



An
Bord
Pleanála

Inspector's Report

ABP-309959-21

Development	Construct 8 dwellings to replace units 11-18 as previously permitted under register references 07404018 and 04404009
Location	Clievragh, Listowel, Co Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20762
Applicant(s)	Homeland DAL Ltd
Type of Application	Permission
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	First Party v Conditions 2, 3 and 4
Appellant(s)	Homeland DAL Ltd
Observer(s)	None.
Date of Site Inspection	21 June 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. This appeal relates to a housing development, Cashen Close located within the Dún Álainn Housing Estate which is located circa 1km north of Listowel Town Centre in County Kerry. The appeal site comprises 8 plots situated in the south-western part of the unfinished housing estate which is served by a single access from R552. The area is characterised by residential development predominantly detached single storey dwellings along Clieveragh Road R552 and two storey detached and semi-detached within the Dún Alainn estate. The appeal site is currently fenced off from eight dwellings within Cashen Close which are currently occupied. Road surfaces and service roads to the site is incomplete. Three dwellings adjoining the appeal site on Cashen Close while substantially complete have remained unoccupied and appear neglected and rundown. Adjoining lands to the south and west are currently under development.

2.0 Proposed Development

2.1. The proposal involves the construction of 8 no semi-detached two-bedroom single storey dwellings to replace previously permitted units 11-18. During the course of the application and specifically in response to the request for additional information the redline boundary of the appeal site was revised (enlarged) to incorporate access road and the green area. Application details indicate that storm and foul services are currently being completed on the site. Wastewater infrastructure comprises a gravity flow system connecting to an existing foul pumping station to the southwest of the site from where it is pumped to the existing foul sewer on the public road to the east of the site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 08th March 2021 Kerry County Council issued notification of the decision to grant permission and 24 no conditions were attached which included the following three conditions which are now under appeal.

Condition 2 “Prior to commencement of development the developer shall lodge with the planning authority a Bond in the sum of EUR90,000 coupled with an agreement to empower the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. Such Bond will be increase from 1st January, 2022 and annually thereafter in line with the Wholesale Price Index for Capital Goods, Building and Construction as published by the Central Statistics Office to the value pertaining at the time of payment and shall be from an approved Financial Institution as may be acceptable to the Planning Authority to secure the provision and satisfactory completion and maintenance of the service road and turning area, footpaths, water supply, foul and surface water drainage, public lighting required in connection with the proposed development. The Bond shall remain in place for a period of 8 years from the grant of permission or until such time as the development has been completed to the satisfaction of the Planning Authority in accordance with the conditions of the planning permission granted (whichever is sooner)

Reason: In order to secure the satisfactory completion of the development.

Condition 3 Prior to the commencement of development, the developer shall pay a contribution of €12,000.00 to Kerry County Council (Planning Authority) in respect of Roads and Transport and Community and Amenity infrastructure benefitting the development.

This contribution is broken down as follows

Roads and Transport €5280.00

Community and Amenity €67203.00

The amount of this contribution is calculated in accordance with the Council’s prevailing Development Contribution Scheme and may be increased from January 1st 2022 and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices – Building and Construction (Capital Goods) as published by the central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefitting the development, as provided for in the Council's prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act (as amended) and that the level of contribution payable should increase at a rate in the manner specified in that Scheme.

Condition 4. Prior to the commencement of development, the developer shall pay a contribution of €EUR 85,000 to Kerry County Council (Planning Authority) in respect of public infrastructure and facilities benefitting the proposed development, as a special contribution within the meaning of Section 48(2)(c) of the Planning and Development Act 2000 towards the cost of implementation of the following schedule of works:

The levy is broken down as follows:

Provision of pedestrian crossing on the R552 Regional Road : €45,000

Construction of public footpath from the main entrance to the pedestrian entrance / pedestrian crossing €40,000. The amount of this contribution will be increase from January 1st 2022 and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices – Building and Construction (Capital Goods) as published by the central Statistics Office.

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefitting the development, as provided for in the Council's prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act 2000

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Planner's initial report considered that the application should be expanded to include permission to complete service road and associated site development works. A request for additional information issued seeking a number of detailed matters including:

- The expansion of the application to include completion of service road and associated site development works.
- Piecemeal development to be avoided.
- Traffic and Transport Assessment.
- Detailed design layout of the proposed junction between the Regional road and the Estate Access road.
- Stage 1 /2 Road Safety Audit,
- SUDS system details
- Detail of existing access road.
- Proposed pedestrian access route.
- Explanation as to why section of ground at southeast of site adjoining R552 is not factored within the site.
- Requirements of Housing Estates Unit to be addressed
- Part V proposals.
- Reference to green area within development description.

3.2.1.2 Following submission of additional information Planner's report considers that outstanding issues can be addressed by condition.

Permission was recommended subject to conditions.

The development levy calculation was set within the report as follows:

- Floor area of each dwelling 66.75 sq.m, 8 dwellings
- Roads & Transport – Up to 125sq.m = €660 x 8 = €5,820
- Community and Amenity – Up to 125sq.m = €840 x 8 = €6,720
- Bond 90m of estate road to be completed, bond calculation is €1000 per linear metre = €90,000

3.2.2. Other Technical Reports

3.2.2.1 County Archaeologist – No recorded monuments in the Record of Monuments and Places while the site has been previously disturbed. No mitigation required.

3.2.2.2 Housing Estates Unit Application should be refused if the planning application redline area is not enlarged to include all common services common areas estate roads and footpaths stormwater infrastructure, foul pumping station and foul rising main, estate road to Ballylongford Road and the original planned roundabout entrance.

Masterplan for overall site required. In relation to the bond claimed by Listowel Town Council for the previous permission for the entire blue area was only €35,000 which is totally inadequate for the works outstanding. They only claimed for a second layer of tarmac on the spine road. However there has been no CCTV of the sewers, water audit as built drawing etc so the entire works done by the previous owner / developer are not signed off on. Thus, the new developer needs to cover all the blue area in individual planning redline areas. One bond or the entire development notwithstanding the phasing proposals.

3.2.2.3 Biodiversity Officer. Conditions in the event of permission.

3.2.2.4 Roads Report. Further information required in relation to Traffic and Transport Assessment, SUDS system to be detailed. Detail of existing access road. Specific Roads levy of €85,000 to be placed to provide pedestrian facilities to serve the development. (Breakdown Provision of Pedestrian Crossing on the R552 €45,000. Construction of public footpath from the main entrance to the pedestrian entrance / pedestrian crossing €40,000. Following submission of additional information report recommends permission subject to consultation with regard to items highlighted in road safety audit, in particular Stop signage, pedestrian crossing, SUDS and sightlines. A specific road Levy of €85,000 should be provided on this development in order for Kerry County Council to provide pedestrian facilities to serve the development.

3.3. **Prescribed Bodies**

3.3.1 Irish Water. Connection agreement prior to commencement of development. Subject to capacity requirements and constrains to the Irish Water Capital Investment Programme.

3.4. **Third Party Observations**

3.4.1 A number of submissions to the Council from the following local residents:

- Mark Yao, 3 Cashen Close.
- Maggie Scanlon, 20 Cashen Close.
- Rosalie Stack 19 Cashen Close,
- Kevin Stack 4 Cashen Close.
- Clare Cusack 21 Cashen Close.
- Declan Molyneaux, 1 Cashen Close.
- Martin and Edna Scanlon, Clieveragh.
- Marion Walsh 5 Cashen Close.
- Mary Beades David O Brien. Clieveragh Upper.

3.4.2 The submissions raise common concern which I have summarised as follows:

- Style single storey dwellings not in keeping and visually inconsistent with Cashen Close.
- No detail regarding Part V arrangements.
- Inaccuracies within the applications including incorrect reference to address as Clashen Close, should be Cashen Close.
- Criticism regarding location of the site notices.
- Upkeep and future of the estate.
- Entrance to the estate and infrastructure including lighting incomplete.
- Public health and safety concerns.
- Negative impact on ecology.
- Substandard access lighting roadway.
- Security concerns during the construction period.
- Piecemeal Development.
- Site amenities. Open space and landscaping.

4.0 Planning History

I note the following history relating to the site and vicinity. I note that history files have not been provided to the Board by the Planning Authority and only limited details are available on Kerry County Council Planning Enquiry system.

(<https://www.kerrycoco.ie/planning/online=planning-enquiry/>)

20/580 Conditional permission granted on 4/05/2021 to construct 2 no dwellings and all associated site works. The proposed dwelling replace units 9 and 1- as previously permitted under register references 07404018 and 04404009 and comprise 2 no detached two storey three-bedroom dormer style units.

04/404009 Permission granted 30th August 2003 for demolition of an existing dwellinghouse and construction of 17 no dormer bungalows.

07/4018 Permission granted for change of house type of 8 no 3 bed dormer dwellings and for construction of 4 additional dwellings within the original site boundary.

5.0 Policy Context

5.1 National Policy

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated 'Urban Design Manual) (2009).

Design Manual for Urban Roads and Streets (DMURS) (2019).

Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018).

5.2 Development Plan

The Kerry County Development Plan 2015-2021 and Listowel Town Development Plan 2009-2015 as extended and varied refer.

The site is zoned Existing Residential (R2) It is the policy of the Local Authority to facilitate development that supports in general the primary land use. Development that does not support or threatens the vitality or integrity of the primary use of these existing built-up areas shall not be permitted.

The Kerry County Council Development Contribution Scheme 2017 applies.
(Extracts Appended)

I note at page 19 it is outlined as follows:

“Modification to a Permitted Development

An application for permission for modification to a permitted development, including a change of house type or amendment to a site layout, shall be assessed on the basis of the scale of development contributions in operation on the date of issue of the decision to grant permission. Any development contributions paid under the parent permission shall be taken into consideration.”

5.3 Natural Heritage Designations

5.3.1 The site is not within a designated area. The nearest such sites are:

- The Lower River Shannon SAC is within 1.1km to the south of the site.
- Moanveanlagh Bog SAC is within 4.5km to the east
- River Shannon and River Fergus Estuaries SPA 10km to the north
- Stacks to Mullaghareirk Mountains West Limerick Hills and Mount Eagle SPA within 11.5km to the east.

5.4 EIA Screening

5.4.1 An Environmental Impact Assessment Screening report was not submitted with the application. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

5.4.2 It is proposed to construct 8 dwellinghouses. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 0.58 ha and is located within an existing built-up area but not in a business district. The site is therefore well below the applicable threshold of 10ha. The site is located within an established residential area. The introduction of infill residential development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site and there is no hydrological connection present such as would give rise to significant impact on nearby water courses. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Kerry County Council, upon which its effects would be marginal.

5.2.3 Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on lands that are zoned for residential development under the provisions of the Listowel Town Development Plan, and the results of the strategic environmental assessment of the Listowel Town development Plan , undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of residential development in the vicinity,

- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to ensure no connectivity to any sensitive location,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case (See Preliminary Examination EIAR Screening Form).

6 The Appeal

6.2 Grounds of Appeal

6.1.2 The first party appeal is submitted by Coakley O Neill Planning Consultants and relates to solely to conditions 2, 3 & 4 of the Council’s decision. Grounds of appeal are summarised as follows:

- The Planning Authority by way of correspondence to the applicants dated 23 July 2020 (Appended) confirmed the payment of all development contributions under the governing permission. 04/404009 and 07/404018
- In relation to the historic bonds in place for this development the Planning Authority confirmed by correspondence 31 July 2019 that the bond in place under 07/4040018 and 04/404009 was €65,555 and no claim was made before the expiry date 30th November 2012.
- On the adjoining site under 06/404032 and 07/404004 a claim of €35,000 was made by the PA on 22 July 2011 and this was paid on 3 November 2015. The

sum was then transferred to the Council's operations department on 2 March 2016 to complete outstanding works.

- The implementation of this other development to the west permitted under 07/404004 subsequently extended under 07/444004 and 07/494004 remains live and implementable and is subject to separate compliance submissions to the Planning Authority.
- Works commenced on 4th January 2021. The works incorporate all necessary infrastructure and service upgrades to fully service and access the lands.
- Drawing 19112-GA-271 submitted in response to the request for additional information clearly indicates the overall development strategy for the lands.
- The applicants in completing the infrastructure for the site and those adjoining have made an offer to put a new bond in place under the extant permission for Cashen Court. A new second bond is therefore unnecessary, unwarranted and unduly onerous.
- Condition 3 imposes a development contribution of €12,000 under the Council's development Contribution Scheme. Overall, across the Dun Álainn scheme a total of €323,054.48 has been paid in compliance with condition under 04/404009, 07/404018, 06/404032 and 07/404004.
- Development Contributions relating to Cashen Close under 04/404009 07/4040018 have been paid in full totalling €45,203.16. These contributions covered a total of 21 dwellings yet only 8 have been fully constructed and a further 3 substantially completed.
- The imposition of a new development contribution charge amounts to double charging contrary to the provisions of the Development Management Guidelines.
- Contribution Scheme provides for exemption from payment of contributions relating to replacement dwelling and modification to a permitted development.
- Regarding condition 4 requiring special contribution amounting to €85,000 with respect to the provision of pedestrian crossing on the R552 and construction of public footpath from main entrance to the pedestrian entrance

/ pedestrian crossing the provision of pedestrian facilities is a basic norm of proper planning and sustainable development and is not an exceptional cost.

- Costs in condition 4 are not as a result of exceptional infrastructural requirements are not specific to the proposed development as they benefit a wide range of landowners, residential properties and existing and proposed uses in the wider area. They are not clearly set out or established so as to form a basis upon which the level of financial contribution can be properly apportioned. Basis for the contribution is not explained in the decision.
- It is considered that both the general and special financial contributions attached as conditions 3 and 4 do not come within the scope of Section 48 of the Planning and Development Act 2000 and are unwarranted.
- Request the Bord to remove Conditions 2, 3 and 4.

6.3 Planning Authority Response

6.2.1 Following the issuing of a Section 132 notice requesting comments the submission of the Executive Planner is summarised as follows:

- As the proposal includes for permission for a service road of 90m and associated site development works to cater for the proposed 8 no dwellings it was necessary to attach condition 3 for the satisfactory completion of this road at a cost of €1000 per linear metres. €90,000.
- As the proposal is for 8 new dwellings on site the KCC development Contribution Scheme 2017 is applicable with a requirement to attached a contribution of €1500 per residential unit up to 125 sq.m. This equates to a figure of €12,000.
- Roads Department recommended a special contribution as outlined in Condition 4 to contribute towards the following infrastructure to facilitate the proposed development. Pedestrian Crossing on R552 Regional Road €45,000. Construction of public footpath from main entrance to the pedestrian entrance / pedestrian crossing €40,000.

6.4 Observations

No submissions

7 Assessment

7.2 Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. In the appeal against Condition 3 and 4 of the planning permission, relating to a Financial Contribution, Section 48 (10)(c) 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.

7.3 Section 139 of the Planning and Development Act 2000 as amended provides that where an appeal is made to the Board against only a condition of a permission and where the Board is satisfied that a de novo assessment of the appeal is not required, the Board may issue a direction to the Planning Authority relating to the attachment, amendment or removal of the condition. In considering the current appeal against condition 2, I am satisfied that the appeal accords with the criteria of Section 139. It is therefore appropriate that I restrict my assessment of the appeal to conditions 2, 3 and 4 only which I set out in turn as follows:

7.4 Condition 2

7.4.1 Condition No 2 is as follows:

“Prior to commencement of development the developer shall lodge with the planning authority a Bond in the sum of EUR90,000 coupled with an agreement to empower the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. Such Bond will be increase from 1st January, 2022 and annually thereafter in line with the Wholesale Price Index for Capital Goods, Building and Construction as published by the Central Statistics Office to the value pertaining at the time of payment and shall be from an approved Financial Institution as may be acceptable to the Planning Authority to secure the provision and satisfactory completion and maintenance of the service road and turning area,

footpaths, water supply, foul and surface water drainage, public lighting required in connection with the proposed development. The Bond shall remain in place for a period of 8 years from the grant of permission or until such time as the development has been completed to the satisfaction of the Planning Authority in accordance with the conditions of the planning permission granted (whichever is sooner)

Reason: In order to secure the satisfactory completion of the development.”

7.4.2 The First Party within the grounds of appeal notes that the historic bond in place in respect of the development at Cashen Close (07/404018 and 04/404009) was €65,555 and no claim was made before expiry date 30th November 2012 as confirmed in letter from the Revenue Department of Kerry County Council appended to the appeal. The applicant has made an offer to put a new bond in place for the completion of the development at Cashen Court. It is therefore contended a second bond is unnecessary, unwarranted and unduly onerous. The Planning Authority in response to the appeal notes that as the proposal involves the completion of a section of service road 90m long and the bond is calculated on the basis €1,000 per linear metre = €90,000. I note that as the previous permissions on the site have expired and the proposed development involves the completion of the roadway it is appropriate that a bond would apply. I consider that the condition 2 should therefore be retained.

7.5 Condition 3

7.5.1 Condition 3 is as follows:

Prior to the commencement of development, the developer shall pay a contribution of €12,000.00 to Kerry County Council (Planning Authority) in respect of Roads and Transport and Community and Amenity infrastructure benefitting the development.

This contribution is broken down as follows

*Roads and Transport €5,280.00
Community and Amenity €67,203.00*

The amount of this contribution is calculated in accordance with the Council's prevailing Development Contribution Scheme and may be increased from January 1st 2022 and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices – Building and Construction (Capital Goods) as published by the central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefitting the development, as provided for in the Council's prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act (as amended) and that the level of contribution payable should increase at a rate in the manner specified in that Scheme.

7.5.2 The question to be determined relates to the consideration of whether or not the terms of the Kerry County Council Section 48 Development Contribution Scheme were properly applied in this instance. The first party within the grounds of appeal notes the contributions paid in respect of previous permission 04/404009 and 07/404018. Correspondence provided from Revenue Department of Kerry County Council submitted with the appeal sets out that in respect of Cashen Close the following contributions were paid.

Cashen Close – All development contributions due have been paid. These payments were as follows:

04/404009	
Levy Description	Amount Paid
Amenity	5,992.50
Footpaths	3,750.00
Roads	5,992.50
Water & Sewer	21,572.32
Total Paid	37,307.32

07/404018		
Condition No	Levy Description	Amount Paid
22	Amenity	1,410.00
21	Roads	1,410.00
20	Water and Sewer	5,075.84
	Total Paid	7,895.84

7.5.3 The Kerry County Council General Contribution Scheme (relevant extracts appended to this report) was adopted by Kerry County Council 2017. The Development Contributions Payable are set out at page 9 as follows:

In respect of residential development, the contribution applicable is as follows:

Development Contributions

	Roads & Transport	Community & Amenity (per m ² unless otherwise stated)	Total
Residential	€660 per unit	€840 per unit	€1,500 per unit
Residential per m ² over 125m ²	€8.80	€11.20	€20.00

In the case of the current appeal the proposed dwellings relate to floor area of 66.75sq.m the total rate of €1,500 per unit is the applicable rate.

This equates to €1,500 x 8 = **€12,000**

I note that the at Page 19 of the Scheme it is set out in relation to “*an application for permission for modification to a permitted development, including a change of house type or amendment to a site layout, shall be assessed on the basis of the scale of development contributions in operation on the date of issue of the decision to grant permission. Any development contributions paid under the parent permission shall be taken into consideration.*”

- 7.5.4 Based on the details provided to the Board it is evident that the Planning Authority did not take into consideration the development contributions previously paid. On the basis of the information provided it is apparent that contributions previously paid are in excess of those applicable.

Contributions Payable **€12,000**

Contributions previously paid **€45,203.16**

(04/404009 €37,307.32+07/404018 €7,895.84)

Excess of contributions paid €33,203.16

On the basis that the development contributions previously paid in respect of the site are in excess of those payable under the current appeal it is considered that the proposed development should not therefore attract a development contribution charge. It is therefore considered that the planning authority has failed to correctly apply the terms and conditions of the Development Contribution Scheme. Condition 3 should therefore be omitted.

7.6 Condition 4.

7.6.1 Condition 4 is as follows:

Prior to the commencement of development, the developer shall pay a contribution of EUR 85,000 to Kerry County Council (Planning Authority) in respect of public infrastructure and facilities benefitting the proposed development, as a special contribution within the meaning of Section 48(2)(c) of the Planning and Development Act 2000 towards the cost of implementation of the following schedule of works:

The levy is broken down as follows:

Provision of pedestrian crossing on the R552 Regional Road : €45,000

Construction of public footpath from the main entrance to the pedestrian entrance / pedestrian crossing €40,000. The amount of this contribution will be increase from January 1st 2022 and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices – Building and Construction (Capital Goods) as published by the central Statistics Office.

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefitting the development, as provided for in the Council's prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act 2000

7.6.2 The specific explanation as to when a planning authority may require the payment of a special contribution is covered in Section 48 (2) (c) of the Planning and Development Act, 2000 where it is stated: "*A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development*". In general terms, Development Contribution Schemes apply as a general levy on development and Special Contributions apply to particular developments where, for example, a specific exceptional cost would arise for the authority, which is not covered by a Scheme or a Supplementary Scheme, resulting from the carrying out of the development in question. The payment must be required (a) in respect of a particular development, (b) specific exceptional costs must be incurred as a result of or in order to facilitate it and, (c) such costs cannot be covered by a development Contribution Scheme made under Section 48 (2) of the Act.

7.6.3 The amount of €85,000 towards the provision of a pedestrian crossing on the R552 (€45,000) and public footpath from the main entrance to the pedestrian crossing (€40,000) in Condition no 4 is expressly specified as a special contribution. The specific explanation as to when a planning authority may require the payment of a

Special Contribution is covered in Section 48(2)(c) of the Planning and Development Act 2000. It is clear that such a request should only be made in respect of a particular development, which is likely to incur specific exceptional costs not covered by the General Development Contribution Scheme of the Council. They are in addition to the terms of the general scheme and might cover specific developments whereby the scale of the development and the demand the proposed development is likely to place on public services and facilities is deemed to be exceptional. The specified works in condition 4 are

- *“provision of pedestrian crossing on the R-552 Regional Road €45,000*
- *Construction of Public Footpath from the main entrance to the pedestrian entrance / pedestrian crossing €40,000”*

7.6.4 The basic question is whether these works can be taken to fall within the category of works for which a special contribution might be sought. Whilst clearly the provision of pedestrian crossing facilities and footpaths are clearly necessary and the problem of lack of pedestrian connectivity on the R552 is evident and acknowledged by all parties (Noted at 2.19 and recommendation 19 of the Road Safety Audit by MHL Associates submitted in response to the Council’s request for additional information) I consider that these pedestrian facilities do not relate to “specific exceptional costs” that are not suitable for incorporation into an adopted development contributions scheme. I note that the permission for residential development on the site was originally granted in 2003 and the site is part of lands zoned existing residential within the development plan (Kerry County Development Plan 2015-2021). As regards the issue of benefit the upgrading of the pedestrian facilities would clearly be of general benefit to many. I consider that the condition is not sufficiently specific to be compatible with the terms of Section 48 (12) (a) and the application of the terms of Section 48 (12) (b) and (c) relating to refund or partial refund should the project not be commenced, or be partially completed within the specified timeframes, if subsequently required. The works providing pedestrian crossing and public footpath do not come within the scope of special contributions as set out in Section 48(2)(c) of Planning and Development Act, 2000 as amended and should be incorporated within a development contributions scheme prepared and adopted in accordance with the procedures set out in Section 48 of the Act, since such works would be likely to benefit the wider community of the area and are not specific to the proposed

development. I concur with the first party that the planning authority in its decision has not demonstrated an allowance in terms of apportionment of cost for the benefit to be derived by other users and the benefit of the proposed works to the wider area and has not justified the imposition of condition 4.

8.0 CONCLUSION AND RECOMMENDATION

8.1 Having reviewed the application documents, the grounds of appeal and the planning authority's development contribution scheme, I conclude that:

- In respect of condition 2. The imposition of a condition requiring the lodgement of a bond to secure the provision and satisfactory completion of roads and other services required in connection with the development is necessary and reasonable. I recommend that the Board **confirms the Planning Authority decision to impose this condition in accordance with the amended wording as set out below.**
- In respect of condition 3 the planning authority failed to apply the terms of the planning authority's adopted development contribution scheme and the imposition of condition 3 would constitute double charging. It is recommended that the Board direct the planning authority to **omit condition 3.**
- In respect of condition 4 the planning authority acted ultra vires its powers under the Planning and Development Acts, 2000 as amended in attaching the requirement for a special contribution of €85,000. This contribution does not accord with the provisions of Section 48 (2) (c) of the Planning and Development Act, 2000 with reference to the payment of a special contribution and the said contribution is not amenable to being applied in accordance with the provision of Section 48(12) of the Act. Furthermore, it is considered that an appropriate requirement to pay such a contribution could properly be included within a development contribution scheme made under this section. It is recommended that the Board directs the planning authority to **omit condition 4.**

Reasons and Considerations

Having regard to the nature of the condition 2 subject to the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had

been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below directs the said Council under Section 139 of the Planning and Development Act 2000 to **amend the condition no 2** as follows:

Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority, of roads, sewers, watermains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The security to be lodged shall be as follows:

- (a) an approved insurance company bond in the sum of €90,000euro), or*
- (b) a cash sum of €90,000 euro) to be applied by the planning authority at its absolute discretion if such services are not satisfied to its satisfaction, or*
- (c) such other security as may be accepted in writing by the planning authority.*

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

Having regard to the nature of the development which relates to permission for the construction of 8 no two-bed semi-detached single storey dwellings, the completion of the associated estate road and services and all associated site works, proposed dwellings replace 8 no detached dwelling as previously permitted under register references 07/404018 and 00404009 (expired) , it is considered that the requirement under Condition 2 to lodge a Bond of €90,000 coupled with an agreement to empower the local authority to apply such security or part thereof to the satisfactory completion of any part of the development is appropriate in this instance.

Having regard to the:

- (a) The Kerry County Council Development Contribution Scheme 2017 which includes provision at 7. Exemptions - “ an application for permission for modification to a permitted development, including a change of house type or amendment to a site layout, shall be assessed on the basis of the scale of development contributions in operation on the date of issue of the decision to grant permission. Any development contributions paid under the parent permission shall be taken into consideration.”
- (b) The information submitted in support of this appeal,

it is considered, based on the evidence submitted that the terms of the planning authority's Development Contribution Scheme have not been properly applied and the application of a development contribution condition as set out in condition 3 would amount to double charging.

It is considered that the special contribution imposed under condition number 4 [€85,000 (eighty five thousand euro) as a special development contribution for the provision of pedestrian crossing on the R552 and construction of a public footpath from the main entrance to the pedestrian crossing is not in accordance with the provisions of Section 48(2)(c) of the Planning and Development Act 2000 as it does not constitute a specific exceptional cost in relation to this particular development and the said contribution is not amenable to being applied in accordance with the provisions of Section 48(12) of the Act. Furthermore, it is considered that an appropriate requirement to pay such a contribution could properly be included within a development contribution scheme made under this section.

Bríd Maxwell
Planning Inspector

4th August 2021