in this regard condition 59, attached to the notification of decision to grant permission, is noted. I am of the opinion that should the Board agree that permission should be forthcoming that conditions requiring a Special Contribution and a Bond be reattached to any decision to grant planning permission.
- 7.3.9. Overall I see no justifiable reason to refuse planning permission on traffic safety grounds.

#### **7.4. Ecological Impacts**

- 7.4.1. The third party has concern that the proposal would prevent bats from foraging locally. I note the response by the first party and the consultant ecologist report, submitted by way of further information, which sets out that this is not the case and that the site at Annabella has limited areas of habitat that bats favour due to risk of predation.
- 7.4.2. The applicant noted that the site supports limited areas of habitat that are preferred by bats and that these are located along the stream and boundary hedgerows. Cognisance is had that as a precautionary approach to this issue, a number of mitigation design features have been incorporated into the proposal. While the Leyland Cypress trees to the south of the site are to be removed to facilitate the development, it is proposed to conserve the existing linear habitat hedgerow treelines on the western boundary and to maintain the riparian buffer zone to the north. The Councils ecologist has acknowledged these proposals and has accepted their incorporation into the proposed development. Given the foregoing and information on file I see no justifiable reason to refuse planning permission on grounds of negative impact upon bat habitat.
- 7.4.3. Concern is raised with respect to adverse impacts on the Blackwater River SAC. I agree with the first party that this matter has been addressed in extensive detail as part of the assessment of the planning application.

- 7.4.4. The Habitats Directive Screening Report has ruled out the potential for the development to give rise to negative effects on the Blackwater River associated with nutrient loadings. This is due in part to the fact that the Mallow WWTP is functioning in accordance with license conditions and has sufficient capacity to accept additional loading to be generated by this development.
- 7.4.5. A Construction and Environmental Management Plan (CEMP) has been prepared. Mitigation measures are proposed to protect water quality. It includes a detailed set of preventative measures to ensure that water quality is protected during the construction phase. The CEMP identifies the location of the site compound, areas for deployment of water protection infrastructure and water protection buffer zones, as well as a temporary settlement pond. The Council Ecologist was satisfied that the risk of water pollution associated with the construction phase can be minimised and that potential for the works to give rise to significant negative effects on the Blackwater River SAC can be ruled out.
- 7.4.6. I note in particular conditions 57 and 58 of the notification of decision to grant planning permission which require a riparian buffer area to be fenced off until the conclusion of construction works on site and that all works are required to be supervised by an on-site clerk of works who will report on compliance with the CEMP. A compliance monitoring report is required to be submitted to the p.a. at the end of the construction period.
- 7.4.7. The site is located within an urban area of Mallow which is zoned residential and forms part of the greater urban fabric of Mallow Town. Urbanisation leads to loss of farming land and possibly area of habitat interest but stringent environmental design feature measures have been incorporated into the proposal to avoid any risk of significant impact to the nearby European site. In light of the information on file I see no justifiable reason to refuse planning permission on grounds of adverse impacts on the Blackwater River SAC.

## **7.5. Water Supply and Wastewater Treatment Capacity**

- 7.5.1. The applicant proposes to connect to a public water supply and a public wastewater treatment system. There is capacity in the public sewer to cater for the proposed

development. This has been confirmed by Cork County Council. Irish water has no objection to the proposed development.

- 7.5.2. I see no justifiable reason to recommend a refusal of planning permission based upon the proposed development being prejudicial to public health.

## **7.6. Impacts Upon Residential Amenity of Adjoining Property**

- 7.6.1. Concern has been raised with respect to negative impact upon houses in Annabella Park, in particular number 45 Annabella Park, located adjacent to the entrance. I note the house numbering system used in Annabella Park does not correspond with the land registry maps for the area and thereby the error in numbering of the appellants dwelling in the plans and drawings submitted.
- 7.6.2. The appellants claim, that any required underpinning works could damage their property, two storey design is uncharacteristic, concern with respect to loss of light to rear garden and also concern that construction works will lead to nuisance and mud on existing roads.
- 7.6.3. Annabella Park comprises detached bungalows on a higher level to the south. There is a row of four dwellings adjoining and fronting the access road to the site (includes the appellants dwelling). Proposed 'House 1' on the application site follows the same alignment. The divisional boundary comprises a low block wall and a timber fence and a high block wall on the rear return. There are no windows to the side of the appellant's bungalow. A separation distance of c.6.1m is indicated between the existing and the proposed dwellings. Given the fall in levels to the north, the site section indicates that house no. 1 (Type B, storey and a half to the front and dormer to the rear with a height of some 7.3m) will have a lower finished floor and finished ridge level to the bungalow. House type B at no. 1 has a first floor side bedroom window. The rear building line of the proposed dwelling would be set forward of the rear building line of the existing dwelling. It is noted that a 2m high wall is proposed along the southern boundary.
- 7.6.4. Regard being had to separation distances proposed and the relationship between the proposed dwellings and the existing development. I am of the opinion in agreement with the p.a. that the proposed development would not, subject to condition, be injurious to the amenity of adjoining residences. Regard is had to the



scale, mass and design, in particular the split level design, detached nature and height of the houses proposed adjoining the southern boundary of the appeal site and the existing single storey dwellings in Annabella Park.

- 7.6.5. It is considered that the proposal would not result in direct overlooking of adjoining property and that given the sunpath and orientation there would not be an overshadowing impact.
- 7.6.6. Underpinning of boundary walls is a civil matter and not a matter for consideration by An Bord Pleanála. In this regard I would note that Section 34 (13) of the Planning and Development Act, 2000, as amended, states that a person shall not be entitled solely by reason of a grant of planning permission to carry out development on land where they have no sufficient legal interest.
- 7.6.7. With respect to construction noise and mud on roads I am of the opinion, that subject to condition re: construction management, the proposal if permitted would have a minimal effect on the adjoining property. Such issues would not therefore give rise to a reason for refusal in the subject instance.

## **7.7. First Party Appeal against Condition 60**

- 7.7.1. I highlight that the Planning and Development Act 2000, as amended, stipulates that no appeal shall lie to An Bord Pleanála in relation to a condition requiring a Development Contribution to be paid in accordance with a Development Contribution Scheme (DCS). However, an appeal may be brought to the Board where the applicant for planning permission considers that the terms of the Scheme have not been properly applied in respect of any condition laid down by the Planning Authority.
- 7.7.2. The first party appeal is solely an appeal against Condition 60. Full detail of which is set out in section 3.1 of this report above. Specifically, the first party are contesting the special contribution charge sought for the provision of recreation and amenity facilities. The special development charge sought for the provision of a roundabout at the N72/Kennell Hill L1203/L9000 junction and the relocation and upgrade of the N20 / N72 roundabout at Annabella is not contested.

7.7.3. Condition 60 requires the payment of €178,000 to Cork County Council as a special contribution as follows:

- €86,000 towards the provision of a roundabout at the N72/Kennell Hill(L1203)/L9000 junction and relocation and upgrade of N20/N72 roundabout at Annabella
- €92,000 compliance with the Recreation and Amenity Policy.

7.7.4. 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.

7.7.5. 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**

7.7.6. 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 (reference is made to the policy in specific objectives SC5-2, SC5-5 and SC5-6 of the CDP 2014) 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.

- 7.7.7. 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.
- 7.7.8. Appendix A of the Cork County Council Recreation and Amenity Policy, 2006 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.
- 7.7.9. 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.
- 7.7.10. 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 14 points. The allocation on site comprising of two local play areas (three points each), two neighbourhood play areas (one points each) and the amenity walkway along the watercourse (one point), totals 9 points, which meets the minimum 30% on site provision. Over 60 % of the required points are satisfied on site. The special contribution applied in this instance is for the shortfall of 5 points at a rate of €18,400 per point which equated to €92,000.

- 7.7.11. The planning authority justifies the special contribution given the scale of the development permitted, which it contends will generate additional demand for recreation and amenity facilities and the requirements of the Council's recreation and Amenity Policy, which are not covered by the adopted General Contribution Scheme (GCS).
- 7.7.12. It is submitted that the funds will be allocated to contribute towards the provision of a network of amenity walkways, in order to improve accessibility to recreational amenity resources in the town and to upgrade existing recreational facilities. The overall programme will facilitate pedestrian connectivity from the proposed amenity walkway along the stream to the north of the subject site, to the town park / Mallow Castle grounds. The specific projects and the associated costs (see 6.3 of this report) are outlined with associated costs and illustrated in Fig. 1 of the p.a.'s response.
- 7.7.13. 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. 61 (€187,446.46) pursuant to the General Development Contribution Scheme made in accordance with section 48 of the 2000 Planning and Development Act, as amended, 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.
- 7.7.14. I note the first party submission that there are a number of precedent cases where ABP have supported the omission of a special contribution in circumstances similar / identical to the subject appeal case. In particular, I note PL04.246853, in relation to a special contribution levied on a residential development on the adjoining site to the west of the subject appeal site. The recreation and amenity projects listed, by the council, towards which the special contribution is to be assigned include those identified by the council in the subject application.
- 7.7.15. Having reviewed the submitted information and in light of precedent set in recent Board decisions I would tend to concur with the applicant that the special development contribution constitutes '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 accept the first party argument that the applicant was not afforded the opportunity to present alternative proposals to provide additional play facilities etc. either on site or off site locally.

- 7.7.16. The projects detailed to be covered by the special contribution are not specific to the proposed development and would be likely to benefit the wider community. The projects and costs are similar to the special contribution costs identified by the council in the recent case of an adjoining site (PL04.246853). 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 permitted and future development. Such an omission is contrary to the recommendations of the Development Management Guidelines (DOEHLG 2007)
- 7.7.17. I agree with the Inspector in the case of PL04.247607 that 'It is reasonable to surmise that the said projects would be pursued whether the development was to proceed or not'. I agree 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.
- 7.7.18. 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 60 accordingly.

## 7.8. Appropriate Assessment (AA)

- 7.8.1. The site is located within the screening assessment zone of the Blackwater River SAC (2170). The development site lies approximately 600m to the north of the Blackwater River SAC and it adjoins a stream, which is a tributary of the Blackwater River.
- 7.8.1. The site comprises a zoned serviced site located within the development envelope of Mallow Town. It is proposed to connect to public foul sewer and public watermain.
- 7.8.2. The applicant has submitted a Screening Report for Appropriate Assessment (AA). The report concludes that no habitats for which the SAC was designated will be directly or indirectly impacted by the proposed development. Environmental design features are proposed. According to the report, adopting these measures will ensure no significant impact to any species for which the SAC is designated.
- 7.8.3. I note the planners report dated 24/02/2016 which states: 'With regard to the Blackwater River SAC and the Fresh Water Pearl Mussel, Cork County Council recently received clarity from the Department of Arts, Heritage and the Gaeltacht in relation to the conservation objectives for the SAC. In this regard, the Fresh Water Pearl Mussel objectives do not apply to the main channel of the river'.
- 7.8.4. The Ecologist report, on file, dated 21/10/2016, considers that outstanding issues with respect to the CEMP have been overcome and that the proposal is acceptable subject to implementation of all measures set out in the CEMP under the supervision of a competent experienced person with appropriate authority. The Ecologist is satisfied that the risk of water pollution associated with the construction phase can be minimised and that potential for the works to give rise to significant negative effects on the Blackwater River Special Area of Conservation can be ruled out.
- 7.8.5. Overall I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of the River Blackwater SAC (2170) having regard to the nature and scale of the proposed development, infrastructure services in place and separation distances involved to adjoining Blackwater River SAC (2170). It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

## 8.0 Recommendation

- 8.1.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

## 9.0 Reasons and Considerations/ Reasons

- 9.1.1. Having regard to the nature and scale of the proposed development, to the existing and permitted pattern of development in the vicinity of the site and to the residential zoning of the site, that, subject to compliance with the conditions set out below, the proposed development, would not seriously injure the amenities of the area, would not adversely affect the character of the area, would be acceptable in terms of access and traffic safety and would not, therefore, be contrary to the proper planning and sustainable development of the area.
- 9.1.2. With respect to Condition 60 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 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.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 14.01.2016, 11.05.2016, 09.08.2016 and 29.09.2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. That this permission authorises 86 residential units, only, in accordance with Site Layout Plan Option 2, drawing no. P-S- 003, submitted on the 09.08.2016. Each proposed residential unit shall be used as a single dwelling unit.

**Reason:** In the interests of development control

3. Access to the reservation area to the south of the site, as shown in Option 2 on the site layout plan, drawing no. P-S- 003, submitted on 09/08/16, shall be restricted, by way of a 2.5m high solid gate, for maintenance access purposes from authorised personnel, only.

**Reason:** In the interests of residential amenity.

4. Details of the materials, colours and textures of all the external finishes to the proposed residential units shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

5. Prior to commencement of development the applicant shall amend the layout in the following respects, or otherwise as agreed in writing with the Planning Authority;

(1) The children's neighbourhood play area within the centre of the site shall be increased in size from 306 sq m to 400 sq m and shall comprise a local play area;

(2) Two neighbourhood play areas, each comprising 100 sq m, shall be provided within the scheme. A revised site layout plan, making provision for the above requirements, shall be submitted and agreed with the Planning Authority prior to the commencement of development. The play areas shall be provided in accordance with the County Council's specification for play areas.

**Reason:** In the interests of residential amenity.



6. The windows serving all bathrooms, en-suites and walk-in wardrobes shall be permanently fitted and maintained with obscure or stained glass. The use of film is not permitted.

**Reason:** In the interests of proper planning and sustainable development of the area

7. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development. The agreed lighting system shall be implemented and operational, before each agreed phase of the proposed development is made available for occupation.

**Reason:** In the interest of public safety and visual amenity.

8. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

9. The areas of public open space shown on the lodged plans shall be reserved for such use. These areas shall be levelled, contoured, soiled, seeded and landscaped in accordance with the landscaping scheme submitted to the planning authority on the 09.08.2016. This work shall be completed before any of the dwellings are made

available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority.

**Reason:** In order to ensure the satisfactory development of the public open space areas and their continued use for this purpose.

10. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority, full details of the proposed boundary treatment including rear and party dividing boundary treatments.

**Reason:** in the interest of visual and residential amenity.

11. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, shall be in accordance with the detailed standards of the planning authority for such works.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

12. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

13. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the

developer has obtained the planning authority's written agreement to the proposed name(s).

**Reason:** In the interests of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

14. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house

**Reason:** In the interests of amenity and public safety.

15. A plan containing details for the management of waste and, in particular, recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each house shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste, and in particular recyclable materials in the interest of protecting the environment.

16. The development shall comply with the requirements of the Engineering and Transportation Division of Cork County Council:

- a) Footpath and kerb to be dished and new access and egress provided to the requirements of the Area Engineer, Roads Maintenance Department.
- b) All costs incurred by Cork County Council, including any repairs to the public road and services necessary as a result of development, shall be at the expense of the developer.
- (c) Traffic Management shall comply with the 'Traffic Management Guidelines' issued by the Department of Transport in 2002.
- (d) Construction drawings shall be submitted and agreed with the Estates

Engineer before any work begins on site.

(e) As built drawings shall be submitted following completion of all the works, these shall be submitted electronically in AutoCAD format and in PDF, (these should include the depth the services which are installed and the location of all underground services)

(f) No muck, dirt, debris or other material shall be deposited on the public road or verge by machinery or vehicles travelling to or from the site during the construction phase. The applicant shall arrange for vehicles leaving the site to be kept clean.

(g) During construction the wheels of all trucks shall be washed prior to their exit from the site in a wheel wash facility. Details of the construction, installation and operation of this facility shall be agreed in writing with the Planning Authority prior to commencement of any development.

(h) During construction the developer shall provide adequate off carriageway parking facilities for all traffic associated with the proposed development, including delivery and service vehicles/trucks. There shall be no parking along the public road.

**Reason:** In the interests of traffic safety

17. Childproof fencing shall be provided along river/stream banks. Details, including height, material and location, shall be submitted to and agreed in writing with the Planning Authority before any development commences, or, at the discretion of the Planning Authority, within such further period or periods of time as it may nominate in writing.

**Reason:** In the interests of public safety

18. Prior to the commencement of development, the riparian buffer area shall be fenced off. No equipment or materials shall be stored inside this buffer, and no vegetation including trees shall be removed from within this area. The fence shall be maintained until the conclusion of construction works on site.

**Reason:** In order to ensure the protection of the Owenacurra River and its associated riparian zone, the Cork Harbour SPA and the Great Island Channel SAC, and

in order to minimise the risk of spread of the invasive alien species Himalayan Balsam.

19. (a) The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

(b) Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 09.00 to 14.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In the interests of public safety and residential amenity

20. All works shall be supervised by an onsite clerk of works who will report on compliance with the Construction Environmental Management Plan. The clerk of works shall be empowered to halt works where he/she considers that the continuation of the works are likely to result in a significant pollution or siltation incident. In the event of a water pollution incident, or of damage to the adjacent river, these reports will be made available to the relevant statutory authorities, and on site works will cease until authorised to continue by the planning authority. A compliance monitoring report, prepared by the clerk of works will be submitted to the planning authority at the end of the construction period.

**Reason:** To ensure the protection of water quality in the catchment of the Blackwater River SAC.

21. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.

22. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development

23. The developer shall pay to the planning authority a financial contribution of €187,446.46 (one hundred and eighty seven thousand, four hundred and forty six euro forty six cents) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any 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 a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

24. The developer shall pay the sum of € 86,000 (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.

---

Fiona Fair  
Planning Inspector  
17.02.2017