



An
Bord
Pleanála

Inspector's Report ABP.306769-20

Development	Construction of 25 no. houses including access, parking, drainage and landscaping. A new vehicular access from the north and a new pedestrian access from the east are proposed.
Location	Curragh, Kanturk Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/5858
Applicant(s)	BCS Asset Holding Ltd.
Type of Application	Planning permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party
Appellant(s)	BCS Asset Holding Ltd.
Observer(s)	None
Date of Site Inspection	31 st July 2020
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in Kanturk, which is located c.25km to the northwest of Mallow and c.40km to the north-west of Cork City. The town is situated at a crossroads where the R576 and the R579 intersect. The R576 links Mallow (via the N72) with Newmarket, while the R759 links Banteer to the south with Freemount to the north. Approaching the town from the south, the two regional roads converge in the centre of the town and diverge again immediately to the north of the town centre. The site of the appeal is located in a suburban area known as the Curragh, which is situated between the two regional roads, (R576 to west and R579 to east), immediately to the north of the town. Access to the site is gained from the Curragh Road (L-1050) which branches off the R576.
- 1.2.** The site is stated as being 3.43ha in area. The site is accessed from the north-west via the Curragh estate, but pedestrian access is also available from the Freemount road (R579) to the east. The site is a green field site which comprises two rectangular fields. It is located on the southern side of a small cul-de-sac which is accessed off the Curragh Road. The eastern boundary is with the rear of three detached dwellings which front onto Curragh Road, part of the northern boundary is with the cul-de-sac, part of the southern boundary is with the rear gardens of a row of houses in the Curragh Court development and the remaining boundaries are with agricultural fields. There is a small development of serviced sites located on the northern side of the cul-de-sac and an entrance to a farmhouse and farmyard at the eastern end of the cul-de-sac. There is a further permitted development of serviced sites to the north-east, which remains undeveloped. Work had commenced on site at the time of my site inspection.

2.0 Proposed Development

- 2.1.** The proposed development involves the construction of 25 no. detached houses. The proposal includes the provision of a new vehicular access to the site from the existing estate road to the north/northwest, which is accessed from Curragh Road, and a new pedestrian access point to the site from the R579 (Freemount Rd). This pedestrian access runs through part of the Kanturk GAA club grounds.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 60 no. conditions. The following are considered to be relevant to roads, traffic management and pedestrian safety issues.

Condition 11 – Stop sign and road markings to be installed at the junction of the proposed development entrance road.

Condition 12 – The full width of the private access road from the junction of the L-1050 to the entrance to the site shall be resurfaced using 45mm wearing course Stone Mastic Asphalt on 55mm dense basecourse macadam. This work shall be completed prior to any house being occupied.

Condition 13 – Entrance shall be recessed a minimum of 4.5m from front boundary fence and side walls shall be splayed at an angle of 45 degrees, and walls and piers shall not exceed a height of 1m over the level of the adjoining public road.

Condition 15 – Footpaths to be dished at entrances, tactile paving to be provided at crossing points, mesh to be provided at entrances.

Condition 16 – Any damage to public roads during construction to be repaired at the developer's expense.

Conditions 17/18 – no mud/debris on public roads, footpaths and roads to be kept in tidy condition and public road to be cleaned regularly during construction.

Conditions 41-44 and 46-47 – public lighting to be installed on public roads, with specifications re design and class of lighting.

Condition 45 – should the applicant need to construct a footpath from the proposed development then they will have to install public lighting along the footpath. Design to be submitted to and agreed with P.A. prior to commencement of development.

Condition 59 – A Special Development Contribution of €39,500.00 shall be paid to Cork Co. Co. in respect of specific exceptional costs not covered in the Council's General Development Contribution Scheme in respect of works proposed to be

carried out, for the provision of traffic calming measures, road surface and footpath improvements in the vicinity of the development.

Condition 60 – A Financial Contribution of €61,632.48 to be paid in accordance with the General Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It was noted that the site is within the Development Boundary and had formerly been the subject of a grant of planning permission (08/5738) for the construction of 15 houses, which was extended (13/5943), which has since expired. It was further noted that a permitted, undeveloped and lapsed serviced site scheme (PL04.239660 and P.A. Ref.11/4559) lies to the north-east of the site. The site is zoned KK-R-07 in the Kanturk LAP (2017), which seeks Medium Density B housing on serviced sites and specifies that the development is only to be accessed from the road to the west. Thus, the proposed increase in density is welcomed.

The main issues highlighted in the first Planner's report (16/09/19) incorporated a wide range of issues including layout, access, design etc., which resulted in a request for FI. However, as the appeal that is currently before the Board relates to a Special Contribution condition regarding roads and access matters, I will confine the summary of the matters raised to those that are relevant to the current appeal.

- The Area Engineer had identified a problem with the proposed access in terms of the current condition of the existing accessway from the L-1050, which had been developed under 04/3383. Although the sightlines were considered to be good, it was noted that the road was in a poor condition, that it had not yet been taken in charge and that it needed to be upgraded before being taken in charge.
- The adequacy of proposed pedestrian crossings within the development was identified as being of concern. Although two raised table crossings were proposed, additional uncontrolled pedestrian crossings would be required.
- It was identified that there would be a need for a special contribution levy to install traffic calming measures along L-1050.

- Surface finish/treatment for the proposed pedestrian link to Freemount Road.

Other matters raised related to matters such as drainage, flooding, layout and design, public lighting, boundary treatment and landscaping. The application was deferred pending the receipt of further information as set out in the P.A.'s letter of 16/09/19.

3.2.2. **Other Technical Reports**

Area Engineer - 12/09/19 - It was noted that the access road needs to be improved and that there is a continuous footpath along the L-1050 linking the access road to the R576, but that traffic calming would be necessary due to the considerable increase in traffic on this road. Further uncontrolled pedestrian crossings were identified as being required throughout the development, with tactile paving. Details were required in respect of footpaths (cross sections), visitor parking, turning bays etc. Further details of the finish and alignment of the roads, road markings, signage, and traffic calming measures within the estate were required. FI was requested in respect of the foregoing. Other issues raised related to surface water/storm water, installation of a hydro-carbon interceptor etc. FI was required.

Estates Office – 23/09/19 – deferral recommended in accordance with Area Engineer's report.

Ecologist – 12/09/19 – recommended deferral pending FI regarding details of SUDs measures, details of surface water management controls, and an outline CEMP.

Archaeologist – 16/09/19 – It was noted that test trenching had identified a new archaeological site, a fulacht fiadha/burnt spread and that the development had been redesigned to accommodate a 20m buffer zone accordingly. This was welcomed, but FI requested in the form of an Archaeological Impact Assessment, which should include a geophysical survey and licenced archaeological testing.

Public lighting – The information provided with the application was considered inadequate and further information was requested.

3.2.3. **Further Information December 2019**

Further information was submitted on 4th December 2019. This included

- Revised drawings (DWG REF 302) including revisions to the roads with further uncontrolled crossings, details of footpaths, visitor parking etc.

- Updated site layout plan (DWG REF P03) and Swept path layout (DWG REF P09), and
- Details of the surface treatment of the pedestrian link to Freemount Road which will comprise a gravel path (DWG REF P10).

It is noted that the Area Engineer (4/2/20) recommended permission subject to conditions. Concern was expressed that the proposed development would give rise to a considerable increase in traffic on the L-1050 and he, therefore, considered that a **Special Contribution** of **€39,500** should be levied towards the cost of providing traffic calming, road and public footpath improvements.

The Area Planner noted that all other internal reports had also recommended permission be granted subject to conditions. Permission was recommended.

3.3. Prescribed Bodies

Irish Water – No objection subject to conditions.

3.4. Third Party Observations

Two observations which objected on the grounds of residential amenity.

4.0 Planning History

08/5738 – planning permission granted for 15 no. houses (change of plan from previously granted 20 dwelling houses under 06/11019). Permission was extended under **13/5943**. This has since expired in 2018.

PL04.239660 (PA 11/4559) – planning permission granted for site development works for 25 no. serviced site for dwellings, but this has since lapsed (not commenced). This site is located to the north-east. The appeal to the Board was in relation to an appeal against a Special Contribution condition, which had required the payment of €86,350 in respect of the provision of roadworks proposed on the Curragh Road. The Inspector's Report (**239660**) had noted that the Roads Engineer had recommended that the entrance to the development be from the Curragh Road to the West, but that a Special Contribution be levied "in order to bring this Curragh Road up to the required standard". It was further noted that the Roads Engineer had

anticipated that this would involve “resurfacing, removal of grass margin to facilitate road widening and a footpath extension near the junction with the R576.” The cost was estimated at €87,400 for the road upgrade (3,035m² @ €28) and €1,650 for the footpath (30m² @ €55).

However, the Board issued a S132 notice requiring further information from the P.A. regarding the means of calculation of the contribution and the means of attributing the costs to the proposed development. Following receipt of the FI, the Board decided to reduce the amount of contribution to 20% of the road upgrade costs (€16,940) and applied the full cost of the footpath upgrade. Thus, the revised amount of contribution was €18,590.

5.0 Policy Context

5.1. Cork County Development Plan 2014

5.1.1. **Chapter 3 – Housing** – Existing Built-Up Areas include all lands within a development boundary which do not have a specific zoning objective. It sets out the housing policies and objectives including the following:

HOU 3-1 Sustainable Residential Communities – reference to national guidance on achieving high quality neighbourhoods.

HOU 3-2 Urban Design – high quality design and layout required.

HOU 3-3 Housing Mix – Intention to seek a mix of house types and sizes in accordance with the Joint Housing Strategy and National Guidelines.

Notwithstanding the desire to achieve higher densities (as set out in the Sustainable Residential Development in Urban Area Guidelines), it is acknowledged that there is a need to allow some lower density development in order to achieve a broader range of house types, particularly where there is a high demand for development in unserviced rural areas.

HOU 4-1 Housing Density on zoned lands – The site is designated as ‘Medium Density B’, with a recommended minimum of 12/ha net density and 25/ha maximum.

5.2. Kanturk Municipal District Local Area Plan 2017

- 5.2.1. Kanturk is designated as a Main Town. It has a stated population (2011 census) of 2,263 with a population target of 2,400. It is estimated that 141 new units will be required (Table 2.1), with a net housing land requirement of 8ha. The plan makes provision for a residential land supply of 32.4ha, which is acknowledged as an overprovision. However, it is stated that some of the villages in the hinterland may not have adequate capacity in the required services, and that this headroom may be needed for this purpose. The Plan makes provision for a range of house types including serviced residential sites.
- 5.2.2. The site is zoned **KK-R-07 Medium B Density** Serviced Site development comprising individual serviced sites. Development on overall zoned land to be accessed only from the road to the west. It is stated at 3.3.8 that Medium Density B is suitable for developments at 12-25 dw/ha. Two specific sites are identified, KK-R-07 and KK-R-08. It is emphasised that good connectivity with the Town Centre is of importance (3.3.9). Pedestrian routes in the town are considered to be generally of a good standard, but it is acknowledged that further residential development will lead to a demand for further extensions to these routes. There is an objective, **KK-GO-07**, which seeks to improve pedestrian and cyclist connectivity throughout the town. It is stated that development proposals shall provide for improved pedestrian/cycle access routes, provision for new footpaths or improvements of existing footpaths and provision of facilities for cyclists as appropriate.

5.3. Natural Heritage Designations

The closest designated site is River Blackwater SAC (002170), which is located 25m to east and 430m to southwest.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by Coakley O'Neill Planning Consultancy on behalf of the applicant. The appeal is against Condition No. 59 only, which requires the payment of a Special Contribution of €39,500 in respect of works involving the

provision of traffic calming measures, road surface and footpath improvements in the vicinity of the development. The main points raised may be summarised as follows:

- **Not ‘Specific’ or ‘Exceptional’** - The Council has not demonstrated that the costs incurred are either specific or exceptional as stated in the reason for the condition, and as required by Section 48(2)(c) and 48(12) of the Planning and Development Act 2000. There is an onus on the P.A. to demonstrate that the works are ‘exceptional’ in the sense that they could not have been envisaged at the time that the Development Contribution Scheme was approved. It is also required that the P.A. demonstrate that the works are ‘specific’ to this development and would benefit the permitted scheme rather than the general area, and would not be incurred at all if the proposed scheme did not go ahead.
- The works covered included the provision of roadworks on the L-1050, junction layout improvements onto the Regional Road R576, Footpath improvements onto the Freemount Road, as well as provision of speed cushions, uncontrolled pedestrian crossings and signage. None of these works could be considered to be specific to the proposed development.
- Other lands will benefit from the works covered by the special contribution, including existing businesses, community facilities, residences etc. There are several residential developments that have been constructed (e.g. Curragh Court (18 units), Curragh Grove (6 units), Egmont Woods(25 units)), as well one-off houses along both roads (approx. 72 dwellings), which will benefit and which are accessed from either Curragh Road or Freemount Road. Furthermore, there are additional lands that remain undeveloped that benefit from a residential zoning objective, which will also benefit from the works.
- The onus is on the P.A. to specify the particular works carried out, or which are proposed to be carried out, in accordance with Section 48(12)(a) of the P & D Act. This requirement is so that, in the event that the specific works are not carried out within 5 years of the payment of the contribution, it must be refunded. Thus, it must be possible to be able to see exactly what specific works are proposed to be carried out. Condition 59 has failed to identify the nature, extent and level of works required and to provide a clear and

transparent calculation as regards the value of the contribution. The condition should therefore be omitted in its entirety.

- **Double charging** - The Council is requiring the payment of this special contribution in addition to the payment of a contribution under the General Development Contribution Scheme. The definition of 'Public Expenditure' set out in Section 48(17) of the Act includes items such as the provision of footpaths, traffic calming measures, road upgrades and these items must be provided for in the General Development Contribution Scheme. Condition 59 therefore fails to demonstrate that the specific exceptional costs required are not already covered by another scheme (GDCS).
- It is noted that a special contribution was required to be paid under PL04.239660 (P.A. Ref. 11/4559), which had been assessed under a previous GDCS. However, the GDCS was updated in 2015, and the provision of roadworks was included in the overall cost of the GDCS. It is also clear that the GDCS does not list specific road projects that are covered by the Scheme. Notwithstanding this, it is clear that the nature of the works involved comes within the definition of road works covered under the Scheme. Thus, it is concluded that the GDCS covers the cost of upgrading the L1050 and providing traffic calming and that a contribution has been paid by the developer under condition 60 in respect of these works.
- The practice of double charging is inconsistent with the Development Contribution Guidelines (2013) in terms of both "the primary objective of levying development contributions and with the spirit of capturing planning gain in an equitable manner."
- **Section 139** - It is requested that the appeal be dealt with under Section 139 of the 2000 Act and that Condition 59 be omitted.

6.2. Planning Authority Response

- 6.2.1. The P.A. responded to the grounds of appeal on 20th May 2020. It is stated that the development of 25 houses will result in additional demand on services that the planning authority would not normally have to provide in this area. It was considered reasonable for the developer to contribute to the overall cost of traffic calming for

both pedestrians and vehicles given that the development will greatly increase the traffic and pedestrian footfall along the L-1050.

6.2.2. The specific measures and costs associated with same were set out as follows:

- 2 no. speed cushions on L-1050 between the R576 and the entrance to the site - €9,000
- Junction layout improvements where the L-1050 exits onto the R576 which will include build-outs and road lining - €5,000
- Uncontrolled pedestrian crossings across the R576 to cater for the increase in footfall - €5,000
- Additional signage associated with ramps, junction layout improvements and pedestrian crossing - €1,500
- Provision for road works on L-1050 which is 520m from the junction with the R576 to the entrance to the development the average width is 5m which gives a total of 2,600m². A rate of road repairs of €20 per m² = €52,000, and the portion attributed to the development is 25% = €13,000.
- Footpath access to the Freemount road (R579) is proposed from the development. The length of the public footpath to Kanturk Town is 1200m and a number of sections would need improvement to cater for the extra demand in footfall. The total cost of repairs at €70 per m² would be €24,000 and applying a 25% contribution from the developer would give rise to a financial contribution of €6,000.

6.2.3. It is stated that the traffic calming measures specifically relate to the development, which means that 100% of this cost is attributable to the proposed development. However, it is accepted that the works to the L-1050 and to the footpath on the R579 will have wider benefits, and as such, it is proposed to attribute 25% of the cost of these works to the development.

6.2.4. The basis for attribution of 25% is that there are currently 75 dwelling on the L-1050 between the R576 junction to the speed limits, and the proposed development will increase this to 100 dwellings. The levy is justified on the basis of the increased demand and the current inadequate state of the public infrastructure, which is incapable of catering for the development of an additional 25 houses.

7.0 Assessment

7.1 Legislation and Guidance

7.1.1. As the appeal is solely against Condition 59 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 59** requires the payment of a special contribution of **€39,500**

“.....in respect of specific exceptional costs not covered in the Council’s General Development Contribution Scheme, in respect of works proposed to be carried out for the provision of traffic calming measures, road surface and footpath improvements in the vicinity of the development.....”

7.1.3. I note that there is also a condition (No. 60) attached to the permission requiring the payment of a financial contribution in respect of public infrastructure and facilities benefitting development in the area under the adopted Cork County General Development Contribution Scheme, made under Section 48(2)(a) of the Act. There are also several further conditions attached to the permission which require the applicant to carry out specific infrastructural works at his own expense in the vicinity of the development. These include Condition 11 (road signs and markings), Condition 12 (resurfacing of access road from junction of L-1050 to entrance to site), and various conditions requiring the roads and footpaths within the proposed development to be constructed to a particular standard to enable them to be taken in charge.

7.1.4. Furthermore, the applicant (as revised by FI submitted to P.A. on 4/12/19) proposes to provide additional items relating to pedestrian and road safety including

- traffic calming measures within the estate - (raised speed table, footpath crossings, stop signs, road markings – Layout Drawing P03 Rev 2),
- a new public 2m wide footpath linking the site entrance to the existing public footpath along the access road leading to the L-1050 (Drg. P03 Rev 2), and
- a gravel footpath linking the development site to the R579 (Drg. P10 Rev. 1).

7.1.5. 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.

7.1.6. It is further clear that such a condition must be amenable to implementation under the terms of S48(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. Nature and scope of the works

7.2.1. The works are not specified in detail in Condition 59, but the Area Engineer’s Report (4/02/20) and the Planning Reports (5/02/20) provide more detail on the nature and scope of the works required. This is further expanded upon in the P.A. response to the grounds of appeal (20/05/20). It is stated that given that the proposed development will greatly increase the traffic and pedestrian footfall on the L-1050, it is requested that the developer should pay a special development contribution towards traffic calming measures for both pedestrians and vehicles along the L-1050 which shall include the following:

- 2 no. Speed cushions - €9,000
- Signage associated with ramps and junction improvement - €1,500
- Uncontrolled pedestrian crossing of the R576 - €5,000
- Junction layout improvements onto the R576 - €5,000
- Provision for roadworks on L-1050 - 520m x 5m = 2,600m² @ €20 per m²
= €52,000. Applying a rate of 25% contribution = €13,000.
- Footpath improvements on the Freemount Road = €6,000.
- Total amount = **€39,500**.

7.3. Specific or exceptional costs

- 7.3.1. The wording of Condition 59 states that the contribution is required in respect of “specific exceptional costs not covered in the Council’s General Development Contribution Scheme”. This means that the costs incurred should be directly as a result of the development or are required in order to facilitate the development and are properly attributable to the development.
- 7.3.2. The main purpose of the special contribution appears to relate to the condition of the Curragh Road (L-1050), which is in need of upgrading. The traffic calming measures identified amount to €15,500 (i.e. for speed cushions, signage and pedestrian crossings), whilst the improvement of the layout of the junction of this road with the R576 amounts to €5,000. In addition to these specific measures, it is required that a proportion (25%) of the cost of “roadworks on the L-1050” be paid at €13,000. Further to this, the contribution also includes a flat fee in respect of “footpath improvements on the Freemount Road” of €6,000.
- 7.3.3. **Upgrade of public footpath R579** - In respect of the Freemount road, it should be noted that the applicant proposes to provide a new pedestrian gravel path linking the proposed development with the R579 along a private lane. Although there is a reasonable continuous footpath along the full length of the Freemount Road, it is considered that the existing gravel roadway leading from the private lane to the public footpath is substandard and would present a traffic hazard for pedestrians existing the laneway. It is considered that the costs of improving the linkage between the two pedestrian paths arises directly as a result of the proposed development and these works would facilitate the development, it is reasonable that the developer should contribute to this element of the works. In addition, the P.A. considers that a 25% contribution to the improvement of the existing public footpath linking the exit from the development site with the town along this road should be levied on the development. The basis for 25% in this instance is not clear. However, it is assumed that the cost of linking the existing and proposed footpaths is included. As such, the proposed levy of **€6,000** is considered reasonable.
- 7.3.4. There are three main elements to the works required to the Curragh Road (L-1050), namely, junction improvement works at R576/L-1050 intersection, general road improvement works to the L-1050 and traffic calming along the route. I noted from

my site inspection that the Curragh Road is a long stretch of roadway which has been developed incrementally with one-off houses and several small housing developments. There is a continuous footpath along the eastern side of the carriageway which links the access road serving the development all the way to the junction with the R576 but stops short of the regional road by approx. 15 metres.

7.3.5. **General road upgrade L-1050** - The issue of the upgrade of the L-1050 has been considered previously by the Board under PL04.239660. This was an appeal against a special contribution condition by the same developer for the development of 25 no. serviced sites on an adjoining site, which was also accessed via the access way serving the site of the current development proposal. The Board considered that, having regard to the pattern of existing and permitted development in the area and to the condition of the public road and footpath serving the site, it would be reasonable that some of the specific exceptional costs of upgrading the local road be attributed to that development. However, it was considered that only a portion of the costs should be borne by the subject development given their wider benefit to other existing/proposed developments in the area. In this instance, the P.A. had requested a payment of €86,350. This was calculated on the basis of 3,035m² @ €28 = €84,700 with a further €1,650 for the continuation of the footpath to the R576. However, the Board considered that the developer should only contribute 20% of the cost of the upgrade of the L-1050, (although the full amount of the footpath continuation to the R576 was required). This reduced the amount of contribution to the road works to €16,940.

7.3.6. In the case currently before the Board, the P.A. are seeking 25% of the cost of roadworks (€13,000) as well as traffic calming measures amounting to €15,500. It is considered that the road is substandard, particularly in terms of pedestrian accessibility and safety. However, it would be reasonable to apply the same rate of contribution applied by the Board to the cost of the road upgrade, which is 20% (of €52,000). This would reduce this element of the requirement from €13,000 to **€10,400**.

7.3.7. **Traffic Calming L-1050** - The issue of traffic calming was not raised in the previous case. Given that the applicant has proposed a considerable amount of traffic calming works within the proposed estate, to re-surface the entire width of the access road leading to the site, and to provide a public footpath linking the development to the

access road, it is considered that a requirement to contribute to traffic calming on the L-1050 as well is unreasonable in this instance, and are not specific to the development. The exception to this is the inclusion of the pedestrian crossing of the R576 as discussed below.

7.3.8. **Junction R576 and L-1050** - The layout of the junction of the R576 and the L-1050 is substandard in terms of alignment and the public footpath continues along the R576 only on the western side of the road. Thus, pedestrians walking to/from the town centre would have to cross the road at this junction in order to access the public footpath on the opposite side of the road, which would be hazardous. In these circumstances, it is considered reasonable that the applicant be required to pay some contribution towards the cost of these works as it would facilitate the development. It is noted from the response to the grounds of appeal (20/05/20), the P.A. has specified that the uncontrolled pedestrian crossing relates to this particular issue, i.e. a crossing of the R576 from the L-1050, (costed at €5,000). In addition, the improvement of the road junction, which is also needed, would be levied at €5,000. It is considered that both of these works are of considerable importance in terms of providing safe pedestrian access to the town centre.

7.3.9. It is acknowledged that the proposed development would not be the only beneficiary of these works, as all of the residents on the Curragh Road would benefit from safe pedestrian access through the junction. On the other hand, it is considered that in the absence of such a safe crossing, it would be inappropriate to facilitate a development which would put additional vehicular and pedestrian demand on this junction. Thus, it is considered reasonable in this case to require the realignment of this junction and to provide a safe pedestrian crossing, which is considered to be specific to the development. It is considered, therefore, that a contribution of **€10,000**, (combined amount for junction improvement and pedestrian crossing at this location) is considered to be justifiable and attributable to the proposed development in respect of this element.

7.4. Double charging

7.4.1. The applicant considers that the P.A. was engaging in the practice of double charging as there is a requirement to pay a contribution under the GDCS in addition to the payment of a special contribution, which amounts to double charging for the

same infrastructural improvements. It was pointed out that the provision of road works, footpaths, traffic calming etc. are included in the types of works identified as Public Expenditure in S48(17) of the Planning and Development Act (as amended). It is argued that the site has been zoned as residential for many years and that both the policy framework and the GDCS have been updated since the previous application for 15 houses on the site had been permitted, which had been subject to a similar requirement.

7.4.2. I would agree that the site has been zoned as residential, as have several other sites in the vicinity, for at least a decade. The current Kanturk Municipal District LAP and the County Development Plan both identify the need to encourage more sustainable development and travel patterns, which include facilitating walking and cycling. It is acknowledged that the public infrastructure in the area is somewhat substandard in this regard, and that the General Development Contribution Scheme is intended to provide for such infrastructural improvements, particularly where such works would have been envisaged when the Scheme and/or the LAP were being drawn up. Curragh Road is a residential road which has an almost continuous line of frontage development (on both sides) together with several small housing estates. It seems to have developed incrementally over several decades and the condition of the road has been affected by this piecemeal development. The standards that would be applicable at present, in light of the strong emphasis on walkable neighbourhoods and the facilitation of walking and cycling as sustainable modes of transport, would not necessarily have been as rigorous as they are now.

7.4.3. The addition of 25 further housing units would lead to some increase in the traffic generation on the road, which would exacerbate the condition of the road to some extent. In addition, the high standard of pedestrian connectivity which would be expected in current times would not be easily achieved along the half a kilometre length of the road. Thus, whilst there is a reasonable expectation that such infrastructural improvements should be provided for by means of the GDCS, it is considered that in the context of the large extent of existing, permitted and likely future development of zoned lands along the route, it would be unreasonable to require the applicant to pay for a significant portion of the costs of such upgrades. It is further noted that the applicant is providing a significant element of public infrastructure as part of the proposed development (as outlined at 7.3.6 above). Thus,

the recommended contribution of 20% of the road upgrade, together with the specific footpath tie-ins to the R576 and R579, and the junction layout and pedestrian crossing at the R576 where it meets the L-1050, respectively, as discussed above, is considered to be reasonable in these circumstances. However, it is considered that there is no justification for additional traffic calming works (speed cushions and associated signage) on the L-1050 as this would amount to double charging.

7.4.4. The Guidelines require that the nature/scope of the works and the expenditure involve be specified. Although the wording of the condition does not specifically state the expenditure for each individual item, it is considered that the intention of the condition is clear and is supported by the planning and technical reports, and is clarified further in the P.A. submission to the Board (20/05/20). It is considered that the following 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.

- 20% of the road upgrade works on the L-1050 - €10,400
- Improvements to the public footpath on the R579 including the tie-in with the proposed pedestrian pathway along the private laneway to the east of the development - €6,000
- Improvement of the layout of the road junction between the L-1050 and the R576 - €5,000
- Provision of an uncontrolled pedestrian crossing of the R576 at the junction with the L-1050 - €5,000.

7.4.5. I would accept that these works come within the scope of Section 48 (2)(c) of the Act. The additional items comprising the works the subject of the Special Contribution condition should be omitted, however, as it is considered that these matters would be covered by the terms of the GDCS. Thus, the amount of the contribution should be reduced from €39,500 to €26,400.

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 59 and the reason therefor as follows for the reasons and considerations set out below.

59. The developer shall pay the sum of €26,400.00 (twenty-six thousand four hundred 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 works proposed to be carried out relating to the following matters

- 20% of the road upgrade works on the L-1050 - €10,400
- Improvements to the public footpath on the R579 including the tie-in with the proposed pedestrian pathway along the private laneway to the east of the development - €6,000
- Improvement of the layout of the road junction between the L-1050 and the R576 - €5,000
- Provision of uncontrolled pedestrian crossing of R576 at junction with L-1050 - €5,000

which are considered to be improvements required to facilitate this development. 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

Having regard to the pattern of existing and permitted development in the vicinity, to the condition of the road and footpath serving the site and to the proposals to provide

public infrastructural improvements as part of the development, it is considered reasonable that only a portion of the costs of upgrading the L-1050 ought to be borne by the subject development and that none of the traffic calming works should be included, given their wider benefit to other existing/proposed developments in the area. It is further considered that the planning authority has demonstrated that the modifications to the junction of the R576 and L-1050, including the pedestrian crossing, and the linking of the public footpath on the R579 to the proposed pedestrian pathway through the private laneway to the east of the site, arise from the proposed development, which would also give rise to additional demands on the road and pedestrian infrastructure serving the site, and which would amount to specific exceptional costs arising from the proposed development that would benefit the proposed development in this instance. The Board has decided to determine the contribution as follows:

Cost of junction improvement R576 with L-1050 -	€5,000
Cost of pedestrian crossing of R576 at junction R576 & L-1050 -	€5,000
Cost of footpath extension at junction of R579 -	€6,000
20% of road upgrade of L-1050 -	<u>€10,400</u>
Total amount of contribution -	€26,400

Mary Kennelly
Senior Planning Inspector

12th August 2020