



An
Bord
Pleanála

Inspector's Report ABP.311694-21

Development

Modifications to 35 no. permitted dwellings as previously permitted under 06/11830 and extended by 12/4124 and 17/6075. Proposed modifications consist of internal layout changes, omission of roof lights, omission of dormer and gable windows, and amendments to elevations and facades.

Location

Rath-beg, Abbeylands, Kinsale, Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

21/06059

Applicant(s)

Hatley Homes Ltd.

Type of Application

Planning permission

Planning Authority Decision

Grant permission

Type of Appeal

First Party

Appellant(s)

Hatley Homes Ltd.

Observer(s)

None

Date of Site Inspection

25th January 2023

Inspector

Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in the northern suburbs at the edge of the existing built-up area of Kinsale town. The area is an emerging new suburb comprising a major urban expansion of the town, approx. 1km to the north of the town centre. The site forms part of a larger residential development which was initially granted permission in 2006 (06/11830), and which has been extended twice (12/4124 and 17/6075), which expired in December 2021. However, I note from the planning authority's website that a further extension of duration has been granted until December 2023.
- 1.2.** The Rath-beg development is situated between two arterial routes leading northwards from the centre of Kinsale town. The Bandon Road travels in a north-westerly direction towards the R605 and lies to the west of the housing development. The Innishannon Road travels northwards towards Abbeylands to the east of the housing development. Each of these roads serve multiple housing estates at their southern ends but become increasingly rural with an absence of footpaths further to the north. There is a large GAA grounds with frontage to the western side of the Bandon Road which forms part of the southern and eastern boundaries with the overall housing development. The phases that have been completed to date are mainly located at the eastern end of the overall development and are accessed from Innishannon Road via a new estate road named Abbey Fort, and include Orchid Grove and Aster Lawn, which are cul-de-sac estates.
- 1.3.** The site of the appeal is located c.100m west of Innishannon Road and is accessed via Abbey Fort and Aster Lawn. The lands immediately to the south and east comprise the remainder of Aster Lawn, the lands to the immediate north-west comprise later phases of the development which are currently under construction, and the lands immediately to the west comprise the GAA grounds.
- 1.4.** The site is stated as being 0.83ha in area. It is roughly L-shaped and incorporates part of a cul-de-sac (35 houses) which terminates at a hammerhead abutting the boundary wall of the GAA grounds. This part of the estate appears to be largely completed and occupied. There is no access to the GAA grounds from the site.

2.0 Proposed Development

- 2.1. The proposed development involves the modification to 35 no. permitted dwellings comprising 2-storey semi-detached or terraced houses (currently under construction). The permission was granted by the planning authority under Reg. Ref. 06/11830 (and subsequently extended).
- 2.2. The proposed modifications consist of internal layout changes, omission of roof lights, omission of dormer windows, gable windows and modifications to the elevations and facades of houses.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 19 no. conditions. The appeal relates to Condition No. 17 which requires the payment of a special financial contribution. It should be noted that Condition No. 18 also requires the payment of a financial contribution under the General Development Contribution Scheme. In summary, these conditions require the following:

Condition 17 – At least one month before commencing development or at the discretion of the planning authority within such further period or periods of time as it may nominate in writing, the developer shall pay a Special Development Contribution of €56,455.00 to Cork Co. Co., updated monthly in accordance with the consumer Price Index from the date of grant of permission to the date of payment, 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 a new footpath between the permitted entrance and the existing footpath adjacent to the GAA..... *[Standard provisions are included (including refunds, payment of interest etc.) to address scenarios where the Council does not commence the said works within 5 years of payment, have commenced works but not completed within 7 years of payment or decide not to proceed with the works.]*

Reason: It is considered appropriate that the developer should contribute towards these specific exceptional costs, for works which will benefit the proposed development.

Condition 18 – At least one month before commencing development or at the discretion of the planning authority within such further period or periods of time as it may nominate in writing, the developer shall pay a contribution of €51,064.10 to Cork County Council in respect of public infrastructure and facilities benefitting development in the area of the planning authority. The value of this contribution is calculated in accordance with the Council's Development Contribution Scheme, on the 20/09/2021 and shall be increased monthly at a rate of 8% per annum in the period between the date on which this value was calculated and the date of payment.

Reason: It is considered appropriate that the developer should contribute towards the cost of public infrastructure and facilities benefitting development in the area of the planning authority, as provided for in the Council's Development Contributions Scheme, made in accordance with S48 of the 2000 Planning and Development Act, and that the level of contribution payable should increase at a rate which allows for both inflation and for phasing of the target contribution rates, in the manner specified in that scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It was noted that the site is within the Development Boundary for Kinsale and had formerly been the subject of a grant of planning permission (06/11830) for the construction of 290 dwelling units, which was extended twice (12/4124 and 17/6075), which was due to expire on 31st December 2021. As noted previously at 1.1 above, this governing permission (06/11830) has since been extended further until December 2023, (utilising new legislation in Circular Letter EUIPR 01/2021 relating to delays encountered due to Covid 19 restrictions).

It was noted that the proposed development sought to modify the original permission by altering the permitted house designs, but would not change the number of dwelling units on the overall lands. Several of the proposed house types would be

altered by omitting the second-floor attic space and reorganising the internal living space and others would be modified by reducing the floor area and retaining the number of bedrooms.

The issue of the special development contribution was addressed as follows:

“ For consistency and following on from the recent permission on another part of the site under Planning Register No. 20/6563, a strategy and framework in respect of a special development contribution with regards footpath infrastructure should be applied....pro-rata using a formula set out in 20/6563, e.g. €1,613 per dwelling unit”.

It was noted that the Area Engineer had calculated the likely cost of providing the footpath between the entrance to the site from the Bandon Road to the entrance to the GAA grounds (beyond which there are public footpaths leading southwards to the town) as €455,000 to provide footpath connectivity which the application would avail of, and that the unit cost of contribution had been estimated at €1,613. This was based on a rough estimate of 282 residential units in the area. Therefore, it was considered that a **Special Contribution of €56,455** should be levied towards the cost of providing this specific section of public footpath along the Bandon Road (between the two entrances) on the pro-rata basis of 35 residential units comprising the current application, (i.e. €1,613 x 35 units).

3.2.2. Other Technical Reports

Housing Officer – 25/08/21 – No objection subject to conditions.

Public lighting – 09/09/21 - No objection s.t. conditions.

Estates Office – 09/09/21 – no objection subject to conditions including compliance with terms and conditions of governing permission (as extended).

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

No third-party observations received.

4.0 Planning History

- 4.1. **PL04.215512 (05/588)** – planning permission granted (May 2006) for 290 no. dwelling units on the overall lands (8.6ha). Permission was granted by the Board subject to conditions, although its Inspector had recommended refusal. One of the recommended reasons for refusal related to prematurity of development due to deficiency in the road network serving the site, with particular reference to the deficiency in pedestrian facilities between the proposed site entrance and the GAA grounds. The Board considered that the site could be development subject to the provision of a footpath by the P.A. prior to the occupation of any units by means of a special contribution. Cond. No. 24 required the payment of a special financial contribution in respect of provision of a footpath between the development site (i.e. site entrance on Bandon Road) and the GAA grounds and specified that no house should be occupied until the footpath is in place.
- 4.2. **P.A. Ref. 06/11830** – planning permission granted (June 2007) for ‘Alterations to permitted residential development 05/588 to make provision for 214 no. dwellinghouses, 42 apartments and relocation and change of plan of creche’. This permission was not appealed and has since then been referred to as the **governing permission**. It was granted an **extension of duration of permission** on three occasions under **12/4124**, **17/6075** and **21/6844**. Permission has been extended until December 2023.

Condition 26 of this governing permission (**06/11830**) required the following:

A footpath shall be provided by the applicant on the L3234 extending from the entrance to the GAA grounds as shown in Malachy Walsh and Partners Drawing No. 11537-5003

Reason: In the interests of orderly development.

- 4.3. **PA Ref. 08/5823** – planning permission granted (June 2008) for modifications to Permission Ref. 06/11830 revisions to layout of Units No. 6 and No.12-16 Aster Lawn.
- 4.4. **PA Ref. 08/8156** – planning permission granted for modifications to Permission Ref. 06/11830 – changes to house types (Jan. 2009)

- 4.5. PA Ref. 12/5939** – planning permission granted for modifications to Permission Ref. 06/11830 – 7 no. houses on Aster Lawn.
- 4.6. ABP.303884 (PA Ref. 18/6073)** - planning permission granted for modification of permission granted under 06/11830 (as extended under 12/4124 and 17/6075) to replace 56 no. dwellings and 36 apartments with 92 houses. Permission was granted by the Board in July 2019.
- 4.7. PA Ref. 18/7063** – planning permission granted for modification to permission granted under 06/11830 (as extended under 12/4124 and 17/6075) increasing the number of permitted units from 57 to 62 units accessed from Aster Lawn and Sorrell Avenue. Note an application for leave to appeal was refused by the Board (304503).
- 4.8. PA Ref. 20/6563** – planning permission granted to Hatley Homes Ltd. For 95 houses which comprised a modification to permission granted under 06/11830 (as extended under 12/4124 and 17/6075). In responses to Requests by the PA for Further Information and Clarification of Further Information, the applicant confirmed that it was not intended to implement permissions granted under 18/6073 or 18/7063 and that the overall scheme would be completed under 06/11830 and 12/5939. A condition was attached to this permission (**Cond No. 32**) which required the payment of ...

“a Special Contribution of €132,000 in respect of exceptional costs not covered in the Council’s General Contribution Scheme) in respect of works proposed to be carried out for the provision of a new footpath between the permitted entrance and the existing footpath adjacent to the GAA grounds (Ref. Planning condition 5)”

Condition 5 required (inter alia) that all recommendations of the Road Safety Audit be carried out and in addition that certain specific measures be carried out including:

- a. A footway shall be provided along the site boundary within the Red Line Boundary as per submitted. Layout drawings and final road alignment, with suitable tie-ins, shall be agreed with the planning authority prior to commencing construction. This shall be constructed at the sole expense of the applicant.

5.0 Policy Context

5.1. Cork County Development Plan 2022

- 5.1.1. It should be noted that the current Cork County Development Plan 2022 has replaced the 2014 CDP, which was in place at the time that the application was decided by the planning authority, and that the former Municipal District Local Area Plans have been absorbed into the new CDP. Relevant chapters include:

Chapter 3 – Settlements and Placemaking – Objective PL3-3 Delivering Quality and Inclusive Places - includes prioritising walking, cycling and public transport and minimise the need to use cars.

Chapter 4 – Housing – sets out the housing policies and objectives for the county.

Chapter 12 - Transport and Mobility Objective TM12-2 Active Travel – deliver a high level of priority and permeability for walking and cycling to promote accessible, attractive and safe settlements within a ten-minute walk of one's home. (pg268)

Chapter 19 – Implementation and Delivery -

- 5.1.2. **Volume 5 – West Cork**

- 5.1.3. **Chapter 1 - Bandon - Kinsale Municipal District**

- 5.1.4. **Kinsale** is designated as a **Main Town**, with Bandon being the other Main Town in the Municipal District area. One of the main strategic aims for Kinsale is to provide for additional residential and employment development and seeks to maximise opportunities for walking and cycling within the town and to reinforce the town's compact form.

- 5.1.5. The recommendations of the Kinsale Transportation Study (2009) are referenced at 1.5.48-1.5.57 of the Plan, in terms of addressing the movement and public realm issues within the town. These include the provision of northern and western relief roads, provision of traffic calming measures, improving pedestrian and cyclist accessibility and improving public transport facilities and parking. The recommendations include upgrading of the Northern Relief Route with additional connectivity to the Bandon Road and the provision of a new Western Relief Road connecting the Bandon Road (R605) with Cappagh Road (R606).

5.1.6. Relevant objectives include the following

KS-GO-03 – Implement the recommendations contained in the Kinsale Transportation Study including the Northern Relief Road as a short-medium term measure and progress the design options to deliver the Western Relief Road to improve movement within and around the town.

KS-GO-07 – support the enhancement of walking and cycling facilities in the town.

KS-RAP-01 - Medium B Residential Development - The site is within the development boundary of this larger site (zoned **KS-RAP-01**). The Sp. Obj. states that development should include pedestrian and cycleway linkages to the KS-RR-01 site to the north.

KS-RR-01 - Medium A Residential Development – to be carried out on a phased basis and will include the construction of a section of the Northern Relief Road and should include pedestrian/cycle linkages to the KS-RAP-01 site to the south.

5.2. Natural Heritage Designations

The closest European designated sites are:-

- Sovereign Islands SPA (004124), approx. 7km to southeast.
- Old Head Kinsale SPA (004021), approx. 10km to the southwest.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The first party appeal was submitted by McCutcheon Halley Planning Consultancy on behalf of the applicant. The appeal is against Condition No. 17 only, which requires the payment of a Special Contribution of €56,455 in respect of works involving the provision of a pedestrian footpath along the Bandon Road between the entrance to the site and the entrance to the GAA grounds. *[It should be noted that the grounds of appeal had initially referred to Condition 18, (which is the condition requiring the payment of a General Financial Contribution), but the submitted grounds relate entirely to objection to the attachment of a ‘Special Contribution Levy’, (which was addressed under Condition no. 17)].* This was confirmed by first party on

6/12/21, when the grounds were re-submitted with the correct reference to the condition under appeal as condition 17.

6.1.2. The main points raised may be summarised as follows:

- **Minor nature of development** – as the proposed development relates to minor changes only in terms of the permitted house types, design issues etc., the requirement to pay a special development contribution for modifications to a permitted housing development seems opportunistic and inappropriate.
- **Not ‘Specific’ or ‘Exceptional’** - The Council has not demonstrated that the costs incurred are either specific or exceptional to the development 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 costs incurred in the provision of a footpath connection from the proposed development to the GAA pitch are considered excessive and unjustified for a development involving minor modifications to a permitted residential scheme which is already under construction. The proposed stretch of footpath will benefit the wider community as it provides access to a number of housing estates including Hillcrest, Rathbeg and Woodlands. These works cannot be considered to be ‘specific’ to the proposed development, as they would be likely to be pursued whether the development was to proceed or not. Thus, the provision of a footpath at this location could not be considered to be works that are specific to the proposed development.
- The works cannot be considered ‘exceptional’ in the sense that they could not have been envisaged when the general scheme was approved. These dwellings already have planning permission since 2006, and as such, the planning authority should have been able to envisage that the provision of footpath connectivity was required to service the development when the

General Development Contribution Scheme was approved. Thus, it is submitted that the special contribution is not justified as the provision of the footpath could have been foreseen and included in the GDCS.

- The P.A. has not demonstrated that the costs incurred under this contribution are either specific or exceptional as required by Section 48(12)(a) of the P & D Act. 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 special contribution under the permission granted under Reg. Ref. 20/6563 for 95 houses as modifications to the governing permission (06/11830). It is pointed out that since the governing permission was granted, two further permissions for modifications to it were granted by the P.A., namely 18/6073 and 18/7063, which are currently subject to legal challenges. However, no special contribution was attached to these permissions.
- The special contribution of €132,000 required under 20/6563, which was for the provision of a footpath from the site entrance to the GAA grounds, was understood to constitute the full extent of the costs associated with the new footpath. It is noted from the planning reports that the P.A. had considered it fair to apply a pro-rata contribution on the scheme for 82 dwellings (granted under 20/6563), together with further contributions likely to arise in relation to an estimated 200 future dwellings on lands zoned KS-R-01. Thus, no further costs were envisaged from the development at Abbey Fort. It is unreasonable, therefore, to levy the applicant with such a large proportion of the costs when the council recognises that there are substantial zoned lands in the wider area that will benefit from the said footpath.
- **Precedent** - Reference is made to a previous Board decision whereby the Board stated that the special contribution levy would have been better incorporated into the General Contribution Scheme. The precedent referred to was PL04.246853.
- **Section 139** - It is requested that the appeal be dealt with under Section 139 of the 2000 Act and that Condition 17 be omitted.

6.2. Section 132 Notice to applicant

- 6.2.1. As stated above, given the confusion regarding which condition was being appealed, the Board issued a Section 132 Notice to the First Party seeking clarification on this matter on the 25th November 2021.
- 6.2.2. The response submitted on the 6th December 2021 re-submitted the appeal with the correct wording and numbering of the condition under appeal. This was then circulated to the planning authority.

6.3. Planning Authority Response

- 6.3.1. The P.A. responded to the grounds of appeal on the 8th of November 2021 stating that it had no further comments.
- 6.3.2. The P.A. responded to first party response to the Board's section 132 Notice (to the first party) on the 12th January 2022. The main points raised are as follows:
 - 1. **Specific and exceptional** – the proposed special development contribution is an exceptional cost and is specific to the development. The special contribution is intended to cover costs of a pedestrian footpath which is fundamental to safely connect the future occupiers of the residential scheme to facilities such as schools etc. It is required as the site is not within easy walking distance of the town centre due to the fragmented walking infrastructure between the site and the town centre and its various facilities and public transport terminus.
 - 2. **Calculations - Costs are pro-rata** – the proposed special contribution does not cover the full cost of the footpath connection, which was calculated under 20/6563 as €455,000, and only a portion of it (€132,000) has been levied so far. The special contribution of €56,455 is pro-rata for the 35 units proposed. The breakdown of the costs for the provision of the length of footpath in question is provided.
 - 3. **No other source of funding** – without the calculated €56,455 special contribution, the gap in funding the overall costs of providing the footpath will fall on the Council. If the Board strikes out this condition, it will increase the burden on the council and in turn increase the risk of the footpath not being delivered in a timely manner, where major urban extension is underway.

7.0 Assessment

7.1 Legislation and Guidance

7.1.1. As the appeal is solely against Condition 17 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 17** requires the payment of a special contribution of **€56,455.00**.

“.....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 a new footpath between the permitted entrance and the existing footpath adjacent to the GAA.....”

7.1.3. I note that there is also a condition (No. 18) 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.

7.1.4. 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.

7.1.5. 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.”

- 7.1.6. Given the complex planning history of the site, it is necessary to review the issue of the works the subject of the special contribution condition in the context of the planning history of the overall lands.

7.2. Background to the issue of a footpath between the Bandon Road site entrance and the GAA grounds entrance

- 7.2.1. A review of the planning history of the site shows that the issue of pedestrian safety and connectivity on each of the local arterial routes serving the overall housing development had been a major issue of concern from the outset in 2005/6. It is clear from the reports on file Ref. PL04.215512 (PA Ref 05/588) that the dangerous nature of the rural road connecting the entrance to the housing development from the Bandon Road southwards as far as the entrance to the GAA grounds, (beyond which there was pedestrian connectivity in existence), was a matter of grave concern to the Planning Authority engineers and planners at that time. It should be noted that the safety and condition of the road has not improved in the intervening time period.
- 7.2.2. The Board's Inspector (215512) was equally concerned and had recommended refusal on the grounds of prematurity due to the dangerous situation and lack of appropriate pedestrian connectivity with the town (file attached). Although the Board granted permission for the overall housing estate (5/5/06), it did so on the basis that a special contribution be required to be paid specifically for the provision of a footpath connecting these two entrances, and also specified that no houses should be occupied until the footpath was in place. I note that this permission has not been deemed to be the 'governing permission' as a subsequent application (06/11830) was submitted a few months after this Board decision, for a slightly modified scheme, for which permission was granted by the P.A. on 19/06/07, and this then became the governing permission.
- 7.2.3. The governing permission did not, however, include a special contribution condition relating to these specific works, i.e. provision of a footpath at this location. Notwithstanding this, Condition No. 26 did require the developer to physically provide the footpath instead. A review of the planning and technical reports (over various applications/permissions) indicates that there was some disagreement between the developer and the local authority about the practicality of the developer providing the footpath as opposed to the local authority carrying out the works, which would be

funded by the developer. For example, a first party appeal against the original planning permission (05/588) had objected to the requirement for the developer to provide the footpath as the lands required to do so were not under the control of the applicant. The remedy sought by the developer at that time was to impose a special contribution condition. The reports relating to the governing permission (06/11830) indicated that agreement had been reached with the developer that a condition would be attached which would require that -

“The footpath would be provided by the applicant on the L3234 extending from the entrance to the GAA grounds as shown in Malachy Walsh Drg 11537-5003”

- 7.2.4. Shortly after the governing permission was granted, the development seems to have commenced, but within a few years it became one of the many unfinished estates in the country. There followed a series of permissions for modifications for parts/phases of the development which appeared to have caused considerable confusion, as it was not clear which permissions had superseded others. During the consideration of the most recent one Reg. Ref. 20/6563, the applicant was asked by the P.A. (FI request) to clarify which permissions it intended to implement. In response, (as referenced in SEP report dated 13/07/21), the applicant confirmed that it would implement the governing permission 06/11830 and 12/5939 (relating to Aster Lawn), and that it was not intended to implement 18/6073 or 18/7063.
- 7.2.5. The fact that the issue of the footpath had not been the subject of further special contribution conditions (until 20/6563) is not surprising given that the matter had been addressed in the governing permission by means of a condition requiring the provision of this infrastructure directly by the developer. However, it would appear from the various planning and technical reports that during consideration of 20/6563, it was established that the provision of the proposed footpath remained outstanding and that it was identified in the Road Safety Audit as a matter to be resolved. The reports further indicate that the developer had come to an agreement with the P.A. that it would be preferable if the footpath were to be physically provided by the planning authority, but that the developer would design it and was agreeable to paying for it on a pro-rata basis. (FI Response to P.A. dated 10th August 2021 refers). It was stated, however, (Planner's report 2/09/21) that the developer's summary schedule of estimated total development costs at €112,000 was

considered to be a significant underestimate. The P.A.'s calculation of the costs is as set out above, which amounted to €455,026.64.

- 7.2.6. In conclusion, it is clear from a review of the planning history that the matter of providing for pedestrian safety on a road which is considered hazardous for pedestrians and which is currently deficient in terms of pedestrian connectivity for the residents of the estate with the facilities within the town centre and surrounding area, is a long-standing issue which remains as critical now as it was when the governing permission for the development of these lands was granted, but which remains unresolved. The matter was revisited during consideration of the most recent planning permission 20/6563, when it was agreed between the developer and the P.A. that the matter would be addressed as a special contribution to be applied on a pro-rata basis.

7.3. Nature and scope of the works

- 7.3.1. The works are not specified in detail in Condition 17, but the Planning Report (07/09/21) provides more detail on the nature and scope of the works required. It is stated that given that the recent permission on another part of the estate under Reg. Ref. 20/6563 had required the payment of a special contribution in respect of the footpath infrastructure on a pro-rata basis, that a similar strategy should be applied here using the formula set out in 20/6563. It was noted that a unit cost rate was devised under 20/6563 of €1,613 per residential unit, which in turn had been based on a calculation for the provision of the footpath at a total estimated cost of €455,000.
- 7.3.2. The calculations for the proposed works were based on 1.8m wide footpath for a length of 200m. The costings included estimates of matters such as drainage, public lighting, site clearance, a retaining wall, land acquisition, reinstatement of gates (third parties), traffic management and solicitors' fees. The total cost was estimated at €455,026.64. The number of houses that could possibly be estimated to benefit from the proposed works was considered to be approx. 282 units. This was based on a combination of the 82 dwellings being permitted under 20/6563 and a rough estimate of 200 possible units on the residentially zoned lands to the north. Thus, the formula applied was calculated as follows:

Total cost €455,000 / 282 units = €1,613 per unit

Unit cost €1,613 x 35 units = €56,455.

This is the amount of special contribution levied under condition 17.

- 7.3.3. It is considered that the nature and scope of the works, in terms of the need for a footpath connecting the entrance to the estate to the entrance to the GAA grounds, beyond which pedestrian footpaths leading to the town are already in place, has been clearly identified, and that the costs associated with the works has been clearly set out by the planning authority, including the pro-rata basis of calculation.

7.4. Specific or exceptional costs

- 7.4.1. The wording of Condition 17 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. Furthermore, the works should be such that they would not have been envisaged as being necessary at the time of the adoption of the GDCS and should not be incurred at all if the development in question did not go ahead.
- 7.4.2. The main purpose of the special contribution levy as set out in Condition 17 is to address the serious deficit in pedestrian connectivity linking the overall housing development with the town and surrounding area. As discussed above in the review of the background to this issue, the dangerous nature of the road and need for safe pedestrian linkages with the town have been a consistent concern for the planning authority since the inception of the proposal to develop these formerly agricultural lands as a major extension of the town for residential purposes in 2006. The matter was addressed initially as a condition requiring the footpath to be provided (05/588), and subsequently by the Board as a Special Contribution (215512) and later again by the P.A. in the governing permission (06/11830) as a condition requiring the developer to carry out the works as shown on the submitted drawings.
- 7.4.3. During consideration of the most recent planning application (20/6563), the Area Engineer (01/09/21) stated:-

“The footpath from the GAA pitch on the L3234, Bandon Road to the proposed site entrance is non-existent, the road is narrow with limited to no verge, and this will require extensive works to be carried out....the applicant has suggested that a footway/walkway can be introduced without interfering with a third party. I have assessed the location again and I would think that this would not be the case....Costings are shown below, total estimate cost is €455,026.64.... Please submit a detailed construction drawing of the proposed footpath to be agreed with Cork County Council, Roads Dept. and the Local Area Engineers Office.”

The submitted drawings (Drawing 1008-PL4 as revised and submitted to the P.A. on the 10th August 2021) included an “outline layout for a future footpath” along this section of the Bandon Road “to be provided by others”. The applicant’s agent (letter submitted with FI on 10th August 2021) accepted the need for the footpath but proposed that it be constructed by the County Council and that a special contribution be levied with costs assigned on a pro-rata basis. This is what was ultimately decided (Condition 32 requiring a special contribution of €132,000 for 95 units).

- 7.4.4. Thus, the proposed works are clearly related to the development and would benefit the permitted scheme rather than the general area. Although other housing developments, both existing and future schemes, are also likely to benefit, the need for the footpath was clearly identified at the time that the governing permission was granted for the development, and this remains as an outstanding and essential piece of infrastructure. It is considered that the proposed works can therefore be described as ‘specific’ to the development.
- 7.4.5. Furthermore, it is unlikely that the works would have been envisaged prior to the adoption of the General Development Contribution Scheme in 2004, or that they would have been required in the absence of such a residential development scheme being pursued at this location. The works could therefore be described as ‘exceptional’. Regardless of the minor nature of the works proposed (as modifications to the permission), the fact remains that the proposal seeks to modify the governing permission which has an outstanding issue that needs to be resolved. It can be seen from the review of the planning history, that the matter has been addressed by means of a special contribution condition on a pro-rata basis in the most recent permission and that a consistent approach would be appropriate.

- 7.4.6. It is considered, therefore, that the scope and nature of the works identified by the planning authority, (namely the provision of a length of footpath along the Bandon Road from the entrance junction with the housing estate and the GAA grounds), is reasonable. It is considered that the P.A. has demonstrated that the costs incurred in relation to the proposed works to provide a pedestrian footpath between the two entrances are 'specific' to the development and are 'exceptional'.

7.5. Double charging

- 7.5.1. The applicant considers that the requirement to pay a special contribution in addition to the contribution paid in respect of the permission granted under 20/6563 would result in double charging for the same infrastructural improvements. It is further considered that the levy would have been better to be incorporated into the General Development Contribution Scheme.
- 7.5.2. As previously noted, under 20/6563, the P.A. had calculated the total cost of the provision of the footpath as €455,000, which would amount to a unit charge of €1,613, which was applied on a pro-rata basis. Thus, the application of the same unit charge to the current proposal of modifications to 35 dwelling units amounts to €56,455. The application of the levy on a pro-rata basis seems reasonable and would not amount to double-charging, unless the planning authority pursued the applicant to physically provide the footpath in addition to paying a special contribution. However, the FI submission of 10th August 2021 in relation to 20/6563 made it clear that the infrastructure in question will be provided by the planning authority and will be paid for by means of special contributions on a pro-rata basis.
- 7.5.3. I would accept that, in general, the provision of footpaths and pedestrian linkages are the type of works that would frequently be covered by a GDCS. However, as stated previously, the initial proposals for the development of these lands brought this issue to the fore in 2006, following the adoption of the Scheme, and the planning authority has since sought to address the identified infrastructural deficit in repeated planning permissions. It is further considered that in the context of the siting of the entrance on a rural road which is very poorly aligned, substandard in width and where footpaths are non-existent north of the GAA grounds entrance, and in light of the large volume of traffic turning movements and pedestrian movements that would be generated by the proposed development, it would be reasonable to require the

applicant to pay a contribution towards the costs of the footpath provision on this specific section of road following completion of the works. The absence of such a pedestrian link would also undermine the policies and objectives for sustainable development and active travel in the current development plan.

- 7.5.4. I would accept that these works come within the scope of Section 48 (2)(c) of the Act. The Special Contribution condition should therefore be attached as it is considered that these matters are specific and exceptional and would not be covered by the terms of the GDCS, and it would not amount to double-charging.

7.6. Precedents

- 7.6.1. The first party appellants have made reference to a previous Board decision in support of their case, i.e. PL04.246853. I have attached the Board Order and Inspectors' Report for the Board's convenience. It is considered however that this case differs from the case that is currently before the Board as follows:

246853 The Board decided that the planning authority had not demonstrated that there were specific exceptional costs in terms of the provision of recreation and amenity facilities arising from the proposed development that would benefit the proposed development. However, the Board also decided that specific exceptional costs had been demonstrated in respect of road improvements and the provision of public lighting arising from the development which would benefit the proposed development. In the current case before the Board, the road works relate to the provision of a footpath which would link the development to the existing pedestrian network leading to the town and is specific to the development.

- 7.6.2. It is considered that the Board has made several decisions in the Cork area in relation to special contribution conditions where works such as the provision of footpath links to a town centre were deemed to justified as special contributions. Two relevant examples are PL04.229412 and PL04.301769, as follows:

229412 The special contribution in this case (75 houses at Glebe, Coachford) related to the upgrading of the local road network (€10,000) and to the replacement of an existing stone culvert through the village (€103,930). The Board decided to amend the condition to require the payment of the contribution towards the road improvement works (€10,000 for the

upgrade of footpaths linking the site entrance to the village) but omitted the remainder of the contribution in respect of the culvert. The Board stated that the provision of the footpath constituted specific exceptional costs not covered by the contribution scheme, and that the payment of a special contribution was warranted.

301769 The development involved the construction of 10 houses at Togher Cross and the special contribution related to the modification of a public footpath opposite the site, modification of a zebra crossing and road pavement improvements. The Board decided that the said modifications/road improvement works would amount to specific exceptional costs which are not covered by the GDCS, and which would benefit the proposed development.

7.6.3. The decisions referred to above indicate that road works such as that proposed can be regarded as specific exceptional costs outside of the GDCS.

8.0 Recommendation

8.1. Having regard to the information on the file, the extensive planning history on the site, 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 **ATTACH** Condition 17 and the reason therefor for the reasons and considerations set out below.

9.0 Reasons and Considerations

It is considered that the provision of a footpath linking the entrance to the development from Bandon Road with the footpath leading to the town centre which commences to the south of the entrance to the GAA grounds constitutes specific exceptional costs not covered by the General Development Contribution Scheme, which would benefit the proposed development. It is considered that the planning authority has demonstrated that the need for a special contribution on a pro-rata basis is justified given that the footpath would also benefit other schemes in the area and that the payment of €56,455 as an apportionment of the overall costs would be appropriate in this instance. The special financial contribution as proposed by the planning authority

for the provision of this facility would, therefore, come within the scope of section 48(2)(c) of the Planning and Development Act, 2000 (as amended), and accordingly, would be warranted.

Mary Kennelly
Senior Planning Inspector

12th April 2023