



An
Bord
Pleanála

Inspector's Report PL04.249008

Development

Construction of 100 No. dwellings, a crèche and all ancillary site development works. The proposed development will consist of 31 No. detached dwellings, 46 No. semi-detached dwellings, 2 No. 3 storey blocks consisting of 8 No. apartments and 15 No. terraced dwellings with a total of 7 No. ancillary bin stores. A single storey crèche is also proposed. The ancillary site development works will include the relocation of the existing ESB pylon to the north of the site and associated cabling. Access to the proposed development will be via the existing estate road network.

Location

Broomfield Village, Broomfield East and Broomfield West, Midleton, Co. Cork.

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

16/06818

Applicant(s)

Castle Rock Homes (Midleton) Limited

Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	First Party v. Conditions Third Party v. Decision
Appellant(s)	Castle Rock Homes (Midleton) Limited Ian & Trish O'Flynn and Kevin & Carol Fitzgerald
Observer(s)	Siobhan & Dan Twohig
Date of Site Inspection	6 th October, 2017
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located on the northern fringe of the town of Middleton, Co. Cork, approximately 1.0km northeast of the town centre, in a predominantly residential area known as Broomfield Village which is characterised by conventional two-storey suburban housing. Whilst this estate is largely complete, construction works are presently in progress within parts of same, including on those lands to the southwest of Parcel 'A' of the proposed development site.
- 1.2. The site itself has a stated site area of 9.39 hectares and essentially comprises three distinct parcels of land (identified as Parcels 'A', 'B' & 'C' in the submitted plans and particulars) that are linked by the existing roads infrastructure serving the wider area. In this respect Parcel 'A' comprises the bulk of the site area with the majority of same occupying an elevated position on a hillside that overlooks the existing housing development to the immediate southeast. Parcel 'B' comprises an undeveloped plot of land situated on the south-western edge of the existing Broomfield Village scheme in an area characterised by three-storey duplex / apartment development alongside an area of public open space and adjacent to a scheme of apartments known as Cherry Orchard. The remaining plot of land identified as Parcel 'C' is located to the southeast of Broomfield Village at the junction of the Broomfield distributor road with Meadowlands Lane and presently comprises an area of open space / undeveloped land composed of grassland and more overgrown / unkempt areas. This part of the site adjoins undeveloped lands to the west and south with the railway line further south beyond same.

2.0 Proposed Development

- 2.1. The proposed development, as initially submitted to the Planning Authority, consists of the construction of 100 No. residential units and a crèche facility over 3 No. plots of land as follows:

Parcel 'A':-

Proposed House Types:

- 1 No. House Type 'A-1': 200m²: two-storey, 4-bedroom, detached
- 2 No. House Type 'B-1': 167m²: two-storey, 4-bedroom, detached
- 6 No. House Type 'D-1': 142m²: two-storey, 4-bedroom, semi-detached
- 6 No. House Type 'D-2': 142m²: two-storey, 4-bedroom, semi-detached
- 2 No. House Type 'E-2': 207m²: two-storey, 5-bedroom, detached
- 5 No. House Type 'E-3': 207m²: two-storey, 5-bedroom, detached
- 8 No. House Type 'F-1': 169.4m²: two-storey (split-level), 4-bedroom, detached
- 16 No. House Type 'G-1': 141.4m²: two-storey, 4-bedroom, semi-detached
- 3 No. House Type 'H-1': 167m²: two-storey, 4-bedroom, detached
- 12 No. House Type 'J-1': 128m²: two-storey, 4-bedroom, semi-detached
- 10 No. House Type 'K-1': 207m²: two-storey, 5-bedroom, detached

Parcel 'B':-

Proposed Apartments:

- 2 No. three-storey apartment blocks providing for 4 No. 2-bedroom units.

Total: 8 No. apartment units

Parcel 'C':-

Proposed House Types & Crèche:

- 6 No. Townhouse Type 'Q1': 80m²: two-storey, 2-bedroom, terraced
- 9 No. Townhouse Type 'R1': 90-90.6m²: two-storey, 3-bedroom, terraced
- 4 No. House Type 'S1': 105m²: two-storey, 3-bedroom, semi-detached
- 2 No. House Type 'S2': 105m²: two-storey, 3-bedroom, semi-detached
- Proposed Crèche Facility: 383.4m²: single storey, detached.

2.2. The overall design and layout of the proposed development is typical of a suburban format of development with each unit having been provided with front and rear garden areas and / or dedicated off-street car parking. Access to the proposed development will be via the existing estate road network. The ancillary site

development works will include the relocation of the existing ESB pylon to the north of the site and associated cabling. Water and sewerage facilities are available from the public mains.

- 2.3. In response to a request for further information, revised proposals were subsequently submitted to the Planning Authority on 12th June, 2017 which omitted the development previously proposed within Parcel 'C' and amended the design and layout of Parcel 'B'. In this respect the overall development was reduced to 88 No. units whilst the number of semi-detached units within Parcel 'A' was increased with 3-bedroom semi-detached units having also been introduced. In addition to the foregoing, the amended proposal includes for the provision of a 20 No. place crèche within the north-eastern part of Parcel 'A' and introduces pedestrian / cycle linkages through to the neighbouring housing schemes to the south and northeast (i.e. Meadowlands & Wheatley Heights).

N.B. In response to the grounds of appeal the applicant has submitted further proposals which have sought to reinstate the provision of an amended crèche design within Parcel 'C'.

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of a response to a request for further information, on 11th July, 2017 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 47 No. conditions. These conditions are generally of a standardised format and relate to issues including Part V, development contributions, landscaping and infrastructural services, however, the following conditions are of note:

Condition No. 2 – States that the grant of permission only approves the development of a total of 77 No. houses and 8 No. apartments and requires the submission of revised drawings, for the written agreement of the Planning Authority, prior to the commencement of development, detailing the following amendments:

- a) Unit Nos. 39-41 to be omitted and the area to be reserved for the provision of a crèche. An application to develop a crèche in this location is to be lodged with the Planning Authority before development commences.
- b) The area of land in the north-eastern section of the site where the crèche was proposed (as per the site layout submitted on 12th June, 2017) is to be developed as open space unless permission is granted for housing in this location. The pedestrian connections to the adjoining estates shown in the revised details submitted to the Planning Authority on 12th June 2017 are to be incorporated into any future proposal for housing in this part of the site.
- c) Parcel 'C' is to be laid out and developed as a passive public open space as part of the development. It should be maintained by the developer until taken in charge by the Planning Authority. Details of proposals to develop this area as open space are to be submitted for agreement with the Planning Authority.

Condition No. 3 - Requires the proposed pedestrian link between Dwelling Nos. 75 & 76 (as per the revised site layout plan submitted on 12th June, 2017) to be omitted with revised drawings detailing an alternative boundary arrangement at this location to be submitted for the written agreement of the Planning Authority prior to the commencement of development.

Condition No. 44 – Requires the payment of a special development contribution in the amount of €60,000 towards works proposed to be carried out for the improvement of the R627/L7630 junction.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report sets out the site location and context before summarising the background to the development of the wider Broomfield Village housing scheme. It notes that the proposed development will be undertaken on three separate parcels of land (identified as Parcels 'A', 'B' & 'C') and subsequently examines the overall principle and design / layout of each aspect of the overall proposal. With regard to Parcel 'A' it is stated that permission was previously granted on these lands for the development of 137 No. dwelling houses under PA Ref. No. 08/8103 and that whilst groundworks commenced on foot of that grant of permission, only 11 No. units were completed and thus the site area remains a problematic unfinished element of the wider estate. It is also noted that the proposal for Parcel 'A' effectively comprises an interconnected continuation of the development of the lower-lying lands in that area already approved under PA Ref. No. 16/5448. In relation to the overall design and layout of the development proposed on Parcel 'A', particular reference is made to the potential visual impact of the proposal given the elevated nature of the lands in question, however, it is considered that the submitted design is largely acceptable, particularly in the context of the planning history of the site.

In respect of Parcel 'B' the report notes that permission was previously granted for 10 No. apartments on these lands under PA Ref. No. 05/2542 and proceeds to state that the overall design of the proposed units would appear to satisfy the requirements of the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015'*.

With regard to the proposed development of housing and a crèche facility on those lands identified as Parcel 'C', the report acknowledges the provisions of the relevant Childcare Guidelines, however, it is noted that this area of land was originally intended to serve as open space for the wider estate (as approved under PA Ref. No. 99/5199) although the recreational facilities for same were never fully delivered. It is further stated that the site is zoned as 'open space' in the Midleton Environs Local Area Plan, 2001 and that this zoning is proposed to be retained in the Draft Municipal Local Area Plan. In addition, it is noted that the Draft Municipal District Local Area Plan, 2016 includes an objective to provide a future relief road across the northern portion of Parcel 'C' and thus there are concerns that any development in this area could undermine the achievement of this objective whilst these lands are also within the 300m 'consultation distance' of the Irish Distillers facility which is

subject to the SEVESO II Directive. Accordingly, the report recommends that the development proposed on Parcel 'C' should be omitted and the land retained as open space.

The report proceeds to recommend that further information should be sought in respect of a number of items, including the proposed drainage arrangements, surface water attenuation and the management of communal areas, however, it is of particular relevance to note the requirement to omit the development proposed on Parcel 'C' of the site, to provide details of an alternative crèche location, and to submit proposals for pedestrian / cycle linkages between Parcel 'A' and adjacent housing.

This report is subsequently supplemented by a further report prepared by the Senior Executive Planner which concurs with the recommendations set out in same.

Following the receipt of a response to a request for further information, a further report was prepared by the case planner (which has been endorsed by the Senior Executive Planner in a follow-up report) which noted that the development originally proposed within Parcel 'C' had been omitted thereby reducing the residential component of the development to 88 No. dwellings. With regard to the revised proposal to locate a replacement crèche facility within the north-eastern corner of Parcel 'A', the proposed location was deemed to be inappropriate from an accessibility perspective and thus it was recommended that a condition be included in any grant of permission whereby the crèche would be repositioned to replace a series of houses further west within Parcel 'A'. In respect of the proposed pedestrian / cycle links, the report recommends the inclusion of a linkage from the north-eastern corner of the site in order to improve accessibility to the train station etc. (it is also noted that this link will provide access for from neighbouring housing to nearby open space areas), however, it is recommended that the link proposed alongside Dwelling No. 75 be omitted as it will not result in a quicker route to the town centre / train station. The report subsequently concludes by recommending a grant of permission for a total of 88 No. dwelling units, subject to conditions.

3.2.2. Other Technical Reports:

Housing Officer: An initial report notes that it is proposed to construct a singular self-contained development of 10 No. units within Broomfield in order to comply with the

requirements of Part V of the Planning and Development Act, 2000, as amended, and subsequently states that there is no objection to the proposed development or the progression of the Part V proposal.

Architect: No objection, subject to the inclusion of a condition requiring the provision of at least 3 No. pedestrian links and cyclepaths linking Parcel 'A' of the proposed development with adjacent housing estates.

Public Lighting: No objection, subject to conditions.

National Roads Design Office: States that the proposed development does not affect any existing or proposed national route.

Engineering: No objection, subject to conditions.

Estates Primary: An initial report states that whilst there is no objection in principle to the proposed development, further information should be sought in respect of a number of items, with particular reference to the servicing arrangements.

Following the receipt of a response to a request for further information, a further report was prepared which stated that there was no objection to the proposed development, subject to conditions.

Area Engineer: No objection.

3.3. **Prescribed Bodies**

Inland Fisheries Ireland: States that there is no objection to the proposed development provided Irish Water confirms that there is sufficient capacity in the existing public wastewater treatment facilities so as to avoid polluting matter entering waters.

Irish Water: No objection, subject to conditions.

3.4. **Third Party Observations**

A total of 17 No. submissions were received from interested third parties and the principle grounds of objection contained therein can be summarised as follows:

- Detrimental impact on residential amenity by reason of overlooking and a loss of privacy.

- Inadequacy of the surrounding road network to accommodate the increased volumes of traffic (and construction traffic).
- The development proposed on Parcel 'C' is contrary to the applicable land use zoning objective as 'Open Space'.
- Parcel 'C' is located within the 300m 'consultation distance' around the site of Irish Distillers Ltd. which is subject to the Seveso II Directive.
- The lands at Parcel 'C' were originally reserved for the provision of community amenities.
- The development of Parcel 'C' would be contrary to Development Plan policy which seeks to retain such open spaces.
- The flooding study does not refer to Parcels 'B' & 'C'.
- The route of the proposed Northern Relief Road extends through Parcel 'C'.
- There is no need for another crèche facility in the area.
- There are concerns with regard to the adequacy of the surface water drainage system serving the area.
- Parcel 'C' is unsuitable for the provision of a crèche.
- The overall design and layout of the proposed development is generic and of a poor quality.
- Concerns with regard to the proposed provision of pedestrian / cycle links with neighbouring housing, including the potential for anti-social behaviour, child safety, the lack of passive supervision, increased noise and disturbance, the change in levels, detrimental impact on existing landscaping, and devaluation of property.
- The amended siting of the proposed crèche (in response to the request for further information) will give rise to increased traffic in the Meadowlands estate.
- The proposed crèche should be located closer to the main road and not at the end of the housing estate.

4.0 Planning History

4.1. On Site:

PA Ref. No. 99/5199 / ABP Ref No. PL04.121116. Was granted on appeal on 22nd December, 2000 permitting McInerney Construction Limited permission for alterations to proposed residential development, planning register reference number S/99/5199, to include an increase in density from 610 number units to 621 number units, changes to the layout and alterations to the housing mix from 13 number sites, 189 number semi-detached, 51 number detached, 128 number terrace, 112 number duplex and 117 number apartments, to 10 number sites, 206 number semi-detached, 72 number detached, 116 number terraced, 64 number duplex and 153 number apartments at Broomfield West and Broomfield East, Midleton, Co. Cork, in accordance with plans and particulars lodged with the Council (which decision was to grant subject to conditions permission for 309 of the said houses, 64 number duplex houses/apartments, 153 number apartments and site development works for 10 number dwellings). All at Broomfield West and Broomfield East, Midleton, Co. Cork.

- PA Ref. No. 056414. Was granted on 1st November 2005 permitting McInerney Homes Ltd. an 'Extension of Duration' of PA Ref. No. 99/5199 / ABP Ref No. PL04.121116.

PA Ref. No. 00/5498. Was granted on 8th March, 2001 permitting McInerney Construction Ltd. permission for a residential development - 83 No. dwelling houses & associated site development works at Broomfield West, Co. Cork.

- PA Ref. No. 05/6413. Was granted on 1st November, 2005 permitting McInerney Homes Ltd. an 'Extension of Duration' of PA Ref. No. 00/5498.

PA Ref. No. 036212. Was granted on 14th June, 2004 permitting McInerney Construction (Cork) Ltd. permission for a residential development - 48 no. semi-detached dwelling houses at Broomfield Village, Broomfield East, Midleton, Co. Cork.

PA Ref. No. 052542. Was granted on 7th December, 2005 permitting McInerney Homes Ltd. permission for a residential development of 73 no. dwelling houses consisting of 17 no. dwelling houses, 37 no apartments and 19 no. duplex

apartments incorporating partial change of layout to permission granted under pl. reg. no.99/5199 at Copper Hill and Cherry Orchard, Broomfield Village, Broomfield East, Midleton, Co. Cork.

PA Ref. No. 06/7671 / ABP Ref. No. PL04.221460. Was granted on appeal on 21st May, 2007 permitting McInerney Homes Ltd. permission for the construction of 88 number dwellings consisting of 18 number detached units, 32 number semi-detached units, 19 number duplex houses and 19 number apartments and associated site development works. The application also includes for access via Wheatley Way and the alteration to the proposed finished floor levels of numbers 17 to 25 Wheatley Way as permitted under planning register reference number S/00/5498, all at Broomfield Village, Broomfield East and Broomfield West, Midleton, Co. Cork.

PA Ref. No. 08/4484. Was granted on 28th April, 2008 permitting McInerney Homes Ltd. permission for a residential development of 25 no. dwelling houses (change of house types to that permitted on part of development granted under pl.reg. no's. 00/5498. 05/6413 and 06/7671) to include 15 no. four bed detached two storey dwelling units and 10 no. four bed semi-detached two storey dwelling units and associated site development and landscaping works, all at Nos. 1-25 Wheatley Way, Broomfield Village, Broomfield West, Midleton, Co. Cork.

PA Ref. No. 08/8103. Was granted on 21st October, 2008 permitting McInerney Homes Ltd. permission for revisions to development previously permitted under Pl. Reg No's 00/5498, 05/6413, 06/7671 & 08/4484 (1-43 Wheatley Way, 1-25, Wheatley Hills & 1-56, Wheatley Heights) to include replacement of 124 no. dwelling units with 137 no. dwelling units comprising of 13 no. four bed detached dwellings, 64 no. optional three or four bed semi-detached dwellings, 14 no. three bed split-level semi-detached dwellings, 20 no. optional three or four bed split level semi-detached dwellings and 26 no. three bed terraced units and associated site development and landscaping works, all at Broomfield Village, Broomfield East, Midleton, Co. Cork.

PA Ref. No. 16/5448. Was granted on 25th November, 2016 permitting Castle Rock Homes (Midleton) Limited permission for the construction of 29 no. 2 storey dwelling houses and all associated site development works. Access to the proposed

development will be via the existing estate road network. All at Broomfield Village, Broomfield East, Broomfield West, Midleton, Co. Cork.

4.2. On Adjacent Sites:

PA Ref. No. 035013. Was granted on 9th January, 2004 permitting Crowley Homes permission for modifications to 10 no. dwelling houses permitted under reg. no. S/99/5199 to include alterations to front elevations at Nos. 1-10 Holly Ridge, Broomfield West. Midleton, Co. Cork.

PA Ref. No. 046033. Was granted on 8th November 2004 permitting McInerney Construction Cork Ltd. permission for a residential development - 7 no. dwelling houses and associated site development works at Redwood Avenue, Redwood Lane, Broomfield Village, Broomfield East, Midleton, Co. Cork.

PA Ref. No. 077713. Was granted on 13th August, 2007 permitting McInerney Homes Ltd. permission for the construction of 3 no. detached dwelling houses (site nos. 6-8) and retention and completion of 5 no. detached dwelling houses (site nos.1-5), associated site development works and landscaping works at Poppyfields Court, Broomfield Village, Bromfield East, Midleton, Co. Cork.

PA Ref. No. 0711283. Was granted on 3rd January, 2008 permitting McInerney Homes Ltd. permission for the retention and completion of extensions to 4 no. dwelling houses and completion of associated site development and landscaping works at No's 26-29 Wheatley Hills, Broomfield Village, Broomfield East, Midleton. Co. Cork.

PA Ref. No. 0711889. Was granted on 23rd January, 2008 permitting McInerney Homes Ltd. permission for alterations to permitted development (Pl. Reg. No. 07/7713) to include optional garage conversion to living accommodation to 7 no. dwelling houses, completion of site development and landscaping works and retention of conversion of garage of 1 no. dwelling house to living accommodation at Poppyfields Court, Broomfield Village, Broomfield East, Midleton, Co. Cork.

PA Ref. No. 13/04467 / ABP Reef. No. PL04.242081. Was refused on appeal on 21st October, 2013 refusing Liam Clifford permission for the construction of 10 two-storey dwelling houses with detached garage and all associated ancillary development works including access, landscaping and amenity area at Broomfield East, Midleton, Co. Cork, for the following reason:

- The Board had regard to the previous planning history of the site, to the provisions of the Cork County Development Plan, 2009, to the parent permission granted by An Bord Pleanála under appeal reference number PL04.121116 (planning register reference number S/99/5199), to the strategic location of the site within the overall housing scheme and to the low density of the proposal and considered that the site should not be developed as an exclusively residential development and further considered that the proposed development would be contrary to the provisions of the said development plan which seeks to promote community and other facilities within residential areas. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Ref. No. 14/04931 / ABP Ref. No. PL04.243621. Was granted on appeal on 18th November, 2014 permitting Liam Clifford permission for the construction of 11 number dwelling houses, a community building and all associated ancillary development works including access, car parking, landscaping and amenity areas, all at Broomfield East, Midleton, Co. Cork.

PA Ref. No. 154209. Was granted on 4th June, 2015 permitting Liam Clifford permission for the modification of the development permitted under ABP Ref. No. PL04.243621 (comprising 11 no. dwelling houses and a community building – PA Ref. No. 14/4931), by replacing the 11 no. dwelling houses with 11 no. residential serviced sites and all associated ancillary development works, all at Broomfield East, Midleton, Co. Cork.

PA Ref. No. 164304. Was granted on 1st June, 2016 permitting Castle Rock Homes (Midleton) Limited permission for the construction of 3 no. 2 storey detached dwelling houses and all associated ancillary development works at Poppyfields Court, Broomfield Village, Broomfield East, Midleton, Co. Cork.

5.0 Policy Context

5.1. National and Regional Policy:

- 5.1.1. The ‘*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*’ generally encourage more sustainable urban development through

the avoidance of excessive suburbanisation and through the promotion of higher densities in appropriate locations. Midleton may be categorised as a large town in accordance with Chapter 5 of the Guidelines and it is recommended that planning authorities should promote increased residential densities in appropriate locations, including city and larger town centres (defined for the purposes of these guidelines as towns with 5,000 or more people). In general, appropriate locations for such increased densities include city and town centres, 'brownfield' sites (within city or town centres), sites within public transport corridors (with particular reference to those identified in the Transport 21 programme), inner suburban / infill sites, institutional lands and outer suburban / 'greenfield' sites. The proposed development site is located on the urban fringe of Midleton and may be categorised as 'greenfield'. The Guidelines define such areas as open lands on the periphery of cities or larger towns whose development will require the provision of new infrastructure, roads, sewers, and ancillary social and commercial facilities such as schools, shops, employment and community facilities. Studies have indicated that whilst the land take of the ancillary facilities remains relatively constant, the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares.

- 5.1.2. The *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015'* (which update the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2007'*) provide detailed guidance and policy requirements in respect of the design of new apartment developments. Notably, where specific planning policy requirements are stated in the document, the Minister intends that such requirements must take precedence over policies and objectives of development plans, local area plans or strategic development zone planning schemes. Furthermore, these guidelines apply to all housing developments that include apartments, whether public or private. The updated guidelines aim to uphold proper standards for apartment design to meet the accommodation needs of a variety of household types and sizes – including

households with a child or children, students, older people and an increasingly mobile workforce. They also seek to ensure that, through the application of a nationally consistent approach, new apartment developments will be affordable to construct and that supply will be forthcoming to meet the housing needs of citizens.

5.1.3. The '*Childcare Facilities, Guidelines for Planning Authorities, 2001*' provide a framework to guide both local authorities in preparing development plans and assessing applications for planning permission, and developers and childcare providers in formulating development proposals. They state that Planning Authorities should encourage the development of a broad range of childcare facilities, i.e. part-time, full day-care, after-school care, etc., including those based in residential areas, in employment areas and in areas close to where users of such facilities live. The Guidelines provide detailed guidance with regard to appropriate locations for the siting of childcare facilities such as in the vicinity of schools in addition to detailing the development control considerations of proposals for same.

5.1.4. The '*Development Contributions, Guidelines for Planning Authorities*' published by the Department of the Environment Community and Local Government in January, 2013 aim to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since guidance was last issued in 2007.

5.2. **Development Plan**

Cork County Development Plan, 2014:

Chapter 2: Core Strategy:

Section 2.3: *The Network of Settlements*

Section 2.4: *Settlement Strategy*

Chapter 3: Housing:

Section 3.3: *Delivering Sustainable Residential Communities*

HOU 3-1: Sustainable Residential Communities:

- a) Ensure that all new development within the County supports the achievement of sustainable residential communities. The

Council will have regard to the provisions of the Guidelines on Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual, in development plan preparation and in assessing applications for development through the development management process.

- b) Promote development which prioritises and facilitates walking, cycling and public transport use, both within individual developments and in the wider context of linking developments together and providing connections to the wider area, existing facilities and public transport nodes such as bus and rail stops.
- c) Following the approach in chapter 10 of this plan, ensure that urban footpaths and public lighting are provided connecting all residential developments to the existing network of footpaths in an area and that the works required to give effect to this objective are identified early in the planning process to ensure such infrastructure is delivered in tandem with the occupation.

HOU 3-2: Urban Design:

- a) Ensure that all new urban development is of a high design quality and supports the achievement of successful urban spaces and sustainable communities. The Council will have regard to the provisions of the Guidelines on Sustainable Residential Development in Urban Areas, the accompanying Urban Design Manual and the Council's Design Guide for Residential Estate Development in development plan preparation and in assessing applications for development through the development management process.
- b) Provide additional guidance, including principles and policies, on urban design issues at a local level, responding to local circumstances and issues. Where appropriate Local Area Plans will consider the need for the provision of additional guidance in the form of design briefs for important, sensitive or large scale development sites.

- c) Require the submission of design statements with all applications for residential development in order to facilitate the proper evaluation of the proposal relative to key objectives of the Development Plan with regard to the creation of sustainable residential communities.
- d) Require developers to take account of the Design Manual for Urban Roads and Streets (DMURS).

HOU 3-3: Housing Mix:

- a) Secure the development of a mix of house types and sizes throughout the County as a whole to meet the needs of the likely future population in accordance with the guidance set out in the Joint Housing Strategy and the Guidelines on Sustainable Residential Development in Urban Areas.
- b) Require the submission of a Statement of Housing Mix with all applications for multiunit residential development in order to facilitate the proper evaluation of the proposal relative to this objective.

Section 3.4: Housing Density:

Chapter 5: Social and Community:

Section 5.3: Childcare Facilities:

SC 3-1: Childcare Facilities:

Support and facilitate the sustainable provision of childcare facilities in appropriate locations and seek their provision concurrent with development, having regard to population targets for the area and in accordance with the Guidelines on Childcare Facilities and the Childcare (PreSchool Services) Regulations 2006.

Chapter 14: Zoning and Land Use:

Section 14.3: Land Use Zoning Categories:

ZU 3-1: Existing Built Up Areas:

Normally encourage through the Local Area Plans development that supports in general the primary land use of the surrounding existing built up area. Development that does not support, or threatens the vitality or integrity of, the primary use of these existing built up areas will be resisted.

ZU 3-4: Appropriate Uses in Open Space, Sports, Recreation and Amenity Areas:

Promote the provision of sports areas including playgrounds, sports centres, sports pitches, other areas for outdoor activities, outdoor recreation training centres, parks, landscaped areas, agricultural areas (including allotments), private landscaped gardens and woodlands in accordance with Article 10 of the Habitats Directive.

East Cork Municipal District Local Area Plan, 2017:

Land Use Zoning:

The proposed development site is located on lands zoned as follows:

Parcel 'A': *'Existing Built Up Area'*.

Parcel 'B': *'Existing Built Up Area'*.

Parcel 'C': *'Open Space / Sports Recreation / Amenity'*:

MD-O-01: Passive open space for informal recreation. This area forms an important visual buffer to the railway line.

MD-U-01: Northern Relief Road (Phases 2 and 3).

Other Relevant Sections / Policies:

Section 1: *Introduction*

Section 2: *Local Area Plan Strategy*

Section 3: *Main Towns and Key Assets:*

Section 3.3: *Midleton Environs*

Infrastructure: Roads:

Section 3.3.45: The Northern Relief road will act as a distributor road bypassing the town centre to the north. Phase 1 has been completed, however Phases 2 and 3 are

dependent on the availability of finance. Two potential routes are shown on the Midleton zoning map for the southern portion of Phase 3 of the route, running to the east, and west, of MD-I-04. These lines are indicative. The critical requirement for this route is that it joins the Old Youghal Road (R907) at a point sufficiently west of the junction between the R907 and the N25, to avoid negative impacts on the operation of the N25. The Council will consider other route alignment options that satisfy this requirement, and otherwise comply with road design and safety standards.

Landscape:

Section 3.3.73: The development boundary for Midleton includes substantial areas of predominantly open land uses that are not, generally, intended for development but nevertheless form part of the structure of the town. The protection of these valuable open space areas have been made the subject of specific objectives. New active and passive open space facilities which will be required will be provided in the Masterplan area in conjunction with new development in that area.

5.3. **Natural Heritage Designations**

The following Natura 2000 sites are located approximately 1.5km southwest of the southernmost extremity of the proposed development site:

- The Cork Harbour Special Protection Area (Site Code: 004030)
- The Great Island Channel Special Area of Conservation (Site Code: 001058)
(This has also been designated as a proposed Natural Heritage Area).

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. Third Party Appeal:

- The appellants object to the inclusion of Condition No. 2(b) in the notification of the decision to grant permission as issued by the Planning Authority which states the following:

‘The area of land in the n-east of the site where the crèche was proposed (in the layout of 12/6/2017) shall be developed as open space unless permission is granted for housing in this location. The pedestrian connections to the adjoining estates shown in the revised details submitted to the Planning Authority on 12 June 2017 shall be incorporated into any future proposal for housing in this part of the site’ (emphasis added)

It is submitted that the appellants purchased their homes within the Meadowlands estate on the understanding that it would be a cul-de-sac with no vehicular or pedestrian connectivity between it and any other proposed / existing development in the wider Broomfield Village area.

- The applicant has indicated a preference that there would be no link between Parcel ‘A’ of the proposed development and the Meadowlands estate. It has also been stated that the change in elevation between the Meadowlands estate and the application site to the north would be problematic in terms of designing and constructing the proposed accesses.
- There are concerns that the proposed pedestrian connectivity will be hazardous to children playing in the estate due to the increased traffic volumes using the Meadowlands Estate as a pick-up / drop-off point for the proposed crèche.
- There are concerns that the proposed pedestrian connectivity will lead to increased noise levels in an existing quiet cul-de-sac due to the increased numbers of pedestrians and cyclists passing to the front of the houses.
- The pedestrian connectivity may lead to anti-social behaviour in the access routes between the proposed development and the Meadowlands estate.

6.1.2. First Party Appeal:

The applicant wishes to appeal the inclusion of Condition Nos. 2 & 44 of the notification of the decision to grant permission as issued by the Planning Authority and has further requested that the subject appeal be limited to the consideration of the specified conditions in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended.

- The applicant has already successfully addressed most of the legacy issues associated with the existing unfinished housing estate and in this regard it is submitted that the subject proposal will be a more suitable and attractive development than that previously permitted. However, a key remaining legacy issue is the failure of previous developers to make adequate provision for childcare facilities to serve the needs of this large residential area and the Planning Authority's failure to implement the *'Childcare Facilities, Guidelines for Planning Authorities, 2001'* in a manner that would provide a viable and accessible childcare facility (*N.B.* Broomfield Village comprises 650 No. dwelling houses with a population approaching 2,000 No. persons and is not served by a crèche).
- In response to the legacy childcare issues, the subject application initially proposed a 50 No. place crèche facility at the entrance to Broomfield Village on those lands identified as Parcel 'C' on the submitted drawings. This land was identified for community and amenity uses in the original parent permission, however, that permission was never fully implemented and has since lapsed. The site is now zoned as passive open space and the County Development Plan indicates that childcare facilities are *'acceptable in principle subject to normal planning considerations in all land use categories'*. The area is not maintained, has evidence of anti-social behaviour, and is of no benefit to the residents of Broomfield Village.

The initial proposal was to provide for a crèche and 21 No. smaller / starter homes on Parcel 'C', however, this was not acceptable to the Planning Authority which stated the following:

'This area was identified as open space for the residents of the estate when the site was first developed. Furthermore, the area is zoned as open space under the Midleton Local Area Plan 2011 and the Draft East Cork Municipal District Local Area Plan 2016. Development on same would contravene this objective. Furthermore, there is a proposed future relief road traversing the northern portion of this parcel. Accordingly, the development proposed on this section of land (21 no. dwellings and a proposed crèche shall be omitted). Revised drawings to indicate same shall be submitted'.

The applicant is disappointed with the failure of the Planning Authority to accept a more sustainable and broader solution to childcare provision in the area as compliance with the request for further information and Condition No. 2 of the grant of permission will result in the provision of a small childcare facility of questionable viability at a location that is not accessible to the majority of Broomfield Village.

- The Board is requested to reassess the childcare requirements of Broomfield Village in a more strategic manner and in this respect consideration should be given to the accompanying revised proposals submitted for the construction of an 80 No. place crèche on those lands within Parcel 'C' at the entrance to the estate. It is not considered that the foregoing proposal would materially contravene the current open space objective, impact on the proposed future relief road, or be injurious to the visual amenity of the area. The revised proposal also provides for the crèche site to be extensively landscaped and for the construction of 2 No. houses in the area proposed to accommodate the 20 No. place crèche as suggested by Condition No. 2.
- The subject lands form part of the original planning application for the development of Broomfield Village which was approved under PA Ref. No. 99/5199 / ABP Ref. No. PL04.121116 and excluded a large proportion of the lands to the southwest to the overall scheme which were anticipated to be utilised for community uses and facilities. However, the Planning Authority has since acknowledged that whilst there has been significant progress towards the completion of the original planning permission, there remains a shortage of community facilities relative to the amount of construction that has taken place. This view has been established inclusive of the community building permitted under a recent application. In this regard the Board is referred to the following comments of the Senior Planner:

'The Broomfield village development will cater for in the region of approx. 650 dwelling units when completed; circa 1,820 persons. There is currently no crèche, no local shop and no local services within the estate which is comprised entirely of residential development. The childcare guidelines recommend a minimum of one childcare facility for 75 houses.'

‘There is an opportunity with the recent formulation of Municipal district to take a holistic approach to the local needs of communities and to plan at an appropriate level the needs for services at this location which is I understand will be a focus of the LAP review process’.

- A precedent has been established on a site to the immediate north of Parcel ‘C’ under PA Ref. No. 14/4931 / ABP Ref No. PL04.243621 wherein the Board approved an application for 11 No. residential units and a community building on the basis that the proposal substantially met with the provisions of the Development Plan.
- The availability of appropriate community services and infrastructure is a vital aspect for the long-term success of any residential development, however, the direction in the request for further information and Condition No. 2 of the grant of permission will only result in the provision of a 20 No. place crèche at a peripheral location. This represents a missed opportunity to comprehensively address the legacy childcare issues in Broomfield Village.
- Revised proposals have been submitted with the grounds of appeal which provide for the construction of an 80 No. place crèche within a landscaped setting on the lands identified as Parcel ‘C’. It is considered that this proposal will provide for the delivery of an important piece of community infrastructure. The site itself is easily accessible and is located at the entrance to Broomfield Village making it the most suitable and available site within the estate as:
 - The development of a crèche on the land will not materially contravene the zoning objective;
 - The site does not function as open space and will not impact on the open space provision for the wider development;
 - The proposed crèche will not be visually obtrusive and does not form a buffer to the railway line; and
 - The proposed crèche will have no impact on the delivery of the Northern Relief Road.
- The Local Area Plan, 2017 does not include a zoning matrix and Section 1.7.2 of the (Draft) Plan states that the objectives on zoning and land use issues

are contained within the County Development Plan, 2014. Paragraph 5.3.3 of the County Development Plan states the following:

‘Childcare Facilities are acceptable in principle subject to normal planning considerations in all land use categories but must be delivered in a sustainable manner and at an appropriate scale in the areas where they are needed’.

Objective SC 3-1: ‘Childcare Facilities’ of the Plan also aims to:

‘Support and facilitate the sustainable provision of childcare facilities in appropriate locations and seek their provision concurrent with development, having regard to population targets for the area and in accordance with the Guidelines on Childcare Facilities and the Childcare (Pre-School Services) Regulations, 2006’.

On the basis of the foregoing, it is submitted that the development of a crèche at Parcel ‘C’ is acceptable in principle. It is further considered that Parcel ‘C’ has been demonstrated as an appropriate site and that the normal planning considerations in this instance would include the impact on open space provision within Broomfield Village, visual impact, and the provision of the Northern Relief Road (which are considered below).

- Parcel ‘C’ has never fulfilled a community or even an informal open space use. Since the parent and previous grants of permission have lapsed, and as the use of the land for community purposes was never formalised, it is highly unlikely that these lands will provide for a community use in the future. Furthermore, the overall site plan detailed in Drg. No. 16010/P/007 highlights that the wider development is well catered for in terms of public open space. The layout was based on the original proposal but nevertheless demonstrates that Broomfield Village has open space provision which is in excess of 12-18% of the County Development Plan standard.
- The limited number of third party observations on the subject proposal would indicate that the majority of the residents of the estate support the development of the area of land to the southeast (i.e. Parcel ‘C’).

- The subject proposal does not prevent the development of public open space and will have no impact on the amenities of Broomfield Village which is well served by suitably distributed public open space amounting to c. 20% of the overall site area.

The open space objective for Parcel 'C' (MD-O-01) states that *'This area forms an important visual buffer to the railway line'*, however, the visual analysis undertaken by Forestbird Design that has accompanied the grounds of appeal highlights that the subject site visually forms part of Broomfield Village rather than the railway line buffer and that built development would not have any impact on that visual buffer. This assessment concludes that given the variance in topography and nature within the MD-O-01 zoning objective, built development can occur in the northeast section of this land (where the subject site is located) without visually detracting from the amenity and open space experience of the area. The report also recommends the following measures in order to mitigate any visual intrusion:

- Retain mature pine trees to the top of the embankment.
- Offset any proposed development a minimum of 6m from the top of the embankment.
- Supplement the existing vegetated embankment with additional large canopy native trees.

The applicant is amenable to complying with the recommendations of the visual analysis which can be provided for in a detailed landscaping plan to be agreed with the Planning Authority prior to the commencement of development.

- The Local Area Plan identifies a possible route across the north of Parcel 'C' for the continued development of the Northern Relief Road (U-01), however, it is the applicant's understanding that there is uncertainty over the extension of the relief road into this area and that the indicative route contained in the Local Area Plan, 2011 may no longer be the most preferable or feasible option.

Notwithstanding the foregoing, the amended site layout (Drg. No. 15084/P/009B), which has accompanied the grounds of appeal, highlights that the proposed Northern Relief Road can be accommodated to Development Plan standards. The route of the proposed road would cut through the northwest corner of the site and as a result it is proposed to reserve this area for the future construction of same. The proposed development of a crèche in this area will have no impact on the future delivery of the Relief Road.

- In order to ensure the viability of the subject proposal the applicant must remain vigilant and in this regard it is considered that the special development contribution sought by Condition No. 44 is unjustified and opportunistic. Condition No. 44 requires the payment of a special development contribution in the amount of €60,000 *‘in respect of works proposed to be carried out for the provision of junction improvement works at the R627/L7630 junction’*, however, whilst the Planner’s Report has stated that this contribution has been imposed on the recommendation of the Roads Engineer, there is no such recommendation on file and no justification or breakdown has been provided as to how the contribution in question has been determined. Therefore, it is submitted that the Council’s approach is contrary to the *‘Development Contributions, Guidelines for Planning Authorities, 2013’* which specify that:

‘While it is expected that planning authorities will ensure that developers make an appropriate contribution towards the costs of public infrastructure and facilities, the local authority must ensure that it avoids levying development contributions that are excessively high – development contributions are ultimately designed to offset only a portion of the costs of public infrastructure and facilities’.

- It is unclear what portion of the cost of the proposed junction upgrading works have been attributed to the proposed development.

A contribution for the provision of junction improvement works at the R627 / L7630 was imposed and paid on the original parent permission 99/5199 PL04.121116 refers. Prior to the applicants purchase of the subject site, the Receiver ceded the land required to facilitate these works to the Local

Authority at no cost. Cork County Council also imposed and collected a special development contribution of €245,000 for upgrades to junctions at Broomfield Estate / L7650 and the L7650 / Dungourney Road junction on a permission granted to Irish Distillers Limited for the extension and expansion of the Midleton Distillery under PA Ref No. 11/06531. In terms of double charging, the *'Development Contributions, Guidelines for Planning Authorities, 2013'* state the following:

'The practice of "double charging" is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing "planning gain" in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.'

Based on the available information, it appears that Condition No. 44 amounts to double, and possibly triple, charging for work already levied by the Planning Authority but not yet carried out. The proposed development will not result in a significant increase in traffic from that previously permitted and it is submitted that through the payment of a development contribution and the ceding of the land, Broomfield Village has already contributed to the upgrading works. There is no breakdown or transparency as to how the special contribution has been calculated and it is considered that the imposition of Condition No. 44 is onerous and contrary to national guidance and thus should be omitted.

6.2. Applicant's Response

6.2.1. Response to Third Party Appeal:

- The applicant has no objection to the removal of the pedestrian links from the proposed development and in this regard the Board is advised that in response to the request for further information the applicant has previously indicated a preference for the omission of the proposed pedestrian connections between the development site and the adjacent Meadowlands estate.

- The applicant shares the appellants' concerns that the proposed connections will encourage anti-social behaviour in the area which will have a detrimental effect on residential amenity.
- The applicant is also concerned that the proposed connections will be hazardous for young children playing in the area given the increased levels of traffic availing of the proposed crèche.

6.3. Planning Authority's Response

- The rationale for the imposition of a special development contribution in respect of the proposed development was that the Local Authority has proposals to construct a roundabout and associated works at the junction of the R627 Dungourney Road with the L7630. The carrying out of these infrastructural works close to the site will improve access to the proposed development and, therefore, it was recommended that a special development contribution equivalent to 10% of the cost of the works be levied on the developer (i.e. €60,000)

A summary of the cost of the provision of the new roundabout and approach roads is set out in the table below (*N.B.* This submission has been accompanied by an Excel File of the estimated cost of construction of the new roundabout and the sections of the approach roads in addition to a preliminary design for the roundabout i.e. Drg. No. R627-LA-01). Zero cost has been allowed for land acquisition as the land on which the roundabout is to be constructed is expected to be ceded to Cork County Council.

Item	Cost (€)
Land acquisition	0
Site investigation	25,000
Design fees	60,000
Costs associated with works to existing ESB overhead line	20,000
Construction of roundabout, approach roads and	445,831.94

accommodation works.	
Supervision of construction	50,000
Total	600,831.94

- With regard to the proposal to develop a crèche on those lands shown as Parcel 'C', the route of the proposed Midleton Northern Relief Road as identified in the Midleton Local Area Plan, 2015 extends through this part of the site and it is considered that this corridor needs to be protected.

The applicant has shown a potential route for the Relief Road on Drg. No. 15084/P009B, however, in the event of a grant of permission, it will be necessary for a clear corridor of 35m to be maintained at this location in order to provide for the future Relief Road. This distance should be measured from the rear boundary of the houses at Copperfields to the north of the proposed Relief Road at this location. If permission is granted, details of setbacks and the corridor for the Relief Road would have to be agreed with the Local Authority prior to construction.

6.4. Observations

Siobhan and Dan Twohig:

- The decision of the Planning Authority to omit the 21 No. dwellings and crèche facility proposed within the area of open space identified as Parcel 'C' in the application documentation is welcomed.
- The lands shown as Parcel 'C' are zoned as open space in the Midleton Local Area Plan, 2011 and the Draft East Cork Municipal District Local Area Plan, 2016. This area is the only plot of land suitable for recreational use to serve Broomfield Village into the future.
- The lands at Parcel 'C' were identified as open space for the residents of the estate when Broomfield Village was first developed almost 15 No. years ago. It would be beneficial to the surrounding community if this area were to be completed as a useable open space with a play area.

- On the basis of data available from the Department of the Environment, there are approximately 1,800 No. people presently residing in Broomfield Village. The addition of a further 88 No. units would increase the population of Broomfield to over 2,200 No. persons. Therefore, it would be beneficial to the wider area if the green area at 'Parcel 'C' were to be completed as a usable active open space with a play area (as identified when permission was first granted for Broomfield Village).
- The proposed childcare facility would be more beneficial to the wider Broomfield community if it were located closer to the main road within Parcel 'A'.
- Part of the proposed development site is located within the 'consultation distance' for Irish Distillers Ltd. facility which is subject to the Seveso II Directive (96/082/EEC).
- With regard to the proposed connectivity between the development ('Parcel 'A') and the Meadowlands estate, it is submitted that the observers purchased their dwelling house within Meadowlands on the understanding that the estate would be a cul-de-sac with no vehicular or pedestrian connectivity between it and any other existing / proposed development.
- There are concerns that the proposed pedestrian links / cyclepaths could result in anti-social behaviour and a loss of privacy within the Meadowlands estate.
- In relation to the proposed link between Parcel 'A' and the Meadowlands estate, the Board is requested to take cognisance of the following:
 - The link will not be overlooked by any property and thus may give rise to anti-social behaviour.
 - The change in levels between the Meadowlands estate and the roadway proposed within Parcel 'A' is significant and contrary to best practice design.
 - There are a number of 'blind spots' along the proposed alleyway / footpath.

- It is proposed to remove an existing pylon and to underground the existing overhead power line in addition to erecting a new pylon further up the hill. This will require the creation of a wayleave in order to allow an excavator to access the transmission lines thereby creating a ‘non-man’s land’.
- The proposed linkages will result in a loss of privacy within the Meadowlands estate.
- The proposal will give rise to increased noise and disturbance.
- The proposed link will impact on the existing trees / landscaped areas in the Meadowlands estate.
- Part of the proposed development site is located outside of the development boundary identified in the Local Area Plan, 2011.
- The road network serving Broomfield Village is used to access Midleton town and the N25 National Road via the Northern Relief Road Phase 1 from the Dungourney Road and Midleton Distillery areas which results in traffic congestion in the estate at peak times. The route for the completion of Phases 2 & 3 of the Midleton Northern Relief Road passes through Parcel ‘C’ of the application site. The provision of this roadway is important to the overall infrastructure of Midleton and will also serve to alleviate traffic congestion in Broomfield and its environs.
- Public lighting along the roadway adjacent to Parcel ‘C’ would be beneficial to Broomfield Village and the wider community.
- The Board is requested to ensure that Parcel ‘C’ is designated as ‘active open space’ and that there is no connectivity between Parcel ‘A’ and the Meadowlands housing estate.

6.5. Further Submissions:

Health Service Executive / North Lee Environmental Health: It would be desirable to promote pedestrian connectivity between the proposed housing and crèches, town centres, parkland and recreational amenities.

6.6. Further Responses

6.6.1. Response of the Applicant to the Circulation of the Planning Authority's Submission:

- The confirmation by the Local Authority that it has no objection from a roads or traffic perspective to the development of a crèche on Parcel 'C', subject to a corridor of 35m being provided to facilitate the development of a future relief road, is welcomed.
- The revised site layout provided by the applicant highlights that a 35m corridor for the completion of Phases 2 & 3 of the Northern Relief Road (pursuant to Objective U-01 of the Local Area Plan) may be excessive, however, with minor alterations to the location of the proposed crèche, the entire crèche site, including the car parking area, can be located outside of the corridor required.
- Notwithstanding the contents of the submission received from the Planning Authority, it is considered that the specific development contribution required by Condition No. 44 represents a double (if not triple) charge on the Broomfield Village housing development.
- The Local Authority has indicated that it will not incur any land acquisition costs as *'the land on which the roundabout is to be constructed is expected to be ceded to Cork County Council'*, however, it has not acknowledged that the land in question was ceded by the previous landowners / developers of Broomfield Village and that this is a further contribution which the development has made to the provision of improvement works at the junction of the R627 / L7630.
- It is reiterated that a contribution has already been paid towards the R627 / L7680 junction improvement works under the original parent grant of planning permission i.e. PA Ref. No. 99/5199 / ABP Ref. No. PL04.121116.
- The Local Authority has confirmed that a total of €1,754,945.68 has been paid in respect of the Broomfield Village housing development and that this

includes for both general and special development contributions. The last payment was made on 20th December, 2017 but Cork County Council is unable to provide a breakdown of the payments as the relevant files were lost during a flood event at County Hall in 2009.

- On the basis of the available evidence, the Broomfield Village housing estate has already contributed to the provision of improvement works at the junction of the R627 / L7630 by way of previously paid development contributions and also through the ceding of the land required for the construction of the roundabout.
- It is reiterated that Condition No. 44 is unjustified and amounts to double charging which is contrary to the '*Development Contributions, Guidelines for Planning Authorities, 2013*'.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- The proposed crèche facility
- Overall design and layout
- Impact on residential amenity
- Traffic implications
- Appropriate assessment
- The requirement for a special development contribution

These are assessed as follows

7.2. **The Principle of the Proposed Development:**

7.2.1. The proposed development site is located within the settlement boundary for the town of Midleton as identified in the East Cork Municipal District Local Area Plan, 2017 wherein it is a strategic policy objective of the Planning Authority to develop an

additional 5,243 No. housing units in order to accommodate the level of population growth projected in the planning strategy for Midleton as set out in the Cork County Development Plan, 2014 i.e. a population growth of 9,575 No. persons within the town and environs. In this regard it is of relevance to note that the proposed development site effectively comprises three distinct parcels of land (identified as Parcels 'A', 'B' & 'C' in the submitted plans and particulars) which are linked by the existing roads infrastructure serving the wider area and that Parcels 'A' and 'B' are zoned as *'Existing Built Up Area'* with the stated land use zoning objective (as set out in the County Development Plan) to *'Normally encourage through the Local Area Plans development that supports in general the primary land use of the surrounding existing built up area. Development that does not support, or threatens the vitality or integrity of, the primary use of these existing built up areas will be resisted'*. Therefore, given that the surrounding area is primarily residential in character and that the prevailing pattern of development is dominated by conventional suburban housing, it is clear that the development of Parcels 'A' & 'B' for residential purposes will accord with the relevant land use zoning.

- 7.2.2. Further support for the proposed development of housing units on Parcels 'A' & 'B' can be derived from the planning history of the application site and the wider area, with particular reference to PA Ref. No. 99/5199 / ABP Ref. No. PL04.121116 and PA Ref. No. 08/8103, given that permission has previously been granted for residential development on these lands on a number of occasions.
- 7.2.3. In addition to the foregoing, I would draw the Board's attention to the *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* which generally encourage more sustainable urban development through the avoidance of excessive suburbanisation and the promotion of higher densities in appropriate locations. More particularly, it is of relevance to note that Midleton can be categorised as a large town in accordance with Chapter 5 of the Guidelines and that within such areas planning authorities are encouraged to promote increased residential densities in appropriate locations, including outer suburban / 'greenfield' sites such as the proposed development site which is located on the urban fringe of Midleton.
- 7.2.4. Accordingly, on the basis of the foregoing, I am satisfied that the overall development of Parcels 'A' and 'B' for housing purposes is acceptable in principle.

7.2.5. With regard to the applicant's initial proposals for the development of 21 No. housing units and a crèche facility on those lands identified as Parcel 'C', it is of relevance in the first instance to note that these lands are zoned as *'Open Space / Sports Recreation / Amenity'* in the East Cork Municipal District Local Area Plan, 2017 and are subject to Objective No. MD-O-01 which states the following:

'Passive open space for informal recreation. This area forms an important visual buffer to the railway line'.

7.2.6. In addition, Objective ZU 3-4: *'Appropriate Uses in Open Space, Sports, Recreation and Amenity Areas'* of the Cork County Development Plan, 2014 clarifies that within these areas it is the objective of the Planning Authority to *'Promote the provision of sports areas including playgrounds, sports centres, sports pitches, other areas for outdoor activities, outdoor recreation training centres, parks, landscaped areas, agricultural areas (including allotments), private landscaped gardens and woodlands in accordance with Article 10 of the Habitats Directive'*.

7.2.7. Having reviewed the available information, in my opinion, it is clear that the proposed development of housing on lands which have been expressly zoned for *'Open Space / Sports Recreation / Amenity'* purposes in the recently adopted East Cork Municipal District Local Area Plan, 2017, and which are also the subject of a specific development objective (MD-O-01) that refers to the use of the lands in question as passive open space for informal recreation purposes, would contravene materially the development objectives set out in the local area plan and would be contrary to the proper planning and sustainable development of the area.

7.2.8. With regard to the proposed development of a crèche facility at 'Parcel 'C' on those lands zoned as *'Open Space / Sports Recreation / Amenity'* (as detailed in both the initial planning application and the amended proposals submitted by the applicant in response to the grounds of appeal), I would draw the Board's attention to Section 1.7.3 of the Local Area Plan which states that the objectives of the Cork County Development Plan have not been repeated in the Local Area Plan and, therefore, the two documents must be read together with any proposal for development put forward in accordance with the provisions of the Local Area Plan having to also demonstrate compliance with the objectives of the County Development Plan. In this respect I am inclined to concur with the applicant's submission that consideration may be given to

the construction of a crèche facility on lands zoned for open space purposes given that Section 5.3.3 of the County Development Plan specifically states that *'Childcare facilities are acceptable in principle subject to normal planning considerations in all land use categories'*.

- 7.2.9. However, notwithstanding that the development of a crèche facility within Parcel 'C' of the subject site may be acceptable in principle pursuant to Section 5.3.3 of the County Development Plan, I would advise the Board that any such proposal would materially contravene the terms and conditions of the parent grant of permission issued in respect of PA Ref. No. 99/5199 / ABP Ref. No. PL04.121116 which approved the initial development of the wider area. More specifically, I would refer the Board to Condition No. 1 of that grant of permission which required the development to be carried out in accordance with the submitted plans and particulars and, in particular, to Drg. No. 9991-03 which details that the lands currently identified as Parcel 'C' were originally earmarked for use as an *'Active Playing Area'* to serve the permitted residential development. Whilst it would appear that this play area / open space was never completed in accordance with the approved drawings (to the dissatisfaction of local residents as evidenced by some of the submissions on file), and although the applicant has asserted that there is sufficient open space provision remaining within the wider Broomfield Village development in order to compensate for the loss of this open space / amenity area, given that the decision was made to specifically zone this area for open space purposes in the recently adopted East Cork Municipal District Local Area Plan, 2017 (despite submissions seemingly having been made by the applicant to re-zone same during the plan preparation process as referenced in the initial report of the case planner), I am inclined to conclude that there is an expectation that this area will be utilised as open space and that the current policy approach of the Planning Authority serves to support the retention of same. Therefore, I would concur with the findings of the Planning Authority as set out in the initial planner's report and the request for further information that the development of a crèche facility on the lands identified as Parcel 'C' is not acceptable in this instance and would contravene both the development objectives of the Local Area Plan and the terms and conditions of the grant of permission issued in respect of PA Ref. No. 99/5199 / ABP Ref. No. PL04.121116.

7.2.10. In respect of the amended proposals received by the Planning Authority on 12th June, 2017 in response to a request for further information whereby the applicant proposed to omit all development from within Parcel 'C' and to provide a new crèche facility in an alternative location within Parcel 'A', given the relevant land use zoning in this area as *'Existing Built-Up Area'* wherein a more flexible approach to development is permitted, and as it is widely accepted that the provision of suitable ancillary uses / facilities such as crèches and childcare facilities can foster the sustainable development of residential communities, I am amenable to the overall principle of the development of a crèche facility within this land use zoning.

7.3. **The Proposed Crèche Facility:**

7.3.1. The *'Childcare Facilities, Guidelines for Planning Authorities, 2001'* recommend that within new housing areas and other areas of residential development an average of one childcare facility providing for a minimum of 20 No. childcare places per approximately 75 No. dwellings should be provided unless there are significant reasons to the contrary. In this regard I would advise the Board that the level of housing proposed in both the initial application and the amended proposal submitted by the applicant exceeds the aforementioned threshold / benchmark. However, it is perhaps of greater relevance to note that the wider 'Broomfield Village' would appear to comprise in excess of 400 No. housing units (as stated by the case planner), although I would suggest that this estimate may be somewhat conservative, particularly in light of recent planning approvals and the estimation in previous planning appeals that the estate extends to approximately 600 No. houses. Moreover, notwithstanding the proximity of Broomfield Village to Midleton town centre, the presence of 2 No. existing childcare facilities in the wider area (as referenced by an objector to the initial planning proposal), and the recent construction of a new community building as part of PA Ref. No. 14/4931 / ABP Ref. No. PL04.2434621 (which currently lies vacant), I am inclined to suggest that there is a clear deficit of local services / facilities within Broomfield Village and thus the development of a new crèche facility as part of the subject proposal would serve to partially address same.

7.3.2. In relation to the siting of the proposed crèche facility as detailed in the amended proposal submitted to the Planning Authority on 12th June, 2017 in response to the request for further information, I would have serious reservations as regards the

appropriateness of same. In this regard the proposed crèche will be located in the northern-eastern corner of the wider site area within Parcel 'A' and thus is effectively located on the periphery of both the subject proposal and the overall Broomfield Village housing scheme. Accordingly, concerns arise as regards the accessibility of the proposed crèche to residents of the wider area. More specifically, the peripheral siting of the proposed crèche relative to both existing and proposed housing (as exacerbated by the steep topography of the area) will likely require pick-ups / drop-offs to the facility to be conducted by private car which will result in increased volumes of vehicular traffic having to travel a significant distance through the proposed (and existing) estate which, in addition to the increased noise and general disturbance associated with same, would be likely to have an adverse impact on the residential amenity of the occupants of neighbouring housing. Furthermore, whilst I would concede that it would also be feasible to access the proposed crèche via Wheatley Heights from Meadowlands Lane to the northeast, in my opinion, any such arrangement is not desirable given that the increased traffic movements through such a small cul-de-sac of 8 No. dwelling houses would likely have a detrimental impact on the residential amenity of same whilst the narrow width and substandard vertical and horizontal alignment of Meadowlands Lane at this location would not be conducive to traffic safety. Therefore, I am not satisfied that the applicant's proposed siting of a crèche within Parcel 'A' of the site area is appropriate as it will have a detrimental impact on both existing and future residential amenity.

- 7.3.3. In reference to the amendments to the site layout required by Condition No. 2 of the notification of the decision to grant permission as issued by the Planning Authority whereby House Nos. 39-41 are to be omitted and the area vacated by same to be reserved for the provision of a crèche, I am similarly not satisfied that this location is suitable for the provision of a childcare facility given the need for traffic to travel through an approved housing estate (under construction) to the detriment of residential amenity.
- 7.3.4. In my opinion, a more appropriate site for a crèche facility would be alongside the main spine road that serves the Broomfield estate given the improved accessibility of any such location. Such a conclusion would perhaps lend credence to the re-consideration of the proposal to locate a crèche within Parcel 'C', however, it has already been established that this would materially contravene a previous grant of

permission and the relevant local area plan objectives. Notably, from a review of PA Ref. No. 99/5199 / ABP Ref. No. PL04.121116, it would appear that it was originally intended to reserve those lands along the spine road to the north / northwest of Parcel 'C' for the development of a commercial / community centre (to include a crèche facility) to serve the wider Broomfield Village scheme, however, the Board recently approved the development of further housing and a community building on these lands under PA Ref. No. 14/4931 / ABP Ref. No. PL04.243621 on the basis that said proposal addressed the earlier refusal of ABP Ref. No. PL04.242081 which stated that *'the site should not be developed as an exclusively residential development given its strategic location'*. In this respect I would advise the Board that the community building approved under ABP Ref. No. PL04.243621 has since been completed and that whilst it is presently vacant it may be feasible to utilise same (subject to any required modification or extension) as a childcare facility for the wider area, although I would emphasise that this structure / site is not within the applicant's control.

- 7.3.5. Therefore, on the basis of the foregoing, it is my opinion that whilst it is clearly desirable to provide a crèche facility to serve both the subject development and the surrounding area, none of the locations proposed by either the applicant or the Planning Authority within the confines of the application site are suitable for same. Accordingly, it is necessary to consider whether or not it would be appropriate to permit the residential component of the overall development in the absence of any such childcare facility. In this regard I am conscious of the potential conflict with the recommendations of the *'Childcare Facilities, Guidelines for Planning Authorities, 2001'*, however, I would draw the Board's attention to the planning history of the application site as it appears from a review of the Planner's Report that permission was previously granted on part of the site area for a larger scheme of housing under PA Ref. No. 08/8103 in the absence of any crèche facility (although I would acknowledge that this earlier approval would seem to have encompassed part of the existing / under construction estate area whilst the subject site would also appear to include some additional recently re-zoned 'existing built-up' lands). Whilst it is regrettable that further details (site plans etc.) of PA Ref. No. 08/8103 have not been forwarded to the Board in order to confirm the foregoing, I am inclined to suggest that it would be permissible in this instance given the planning history of the area, the

previous approval of housing development on site in the absence of any definitive childcare provision, and the recent construction of a community building nearby under ABP Ref. No. PL04.243621, to approve the subject proposal without the proposed crèche facility.

7.4. **Overall Design and Layout:**

- 7.4.1. With regard to the overall design and layout of the proposed development it is perhaps of relevance in the first instance to highlight those factors which have evidently served to constrain the development potential of the wider site area i.e. Parcel 'A'. In this respect I would draw the Board's attention in particular to the prevailing site topography which rises steeply over the existing housing to the south / southeast, the established pattern of development on adjacent lands through which access to the subject site will be obtained, and the need to consider the relationship with adjoining housing.
- 7.4.2. Having regard to the foregoing, it is apparent that the submitted proposal has employed a typically conventional and somewhat suburban approach to the development of Parcel 'A' through the construction of a series of detached and semi-detached housing units with each dwelling house having been provided with front and rear garden areas and dedicated off-street car parking. Whilst such a design response is somewhat unimaginative, I would acknowledge that the aforementioned on-site constraints, including the site topography and the need to minimise 'cut and fill', would appear to have significantly influenced the design of the scheme whilst the submitted proposal would also seem to have taken cognisance of the broader site context and thus is in keeping with the prevailing pattern of development in the area. However, it is regrettable that the proposed site layout will result in a significant expanse of retaining walls being positioned alongside public areas whilst virtually all of the proposed housing units will be orientated to face northwards into the hillside. Nevertheless, I am generally amenable to the overall design and layout of the proposed development given the on-site constraints.
- 7.4.3. Whilst I would concede that the overall density of the proposal is considerably below that recommended for outer suburban sites in the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*', I would reiterate the on-site constraints and the wider sensitivities concerning the site context

(in reference to Parcel 'A'), including its elevated position, topography, dimensions, and its relationship with adjacent housing.

- 7.4.4. In respect of the proposed development of 2 No. apartment blocks within Parcel 'B' of the site area, I am inclined to conclude that the overall design and layout of same is in keeping with the surrounding established pattern of development and generally accords with the requirements of the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015*'.

7.5. **Impact on Residential Amenity:**

- 7.5.1. Concerns have been raised in the grounds of appeal as regards the potential detrimental impact on the residential amenity of neighbouring properties attributable to the proposed inclusion of a series of pedestrian / cycle links between the subject proposal and adjacent housing developments, with specific reference to the Meadowlands estate. In this respect it is of particular relevance to note that the proposed development, as initially submitted to the Planning Authority, did not provide for any pedestrian or vehicular links with the Meadowlands estate and that the inclusion of same was in response to a request for further information issued by the Planning Authority which stated that the proposed layout was overly linear and failed to promote connectivity and permeability (as derived from the report of the County Architect).
- 7.5.2. Whilst the original proposal provided for a pedestrian link within the north-eastern corner of the application site between the proposed development and the neighbouring housing scheme known as Wheatley Heights, the amended site layout submitted on 12th June, 2017 in response to the request for further information has sought to address the Planning Authority's concerns as regards a lack of permeability and interconnectivity with adjacent housing areas by providing for 2 No. additional pedestrian / cycle links between the subject proposal and the Meadowlands estate. In this regard it is proposed to provide a new pathway between Proposed House Nos. 75 & 76 along the route of a wayleave required to serve an underground cable / power line which will link into a turning bay that terminates in a cul-de-sac within the Meadowlands estate. In addition, a second new pathway linking the north-eastern corner of Parcel 'A' with the Meadowlands estate is to be provided

through an area of public open space to the rear of the proposed relocated crèche facility.

- 7.5.3. The need for increased permeability and connectivity in order to promote inclusivity and to provide for improved access to local services and facilities within urban development (particularly for pedestrians and the mobility impaired) is acknowledged in the *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* and thus I would accept the desirability of providing for pedestrian / cycle links between the proposed development and the surrounding area. In this regard I would suggest that the proposal to provide a link through the development to Wheatley Heights is to be welcomed as it will allow the residents of that housing to access the public open space / green areas within the subject site (*N.B.* When taken in combination with the other proposed links / pathways, this interconnectivity will also allow for improved access to the wider area to the southwest). In addition, the provision of a new turning bay at the end of Wheatley Heights as part of the proposed development should be viewed as a planning gain to the residents of that estate.
- 7.5.4. With regard to connectivity and permeability between the proposed development and the Meadowlands estate, whilst I would acknowledge the appellants' concerns, it is nevertheless desirable in the interests of sustainability and inclusivity to promote such linkages. However, having reviewed the submitted proposals, I would have serious reservations as regards the suitability of the pathway proposed between House Nos. 75 & 76 given the confined and enclosed nature of same and the absence of any passive supervision. In my opinion, any such access could potentially give rise to anti-social behaviour and would likely be to the detriment of the occupants of the adjacent housing. Accordingly, I would concur with the decision of the Planning Authority to omit this proposed access.
- 7.5.5. In relation to the access route intended to link the north-eastern corner of Parcel 'A' with the Meadowlands estate through the open space to the rear of the proposed crèche facility, whilst I would acknowledge the difficulties in seeking to 'retrofit' this access given the established nature of the Meadowlands estate and the prevailing site topography, it should be noted that any such access would serve to benefit the residents of both the proposed development and Wheatley Heights by reducing the walking time / travel distance to services etc. located further southwest. It is also of

relevance to note that the omission of the proposed crèche facility from this location (as recommended elsewhere in this report) will serve to improve the overall visibility and passive supervision of this pathway / access from both existing and proposed housing. Therefore, I am inclined to recommend to the Board that this access should be retained as part of the overall development proposal, although I would also suggest that Proposed House No. 96 should be omitted in order to improve passive supervision of the area (whilst also allowing for greater flexibility in the precise siting of the access pathway).

7.5.6. On balance, I am satisfied that the proposed development, subject to conditions, will not have an undue detrimental impact on the residential amenity of neighbouring properties or the wider area.

7.6. **Traffic Implications:**

7.6.1. The residential component of the proposed development within Parcels 'A' and 'B' of the application site will be accessed via the existing roads infrastructure serving the wider area and in this respect I am satisfied that the surrounding road network has sufficient capacity to accommodate the additional traffic volumes consequent on the proposed development.

7.6.2. With regard to the proposal to develop a crèche facility on those lands identified as Parcel 'C' to the southeast of Broomfield Village at the junction of the Broomfield distributor road with Meadowlands Lane, I would refer the Board to Section 3.3.45 of the East Cork Municipal Local Area Plan, 2017 and, in particular, to Objective No. MD-U-01: '*Northern Relief Road (Phases 2 and 3)*' which identifies an indicative route for the completion of the Northern Relief Road.

7.6.3. From a review of the available information, it would appear that the indicative route for the proposed Northern Relief Road, which is intended to function as a distributor road bypassing the town centre to the north as set out in the mapping contained in the Local Area Plan, will extend through or immediately alongside Parcel 'C' and thus I would have reservations that the proposed development could undermine the future achievement of this objective. However, it is of relevance to note that the Engineering Department of the Local Authority has indicated that the potential route for the proposed relief road (as identified by the applicant in unsolicited further information received by the Planning Authority on 23rd December, 2016) would be

'broadly acceptable' provided a clear corridor of 35m is maintained to accommodate the roadway. In this respect it should also be noted that the applicant's grounds of appeal and its response to the Planning Authority's submission to the first party grounds of appeal have both been accompanied by revised proposals which seemingly assert that a suitably sized corridor can be maintained as part of the development of Parcel 'C' to accommodate the provision of the proposed Northern Relief Road. It is of further relevance to note that the suggested road reservation corridor contained in the aforementioned revised proposals would seem to be compatible with the schematic design of the roundabout proposed at the junction of the R627/L7630 which has accompanied the Planning Authority's response to the first party grounds of appeal.

- 7.6.4. Whilst I would acknowledge that it may be possible to develop Parcel 'C' without compromising the achievement of Objective No. MD-U-01, given the absence of any definitive design for the proposed relief road and the possibility of unforeseen circumstances impacting on the route / design of same, I am inclined to conclude that development of the kind proposed at Parcel 'C' would be premature pending the determination of a final road layout by the Planning Authority. Therefore, it is my opinion that the proposed development of Parcel 'C' could undermine the achievement of Objective No. MD-U-01 of the Local Area Plan.

7.7. **Appropriate Assessment:**

- 7.7.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation the southernmost extremity of the site area (i.e. Parcel 'C') is situated approximately 1.5km southwest of the Cork Harbour Special Protection Area (Site Code: 004030) and the Great Island Channel Special Area of Conservation (Site Code: 001058). In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Objective No. HE 2-1: *'Sites Designated for Nature Conservation'* of Chapter 13 of the Cork County Development Plan, 2014, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the

vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

7.7.2. Having reviewed the available information, including the screening exercise undertaken by the Planning Authority in respect of the subject proposal, and following consideration of the 'source-pathway-receptor' model, it is my opinion that in light of the nature and scale of the development proposed, the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, no appropriate assessment issues arise and that the proposed development would not be likely to have any significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

7.8. **The Requirement for a Special Development Contribution:**

7.8.1. Condition No. 44 of the notification of the decision to grant permission as issued by the Planning Authority requires the payment of a special development contribution in the amount of €60,000 towards works proposed to be carried out for the improvement of the R627/L7630 junction. From a review of the Planner's Report it would appear that this special contribution was imposed on the basis of a recommendation made in a report compiled by the Engineering Department which stated the following:

'Cork County Council has proposals to carry out junction improvements and associated works at the junction of the R627 Dungourney Road and the L7630 to the east of the site. These improvement works will involve the construction of an off line roundabout and some realignment of the existing roads. These proposed works will benefit the development and I do not think it unreasonable that a special contribution be levied on the development for these works which will be of benefit to the development. A preliminary cost estimate of these works is in the sum of €600,000. A special contribution of €60,000 should be levied on

the development which is equivalent to 10% of the cost of the proposed road improvements’.

7.8.2. In response to the inclusion of Condition No. 44 the applicant has put forward two principle arguments in the grounds of appeal against the imposition of such a special development contribution. Firstly, it has been submitted that the Planning Authority has failed to provide any breakdown of the basis upon which the special contribution was calculated contrary to the provisions of the *‘Development Contributions, Guidelines for Planning Authorities, 2013’*. The second aspect of the grounds of appeal questions the apportionment of the cost of the proposed junction upgrading works to the proposed development and further asserts that the imposition of same would amount to ‘double-charging’ given that monies have already been paid towards the provision of the junction improvement works pursuant to PA Ref. No. 99/5199 / ABP Ref. No. PL04.121116 whilst the lands required for the works have also been ceded to the Local Authority at no cost (by a receiver acting for the previous developer).

7.8.3. Section 48(2)(c) of the Act which states that Planning Authorities may require the payment of a special development contribution in respect of a particular development where specified exceptional costs not covered by the General Contribution Scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. By way of further clarification in this respect I note that Paragraph 7.12 of the *‘Development Management, Guidelines for Planning Authorities, 2007’* states the following:

“special contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of Section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis of the calculation, including how it is apportioned to the particular development”.

7.8.4. In addition, I would refer the Board to the *‘Development Contributions, Guidelines for Planning Authorities, 2013’* which state the following:

‘A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution’.

7.8.5. Therefore, on the basis of the foregoing, it is necessary to consider whether or not the special development contribution as imposed complies with the requirements of Section 48(2)(c) of the Act.

7.8.6. From a review of the available information it is apparent that the special contribution was imposed on the recommendation of the Engineering Department and whilst I would accept that the proposed junction improvement works will serve to benefit the proposed development, I would have some reservations as to whether the works in question can be held to be ‘specific exceptional’ costs attributable to the proposed development. In this regard I note that the proposed junction improvement works involve the provision of a new roundabout which would seem to form part of the Midleton Northern Relief Road and that the construction of this relief road was previously included as a development objective in the Midleton Special Local Area Plan, 2005 and the Midleton Electoral Area Local Area Plan, 2011 (*N.B.* It is also included as a specific development objective in the East Cork Municipal District Local Area Plan, 2017 i.e. MD-U-01: Northern Relief Road: Phases 2 and 3). Given that the construction of the Northern Relief Road was included in previous local area plans, and as it continues to be an objective of the current Local Area Plan, in my opinion, it would seem reasonable to suggest that the costs associated with the provision of this infrastructure are likely to be included in the Cork County Council General Development Contribution Scheme and thus a special contribution towards same would seem to amount to ‘double-charging’.

- 7.8.7. In addition to the foregoing, it is of particular relevance to note that a special development contribution towards the proposed junction improvement works was not imposed in respect of other multiple residential unit / serviced site developments recently permitted in the immediate vicinity of the subject site under PA Ref. Nos. 15/4209, 16/4304 & 16/5448, notwithstanding that said developments would similarly have benefitted from the proposed works. More specifically, the Board's recent determination of PA Ref. No. 14/04931 / ABP Ref. No. PL04.243621, which approved the construction of housing on lands which were not previously identified for residential purposes under PA Ref. No. 99/5199 / ABP Ref. No. PL04.121116, did not include for any special development contribution towards the junction improvement works. Accordingly, it would appear that the absence of any special development contribution in the aforementioned decisions would lend credence to the position that the costs of the proposed junction improvement works are actually intended to be covered by the general development contribution.
- 7.8.8. Notwithstanding the foregoing, with regard to the assertion in the grounds of appeal that the Planning Authority has failed to provide any breakdown of the basis upon which the special contribution has been calculated and how the costs of the proposed junction improvement works have been apportioned to the subject development, at the outset I would advise the Board that the identification of the proposed works is key to the determination of the expenditure involved and to allow a clear basis for the calculation of any development contribution, including how the monies would be apportioned to a particular development. In the absence of these details it would be impossible for the applicant to calculate, in the future, if a refund would be payable should the works not commence or be partially completed within the specified timeframes.
- 7.8.9. In this respect it should be noted that the Planning Authority's response to the grounds of appeal has been accompanied by a detailed costing of the proposed works which is estimated to be in the order of €600,831. It is further stated that 10% of this cost has been apportioned to the proposed development.
- 7.8.10. Whilst I am amenable to accepting the Planning Authority's costing of the proposed junction improvement works (I note that the applicant has not questioned same), I would have difficulties in accepting the apportionment of same onto the subject application. In my opinion, it is regrettable that a greater level of detail has not been

provided by the Planning Authority in respect of the rationale for its decision to impose 10% of the costs of the works on the subject development. Indeed, no clear justification has been provided for this particular apportionment and thus it is not possible to determine if it can be held to be reasonable. Moreover, it is of relevance to note that the apportionment of 10% of the costs of the junction improvement works, which has been used to impose a special development contribution in the amount of €60,000, was recommended by the Engineering Department in its assessment of the original development proposal and thus does not reflect the changes to the scheme which have occurred over the course of the application process both by way of further information (i.e. an overall reduction in the number of dwelling units proposed) and pursuant to the amendments required by way of condition in the notification of the decision to grant permission (i.e. a further reduction in the total number of approved dwelling units) (*N.B.* In the event of a grant of permission pursuant to my recommendation, the omission of a further dwelling house and the proposed crèche facility would also require a proportionate reduction in any special development contribution imposed). In effect, the imposition of a special development contribution in the amount of €60,000 as sought by the Planning Authority seemingly applies equally to a development proposal comprising 85 No. housing units (as approved by the Local Authority) and 100 No. units (as originally sought by the applicant). Therefore, in the absence of any clear basis on which the cost of the proposed works has been apportioned to the development (e.g. by way of expected traffic generation), it is not possible to calculate a revised figure which would be reflective of the amended (or approved) development proposal.

- 7.8.11. With regard to the applicant's assertion that development contributions have already been paid towards the proposed junction improvement works pursuant to the parent grant of planning permission issued in respect of PA Ref. No. 99/5199 / ABP Ref. No. PL04.121116 and that no account would seem to have been taken of the fact that the lands required for the proposed works were ceded to the Local Authority at no cost by a receiver acting on behalf of the previous developer of Broomfield Village, whilst I am not in a position to specifically comment on the veracity of the foregoing, it is of relevance to note that Condition No. 2 of ABP Ref. No. PL04.121116 stated the following:

'No residential unit shall be occupied until road improvements are completed by way of the provision by the planning authority of roundabouts at Mill Road to the west of the site (the R626) and on the Middleton/Dungourney Road to the east of the site (the R627) which would facilitate the proposed development. The latter roundabout shall also include the provision of an access therefrom to the site of the proposed development.

Reason: In the interest of traffic safety and for the convenience of road users'.

- 7.8.12. Given that this condition would seem to have actually required the proposed junction improvement works to be undertaken by the Planning Authority in advance of the occupation of any unit within 'Broomfield Village', I would have reservations as regards the appropriateness of imposing a further special development contribution given that this may amount to double-charging in light of the contributions already paid under ABP Ref. No. PL04.121116 which may have been intended to be put towards *'the provision by the planning authority of roundabouts . . . on the Middleton/Dungourney Road to the east of the site (the R627)'* as has been suggested by the applicant.
- 7.8.13. Having considered the available information, I am inclined to conclude that the special development contribution sought by Condition No. 44 of the notification of the decision to grant permission cannot be considered to constitute a specific exceptional cost in relation to this particular development. Furthermore, the Planning Authority has failed to provide a clear rationale as to the apportionment of the cost of the proposed road improvement works to the subject proposal. In addition, it would appear that the monies sought may amount to double-charging given that development contributions have already been paid pursuant to PA Ref. No. 99/5199/ ABP Ref. No. PL04.121116 which may have been intended to be used towards the cost of the junction improvement works referenced in Condition No. 2 of that grant of permission (which stipulates that the Planning Authority was to undertake the junction improvement works in advance of the occupation of any unit approved as part of that development).
- 7.8.14. Accordingly, on the basis of the foregoing, it is my opinion that the attachment of Condition No. 44 as a special development contribution fails to meet the requirements of Section 48 of the Act.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

9.0 Reasons and Considerations

Having regard to the zoning of the site and its location within the settlement boundary of Midleton as set out in the East Cork Municipal District Local Area Plan, 2017 and the current Development Plan for the area, and the policies contained therein, to the site location and context, to the design and scale of the proposed development, to the nature and pattern of development in the vicinity, and to the planning history of the site, and having regard to national policy guidance for residential areas, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic and pedestrian safety and would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 23rd day of December, 2016, the 12th day of June, 2017 and the 23rd day of June, 2017, 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. The proposed development shall be amended as follows:

- (a) House No. 96 and the crèche facility (as shown on Drg. No. 15084/P/003B Rev. P2: 'Proposed Site Plan' received by the Planning Authority on 12th June, 2017) shall be omitted and the space thereby released shall be incorporated into the public open space of the development and shall be landscaped and used as public open space.
- (b) The pedestrian pathway / cycleway between House Nos. 75 & 76 (as shown on Drg. No. 15084/P/003B Rev. P2: 'Proposed Site Plan' received by the Planning Authority on 12th June, 2017) shall be omitted and alternative proposals made for the reservation of a wayleave to serve the underground cabin / power line.
- (c) No development shall be undertaken within those lands identified as Parcel 'C' on foot of this grant of permission.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential amenity and traffic safety, to provide for increased usable public open space within the development, and to ensure adequate passive supervision of the proposed pedestrian link between the proposed estate and the adjoining housing development to the southeast.

- 3. 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.

- 4. 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. All existing overhead cables crossing or bounding the site shall be undergrounded at the developer's expense.

Reason: In the interest of visual and residential amenity.

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

Reason: In the interest of visual amenity.

6. Prior to commencement of development, the developer shall submit to the planning authority, for written agreement, complete details of all boundary treatment within and bounding the proposed development site.

Reason: In the interests of visual and residential amenity.

7. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

8. 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. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. 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 interest of urban legibility, and to ensure the use of locally appropriate placenames for new residential areas.

9.
 - (a) The roads and traffic arrangements serving the site (including signage) shall be in accordance with the detailed requirements of the planning authority for

such works and shall be carried out at the developer's expense and shall be agreed to the satisfaction of the planning authority prior to commencement of development.

- (b) Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of the locations and materials to be used in such dishing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic, cyclist and pedestrian safety.

10. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, 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. Lighting shall be provided along the full length of the proposed pedestrian links to adjoining housing developments.

Reason: In the interest of amenity and public safety

11. The construction of the development shall be managed in accordance with a Construction 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 hours of working, noise management measures and off-site disposal of construction waste.

Reason: In the interest of public safety and residential amenity.

12. 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 social and affordable housing in accordance with the requirements of section 96 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 97(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 for the area.

13. 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 and maintenance until taken in charge by the planning authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion or maintenance 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 and maintenance of the development until taken in charge.

14. The developer shall pay to the planning authority a financial contribution 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.

15. The developer shall pay to the planning authority a financial contribution in respect of the Cobh / Midleton – Blarney Suburban Rail Project in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Robert Speer
Planning Inspector

23rd November, 2017