



An
Bord
Pleanála

Inspector's Report ABP.301156-18

Development	Permission for 78 no. houses, creche and all-weather surface play area, outline permission for 5 no. houses, retention of 8 no. houses
Location	Shronedarragh, Barraduff, Killarney Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/980
Applicant(s)	XDEV Real Estate Ltd.
Type of Application	Planning permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party
Appellant(s)	XDEV Real Estate Ltd.
Observer(s)	None
Date of Site Inspection	30 th June 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** Barraduff village is located on the N72, Mallow to Killarney road, approx. 10km to the east of Killarney town. The N72 intersects with the R570 at the eastern end of the village. The R570 connects the N72 with the main Cork-Kerry Road, the N22 at Glenflesk. The site is located off the R570 within the village and is also accessible from the N72. The main commercial core of the village is located along the N72 with shops, offices, commercial units, community facilities on both sides (north and South) of the main road. Large tracts of land to the south of the main street properties, have recently been developed for housing in the form of residential estates, predominantly on the western side of the R570. There is also a large community field which has been developed as part of the recent housing developments, and which is accessed from the R570. There is an existing footpath leading from the R570 to the community field.
- 1.2.** The site is stated as being c.4 53ha in area. It forms part of a larger partially completed housing development which was commenced under 05/2462.

2.0 Proposed Development

- 2.1.** The proposed development involves the construction of a total of 91 residential units, a playground, a creche and pedestrian access from the R570, which involves the completion of an unfinished housing estate commenced under 05/2462, which was granted in 2006. The previously granted development was for a 'Village Development' which comprised retail/office buildings, a creche, an ATM, 15 no. apartments, 59 no. terraced houses, 64 no. semi-detached houses and 3 no. detached houses. The offices/retail buildings and apartments have been constructed at the northern end fronting Main Street and 11 no. houses are occupied on the western side, adjacent to the R570. It is stated that the proposed development seeks to link the developed sections with a large development to the west being carried out by other developers.
- 2.2.** The proposed development comprises the following specific elements:-

- Completion of 8 semi-detached houses and boundaries
- Construction of 72 no. 2-storey semi-detached houses;
- Construction of 2 blocks of 3-unit, 2-storey houses (6 houses in total);
- Construction of 5 detached 2-storey houses;
- Modifying and completing the construction of access roads, services and ancillary works commenced under 05/2462 and an additional storm connection;
- Construction of a new pedestrian access to the R570.
- Construction of a playground;
- Construction of a creche.

2.3. The application was accompanied by a Design Statement, an Engineering Report a Road Safety Audit Report and a Response to the Road Safety Audit Report and a Landscaping Plan.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 49 no. conditions. The conditions were set out under four separate schedules for different parts of the development, and as such, some of the conditions were repeated, with different numbers.

3.1.1. Schedule 2A related to the retention and completion of **8 no. semi-detached houses**; at sites 23-30 commenced under 05.2462; the retention, modification and completion of **access roads, services and ancillary works** commenced under 05/2462, the retention of an **ESB substation** and the construction of a **storm water connection**.

This schedule included 25 no. conditions. Conditions 2 and 3 related to development contribution conditions.

Condition 2 required the payment of €4,150.78 in respect of Roads and Transport and Community and Amenity Infrastructure benefitting the development in accordance with the Council's General Development Contribution Scheme.

Condition 3 required the payment of €180,500.00 as a Special Contribution towards the cost of implementing the following works:-

- Provision of pedestrian crossing of N72 €50,000
- Upgrade overlay of R570 between site and N72/R570 jnc. €36,500
- Contribution - upgrade of footpath along R570 to centre village €50,000
- Contribution to upgrade public lighting along R570 to N72 jnc. €9,000
- Contribution to upgrade public lights, footpaths, undergrounding of overheads within village Centre along N72 €35,000

3.1.2. **Schedule 2B** related to the construction of 72 no. 2-storey semi-detached houses; construction of two blocks of three unit, 2-storey houses (6 no. in total), construction of a new pedestrian access onto the R570 and the construction of an all-weather surface play area.

This schedule included 11 no. conditions. **Condition 27** related to a development contribution condition under the GDCS. It required the payment of €69,099.79 in respect of Roads and Transport and Community and Amenity infrastructure benefitting the development in accordance with the Council's GDCS.

3.1.3. **Schedule 2C** related to the construction of a **creche**. This schedule included 7 no. conditions. Condition No. 38 required the payment of a Development Contribution of €1,259.61 in respect of Roads and Transport and Community and Amenity in accordance with the Council's GDCS.

3.1.4. **Schedule 2D** related to the grant of outline permission for 5 no. detached 2-storey houses. This schedule included 6 no. conditions. Condition 49 required that where any approval was granted within 3 years on foot of the outline permission a Development contribution shall be payable, which shall be calculated in accordance with the Council's GDCS prevailing at the time.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first Area Planner's report (Nov. 17) noted that planning permission had been granted for a much more dense development under 05/2462, of which 11 houses have been completed, and that these dwellings are served by an access road, open space area and parking. It was further noted that an apartment block with commercial units at ground floor level, which was also permitted under the same permission, has been completed at the northern end of the site. The proposed development was generally considered to be appropriate to the residential zoning and existing development on the site.

The following items were the subject of a FI request on 23rd Nov. 2017:-

- The inclusion of a proposed creche was welcomed but it was considered that it was inappropriate for it to be as an outline application. It was requested that full details of proposed creche to be provided.
- Further details regarding the proposed large playground (400m²) which lies adjacent to the access road including whether it is intended for public access.
- A Road Safety Audit in accordance with Section 5.4.1 of the Design Manual for Urban Roads and Streets to assess the junction design of the proposed development with the R570.
- A detailed specification for all boundary treatment on the site which should be appropriately designed and finished and of low maintenance, particularly fronting public spaces.
- Details of proposed footpath onto R570 and how it will tie into the existing footpath leading to the Community Field, together with details of the treatment of the area between the site boundary and the inside edge of the R570.
- Details of a proposed footpath from the proposed development to the N72.
- All communal areas and services to be shown on a separate drawing to enable those to be taken in charge to be identified at an early stage.
- Response required to third party objection re drainage issues.

3.2.2. **Other Technical Reports**

Roads -no report attached although referred to in Area Planner's report.

Housing Estates Unit – general comments regarding design and layout of housing development which it was considered did not comply with Sustainable Residential Development in Urban Areas, and queried access arrangements to community field.

Ecologist –no significant effects on the SAC considered likely subject to appropriate best practice environmental management of waste water during construction.

Archaeologist – no mitigation required.

3.2.3. **Further Information Response**

Further information was submitted on 20th December 2017. This consisted of Revised Drawings in respect of the proposed playground, creche, boundary treatment, footpath links to Community Field and to N72 and a revised junction design with the R570. A drawing indicating the areas and services to be taken in charge was also submitted. The red line boundary was also amended to include up to the centre line of the R570.

The revised information was considered to be significant further information and was republicized on 18th January 2018. Additional further information was submitted on 19th January 2018 and on 7th February 2018. This related to phasing arrangements, for which separate bonds are proposed, and information regarding contributions already paid in respect of 05/2462. It is noted that a total of €802,788.94 has been paid to date in respect of the uncompleted development, but that only 21% of the development has been completed. It was estimated that approx. 71% of the contributions required under 05/2462 had been paid.

3.2.4. **Planning authority response to Further Information of 20/12/17; and 07/02/18**

Area Planner's final report – 15/02/18 – the further information received on 20/12/17 and 01/02/18 was considered to be satisfactory and permission was recommended.

Area Engineer – 15/02/18 – memo setting out matters to be subject of conditions and contributions. This included the items specified in condition 3 of the P.A. decision as summarised above.

3.3. Prescribed Bodies

Irish Water - No objection subject to conditions.

3.4. Third Party Observations

John Joe Murphy, Murphy's Bar, Main Street, owner of lands bounding site to north (25/10/17). Objection regarding drainage issues and row of houses facing his property, which would interfere with his privacy. Also requested that boundary between the two properties be constructed

4.0 Planning History

05/2462 – planning permission granted for a 'Village Development' which comprised retail/office buildings, a creche, an ATM facility, 15 no. apartments, 59 no. terraced houses, 64 no. semi-detached houses and 3 no. detached houses. The offices/retail buildings and apartments have been constructed at the northern end fronting Main Street and 11 no. houses are occupied on the western side, adjacent to the R570.

07/4197 – planning permission granted for construction of 50mg underground tank for foul sewerage effluent storage in lieu of Cond 2 of PP 05/2462 as a temporary measure to serve proposed housing.

5.0 Policy Context

5.1. Sustainable Residential Development in Urban Areas Guidelines

5.2. Design Manual for Urban Roads and Streets

5.3. Development Plan

Kerry County Development Plan 2013-2019

Zoned for residential development

5.4. Natural Heritage Designations

There is one European site in the vicinity of the site – the Blackwater River SAC (002170) which is adjacent to site. The Owneyskeagh river, which is designated as part of the SAC, is located 1080m from the site.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by Diarmuid Mangan and Associates on behalf of the applicant. The appeal is against **Condition No. 3 only**, which requires the payment of a Special Contribution of €180,500 in respect of 5 separate elements. The grounds of appeal are stated in respect of each of the separate elements as follows:

- **Provision of pedestrian crossing of N72 - €50,000** - The Council has not demonstrated that the costs incurred are specific to the development and has confirmed that the contribution represents the total cost of the works. The crossing is to be as a safe point near the church and is for the benefit of the village. It is unreasonable to expect the developer to pay the full cost and proposes 30% as being a fair amount of contribution.
- **Upgrade/overlay of R570 between the development and the junction of N72/R570 €36,500** - The Council has not demonstrated that the costs incurred are specific to the development and has confirmed that the contribution represents the total cost of the works. The road has been upgraded to the north and south of the development in recent years, but not the section adjacent to the development. The works are to benefit the whole village travelling to and from the school and the community field. It is unreasonable to expect the developer to pay the full costs and proposes 30% as being a fair amount of contribution.
- **Contribution towards upgrade of the public footpath along the R570 between the development and the Village Centre €50,000** - The Council has not demonstrated that the costs incurred are specific to the development

and has confirmed that the contribution represents the total cost of the works. The works involve approx. 65m of footpath along the R570 and 80m along the N72 and are for the benefit of the village in terms of providing additional linkage to the school and the community field. It is unreasonable to expect the developer to pay the full costs of the works and proposes 30% as being a fair amount of contribution.

- **Contribution towards the upgrade of public lights along the R570 between the proposed development and the N72/R570 - €9,000** – The Council has not demonstrated that costs incurred are specific to the development and has confirmed that the contribution represents the total cost of the works. The works involve 3 new street lights along the R570, two of which are near the R570/N72 and one of which is adjacent to the development. It is stated that the street light outside the development will be installed by the developer. The other two lights are adjacent to lands zoned for mixed use/commercial. The proposed lights are for the benefit of the entire village. It is unreasonable to expect the developer to pay the full costs of the works. It is proposed that 30% of the costs of the two lights near the village would be more reasonable, i.e. €1,800.
- **Contribution towards the upgrade of public lights, footpaths and the undergrounding of overheads within the Village Centre along the N72 €35,000**- The Council has not demonstrated that the costs incurred are specific to the development and has confirmed that this is a part-contribution and does not represent the total cost of the works. It is stated that the works/costs are vague at this point in time and suggests that there may be an overlap with the contribution required above. It is considered that the requirement should be omitted on the basis of lack of clarity, or alternatively, should be considered that it has already been covered as part of the contribution payable under the General Development Contribution Scheme.
- **Section 139 appeal** - It is requested that the appeal be dealt with under Section 139 of the 2000 Act and that condition 3 be amended as outlined above. Reference is made to the zoning of the site/area, other permissions granted in the area and the newly installed sewer treatment plant, and to the

proportion of development represented by the proposed development in this context.

6.2. Planning Authority Response

The P.A. responded to the grounds of appeal on 28th June. A breakdown of the costs incurred has been provided together with justification for the works and the proportion of each contribution towards the works required.

- It is noted that the contributions required in respect of the crossing of the N72 and the upgrade of the wearing course represent 100% of the works incurred. However, it would appear that an additional amount of €500 has been added to the latter contribution, when it is itemised in the summary table. The breakdown indicates a total cost of €36,000 but the summary table includes the item as €36,500. This is also the amount that was stated in Condition 3.
- It is stated that the contributions in respect of the upgrade of both the footpath and lighting along the R570 represents 50% of the costs incurred and that the contribution in respect of the upgrade of the footpaths, public lighting and undergrounding of services on the N72 represents just 4.24% of the costs involved.
- Justification for the pedestrian crossing of the N72 is stated as being that the development introduces 91 dwelling units and that there is no pedestrian crossing in the vicinity to facilitate pedestrians accessing the northern side of the village.
- Justification for the cost of the resurfacing works was given as the increased turning movements arising from the development. The costs relate to two specific sections of the R570, 80m and 50m in length. 100% of the cost for these sections is required.
- Justification for a contribution of 50% of the costs incurred in respect of the footpath and upgrade of the public lighting along the R570, respectively, was given as facilitating access from the development to the village centre and acknowledging that there would also be other beneficiaries.

- Justification for 4.24% contribution to the costs of the upgrade of the public lights, footpaths and undergrounding of services was given as the scheme benefits the village and other developments in Barraduff. There is currently no state funding for the works involved. However, there is some potential for the village upgrade works to qualify as part of a Town and Village Renewal Scheme, but it is considered that the 4.24% would be used as part of match funding.
- It is confirmed that the proposed works do not constitute any infrastructure, facility proposed as service under a Development Contribution Scheme.

6.3. First party response to P.A. clarification

Item 1 – Pedestrian crossing N72

Rates and requirements considered excessive. Amounts are disputed and counter proposals are made regarding costings and rates at a detailed level based on personal experience of applicant's agent. Inclusion of footpath elements amounts to double charging with respect to Justification in respect of specific and exceptional costs which would benefit the proposed development exclusively also disputed. The need for contributions from other development proposals in vicinity is questioned, and 100% of costs is strongly disputed. In conclusion, should a special contribution be justified, it is submitted that a sum of between €6,000 and €9,000 (20-30%) would be reasonable

Item 2 – Resurfacing R570

Rates and cost of works excessive. €25/m² is disputed and submits should be €18-€20 per sq.m. Justification in respect of additional turning movements and area/length involved is also disputed. Submits should be 36m rather than 130m. 100% contribution excessive and no account taken of provision of existing roads and footpaths, with public lighting, within development. In conclusion, seeking reduction to €5,840 -€8,760

Item 3 – Public footpaths on R570/N72

No justification for 50% of cost provided. Reference to Appendix C attached to appellant's submission (Map with annotations) – it is submitted that the 152m length in P.A. clarification relates to C-D-E, but considers that involves double charging and are not works which are essential or exclusive to the proposed development. Rate should only relate to 65m along R570, not onto N72. In conclusion, it is submitted that 20-30% of €16,250 would be more reasonable.

Item 4 – Public lighting R570

P.A. says 2 lights required between B and C (Main entrance to No. 1 Coill Darrach) and 1 light between C and D (northern end R570 and onto N72). However, it is submitted that the former will be provided by the developer as part of the development and the latter has already been accounted for in Item 3.

Item 5 – contribution towards upgrade of public footpaths, public lighting and undergrounding of services on N72

It has not been possible to confirm that these works are specified in any LAP or in the CDP, nor is it in the council's Capital Expenditure Programme for 2018-2020. Thus, it is unrealistic that they would be carried out in the next 7 years. The rates employed and the total cost for the overall works are disputed as being excessive and counter proposals offered. It is noted that this special contribution has not been applied to other recent planning decisions in the vicinity. The levy is considered to overlap with the GDCS. It is submitted that there would be an overlap with the contributions required under other items, resulting in double charging. In conclusion, although it is submitted that this levy should be omitted, the developer would be prepared to contribute up to 5% of the overall costs (up to max. of €30,000) provided that a fair, transparent and realistic budget and funding programme is approved by the Council, (in the form of a Part 8 or similar).

7.0 Assessment

7.1 Legislation and Guidance

- 7.1.1. As the appeal is solely against Condition 3 of the planning permission, relating to a Special Financial Contribution, Section 48(13)(a) of the Planning and Development

Act 2000, as amended, applies. This requires that the Board shall not determine the relevant application as if it had been made in the first instance, but shall determine only the matters under appeal.

- 7.1.2. Condition 3 requires the payment of a special contribution of **€180,500**. However, as stated in 6.2 above, it is considered that the correct amount is **€180,000**. I note that there are a number of conditions attached to the permission requiring the payment of financial contributions in respect of public infrastructure and facilities benefitting development in the area under the adopted Kerry County General Development Contribution Scheme, made under Section 48(2)(a) of the Act. These are

Condition 2 - €4,150.78;

Condition 27 - €69,099.79 and

Condition 38 - €1,259.61.

- 7.1.3. Section 48(2)(c) of the P&D Act 2000 as amended provides for the payment of a Special Contribution and further guidance on the matter is provided in the Development Management Guidelines, 2007 (Section 7.12). It is clear from the legislation and the guidance that such a requirement should only be made in respect of a particular development whereby demands likely to be placed on the public services and facilities are deemed to be exceptional, thereby incurring costs not covered by the General Development Contribution Scheme. It is further clear that such a condition must be amenable to implementation under the terms of S 48(12) of the Act. This means that the basis for the calculation should be clear from the planning decision. The Guidelines state that “this means that it will be necessary to identify the nature/scope of the works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.”

7.2. Specific and exceptional costs

7.2.1. Item 1 Pedestrian Crossing of N72

The N72 is a busy regional road which connects the towns of Killarney and Mallow, as well as Rathmore. It also forms the main street of the village of Barraduff, which is designated as a District Town in the Kerry CDP. The settlement is earmarked for growth with a stated population (census) of 370 and a growth allocation of 35. However, it is clear from the submissions on file that the settlement has been the

subject of significant residential development proposals in recent years and that the current development relates to a registered unfinished estate for a substantial development, which would almost double the population of the settlement. It is further noted from the Road Safety Audit submitted as part of the previous proposed scheme, that the lack of a pedestrian crossing on the N72 was identified as hazard.

The Guidelines require that the works specified in a special development contribution condition should be specific and exceptional. However, I do not accept that this means that the works can only serve the particular development proposal and not provide any benefits to the wider community. In regard to the pedestrian crossing, I would accept the Planning Authority's justification for the crossing on the basis that the occupants of the development will need to be able to cross safely to the north side of the N72, and as such, it is necessary and specifically related to the proposed development. It is considered that the intention of the condition is clear from the planning and technical reports and that the proposed works are specific exceptional costs that would be incurred by the planning authority arising from the proposed development and which are not covered by the General Development Contribution Scheme. It is considered that the proposed levy in respect of this element of the works is justified and should be retained.

7.2.2. Item 2 Upgrade of paving/wearing course of R570

The justification for this levy is given as the additional costs arising from the additional turning movements generated by the proposed residential development. However, the site is zoned residential and has been formerly the subject of a planning permission (05/2462) for a substantial residential development, which had been commenced on site, but not finished. The current permission is subject to several conditions requiring the payment of levies under the current General Development Contribution Scheme, which included Roads and Transportation. The previously granted planning permission, now expired, was also subject to conditions requiring payments in respect of roads under the General Development Contribution Scheme which was in place at the time. It is difficult to see how the proposed road works could be classified as specific or exceptional in these circumstances.

The current GDCS lists projects to be funded by the DCS in the appendices, which includes "the refurbishment, upgrading, enlargement or replacement of

roads...". Given that the nature and scope of the works proposed constitute road works which would have been foreseen when both the Development Plan and the GDCS were drawn up and adopted, it is considered that these works are neither exceptional nor specific to the proposed development and accordingly, this element of the levy should be omitted.

7.2.3. Item 3 – Public footpath along R570/N72

The P.A. justification for this public footpath is that it is required to facilitate pedestrians accessing the centre of the village from the development. It is noted that there appears to be a difference of opinion regarding which particular stretch of the road the levy relates to, as the P.A. refers to 152m between the development main entrance and the centre of the village, which I would interpret as the junction with the N72. However, the appellant considers that the stretch involved extends along the R570 and westwards onto the N72, but there is no evidence to support this contention.

The length stated as 152m seems to correspond to the section along the R570 from the proposed entrance to the N72. However, this stretch includes an existing footpath which has already been provided, but is to be upgraded as part of the current development. Thus, it would appear to be an error. Irrespective of this, it is considered that there is no justification for extending the public footpath along the N72 as an exceptional/specific cost associated with the current proposal, as there is a proposed pedestrian link directly to the N72 from within the development.

Notwithstanding this, there is a need for a public footpath linking the proposed main entrance to the junction of the N72 and R570, as there is currently no footpath north of No. 1 Coill Darrach (opposite the school), on the western side of the road.

Pedestrians are likely to walk along the R570 to access the eastern end of the main street, and vice versa, which would be very hazardous. Thus, I would agree with the P.A. that the provision of a footpath would facilitate safe access for residents to the village main street. As such, it is considered that a contribution towards the provision of a public footpath along the section to the north of No. 1 Coill Darrach to the junction with the N72 should be required, and as such, the condition should be amended accordingly.

7.2.4. Item 4 Public lighting on R570

The P.A. has clarified that there are three street lights for which a contribution is required, namely, two lights to extend the public lighting to the main entrance of the development and one light between the development and the junction with the N72. The appellant has confirmed that the developer will provide the two lights between the entrance and No. 1 Coill Darrach as part of the development. I note that Drawing No. 17-30-100-27 (submitted to the P.A. on 20/12/17) indicates that these two lights will be provided immediately to the north of the main entrance, (in addition to a proposal to provide a further two lights to the south of the entrance). Thus, it is considered that a levy in respect of these two lights would amount to double charging.

The third light relates to a section of the R570 to the north of the overall development, between the northernmost house in Coill Darrach (No. 1) and the junction with the N72. The P.A. has stated that this is required in order to facilitate pedestrian access to the village. As stated previously, there is currently no footpath along this stretch of road and I can confirm that there are also no street lights here. It is considered, therefore, that the requirement for a street light at this location is justified, and as this would directly benefit the residents of the development and would be necessary for safe access to/from the village, a contribution towards its provision would be warranted.

7.2.5. Item 5 – Contribution towards upgrade of public lights, footpaths and the undergrounding of services within the Village Centre along the N72.

The works referred to relate to a 750m stretch of the N72, which the P.A. has costed at €828,000. The contribution in this instance is stated to represent 4.24% of the total costs. As stated previously, there are a number of conditions requiring the payment of contributions under the current General Development Contribution Scheme, which include Roads and Transportation and Amenity and Community. Permission Ref. 05/2462 was also subject to similar conditions under a former GDCS. It is not clear how the works in question could be classified as either specific or exceptional in these circumstances.

The current GDCS lists projects to be funded by the DCS in the appendices, including the following

- The provision of infrastructure to facilitate public transport, cycle and pedestrian facilities and traffic calming measures”.
- Improvements to streetscapes, including the undergrounding of overhead power lines in towns and villages, including Rathmore, Gneeveguilla, Tarbert, Portmagee and Waterville”.

However, no mention is made of improvement works to the streetscape in Barraduff. The P.A. states that there is no state funding available other than potentially, Town and Village Renewal funding, but states that this funding is limited and requires match funding. Given that the nature and scope of the works proposed constitute works which would have been foreseen when both the Development Plan and the GDCS were drawn up and adopted, it is considered that these works are neither exceptional nor specific to the proposed development and could be funded, at least in part, from the GDCS. Accordingly, this element of the levy should be omitted.

7.3. Justification for costs – basis of calculation

- 7.3.1. The Guidelines state that it should be clear from the decision how the contribution was calculated and apportioned to the particular development. The appellant has strongly disputed the rates used, the dimensions and the apportionment of costs to the development. The P.A. (28/06/18) has provided a breakdown of the costs and how they were calculated and advised what proportion of the costs the contribution represents in respect of each of the items discussed above. The P.A. did not, however, indicate on what basis the dimensions of the areas to be resurfaced, footpath lengths etc. were arrived at or why particular rates were used. Neither did it provide any explanation or justification for the apportionment of the costs to the development, other than a vague reference to the fact that there were other beneficiaries.
- 7.3.2. The current General Development Contribution Scheme (applicable from 25th July 2017) does not contain any information on the rates per metre or square metre in relation to road works, footpaths etc. and I can find no specific guidance on this matter in respect of Special Contributions. However, the P.A. has provided detailed breakdowns of how the contributions were calculated, which seem reasonable.
- 7.3.3. As stated previously, I do not accept that the works specified in Items 2 and 5, respectively, should form part of the Special Contribution levy and should be omitted.

I also would question the length of the proposed footpath on R570 to be covered by the contribution (Item 3), and would suggest that 70m would be more realistic length from the end of the existing footpath to the junction with the N72. This would reduce Item 3 from €100,000 to €45,500, with 50% bringing it to €22,750. Item 4 would also be reduced from €9,000 to the cost of just one public street light, which is given as €8,800, and 50% of this would be €4,400.

7.3.4. The apportionment of costs to the development in terms of the above items is given as 100% for Item 1 and 50% for Items 3 and 4. The appellant made reference to several other planning permissions in the vicinity and that in light of these developments, considered that 20-30% of the costs should be apportioned to the proposed development. I have reviewed the planning permissions referred to (16-1201, 16-1254, 16-1257, 16-1255 and 17-698), which all relate to a similar large-scale housing development to the west by a different developer. The site was also an unfinished housing estate with 18 units constructed. The various permissions listed above relate to several different phases of a new proposal to complete the development. The first four permissions (apart from 17-698) were granted by the P.A. in August 2017 and the conditions attached included requirements to pay a contribution under the GDCS (for each phase) and a special contribution (divided across the four permissions). This condition required the payment of €95,000 in respect of road overlay (€25,000) and pedestrian access in the form a footpath along the N72 (€70,000). A similar condition was attached to 17-698, (which represented more than half the overall development of approx. 180 houses), which required the payment of €90,000 as a Special Contribution towards road overlay and footpath along the N72.

7.3.5. It is noted that this large site would deliver almost twice the number of housing units to the current proposal and that it is located further to the west along the N72. Thus, it could be argued that Item 1 (current appeal) would provide some benefit to these developments also, and that as such the contribution should be reduced to a third. Equally, however, the development currently before the Board would also benefit directly from the elements of the special development contributions required in respect of those developments, although not required to contribute to the footpath along the N72. It is considered that the current proposal is located much closer to the proposed crossing point and would be likely to discharge a significant number of

pedestrians close to the proposed crossing. As such, it is considered reasonable that 100% of the contribution is apportioned to the proposed development.

7.3.6. Items 3 and 4 relate to a public footpath and a public street light on the R570, which is quite remote from the other development site to the west. Having reviewed the P.A. website, there are no other significant residential development proposals/permissions in the vicinity. The proposed development occupies the majority of the western frontage of the R570. Thus, it is considered reasonable that 50% of the contribution is apportioned to the proposed development.

7.3.7. Thus, it is considered that the Special Contribution should be €77,150.00, based on the above.

7.4. Double charging and provision for reduced payments

7.4.1. The appellant considered that the requirement to pay a Special Contribution, given that the site was formerly granted planning permission (05/2462) subject to the payment of development contributions, of which 71% had been paid, yet only 21% had been constructed, effectively resulted in double charging. It was also submitted that certain elements of the required works (specified in condition 3) overlapped with other elements of the required works and/or were works which would be carried out under the GDCS or by the developer. These latter matters have been addressed above, whereby I have suggested that Item 2 and 5 be omitted and that Item 4 be reduced to allow for the fact that the developer will provide two street lights.

7.4.2. The Development Contribution Guidelines 2013 state in respect of double charging, 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. However, the current application is a new application which includes some elements of the previous permission (retention of 8 houses) and it relates to a ghost/unfinished housing estate. It is noted that there is a provision in the GDCS which allows for a reduction in the development contribution required under such a Scheme in respect of ghost estates/unfinished housing developments of 50% and 33% respectively (R16/R17). It is not clear whether such a reduction was applied to the contributions required under the GDCS, but the relevant conditions were not appealed.

8.0 Recommendation

8.1. Having regard to the information on the file, the grounds of appeal, the planning and technical reports of the planning authority in relation to the development, and to the assessment above, I recommend that the Board directs the planning authority to **AMEND** Condition 3 and the reason therefor as follows for the reasons and considerations set out below.

35. The developer shall pay the sum of €77,150.00 (seventy seven thousand, one hundred and fifty euro) (updated at the time of payment in accordance with changes in the Wholesale Price – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of the following works:-

- Provision of pedestrian crossing of N72 €50,000
- Contribution towards upgrade of public footpath
along R570 from adjacent to No.1 Coill Darrach
to junction with N72 (c. 70m) €22,750
- Contribution towards upgrade of public lighting
along R570 between proposed development and
junction with N72 (1 light) €4,400

This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority might facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which benefit the proposed development.

9.0 Reasons and Considerations

It is considered that the planning authority has demonstrated that the provision of a pedestrian crossing of the N72 and the upgrading of the public footpath and public lighting north of the development along the western side of the R570 as far as the junction with the N72 would amount to specific exceptional costs in terms of facilitating pedestrian access to the centre of the village arising from the proposed development that would benefit the proposed development in this instance. However, it is considered that the planning authority has not clearly justified the method by which the contribution was calculated in terms of the length of footpath and number of public lights required to be upgraded/provided. Therefore, it is considered that the special financial contribution as proposed by the planning authority should be amended to reflect the presence of the existing footpath and the inclusion of two public lights in the permitted development in order to comply with section 48(2)(c) of the Planning and Development Act 2000, as amended.

Mary Kennelly
Senior Planning Inspector

16th August 2018