



An
Bord
Pleanála

Inspector's Report ABP-303141-18

Development	Permission for a Cancer Treatment Clinic (Proton Therapy) on a site located at the former Magee Barracks, Hospital Street/R445, Kildare Town, County Kildare
Location	Hospital Street/R445, Kildare Town, County Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18149
Applicant	Lonadale Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party – v - Conditions
Appellant	Lonadale Ltd.
Date of Site Inspection	29 th , March 2019
Inspector	Paddy Keogh

1.0 Site Location and Description

- 1.1. The site of the proposed development which has a stated area of 2.5 hectares forms part of a much larger (c.20.78 hectare) site formerly occupied by Magee Barracks. The Magee Barracks site is located on the eastern side of Kildare town. The Magee Barracks site is enclosed on its western, northern and eastern boundaries by housing estates. The site of the proposed development comprises the south-eastern section of the former Barracks. The southern boundary of the site is defined by the carriageway of the R445 (Hospital Street). The R445 formerly formed part of the N 7 (the main Dublin/Limerick Road) which passed through Newbridge, Kildare town etc. prior to these towns being by-passed by the M7 Motorway. Despite the by-passing of the town the road remains a busy route linking the town with Newbridge.
- 1.2. The site of the proposed development incorporates a proposed new junction to serve the Magee Barracks lands. The Cancer Treatment Centre lands adjoin Rowanville housing estate to the south-east, the R445 to the south and the remainder of the Barracks site on the remaining boundaries.
- 1.3. There is an existing LIDL Store and a recently constructed Primary Care Centre located on the opposite side of the R445 to the appeal site. An Educate Together primary school has been constructed on a portion of the original Barracks site and a separate Gaelscoil is currently nearing completion.
- 1.4. Six vacant buildings (proposed for demolition) currently occupy the appeal site. These buildings include the former Officers' Mess Building and other military buildings.
- 1.5. Magee Barracks ceased operation in 1998. The Barracks was subsequently used as a Refugee Centre for a short time but has been vacant (and closed) for a number of years now.

2.0 Proposed Development

- 2.1. The proposed development involves:
 - the demolition of six existing disused army buildings (GFA of c. 2,180sqm)
 - the removal of hard surfacing on the subject site

- the construction of a part 1 storey, part 2 storey and part 3 storey Health Care Facility for a Cancer Treatment Clinic (Proton Therapy) (GFA of c. 3,555sqm) to include a terrace and plant areas at roof level
- provision of a service yard which also contains a substation, switch room, transformer, waste storage area and 2 No. chillers.
- provision of landscaped areas of open space, including a variety of gardens, and all associated boundary treatments.
- a new signalised road junction providing access to the proposed development, and future development proposals from Hospital Street (R445) together with road improvement works to Hospital Street, including pedestrian crossings, upgrades to footpaths, road markings and traffic signaling.
- provision of internal access roads, including connections to future development lands, new pedestrian access points and footpaths.
- associated site and infrastructural works to include foul and surface water drainage, 80 no. surface car parking spaces and cycle parking.

The proposed development was revised by significant further information submitted to the planning authority. These amendments include:

- amended red line boundary, amended access arrangements for the development, amended internal road network, amended cycle lanes and amended car parking arrangement and associated landscaping;
- extension of red line boundary along the frontage of Magee Barracks site to incorporate segregated cycling facilities on Hospital Street (R445), pedestrian crossings, upgrades to footpaths, road markings and traffic signaling on the R445/Hospital Street;
- revised elevation treatment of the Cancer Treatment Clinic building to include a variety of brickwork and concrete elevational treatment;
- revised boundary treatment;
- omission of pedestrian connection at south eastern boundary and relocation further west along Hospital Street;

- increase in floor space of the proposed Cancer Treatment Clinic to include a larger vault and associated alterations to the service yard area.

The proposed Cancer Treatment Clinic (Proton Therapy) will be the first in Ireland to offer proton beam therapy (an advanced form of radiation therapy reducing the damage to healthy cells that typically occurs with conventional therapy). The proposed facility will cater for patients from both north and south of the border.

The proposed development is described as the first phase of an overall re-development by the applicant as proposed in the Masterplan for the former Magee Barracks which also includes a Phase 1 Residential and Neighbourhood Centre development and a Phase 2 Residential Development providing for the final phase in the regeneration of the site.

3.0 Planning Authority Decision

3.1. Decision

Notification of a decision to grant planning permission for the proposed development subject to 55 conditions was issued by the planning authority per Order dated 5th, November 2018.

Condition No. 25 states:

Prior to commencement of development, the developer shall submit, for the written agreement of the Planning Authority, a detailed design for the proposed R445 Traffic Calming Works at the approaches to the site frontage and the full site frontage (c.664m). The Developer's Consulting Engineer shall engage with the design teams for the retail development and the Strategic Housing Development in the former Magee Barracks Site and the Cherry Avenue Park Project.

The agreed traffic calming works shall be fully constructed by the Developer at the approaches to the frontage and at the full frontage of the former Magee Barracks site prior to the occupation of the development. The provisions of section 34(4)(m) of the Planning and Development Act 2000 (as amended) shall apply to the proposed works.

Reason: *To safeguard vulnerable road users and to accommodate traffic from the development.*

Condition No. 26 states:

Prior to commencement of development the Developer shall submit an updated Road Safety Audit (RSA), Stage 1/2 carried out by an independent approved and certified auditor. The RSA should also include the section of the R445 immediately east of the development as far as a point 80 metres northeast of the junction with French Furze Road.

The audit should include signalised works and the necessary traffic calming measures along the frontage of the development on Hospital Street (R445). The Road Safety Audit recommendations shall be incorporated into the detailed design.

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

Condition No. 27 states:

Upon completion of the development, signalised works and road works for the R445, the Developer shall complete a Stage 3 Road Safety Audit, to be carried out by an independent approved and certified auditor. The recommendations contained in the Road Safety Audit and agreed actions shall be signed off by the audit team.

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

Condition No. 34 states:

Prior to the commencement of development, the Developer shall submit, for the written agreement of the Planning Authority, a detailed design for the installation of additional Toucan Crossings on the R445 on either side of the main signalised junction into the proposed development. The exact locations shall be agreed with the Planning Authority. The two additional Toucan Crossings shall be linked to the main signalised junction. The location of signals shall be consistent with the long term plan for the section of the R445 along the entire frontage of the former Magee Barracks and shall take into account the multiple entrances on the R445.

The detailed design for signals shall include:

- (a) The provision of a MOVA operated ELV controlled with LED signals including MOVA loop positions, Kerb Side Detection, Signal Pole positions, Ducting, Phasing and Staging etc.*
- (b) All new signalised crossing points to be Toucan crossings for both pedestrians and cyclists.*

(c) *All public lighting design in accordance with Kildare County Council Public Lighting Policy.*

Details of the design, implementation, costing and phasing of these works shall be agreed in writing with the Planning Authority prior to the commencement of the proposed development. All installations shall be connected to Kildare County Council's Traffic Management Centre located in the Council's Headquarters in Aras Chill Dara, Naas.

The installations shall be designed in accordance with Kildare County Council's specification.

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

3.2. Planning Authority Reports

3.2.1. Planning Reports

A report from the Area Planner dated 10th, April 2018 includes the following:

- Notes the contents of the Planning Report, Conservation Report, Ecological Appraisal, Hydrogeological Site Assessment, Structural Survey, Archaeological Report, Site Investigation Report, Traffic Assessment, Road Safety Audit Stage 1/2, Mobility Management Plan, Operation Waste Management Plan, Drainage Report, Landscape Design Rationale, Tree & Hedgerow Survey, Architectural Design Statement, Site Heritage/Sense of Place Document and Emerging Masterplan Document that accompanied the application lodged with the planning authority.
- The proposed development is acceptable in principle on lands zoned 'Z'.
- Key requirement to consider the impact of the proposed development on residential amenity in the area.
- Magee Barracks developed prior to surrounding housing. Housing in the area (particularly at Rowanville) has always co-existed with the Barracks and activities at the Barracks.
- The proposed building will be set back further from adjacent dwellings than the existing unused Barracks buildings.

- Dwellings closest to the proposed buildings will be protected by a landscape and pedestrian buffer.
- Need to create a landmark building on the site.
- The height of the proposed structure is considered acceptable.
- The proposed use of brick is considered acceptable but a mix of brick and other materials would be preferable.
- Further information is required in relation to a number of matters including a visual of the proposed roof garden (to consider impact on adjacent dwellings), alternative mix of materials etc.
- Further information is required in relation to a number of technical matters relating, in particular, to roads and water supply matters.

A report from the Area Planner dated 2nd, November 2018 includes:

- Revisions to the scheme which include (ii) the removal of a pedestrian access link from the south eastern boundary (ii) retention of mature conifer trees along the eastern boundary (iii) changes to the design of the eastern elevation satisfactorily address concerns in relation to the impact of the proposed development on the residential amenities of surrounding properties.
- The proposed development is considered to be acceptable from a design, visual and residential impact perspective.
- The 36 matters raised in the request for further information have been satisfactorily resolved and/or can be addressed by way of the attachment of appropriate conditions to a grant of planning permission.

The recommendation of the Area Planner is reflected in the planning authority decision.

3.2.2. Other Technical Reports

Environment Health Officer – Report dated 9th, April 2018 indicates no objection to the proposed development subject to conditions.

Environment Section – Report dated 4th, April 2019 indicates no objection to the proposed development subject to conditions.

Chief Fire Officer – Report dated 29th, March 2018 indicates no objection to the proposed development subject to conditions.

Conservation Officer- The report from the Area Planner dated 10th, April 2018 refers to a report from the Conservation Officer (not on file) indicating no objection to the proposed development subject to conditions.

Following the receipt of Further Information

Area Engineer – Report dated 16th, October 2018 indicates no objection to the proposed development subject to conditions.

Water Services - Report dated 23rd, October 2018 indicates no objection to the proposed development subject to conditions.

Transportation – Report dated 22nd, October 2018 indicates no objection to the proposed development subject to conditions.

Heritage Officer – Report dated (11th, October 2018) indicates no objection to the proposed development subject to conditions.

3.3. Prescribed Bodies

Irish Water – Report dated 23rd, October 2018 (following the receipt of further information) indicates no objection to the proposed development subject to conditions.

Development Applications Unit – Report dated 15th, October 2018 (following the receipt of further information) indicates no objection to the proposed development subject to conditions.

3.4. Third Party Observations

Three third party observations were received by the planning authority. All three observers say that they welcome the proposed development. However, concerns are expressed in relation to design details of the proposal. These include:

- Concerns in relation to the proposed signalised junction at the main entrance to the site/failure to explore alternatives.
- Proliferation of crossings/signage.
- Query the need for a signalised junction.
- Concerns in relation to wayleaves shown in yellow on submitted maps – this area was abandoned by the Dept. of Defence and has been maintained by residents (Adverse Possession rights have been acquired)
- Concerns in relation to the proposed location of a pedestrian crossing (allegedly close to an accident ‘black spot’).

4.0 Planning History

Appeal No. ABP.304093-18 (Reg. Ref. 18/273) – This appeal was **WITHDRAWN** on 16th, April 2019. The appeal related to a condition only (condition no. 42 relating to noise) attached to a notification of decision to grant planning permission issued by the planning authority on 1st, March 2019 to LIDL Ireland for the demolition of existing structures including a gatehouse and ancillary building and for the construction of a single storey licensed discount food store etc. on the portion of site of the former Magee Barracks immediate to the west of the current appeal site.

Condition No. 11 of the planning authority decision in relation to this development states:

11. The Developer shall pay a Special Contribution of under the provisions of Section 34(4) of the Planning and Development Act, 2000 towards the cost of Hospital Street R445 traffic calming works.

Reason: It is considered reasonable that the Developer should make a contribution in respect of the necessary infrastructure and facilities benefiting development in the areas of the planning authority.

ABP-301371-18 – (Strategic Housing Division). Planning permission for a development consisting of the demolition of 16 former Barracks buildings and the construction of 264 residential units, a neighbourhood centre together with all internal roads, car parking, pedestrian and cycle paths etc. on an 11.4 hectare site comprising part (Phase I) of the former Magee Barracks was refused by the Board per Order dated July 2018. Briefly, the reasons for refusal were (1) development characterised predominantly by three and four bed semi-detached housing would be contrary to the Ministerial Guidelines on Sustainable Residential Development in Urban Areas and contrary to Development Plan policy which seeks to ensure a good mix of residential unit types featuring both houses and apartments of varying sizes and (2) the proposed development would not be developed at a sufficiently high density to provide for an acceptable level of efficiency in the development of serviced lands and would accordingly be contrary to national policy.

ABP.302920-18 – (Consultation under Strategic Housing Division). This consultation with a prospective Applicant relates to an application for the demolition of 16 Barracks buildings and the construction of 298 residential units, a neighbourhood centre, all internal roads, car parking, pedestrian and cycle paths and associated works on a c. 11.32 hectare site consisting of part (Phase I) of the former Magee Barracks. The prospective Applicant was advised per Order dated 9th, January 2019 that the proposed application requires further consideration and amendments.

ABP.305007-19 – (Strategic Housing Division). – This is an application by Ballymore Properties Ltd. lodged on 26th, July 2019 for 375 residential units (185 houses and 190 Apartments) creche and associated site works on the Magee Barracks site.

Reg. Ref. 16/13 – Planning permission was granted by the planning authority per Order dated 5th, July 2016 to the Minister for Education and Skills for a new Gaelscoil comprising 8 classrooms, general purpose hall, car parking etc.

Appeal No. 09.243089 (Reg. Ref. 13/635) – Planning permission was granted by the Board per Order dated July 2014 for a new two storey national school comprising of 16 Classrooms, general purpose hall, car parking etc. on a site forming part of the northern end of the original Magee Barracks site.

5.0 Policy and Context

5.1. Kildare Town Local Area Plan 2012-2018 (KTLAP)

- 5.1.1. The site of the proposed development is zoned 'Z' in the KTLAP. The stated objective of this zoning is 'To facilitate a wide range of uses to allow for flexibility in the regeneration of the former Magee Barracks site in a sustainable manner'.
- 5.1.2. Lands surrounding the Magee Barracks site are zoned 'Existing Residential'. The stated objective of this zoning is 'To protect and improve existing residential amenity; to provide for appropriate infill residential development; to provide for new and improved ancillary services'.
- 5.1.3. Section 7.6.2 of the KTLAP sets out a design brief for the former Magee Barracks site. This brief allows for the development of the lands for a mix of employment generating, community and residential uses. The design brief includes:
- Mend and reconnect the urban fabric in order to increase accessibility and permeability,
 - Increase commercial and sustainable economic activity by encouraging enterprise and the creation of employment,
 - Protect the amenity of adjoining residential areas,
 - Provide a range of appropriate recreational and community uses,
 - Provide strong physical links and connections to the surrounding areas in order to knit the site into its context,
 - Provide for the integration of new communities with the established communities in the area.
- 5.1.4. The site of the proposed development is envisaged as Phase 2 (Officers' Mess & Parade Ring Block) in the KTLAP design brief. This envisages that the Officers' mess will be retained with a tourism/cultural focussed use.
- 5.1.5. A Health Centre/Clinic is 'permitted in principle' and Medical and related Consultancy is 'open for consideration' on lands zoned 'Z' in accordance with the zoning matrix as set out in Table 16 of the Development Plan.

- 5.1.6. Section 7.3 of the KTLAP sets out the strategy in relation to economic development in the county. This strategy includes specific reference to Magee Barracks and seeks to ensure the flexible re-use of the site through the provision of a mix of employment and a built environment that reflects the military history of the site and the existing urban fabric of the town.
- 5.1.7. Objective EDO1 of the KTLAP seeks to promote Magee Barracks as an appropriate site to develop enterprise and employment.
- 5.1.8. The KTLAP seeks to provide for the construction of a new street from Hospital Street to Tully Road including the provision of new crossing on both of these streets.

5.2. **Kildare County Development Plan 2017-2023**

- 5.2.1. It is Development Plan policy to:

'support and cooperate with promoters or operators of public and private health care facilities by facilitating and encouraging the provision of improved health care facilities in appropriate locations' (Policy HS 3)

'to facilitate the integration of appropriate healthcare facilities within new and existing communities' (Policy HS 3).

None of the buildings or structures on site are included on the Record of Protected Structures.

5.3. **Natural Heritage Designations**

Pollardstown Fen Special Area of Conservation (SAC) (Site Code 00396) is located c. 4.3 km NE of the site.

Moulds Bog (SAC) (Site Code 002331) is located c. 7.2 km NE of the site.

River Barrow and River Nore SAC (Site Code 002161) is located c. 7.4 km south of the site.

Ballynafagh Lake SAC (Site Code 001387) is located c. 15 km NE of the site.

Ballynafagh Bog SAC (Site Code 000391) is located c. 16 km NE of the site.

Poulaphouca Bog Special Protection Area (Site Code 004063) is located c. 22 km east of the site.

5.4. EIA Screening

- 5.4.1. It is considered that the nature and scale of any works involved in the subject matter of the conditions under appeal would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The submitted grounds of appeal include the following:

- Request that the board exercise its discretion pursuant to Section 139 of the *Planning and Development Act, 2000* and restrict its consideration of this appeal to four conditions being appealed – Condition No. 25, Condition No. 26, Condition No. 27 and Condition No. 34.

Condition No. 25

- The requirement of Condition No. 25 the Developer in the current instance design and implement improvements to Curragh Road for c. 340 m beyond the Magee Barracks road frontage onto the R445 **prior the commencement and occupation of the proposed development** are unreasonable and have the potential to jeopardise the viability and funding of the proposed development.
- Item No. 34 of the planning authority request for further information suggested that road improvement works as part of the proposed development should include the entire Magee Barracks road frontage onto the R445. The Applicant agreed to this request. Revised drawings submitted to the planning authority as further information provided for the inclusion of the entire Magee Barracks frontage onto the R445 including additional traffic calming and cycle/pedestrian measures incorporating the provision of fully segregated cycling facilities, pedestrian crossings, upgrades to footpaths, road markings

and traffic signalling (Appendix 2 – attached to Grounds of Appeal). These proposals are at significant expense to the Applicant and are considered sufficient to facilitate the Cancer Treatment Clinic development and future phases of development on the Magee Barracks site.

- Item No. 34 of the planning authority request for further information suggested that works beyond the Magee Barracks site might be needed. The Applicants in their response stated that it is considered proportionate that the Applicant should provide improvements along the Magee Barracks site only and that it is not considered reasonable, appropriate or necessary to request the Applicant to implement considerable works beyond the site frontage, which are more appropriately addressed by the Planning Authority (if they consider them necessary) through a Part 8 (of the *Planning and Development Act, 2000*, as amended) process and funded through standard Section 48 Development Contributions in circumstances where the Development Contribution Scheme does not include a specific list of projects which contributions will fund but states that they ‘address infrastructural deficits and advance provision for new development in Kildare’.
- A Part 8 application by Kildare County Council has been approved for the development of Cherry Avenue Park on 18.1 acres of land accessed via the R445, which did not include any significant upgrades to the R445 or Curragh Road.
- The requirements of Condition No. 25 are ultra vires the powers of the planning authority. This condition requires that the Applicant design and construct traffic calming works, which are not required to facilitate the development, on land which are outside the Applicants control and that these works be funded by 4 different parties (the Applicant, the planning authority, the developer of the LIDL site and the Phase I Housing Development. *Both of the latter proposals relate to sites within the former Magee Barracks lands*). This condition cannot be complied with by the Applicant without encroachment on land outside their control, or without otherwise obtaining the

consent of other parties and would result in significant costs being incurred by the Applicant without guarantee of reimbursement from the other three parties (Kildare Co. Council, the LIDL Developer and the proposed housing Developer).

- Condition No. 25 is contrary to the Development Management Guidelines (issued by the Dept. of Housing Planning and Local Government) as it is both unreasonable and unnecessary given the extent of development proposed in the context of the upgrades required to public roads.
- The Applicant only has control over the lands outlined in red and blue in the documentation submitted to the planning authority (as amended by the further information submission). A letter of consent was obtained from Kildare Co. Council to include a portion of Hospital Street (R445) as shown hatched in red in the further information submitted to the planning authority (and indicated in Figure 4.1 of the submitted Grounds of Appeal). All other lands are outside the control of the Applicant. Condition No. 25 requires that the Applicant submit details for proposed Traffic Calming Works at the approaches to the site frontage as well as along the site frontage. This amounts to c. 644m of frontage (including 340m which lie beyond the site frontage and outside the Applicant's control). It is a further (onerous) requirement that the Applicant fully construct all of the traffic calming works prior to the occupation of the development.
- Section 34(4) of the *Planning and Development Act, 2000, as amended*, allow the attachment of a condition to a grant of planning permission regulating the development or use of any land which adjoins, abuts or is adjacent to the land to be developed. However, this section explicitly provides that any such land must be **under the control of the applicant**. (Para. 7.3.2 of the Development Management Guidelines echo this requirement)
- The reason given by the planning authority for the attachment of Condition No. 25 is 'to safeguard vulnerable road users and to accommodate traffic from the development'. It is not justifiable to suggest that the extent of traffic

calming works required by this condition are necessary to accommodate traffic from the proposed Cancer Treatment Centre of to safeguard vulnerable road users. (The additional c. 340 m of road improvements to be delivered are excessive).

- A revised Stage 1/2 Road Safety Audit (RSA) accompanied the further information submission to the planning authority. The RSA states that an examination has taken place of those issues within the design relating to the road safety implications of the scheme. The further information response (Garlands Consulting Engineers) confirms that all problems and recommended measures set out in the RSA have been accepted. The necessary alterations arising out of the RSA were made to the relevant drawings and revisions formed part of the FI response.
- The submitted Traffic Impact Assessment (TIA) and RSA outline that additional works beyond those proposed in the planning application are not necessary to facilitate the proposed development. The works proposed are considered to be sufficient to facilitate the Cancer Treatment Clinic and other proposed development on the Magee Barracks site, as outlined in the TIA and RSA, and will provide the necessary improvements to deliver this development within Kildare Town. It is unnecessary and disproportionate to request the Applicant to provide a further extension of works (comprising a total of 664 m) of improvements to the R445.
- The planning authority have placed the onus and responsibility for the design and construction of the proposed 664 m of traffic calming works on the applicant. Their notification of decision to grant planning permission for the proposed development is accompanied by an attached schedule which estimates the total cost of the 664m of road works at €1,928,000. The schedule divides this total cost estimate between 4 parties that should fund the works (the current applicants – 15%; the developer of the LIDL site – 15%; the developer of the housing site – 50% and Kildare Co. Council/Cherry Avenue Park Project – 20%). On this basis a sum of €289,000 is apportioned

to the applicant. This sum is in addition to a Section 48 levy in the sum of €238,383.15 imposed by Condition No. 55 of the planning authority notification of decision to grant planning permission. The Kildare Co. Council Development Contribution Scheme makes it clear that Section 48 levies include a levy towards the cost of provision of roads and the improvement of existing road infrastructure. The standard Section 48 contribution together with the significant upgrade and traffic calming works to be provided by the applicant (along the Magee Barracks frontage) constitute significant funding from the Cancer Treatment Clinic. A request for further funding in the sum of €289,000 to fund works not required to facilitate the proposed development is unreasonable, excessive and will undermine the viability and deliverability of the clinic.

- It is unclear how a requirement to carry out works on lands outside the Applicant's ownership can be enforced. Furthermore, it is not clear how the proposed breakdown of funding between different Applicants and planning applications (one of which has not yet been permitted and might never obtain planning permission) is workable or enforceable.

Condition No. 26 & Condition No. 27

- These conditions are tied to Condition No. 25
- In the event that the Board omit Condition No. 25, it is requested that Condition No. 26 and Condition No. 27 also be omitted, or at least amended, to reflect the fact that the requirements of these conditions no longer relate to the full extent of works that would otherwise be required per Condition no. 25.

Condition No. 34

- This condition requires the provision of an additional Toucan crossing to the west of the main signalised junction in addition to the Toucan crossing to the east of the junction. The Applicant's Consulting Engineers (Garlands) consider that the provision of an additional crossing is unnecessary. This

requirement would result in 4 crossing points within 250m of one another on one of the primary roads into Kildare town. The design proposals submitted by the Applicant to the planning authority at further information stage have been carefully considered and justified. The reasons for imposing the requirement for an additional Toucan crossing have not been clearly set out by the planning authority.

- It is submitted that the condition is unreasonable, excessive and places an unnecessary additional financial burden on the Applicant beyond the level of works necessary to facilitate the development.

6.2. Planning Authority Response

A response from the planning authority to the first party grounds of appeal per letter dated 7th, January 2019 includes:

- There are 4 main developments proposed at this section of the R445 (Lonadale Cancer Treatment Clinic, LIDL, Ballymount Properties (Housing) and Kildare Co. Council (Cherry Avenue Park Development)).
- There will be a considerable increase in traffic volumes and movements at this location as a consequence of these developments. In particular, there will be increased movements by vulnerable road users (pedestrians and cyclist) towards the Cherry Avenue Park Development.
- Existing traffic volumes on the R445 are high and include high volumes of HGVs and buses with average speeding figures higher than the posted speed limit of 50kph. The carriageway is wide but sections of footpath are inadequate in proper width.
- The main reason for the required traffic calming works along this 664 m section of the R445 at the approaches to the site frontage to Magee Barracks and at the site frontage is to reduce traffic speed at the approaches to the site, in particular from the Curragh direction where there is a sharp bend and to provide safe crossing facilities for vulnerable road users (cyclists and

pedestrians) towards the Cherry Park Avenue Development when it is completed by Kildare Co. Council.

- The planning authority have carried out a comprehensive breakdown of the estimated costs of traffic calming works on the 664m section of the R445 Hospital Street at the approaches to the site frontage (assumes no land acquisition costs involved).
- The planning authority has no objection to the traffic calming works being carried out by the Developer.
- The planning authority is satisfied that proposed sources of funding for the traffic calming works (under S34(4)(m) of the Planning and Development Act, 2000) have been apportioned in a fair and reasonable manner.

6.3. **Appellant's Response** (to planning authority letter of 7th, January 2019)

A submission was received from the Appellant dated 11th, February 2019 in response to the planning authority submission dated 7th, January 2019. This submission includes at 'Appendix 2' a letter from Garland Consulting Engineers. The submission includes:

- The submission from the planning authority includes no substantial new points and refers back to the planning authority Roads Department report.
- As set out in the lodged grounds of appeal TIA prepared by Roadplan Consulting, the proposed works associated with the Cancer Treatment Clinic are more than capable of accommodating the limited traffic generated by the development.
- The Cancer Treatment Clinic development, as amended at further information stage provides for significant and sufficient upgrades commensurate with the level of development being proposed. This includes 3 no. pedestrian crossings, segregated cycle lanes and traffic calming measures along the full frontage of the Magee Barracks frontage, which will also cater for the retail development and residential proposals on the lands. In addition, the grant of planning permission includes S. 48 Development Contributions which will be

utilised by the planning authority to finance infrastructural improvements in the area.

- The Traffic and Transportation Assessment (TTA) prepared by Punch Consulting Engineers on behalf of the planning authority as part of the Part 8 planning process for Cherry Avenue Park stated that *traffic calming measures and dedicated pedestrian crossings are proposed for the existing R445 and French Furze Road as greatly increased pedestrian footfall in particular from the town centre can be expected as a consequence of the development and the adjacent Primary Care Centre which has recently been completed.*
- The Part 8 application did not include any significant pedestrian and cycle upgrades on Hospital Street / Curragh Road (which have now been requested and are to be implemented by the Applicant) although the new town park is likely to generate substantially greater pedestrian and cycle movement along this corridor. This finding is corroborated by Garland Consulting Engineers (Appendix 2) who state that *'An independent RSA of the c. 347m of site frontage was undertaken prior to submission of the planning application and the recommendations of same were incorporated in our design. Therefore, the design of the road infrastructure contained in the planning application, improves road conditions and safeguards vulnerable road users for the extent of the entire former Magee Barracks development frontage.....to undertake these works outside our client's site frontage (for extent 664m) and prior to the occupation of the Cancer Treatment Clinic development is overly onerous'.*
- Notwithstanding the fact that the planning authority have stated that they have no objection to the developer undertaking the improvements to Hospital Street beyond the site boundary as required by Condition No. 25 the nature of the condition remains ultra vires (i.e. it requires the applicant to design and construct traffic calming works on lands which are outside their control and which are not required to facilitate the proposed development).
- Garland Consulting Engineers state, in relation to the section of road beyond the Magee Barracks frontage, that *'we are of the strong opinion that the Local Authority is best placed to undertake such works as our client has no direct control beyond their site frontage, and whilst it was considered reasonable to*

include the works opposite the site as part of the application, through a letter of consent from KCC, to further extend the works by way of a condition is overly onerous. We would further note that it is normal practice for the Local Authority to undertake such works and that they have already conditioned a financial contribution to address same.

- The Applicant strongly refutes the statement by the planning authority that the funding sources have been apportioned in a fair and reasonable manner (between the 4 relevant parties) to ensure that the burden of the costs is fair and equitable and proportional to the benefit that the proposed works create for the developers.
- The Applicant has already committed to a significant investment in infrastructure, pedestrian and cycle improvement works and traffic safety works on Hospital Street. Nonetheless, the Applicant is being required to provide 15% of the funding for the further works required by the planning authority. This amounts to €289,000.00. This is in addition to the €238,383.15 levied under Condition No. 55 of the planning authority decision pursuant to S. 48 of the Development Contribution Scheme 2015-2022.
- Section 48 Development Contributions levies in respect of the Magee Barracks site will be collected by the planning authority in relation to the current application, the LIDL development, Phase 1 Housing and Phase 2 Housing. These will amount to substantial contributions towards infrastructural improvements required in the town.
- The financial contribution arising under Condition No. 55 of the planning authority decision together with the upgrades and traffic calming works being provided by the Applicant should be regarded as significant funding from the Cancer Treatment Clinic for road improvement works to be undertaken by the Council and that the imposition of an additional funding of €289,000.00 for additional works not required to facilitate the development (not to mention the design of such works) is excessive and will undermine the viability and delivery of the Clinic.

- The proposed Cancer Treatment Clinic is a specialist facility with a limited traffic impact and will be a limited generator of traffic and footfall in comparison to a large new town park.

6.4. **Planning Authority Response** (to Appellants submission of 11th, Feb. 2019)

A submission from the planning authority, dated 7th, March 2019 (prepared by the planning authority Roads, Transport & Public Safety Department – dated 28th, February 2019), in response to the submission from the Appellant dated 11th, February, 2019, includes:

- KCC Roads, Transport & Public Safety Department have held meetings recently with the Main Developer (David Kennedy) and it is our understanding that agreement has been reached in principle between both sides on the delivery of the Hospital Street R445 traffic calming works (report submitted to Senior Engineer awaiting final approval).
- It is proposed that the provisions of S. 34(4)(m) of the *Planning and Development Act, 2000* be used towards the costs of the Hospital Street traffic calming works. Kildare Co. Council have agreed to increase their share of contribution towards the works from 20% to 26%. On this basis the share of contribution from LIDL and the proposed Cancer Treatment Clinic will be reduced from 15% (€289,000.00) to 12% (€231,600.00).
- In light of the agreement that has been reached in principle, the planning authority now has no objection to Condition No. 25 and Condition No. 34 being amended to take account of the agreement in principle and Condition No. 26 and Condition No. 27 being amended (suggested new wording provided).

6.5. **Appellant's Response** (to submission from planning authority dated 7th, March 2019)

A submission from the Appellant dated 30th, April 2019, in response to the planning authority submission dated 7th, March 2019 includes:

- Restatement of objection to the requirement that the Applicant design and complete works to Hospital Street R445 beyond the site frontage of the former Magee Barracks.
- The Applicant confirms that they have engaged in further discussions with the planning authority in respect of the proposed improvements to Hospital Street, specifically those not included in the red line boundary of the application site. These further discussions were undertaken at meetings with the KCC Roads Department on 7th, February and 13th, February 2019.
- Whilst favourable discussions were undertaken between the Applicant and KCC Roads Department, no formal agreement was reached with KCC in respect to revisions to the relevant conditions and reduction in costs.
- The Applicant welcomes KCC's proposal to reduce the financial contribution for the Cancer Treatment Clinic to 12%. However, the Applicant still maintains that it is unreasonable and unnecessary to require the occupation of the Cancer Treatment Clinic to be dependant on the completion of the substantial works to Hospital Street required under the grant of planning permission and not included in the application red line boundary. The Applicant requests that the *prior to the occupation of the proposed Cancer Treatment Clinic* requirement be removed from Condition No. 25.

7.0 Assessment

- 7.1.1. This first party appeal relates solely to Conditions nos. 25, 26, 27 and 34 of the notification of decision to grant planning permission that issued from the planning authority. These conditions relate to the design and provision of traffic calming works and associated Road Safety Audits only.
- 7.1.2. I am satisfied that the proposed development is acceptable at this location.
- 7.1.3. I consider it appropriate, therefore, that the scope of this assessment is restricted to consideration of Condition nos. 25, 26, 27 and 34 as attached to the notification of decision issued by the planning authority in accordance with S. 139 of the *Planning and Development Act, 2000*, as amended.
- 7.1.4. The issue of Appropriate Assessment also needs to be addressed.

7.1.5. I consider that the key issues for determination relate to-

- Condition no. 25
- Condition no. 26
- Condition no. 27
- Condition no. 34
- Appropriate Assessment

7.2. **Condition No. 25**

7.2.1. Condition No. 25 attached to the planning authority notification of decision to grant planning permission for the proposed development requires that:

- Prior to the commencement of development, the Developer submit, for the written agreement of the planning authority, a detailed design for proposed R445 Traffic Calming Works at the approaches to the site frontage and the full site frontage (c.664m).
- The Developer's Consulting Engineer shall engage with the design teams for the retail development and the Strategic Housing Development in the former Magee Barracks site and the Cherry Avenue Park project.
- The agreed Traffic Calming works shall be fully constructed by the Developer at the approaches to the frontage and at the full frontage of the former Magee Barracks site prior to the occupation of the development. The provisions of Section 34(4)(m) of the *Planning and Development Act, 2000* (as amended) shall apply to the proposed works.

7.2.2. The planning authority acknowledge that four separate developments will benefit from the traffic calming and road works required under Condition No. 25. These are;

- (1) The proposed Cancer Treatment Centre – current appellant,
- (2) The planning authority – Cherry Avenue Park project – town park on opposite side of R445 to the site,
- (3) LIDL – retail store granted planning permission by the planning authority per

Reg. Ref. 18/273 and

(4) Ballymore Properties Ltd. Housing Development – subject of a current Strategic

Housing Development application being considered by the Board

(ABP.305007-19).

Three of these projects, namely the Cancer Treatment Center, LIDL and the Ballymore Properties housing proposal, concern sites provided on the former Magee Barracks site.

7.2.3. The planning authority notification of decision to grant planning permission in the case of the current application was accompanied by a letter dated 5th, November 2018 setting out the costings (prepared by the planning authority) in respect of the entire 664m of Traffic Calming and road works required by the planning authority and referred to in Condition No. 25. The planning authority estimate a total costing of €1,928,000.00 for the works. The letter also provided a breakdown of how this total amount is to be apportioned between the four developments that will benefit from the works, as follows:

• Cancer Treatment Centre	€289,000.00 (15%)
• Housing Developer	€964,000.00 (50%)
• Retail Developer	€289,000.00 (15%)
• Kildare Co. Council (Cherry Avenue Park)	€385,000.00 (20%)
TOTAL	€1,928,000.00 (100%)

7.2.4. At this juncture it should be noted that in the course of the current appeal the planning authority has (per letter dated 7th, March 2019) agreed to revise the breakdown as to how the total costing referred to above is to be apportioned between the parties, as follows:

• Cancer Treatment Centre	€231,600.00 (12%)
• Housing Developer	€964,000.00 (50%)
• Retail Developer	€231,600.00 (12%)

• Kildare Co. Council (Cherry Avenue Park)	€501,280.00 (26%)
TOTAL	€1,928,000.00 (100%)

7.2.5. The submitted grounds of appeal point out that, in their consideration of the proposed development, the planning authority sought a number of items of further information (37 in total). These included 'Item No. 34' which stated:

'The proposed works on the R445 should be extended to at least the entire frontage of the development. It may be necessary to extend works further, for example to meet desire lines from the development to the new Cherry Avenue Park, to provide appropriate controlled crossing facilities and suitable background lighting.....'

The Applicant agreed to extend the area of road works originally being proposed to the R445 to incorporate the entire 340m road frontage of the Magee Barracks site. This amendment necessitated the Applicant securing the permission of the planning authority to carry out works outside the control of the Applicant. Written consent was received from the planning authority in respect of the required works over the 340 m of road frontage.

7.2.6. The submitted grounds of appeal argue that the proposed 340m of Traffic Calming Road works are adequate to cater for the propose Cancer Treatment Clinic development. The grounds of appeal state that this viewpoint is bolstered by the information set out in both the RSA and TIA that accompanied the application to the planning authority. The Appellant further points out that in their response to the request for further information it was clearly stated that a further extension of works (beyond the 340m agreed to) *'is not considered necessary, or viable, for the Applicant, having regard to the small scale, function and substantial wider public gain provided by the proposed Cancer Treatment Clinic'*.

7.2.7. The Appellant argues that the requirements of Condition No. 25 are ultra vires, unreasonable and unnecessary to serve the proposed development and that the condition should be removed by the Board. The grounds of appeal suggest that Condition No. 25 is ultra vires insofar as it required the Applicant to carry out traffic calming works on lands outside the Applicants ownership (i.e. on sections of road outside the 340 m Magee Barack site frontage). The planning authority have previously given written consent to the Applicant to carry out road works to the 340

m frontage controlled by the planning authority. The planning authority have stated that it will not be necessary to acquire land owned by any third party in order to complete the required road improvement works to the 664 m of road specified by the planning authority. In circumstances where works are required only on lands controlled by either the Applicant or the planning authority, I consider that the requirement of Condition No. 25 is not ultra vires.

- 7.2.8. However, the grounds of appeal also highlight the fact that Condition No. 25 requires the Applicant to undertake a detailed design for the proposed R445 traffic calming works and in doing so to '*engage with the design teams for the retail development and the Strategic Housing Development*'. The wider Magee Barracks site incorporating the LIDL site and the proposed Strategic Housing Development site are indicated as being under the Applicant's control (outlined in blue) per Fig. 4.1 of the submitted grounds of appeal. Nonetheless, I consider that the wording of Condition No. 25 may be ultra vires insofar as it imposed an obligation on the Applicant to engage in consultation (and presumably reach agreement with third parties i.e. the LIDL developer and the proposed Strategic Housing Development developer)
- 7.2.9. The grounds of appeal argue that the road works proposed by the Applicant along the Magee Barracks frontage are adequate to meet the requirements of the limited quantity of additional traffic that will be generated by the proposed Cancer Treatment Centre. It is further submitted that the planning authority have failed to justify the reason for the imposition of Condition No. 25 but simply assert that it is necessary in order to safeguard vulnerable road users.
- 7.2.10. In fact the planning authority have stated in their initial response (letter dated 7th, January 2019) to the submitted grounds of appeal that the main reason for the traffic calming works and VRU crossings on the 664m section of the R445 at the approaches to the site frontage and at the site frontage is to reduce traffic speed at the approaches to the site, in particular from the Curragh direction where there is a sharp bend and to provide safe crossing facilities for vulnerable road users (pedestrian and cyclist) movements towards the Cherry Avenue Park Development when it is completed by Kildare Co. Council.

- 7.2.11. On balance, I consider that the planning authority have provided adequate justification for the traffic calming works along the 664m section of the R445 and have clearly highlighted the fact that the traffic calming works will benefit the Cancer Treatment Clinic, LIDL, the (as yet not permitted) Ballymore Homes Housing Development and the new Kildare Co. Council Cherry Avenue town park.
- 7.2.12. The planning authority have provided a schedule of costs for the works involved together with the suggested manner in which these costs should be apportioned between the 4 relevant parties. The basis of apportionment between the parties was revised by the planning authority as indicated in their letter dated 7th, March 2019. This revision apportions 12% of the overall cost to the Cancer Treatment Clinic (€231,600.00). The planning authority has not provided details of the formula on which the total cost was apportioned between the parties was based. Nonetheless, notwithstanding the fact that the Appellant has maintained his opposition to Condition No. 25 and requested that it be removed in the various submissions on file, the Appellant (submission dated 30th, April 2019) indicates that if a contribution is to be made by the Appellant it should be on the basis of 12% of the overall cost. The Appellant has not questioned the basis of how this percentage was arrived at.
- 7.2.13. The letter dated 5th, November 2018 that accompanied the notification of decision to grant planning permission for the proposed development of the same date provides an estimate of the costing of the traffic calming works required along the entire 664m section of the R445 at €1,928,000.00. This figure is arrived at on the basis of a typical rate of €2 million per kilometre for road, footpath, cycle and public lighting improvement works to comply with DMURS standards (not including land acquisition costs). This gives a figure of €1,328,000.00 plus the cost of installation of 2 signalised junctions (to include Microprocessor Optimised Vehicle Actuation (MOVA), CCTV, Toucan Crossings and public lighting) at a cost of €250,000.00 per junction plus 2 Toucan signalised crossings to serve the cancer Treatment Clinic and the Cherry Avenue Park project.
- 7.2.14. The Appellant agreed in the further information submitted to the planning authority to provide road improvement and traffic calming works along the (340m) site frontage of Magee Barracks. (No details of the mechanism, if any, for the cost of these works to be shared with the other Developers involved in the development of the Magee Barracks site have been provided). The grounds of appeal clearly indicate that the

Appellant does not agree to accept responsibility for the design and carrying out of further works along the R445 beyond this 664m section of the R445.

7.2.15. The Appellant argues that the imposition of responsibility for the design and delivery of the traffic calming works required along the entire 664 section of the R445 is a disproportionate and overly onerous burden on the Appellant who is only one of four developers that will benefit from the proposed works. Furthermore, the grounds of appeal point out that the requirement of Condition No. 25 that the works be completed prior to the occupation of the proposed Cancer Treatment facility is unreasonable particularly in circumstances where planning permission has not yet been (and might never be) obtained for the proposed Strategic Housing Project – who has been identified as a significant contributor to the road improvement works. On balance, I agree with the Appellant. The Cancer Treatment Centre will not be a major contributor in terms of traffic volumes relative to the permitted retail development, the proposed housing development and the Cherry Avenue Park. I consider that it is disproportionate to impose the entire burden for the design and delivery of the required 664m of traffic calming works on the Cancer Treatment Clinic prior to the occupation of the facility particularly in circumstances where planning permission for the housing development has not yet been obtained. Furthermore, any risk in relation to the accuracy of the costings (prepared and provided by the planning authority) or potential price changes before the works are completed must be borne by the Appellant.

7.2.16. The planning authority have indicated that the requirements of Condition No. 25 have been imposed pursuant to Section 34(4)(m) of the *Planning and Development Act, 2000*, as amended. This section allows for:

(m) conditions for requiring the provision of, including traffic calming measures, open spaces, car parksin excess of the immediate needs of the proposed development, subject to the local authority paying for the cost of the additional works and taking them in charge or otherwise entering into an agreement with the Applicant with respect to the provision of those public facilities

- 7.2.17. The grounds of appeal point out that reference to S. 34(4)(m) by the planning authority is an acknowledgement by the planning authority that the relevant works are in excess of the immediate needs of the proposed development.
- 7.2.18. In my opinion, it is clear from the wording of S. 34(4)(m) that the planning authority can either require the Developer to carry out works in excess of the needs of the development subject to the works being paid for by the planning authority or the planning authority can enter into an agreement with the Developer in relation to the works.
- 7.2.19. In the current instance agreement has not been reached with the Applicant. Therefore, the additional works required must be at the expense of the planning authority. It is not clear, from the documentation on file, as to the precise mechanism by which monies to fund the overall traffic calming works will be collected. It would appear that the planning authority (based on the costs set out in the letter accompanying the notification of decision to grant planning permission) envisage that they will collect the contributions required from the LIDL developer and the proposed housing development Developer and will transfer these monies together with a direct contribution from the planning authority (in respect of the Cherry Avenue Park) to the developer of the Cancer Treatment Clinic to fund the 664 m of traffic calming works. Thus, the 12% contribution (€231,600.00) by the Appellant would be a notional contribution insofar as works to this value will be provided by the Appellant rather than monies.
- 7.2.20. I note that Condition No. 11 attached to the planning authority notification of decision to grant planning permission for the LIDL development (final grant on 1st, March 2019) required the developer to pay what was described as a Special Financial Contribution in the sum of €231,600.00) pursuant to Section 34(4) of the *Planning and Development Act, 2000.*, as amended towards the cost of Hospital Street R445 traffic calming works. I note that the sum levied in this instance is in accordance with the schedule of costs and apportionment of costs between the 4 developers benefiting from these road improvement works as set out in the letter from the planning authority dated 7th, May 2019 in the context of the current appeal. However, I consider that there is no provision under S. 34(4) for the levying of Special Financial Contributions. In my opinion, the appropriate mechanism for the levying of Special Financial Contributions is under S. 48(c) of the Act.

- 7.2.21. In the current instance, I consider that (for reasons already stated) that the burdening of the Appellant with responsibility for the design and delivery of the required entire 664m of road works is excessive and disproportionate in circumstances where the Cancer Treatment Centre will be one of the smaller of the relevant 4 projects benefitting from the traffic calming works and will not be a major contributor to the overall anticipated increase in traffic flows.
- 7.2.22. In these circumstances, I consider that it would be reasonable to either (a) amend Condition No. 25 to require that the Appellant provide only 340m of traffic calming and road works along the frontage of the Magee Barracks site or (b) remove (Amend) Condition No. 25 in its entirety and replace the condition with a new condition requiring that the Appellant pay a Special Financial Contribution pursuant to S. 48(c) of the Act to be used towards the delivery of the required traffic calming works along the entire 664m boundary of the site.
- 7.2.23. On balance, I favour option (b). I am satisfied that Option (a) would allow for the delivery of traffic calming works to serve the immediate needs of the proposed Cancer Treatment Centre. However, it would result in a scenario where further traffic calming works will still be required either side of the 340m Magee Barracks site frontage. Thus, this option would result in a degree of project splitting in the delivery of the traffic calming works required along the remainder of the 664m section of the R445. In my opinion, this is not a satisfactory outcome. In the case of Option (b) the planning authority would assume responsibility for the delivery of the entire 664m of traffic calming and road works funded by way of Special Financial Contributions supplemented by a contribution from the planning authority. In coming to this conclusion, I note that the planning authority project (Cherry Park Avenue town park) will be the main beneficiary of the proposed traffic calming works.
- 7.2.24. I consider that the quantum of contribution levied should be in accordance with the revised schedule provided by the planning authority per letter dated 7th, March 2019. (The Appellant has indicated that this quantum of contribution is acceptable in the event that a financial contribution is to be levied).
- 7.2.25. The planning authority have indicated in their letter dated 7th, May 2019 (per attached report from the Roads, Transportation & public Safety Department) that meetings have been held recently with the Main Developer David Kennedy and it is

understood that agreement has been reached between both sides o the delivery of the Hospital Street R445 traffic calming works. No details of any such agreement have been received by the Board. The Appellant has indicated that no formal agreement has been reached with the planning authority. In my opinion, the replacement of Condition No. 25 with a condition requiring the payment of a Special Financial Contribution towards funding of the overall works would not preclude any future agreement that may be reached between the parties in respect of the delivery of the works.

7.2.26. Finally, option (b) as outlined above addresses the Appellants grievance in relation to the requirement of Condition No. 25 that the traffic calming works along the entire 664 m section of the R445 must be completed prior to the occupation of the proposed Cancer Treatment Clinic.

7.3. **Condition No. 26**

7.3.1. This condition requires that a Stage 1/2 Road Safety Audit be carried out by an independent and approved and certified auditor in respect of the upgrade to the R445 required under Condition No. 25. However, in light of the recommendation to remove (and replace) Condition No. 25, as set out above, it follows that Condition No. 26 should also be removed.

7.4. **Condition No. 27**

7.4.1. This condition requires that a Stage 3 Road Safety Audit be carried out by an independent and approved and certified auditor in respect of the upgrade to the R445 required under Condition No. 25. However, in light of the recommendation to remove (and replace) Condition No. 25, as set out above, it follows that Condition No. 27 should also be removed.

7.5. **Condition No. 34**

7.5.1. Condition No. 34 of the planning authority notification of decision to grant planning permission requires the provision of 2 additional Toucan Crossings on the R445 on either side of the main signalised junction into the proposed development. The

reason stated by the planning authority for this condition is in the interest of pedestrian, cyclist and vehicle safety.

- 7.5.2. The submitted grounds of appeal state that this requirement would result in 4 crossing points within 250m of one another on one of the primary roads into Kildare town. The design proposals submitted by the Applicant to the planning authority at further information stage have been carefully considered and justified. The reason for imposing the requirement for an additional Toucan crossing have not been clearly set out by the planning authority. The requirement of the planning authority for addition Toucan Crossing(s) will place an unreasonable and unwarranted additional financial burden of the Applicant.
- 7.5.3. The planning authority state that the main reason for the traffic calming works and VRU crossings on this 664m section of the R445 at the approaches to the site frontage and at the site frontage is to reduce traffic speeds at the approaches to the site, in particular from the Curragh Road direction where there is a sharp bend and to provide safe crossing facilities for vulnerable road users (pedestrians and cyclists).
- 7.5.4. On balance, having regard to the character of the R445 (the old national primary route between Newbridge and Kildare) along which traffic travels at (and above) the maximum permitted speed limit and to the multiplicity of existing entrances along the 664m section of the road that is the subject matter of the conditions under appeal together with the planned new entrances (serving the LIDL development, the Cancer Treatment Centre, the proposed housing development and the Cherry Avenue Park) and associated increases in traffic volumes, I consider that the requirement of the planning authority in respect of the provision of additional Toucan crossings is reasonable.
- 7.5.5. As set out above, I consider that (in the absence of agreement between the parties to the contrary) delivery of the traffic calming works along the 664m section of the R445 should not be the responsibility of the Appellant and, therefore, Condition No. 25 should be removed. The requirements of Condition No. 34 of the planning authority notification of decision to grant planning permission are linked with the works required under Condition No. 25. Accordingly, I consider that Condition No. 34 should also be removed. However, I consider that the Applicant should contribute on a pro rata basis with the other three developments that will benefit from the proposed

traffic calming works (LIDL, the proposed housing development and the Cherry Avenue Park) towards the provision of the 2 additional Toucan Crossings. Based on the estimate of costs of these works provided by the planning authority (2 no. crossings @ €50,000.00 per crossing = €100,000.00) and on the apportionment of overall costs between the four relevant parties suggested by the planning authority i.e. 12% to the Applicant, I consider that the Applicant should contribute €12,000.00 by way of a Special Financial Contribution towards the provision of the 2 additional Toucan crossings. This €12,000.00 Special Contribution shall be in addition to the €231,600.00 Special Contribution required in lieu of the requirements of Condition No. 25 attached to the planning authority notification of decision to grant planning permission.

7.5.6. In summary, I consider that a new (Amended) Condition No. 25 should be attached by the Board (replacing Condition No. 25 attached to the planning authority notification of decision to grant planning permission) requiring the payment of a Special Financial Contribution pursuant to Section 48(2)(c) of the *Planning and Development Act, 2000*, as amended) in the sum of €243,600.00 towards the cost of proposed traffic calming works along the relevant 664m section of the R445 including the provision of 2 additional Toucan crossings.

7.5.7. I note the requirements of Condition No. 35 attached to the planning authority notification of decision to grant planning permission for the proposed development which requires that the Applicant submit, for the written agreement of the planning authority, a detailed design for the new signalised junction with the R445. I consider that the removal of Condition No. 25, Condition No. 26, Condition No. 27 and Condition No. 34, as recommended, does not preclude compliance with the requirements of Condition No. 35 notwithstanding the fact that the Applicant will no longer be required to deliver the traffic calming works along the 664m section of the R445.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and scale of the development proposed in the conditions being appealed and the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the development proposed in

the conditions under appeal would be likely to have a significant effect individually or in combination with other plans or projects on any European site.

8.0 Recommendation

8.1.1. I recommend that the planning authority be directed to:

Remove Condition No. 25 and the reason attached thereto.

Remove Condition No. 26 and the reason attached thereto.

Remove Condition No. 27 and the reason attached thereto.

Remove Condition No. 34 and the reason attached thereto.

Replace/Amend Condition No. 25 with a new/amended Condition No. 25, as follows:

(25) The developer shall pay to the planning authority a financial contribution in the sum of €243,600.00 as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of the provision of traffic calming works including Toucan Crossings along a 664m section of the R445 fronting and running either side of the Magee Barracks road frontage. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the ***Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning

authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development and the anticipated additional traffic volumes along the R445 and into and out of the site that will be generated by the proposed development, as a proportion of the anticipated total traffic flows that will be generated by the development in combination with the development of the entire Magee Barracks site together with the proposed Cherry Avenue park, it is considered that the requirements of Condition No. 25, Condition No. 26, Condition No. 27 and Condition No. 34 place an unduly onerous burden on the Applicant and the Developer of the proposed Cancer Treatment Clinic. Accordingly, it is considered that Condition No. 25, Condition No. 26, Condition No. 27 and Condition No. 34 of the planning authority notification of decision to grant planning permission should be removed. It is considered that the Applicant should contribute towards the traffic calming works required on 664m section of the R445 specified by the planning authority by way of the payment of a Special Financial Contribution pursuant to Section 48(2) (c) of the *Planning and Development Act, 2000*, as amended, in accordance with the schedule of costs indicated by the planning authority in their letter of 5th, November 2018 (accompanying the planning authority notification of decision to grant planning permission for the proposed development of the same date) as revised by the planning authority in their letter to An Bord Pleanála dated 7th, March 2019 (i.e. 12% of the total estimated cost of €1,928,000.00 = €231,600.00). It is considered that the Applicant should also contribute, on a pro rata basis with the other developments benefitting from the proposed works to the 664m section of the R445, towards the cost of the provision of the addition 2 no. Toucan crossings identified by the planning authority as being required along this section of the upgraded R445 calculated on the basis of the estimate of costs provided by the planning authority (i.e. 12% of €100,000.00 = €12,000.00). The total Special Financial Contribution to be levied pursuant to Section 48(2) (c), therefore, amounts to €243,000.00 (i.e. €231,600.00 + €12,000.00).

Paddy Keogh
Planning Inspector

2nd, August 2019.