



An  
Bord  
Pleanála

## Inspector's Report ABP 312531-22

---

<b>Development</b>	Construction of 60 dwellings.
<b>Location</b>	Kilronan, Ballycannon, Kerry Pike, Co. Cork.
<b>Planning Authority</b>	Cork City Council.
<b>Planning Authority Reg. Ref.</b>	2140189
<b>Applicant(s)</b>	O' Flynn Construction Co. Unlimited Company.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First & Third Party
<b>Appellant(s)</b>	O' Flynn Construction Co. Unlimited Company (First Party) Frank O'Brien (Third Party).
<b>Observer(s)</b>	Clogheen / Kerry Pike Community Association

**Date of Site Inspection**

23<sup>rd</sup> January 2023.

**Inspector**

Brendan Coyne

## Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	6
3.1. Decision .....	6
3.2. Planning Authority Reports .....	11
4.0 Planning History.....	28
5.0 Policy and Context.....	30
5.1. Development Plan.....	30
5.2. Natural Heritage Designations .....	33
5.3. EIA Screening .....	33
6.0 The Appeal .....	35
6.1. Grounds of Appeal .....	35
6.2. Applicant Response .....	47
6.3. Planning Authority Response .....	41
6.4. Observations .....	46
6.5. Further Responses.....	48
7.0 Assessment.....	49
8.0 Recommendation.....	64
9.0 Reasons and Considerations.....	64
10.0 Conditions .....	65

## 1.0 Site Location and Description

- 1.1. The site, which spans an area of 2.75 hectares, is situated on the northern side of Kerry Pike Road (L2779-25) in the village of Kerry Pike. The location is approximately 1.5 km southeast of Tower/Model Village, c. 2 km south of Blarney, and approx. 7 km northwest of Cork City Centre. The site's irregular shape features a road frontage width of c. 72 meters, with access provided via a recessed fenced entrance from the road. The main area of the site is situated to the rear of a row of detached dwellings that face onto Kerry Pike Road. The site is bordered by detached dwellings to the west and east of the roadside section, known as Ballycannon House and Radharc, respectively. Adjoining lands to the southeast along Kerry Pike Road host a garden centre. The northern and eastern borders of the site adjoin agricultural fields.
- 1.2. The site's topography rises from 65.7m OD at the roadside boundary to 75m OD at the north-western corner and 81m OD at the north-eastern corner, dropping to 67.8m OD at the south-eastern corner. The roadside boundary and boundaries shared with dwellings on adjoining lands along Kerry Pike Road are defined by mature trees and hedgerows, while a post and wire fence defines the northern boundary of the site. On the southern side of Kerry Pike Road, a public footpath with street lighting is present, and opposite the appeal site, a residential estate known as Woodlands is situated.
- 1.3. Kerry Pike is an extensive linear village located approximately 3 km to the northwest of the built-up part of Cork City and lying immediately north of the Shournagh River Valley. The village is host to numerous single dwellings that line the main road through the village with a number of larger residential estates. Community facilities in the village include Clogheen Kerry Pike National School and Clogheen Kerry Pike Community Centre, located approximately 1 km southwest of the site.

## 2.0 Proposed Development

### 2.1. Application as lodged to the Planning Authority on the 14<sup>th</sup> May 2021

Permission sought for the following (as described in public notices);

- The construction of 60 no. dwellings, involving a change of layout and design from that previously permitted on the site under Cork County Council Reg. Ref. 01/3276, subsequently extended under Cork County Council Reg. Ref. 13/4089

and Cork City Council Reg Ref 18/4591 and further amended under Cork County Council Reg Ref 17/6275 and Cork City Reg Ref 18/6729.

- The proposed development includes an increase in the number of houses proposed from the previously permitted 32 detached dwellings to 60 dwellings, consisting of;
  - 2 no. detached dwellings,
  - 42 no. semi-detached dwellings and
  - 16 no. terraced dwellings,
  - Changes to house designs, and
  - All ancillary site development works.

**2.1.1. Further Information submitted on 03/09/2021 included (inter alia) the following;**

- Site Layout Plan
- Site Layout boundary walls
- Front entrance boundary detail
- Site Section Drawings
- Landscape Masterplan
- Traffic Report
- Construction and Waste Management Plan
- Public lighting details
- Photomontage

**2.1.2. Revised Proposal, as submitted by way of Clarification of Further Information on 26/11/2021, provided the following;**

- Omission of 1 no. dwelling house (Unit No.2)
- The provision of a pedestrian crossing to the existing footpath on the southern side of the L2779
- Increase in the road width along the site frontage to 6.0m.
- Revisions to the entrance to the site, providing increased sightlines

- Revised landscaping and an increase in open space provision.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Cork City Council GRANTED permission for the proposed development subject to 40 no. Conditions. Noted Conditions include:

1. The development shall be carried out in accordance with the plans and particulars submitted to the Planning Authority on 14/05/2021 as amended by the Further Information plans and particulars submitted to the Planning Authority on 03/09/2021 and 26/11/2021, except where otherwise required by the conditions in the schedule.
2. Prior to the commencement of development, the Applicant shall submit to the Planning Authority, for written approval, revised plans omitting the farm access through the proposed estate.
3. a) Prior to the commencement of the permitted development, the Applicant or any person with interest in the land shall enter into an agreement with the Planning Authority, pursuant to Section 47 of the Planning and Development Act of 2000, that restricts all residential units permitted to first occupation by individual households (i.e. i.e. those not being a corporate entity, or by those eligible for the occupation of social or affordable housing, including cost rental housing).  
  
b) An agreement pursuant to Section 47 shall be applicable for the duration of the planning permission unless, after not less than two years from the date of completion of each housing unit, it is demonstrated to the Planning Authority's satisfaction that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.  
  
c) The determination of the Planning Authority as required by b) is subject to receipt by the Planning and Housing Authority of satisfactory documentary

evidence from the Applicant or any person with an interest in the land regarding the sales and marketing of the specified residential units, in which case the planning authority shall confirm in writing to the developer or any person with an interest in the land, that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

4. Prior to lodging a commencement notice under Part II of the Building Control Regulations 1997, the Applicant or any other person with an interest in the land to which this application relates shall enter into an agreement with the planning authority under Section 96 of the Planning and Development Act, 2000 as amended in relation to the matters referred to in paragraphs (a) or (b) of Subsection (3) of Section 96.
5. (a) Prior to the commencement of development, the developer shall retain the services of a suitably qualified archaeologist, at the developer's expense, to advise on the archaeological implications of the development site.  
(b) The developer shall employ the archaeologist to test the site prior to the commencement of development.  
(c) The archaeologist shall submit a report to the Planning Authority outlining the results of the investigation and their reports on any archaeological finds.
7. Between manholes S19 and S20, there is a level difference of approximately 8.1 meters; this is a 55-meter-long section of sewer. This implies an excessive gradient of 1/6.8 at this location. Prior to development commencement, the Applicant shall clarify this detail, submit a revised drainage layout plan and long section drawings, and obtain written approval from the planning authority.
8. A review of historic photographic imagery of the public road at the entrance to the site, off the Woodlands road, reveals a buried storm manhole immediately outside this entrance. As part of the development, the Applicant shall expose and raise this manhole to the finished road grade.

In order to avoid the construction of a new manhole on the public storm sewer, the Applicant shall investigate the possibility of making their storm connection to this manhole. This shall be agreed upon with the Planning Authority prior to the commencement of development.

9. The Applicant shall carry out a survey of the public storm sewer from the new connection point, to its eventual outfall. Where remedial works are identified, either to the sewer, or to its outfall, these shall be agreed with the Planning Authority, prior to commencement. Any remedial works required to facilitate the proposed development shall be carried out at the Applicant's expense.
10. The Applicant shall submit an application for a storm water connection to the Drainage Section of Cork City Council, and obtain written approval for same, prior to the making of any connection to the public stormwater sewer.
11. The existing roadside drainage channel on the northern side of the public road has been culverted under the entrance to the subject site; however, while the culvert inlet is accessible on the upstream side, its outlet could not be located on the downstream side. The Applicant shall ensure that the roadside drainage infrastructure at this location is permanently reinstated, functional, and maintained, so as to prevent nuisance flooding at this location, prior to the commencement of development.
12. Details of the proposed cut-off swale along the northern boundary of the site shall be agreed upon with the Planning Authority, prior to commencement, with the intention of minimising greenfield run-off discharges to the public sewer at the proposed connection from the western portion of the development.
13. All public lighting requirements associated with the proposed development shall be agreed upon with the Planning Authority prior to the commencement of development.
14. All external lighting requirements associated with the proposed development, including lighting associated with the construction stage, shall be designed collectively with any existing lighting (including public lighting) requirements. The external lighting requirements shall also optimise energy efficiency, incorporate glare control and be agreed with the Planning Authority prior to commencement of development. All external lighting requirements associated with the proposed development including lighting associated with the construction stage shall be designed collectively with any existing lighting (including public lighting) requirements. The external lighting requirements shall



also optimise energy efficiency, incorporate glare control and be agreed with the Planning Authority prior to commencement of development.

15. Before the commencement of development, the Applicant shall agree on the details and extent of all road markings and signage requirements on the L2779 Road, including the relocation of the existing driver feedback sign with the Planning Authority. All costs associated with this condition to be borne by the Applicant.
16. A Construction Traffic Management Plan for the proposed development including dedicated haulage routes, a protocol to be followed by HGV drivers and allowable operational times for the HGV's on the city's road network shall be agreed with Cork City Council in consultation with An Garda Sochána before works commences on site.
17. Recommendations in the Stage 1/2 Road Safety Audit shall be incorporated into the development design and a Stage 3/4 audit carried out at the appropriate stage of development.
18. Before the development is commenced, the developer shall lodge with the Planning Authority a bond or such other security as may be accepted by the Planning Authority, in a sum to be determined by Cork City Council to secure the provision and satisfactory completion and maintenance of roads, footpaths, open spaces and amenities, car parks, public lighting, surface water drainage systems and communal waste storage required in connection with the proposed development.  
  
The bond or security shall provide for the adjustment on a monthly basis, in accordance with the Consumer Price Index of the Central Statistics Office, of the amount of bond as approved by the City Council.
19. The Applicant or developer shall enter into water and or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.
20. The developer shall submit to the Planning Authority a drawing (hardcopy and electronically) showing the areas that would be proposed for "Taking In Charge, prior to commencement of development. This drawing shall also show the public facilities typically considered by the Planning Authority for "Taking In Charge" such as: public lighting, roads, footpaths, open spaces and surface

water systems. The area on the drawing that would be considered for "Taking In Charge" shall be finalised to the satisfaction of the Planning Authority.

- 21 (a) Construction waste such as wood, metal, and concrete, shall be segregated and submitted for recycling. Waste Gypsum shall be segregated and delivered to an appropriate facility. Hazardous construction waste such as paint, lubricants, oil, lighting, wood preservative shall be segregated and disposed of at an authorised facility.
- (b) The developer shall ensure that any waste moved off site during site clearance operations or construction works is removed by authorised waste contractors only. The material shall be taken only to sites authorised by a local authority or the Environmental Protection Agency.
26. A special contribution of €250,000 shall be paid by the Applicant for construction of a new footpath to connect from the proposed development to existing footpaths in Kerry Pike village together with associated drainage works and public lighting
27. A special contribution of €100,000 shall be paid by the Applicant for the construction of a controlled raised pedestrian crossing and associated traffic calming measures to safely connect the proposed development to the existing footpath south of the L2779.
28. The Applicant shall agree haulage routes with Blarney Area Office prior to commencement of works and road damage along the haulage route shall be repaired by the Applicant for an extent to be agreed with the area engineer. At a minimum the Applicant shall resurface the L2779 at the frontage of the proposed development.
- All works shall include road planning of 100mm reinstated with 60mm base course and 40mm 942.
29. Relocation of existing public manholes where necessary (to be agreed with Cork City Council in advance).
37. The Applicant shall ensure 90m sightlines are achieved at the proposed entrance off the L2779. Sightlines are to be measured to the nearside road edge with all structures and vegetation set back outside the sightline triangle.

40. Prior to the commencement of the proposed development, the Developer shall pay or enter into an agreement with the Planning Authority to pay a contribution to Cork City Council in respect of the following classes of public infrastructure and facilities benefiting development in the City of Cork and that is provided or that is intended to be provided by or on behalf of Cork City Council, in accordance with the General Development Contributions Scheme ("the GDCS scheme"):

Class 1 - Roads, Transportation Infrastructure and Facilities

Class 2 - Water and Drainage Infrastructure and Facilities excluding Water and Wastewater

Class 3 - Parks, Recreation, Amenity and Community Facilities

The present value of the contribution as determined under the GDCS made by Cork City Council on the 14<sup>th</sup> September, 2020 is €169951.05, which sum is subject to indexation in accordance with the Consumer Price Index prevailing at the date of payment and subject further to such exemptions or reductions as apply to the proposed development having regard to the provisions of Tables 5 and 6 of the GDC Scheme.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

#### **3.2.2. First Report (07/07/2021)**

##### Principle of development:

- The site is zoned "Existing Built Up" in the Cobh Municipal District Local Area Plan (CMDLAP) with an extant permission for the construction of dwellings associated with the site.
- Parent permission for the development was lodged in 2001 for 32 no. dwellings. According to correspondence from the Cork County Council file for the most recent extension of duration (18/4591), the current permission will expire on 31/12/2021.
- The current application proposes an almost doubling of the number of permitted units on the site.

- The increase in units proposed by the current application is not provided for in the calculations that guided the Cobh Municipal District Local Area Plan (CMDLAP) policies for Kerry Pike, despite the 32 homes permitted under the extant permission 01/3276 being included in those calculations.
- The CMDLAP, prepared in 2017, sets a maximum of 30 new development units over the next ten years in Kerry Pike, with an individual housing scheme cap of 20 units.
- According to An Bord Pleanála's Inspector's Report for ABP Ref: 308650 (PA Ref. 20/39213 for development at Woodside), there is enough room within the plan period for the 13 houses proposed in the current application and the 13 houses proposed in the parallel application, which would bring the total to 47 houses. The report notes that 43 new permissions for houses have been granted, and 21 of them are nearing completion.
- The Inspector's Report also notes that if the houses proposed for Phases 2 and 3 were to be combined, they would exceed the cap of 20 houses in an individual scheme. However, the cap is qualified by design considerations that aim to reinforce the village's character and avoid large housing estate layouts.
- Key considerations in assessing the proposed development's acceptability are whether there is sufficient headroom for additional dwellings and whether the design reinforces the village's character.
- The application documentation does not provide any rationale for the increase in units proposed on the site. As such, it is appropriate to request that the applicant justify the increase in housing proposed on the site.

#### Childcare Facilities

- The Childcare Facilities Guidelines 2001 require one childcare facility with a minimum of 20 spaces per 75 dwellings.
- The proposed development is for less than 75 dwellings, but permission has been granted for over 40 new dwellings in the area, potentially creating a childcare provision deficit.
- The former county area is not yet included in the administrative area of the Cork City Childcare Committee.

- The applicant is encouraged to consult with the Cork County Childcare Committee to evaluate the possibility of including a childcare facility on the subject site based on the cumulative increase in houses in Kerry Pike, rather than just the proposed development.

### Density

- Aside from the cap on new dwellings in the CMDLAP, the proposed development must be assessed for its appropriateness in terms of design.
- The proposed increase in density, which almost doubles the number of units from the extant permission, aligns with current development policies and objectives for sustainable use of zoned and serviceable lands.
- The proposed density is 23 units per hectare.
- Kerry Pike falls under the administrative area of Cork City but is better described as a small town or village, as per the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009.
- The proposed density falls within the recommended range of 20-35 units per hectare for edge of centre sites according to the aforementioned guidelines.

### Housing Mix

- The current planning proposal includes a wider variety of dwelling types compared to what was allowed under permission 01/3276.
- This increase in diversity aligns with current housing mix policies.

### Topography

- The subject site has a hilly terrain, with a level difference of 15 metres between the entrance and the northeastern corner of the site.
- The layout of the proposed development does not fully align with the existing topography of the site.
- The provided site sections demonstrate the extent of cut and fill required. However, a section from east to west at the top of the site is missing.
- There is an apparent 2-4 metre level difference between the open space and unit no. 9, and it is unclear how this transition will be addressed.

- To assess the impact on resident amenity and the feasibility of passive surveillance, additional information in the form of a site section or contextual elevation is required.

### Entrance

- The proposed entrance to the estate requires improvement.
- Currently, a detached house is located closest to the roadside, and the road sweeps to the west, with the rear of units 2-5 bounded by 1.8m high walls being the first view of the estate upon entry.
- The buildings are set back into the site, and houses backing onto the main entrance are not considered an optimum outcome. It is suggested that the applicant should revise this aspect of the proposed development to provide a more attractive entrance to the estate through Further Information.

### Visual Impact

- The site is situated on an elevated terrain.
- The proposed homes are planned to be constructed on the highest corner of the northeastern side of the site. However, the plans provided in this application do not allow for a thorough assessment of the development's visual impact on the surrounding area.
- To better evaluate the project's impact, it is advisable to request a visual impact assessment from the applicant.

### Public Open Space and Boundary Treatments

- The Environment (Parks) Report requires detailed landscape proposals for open space areas and all field boundaries.
- The application documentation states that 0.6765 ha of public open space will be provided, representing 24.6% of the site area. However, it is unclear if the proposed open space includes steeply sloped or verge areas.
- A full schedule of public open space should be provided, along with a site layout plan indicating the location of designated open space areas.

- Concerns have been raised regarding boundary treatments, particularly on the southeast boundary adjacent to the house known as Radharc and the southern boundary behind existing dwellings and the garden centre.
- Additional information should include a survey of existing vegetation along the site boundaries, proposals for improving existing hedgerows, and a revised boundary treatment plan with any necessary setbacks to protect existing vegetation.

#### House design / private open space

- The application documentation included a comprehensive quality housing assessment.
- The assessment indicates that the house and room sizes comply with, or even exceed, the standards outlined in Quality Housing for Sustainable Communities, 2007. However, the table does not provide details on the proposed quantum of private open space.
- Further information should be requested re. private open space provision.

#### Other Matters

- The Traffic: Regulation & Safety Report has recommended that the Applicant work with the public lighting department of Cork City Council to design public/external lighting.
- The lighting proposal submitted with the application was illegible.
- The proposal indicated a new light pole being installed in the driveway of the adjacent house to the west of the site, which is a potential error. This issue will be addressed by way of a Further Information request to ensure that the proposed lighting plan is clear and accurate.

#### Development Contributions

- Development contributions for the proposed development are calculated based on the gross internal areas, in accordance with the Cork City Council Development Contributions Scheme 2018, using a quarterly CPI rate.
- Based on the nature and extent of the proposed development, it has been determined that development contributions will apply.

- The applicable contributions are as follows:
  - Standard Development Contribution: €171,958.06
  - Supplementary Contribution: €0.00
  - Total Contribution: €171,958.06

Recommendation:

- Request Further Information

**3.2.3. Further information was requested requiring the following:**

1. The Cobh Municipal District Local Area Plan (CMDLAP) states that new development in Kerry Pike over the next ten years should not exceed 30 units in total and that any new individual housing schemes should normally not exceed 20 units. Development must be of an appropriate density to facilitate integration with the landscape.

Concern has been raised that the current proposal, to increase the number of dwellings permitted on the subject site, does not accord with the CMDLAP. The principle of the proposed development could be therefore viewed as unsound.

Provide a robust, planning based, rationale as to why you consider Cork City Council should grant permission for the increase in house number proposed. This should focus upon the reasons that the cap on development was included in the CMDLAP and whether any material changes have occurred that would allow consideration of an increase in house numbers to be considered.

2. It is noted that planning permission has been recently granted for over 40 no. dwellings in Kerry Pike. Please consult with the Cork County Childcare Committee regarding the cumulative need for additional childcare spaces in Kerry Pike and whether a new facility should be incorporated into the proposed development. Your response shall include written confirmation of said consultation from the childcare committee.
3. There appears to be significant level differences between the unit no. 9 and the adjoining open space to its west. Please submit a site section / contextual elevation from east to west across the northern part of the site to include public open spaces and units no. 9 to 26.



4. Units no. 2 - 5 back onto the entrance into the site. Their 1.8 metre rear walls will be at a higher level than the road. Consider revising the orientation and location of the residences in this area to increase passive surveillance of the entrance and increase the attractiveness of this part of the site.
5. The subject site is elevated. Submit a visual impact assessment, including photomontages, to show the extent to which the proposed development will be visible from the existing settlement. View points shall be agreed with the Planning Authority prior to submission.
6. Environment (Parks) -
  - a. Relocate the farm access gate to the western boundary and be independent of the residential access road.
  - b. Submit detailed landscape proposals for the proposed open space areas and all field boundaries.

(Regarding public open spaces this should include, but not be limited to:

    - i. a schedule of open space areas
    - ii. revised landscaping plan to show the extent and usability of the designated public open spaces

Regarding boundaries this should include, but not be limited to:

    - i. a survey of existing vegetation,
    - ii. proposals for additional planting to re-enforce existing hedgerows etc. as required, ill. confirmation that any walls, fences etc. proposed will be set back from existing vegetation, such that it will not impact on root systems)
7. Provide a schedule setting out the quantum of private open space associated with each proposed residence.
8. Urban Roads & Street Design (Planning)
  - a) The applicant is requested to review the road layout to reduce the length of the straight section of the internal spine road to reduce or eliminate the requirement for additional traffic calming measures.

- b) It is unclear from the drawings available if the planting of trees adjacent to the carriageway are planted between the footpath and the carriageway, in essence creating a verge between pedestrians and the vehicles which is desirable, the applicant is requested to clarify.
- c) It is unclear how pedestrians, residents of the estate, can safely cross the Kerry Pike Road to the footpath on the western side of the carriageway. The applicant is requested to submit details of an appropriate suitable pedestrian crossing with agreement with Cork City Council and/or engage with the Planning Authority in relation to a special contribution.

#### 9. Traffic: Regulation & Safety

- a) The increase in the number of units and associated parking may warrant the preparation of a traffic report. A traffic report or note outlining the impact of the development on traffic and transport should be submitted.
- b) Confirm if there are any changes to the permitted access from the L2779-25. Any changes to the access junction design should be included in Road Safety Audit.
- c) A swept path analysis should be carried out for the development for fire tender/refuse truck.
- d) Liaise with public lighting department of Cork City Council in relation to public/external lighting design. (The light plan submitted appears to show a light pole in the driveway of the adjoining residence to the west of the site. Please ensure that any revised plans are legible and that the poles do not form obstructions.)
- e) It is not clear exactly what parking is provided as part of the development. Submit details of the level of parking provided and how this compares to the development plan.

#### 10. Area Engineer

- a) The applicant has not submitted a sightline drawing. The applicant is required to submit a sightline drawing showing adequate sightlines in accordance with DMURS. Sightlines are to be measured to the nearside road edge with all structures and vegetation set back outside the sightline triangle.

- b) The applicant details vegetation throughout the proposed development. Footpaths shall be constructed using suitable membranes to restrict uplift of pavements by tree roots. Details to be submitted.
- c) There is a proposed footpath along the roadside boundary of the site, but the footpath is not connecting to any existing footpath or local amenities. Clarification is sought on the connectivity to local amenities and school.
- d) Clarification is sought on the width of the L2779 after the completion of the development, a minimum of 6m carriageway width is required.
- e) The proposed development is on a very busy road and traffic often travels at speed in the area. Clarification is sought on traffic calming proposals on the approaches to the development.
- f) A section through the entrance shows that the entrance walls are retaining, however the Site Layout - Boundary Walls drawing does not specify whether the walls are retaining or not. Clarification is sought on the type of entrance wall.

11. Environment - Submit a construction and waste management plan.

#### 3.2.4. **Second Report (29/09/2021)**

(i) **Re. Further Information (FI) Point 1:**

- The applicant has presented a strong rationale for adding 28 new dwellings to the site, which already has permission for 32 dwellings.
- The proposed increase in density aligns with the current planning policies focused on sustainable development.
- The increase from 32 to 60 dwellings accords with the proper planning and sustainable development of the area.

(ii) **Re. FI Point 2:**

- The applicant referred to a recent application for a new creche in Kerry Pike (Ref. No. 21/40381), which has since been withdrawn.

- The decision date for a current application to change the use of a permitted creche in Kerry Pike (Ref. No. 21/40379) has been extended until 17/04/2022, which means the situation has changed since the Further Information response was lodged.
- There are currently no childcare facilities in Kerry Pike, and the applicant has not sought to amend the current application to include a childcare facility.
- As the proposal is for less than 75 dwellings, the Planning Authority cannot legally require the provision of a childcare facility on site.

(iii) **Re. FI Point 3:**

- The revised proposal is considered acceptable.

(iv) **Re. FI Point 4:**

- The proposed measures to reduce wall height and improve landscaping in order to mitigate the impact of level differences have not fully addressed the concerns raised.
- The applicant has not provided any information about the new walls depicted in yellow on the Site Layout - Boundary Walls plan.
- Clarification is necessary regarding this matter, especially in light of the omission of Unit No. 2 in order to minimise the impact of level differences at the entrance to the site.

(v) **Re. FI Point 5:**

- The photomontage provided shows that the new dwellings will largely be screened from view by existing vegetation and buildings. However, the final view (View No. 4) from a point SSE of the subject site reveals that the development, which is situated on higher ground than the existing settlement, will have some impact on wider views.
- Overall, it is considered that the proposed dwellings are well integrated into the wider landscape and will not have a significant visual impact.

(vi)

**Re. FI Point 6:**

- The Environment (Parks) Report seeks clarification of the further information received. It states:

*The applicant's reluctance to relocate an access gate to agricultural land from a residential road is not acceptable. Agricultural land by its very nature will attract heavy agricultural machinery during various seasons which is in complete conflict with vehicular traffic to access persons homes, it also creates a major safety risk for children at play within the residential area. The reference that the access operates well for the farmer is of no relevance to this proposed development. There is adequate space west of the proposed residential access road to accommodate an access road to the adjoining field, the entrance to both access roads can be shared.*

*The proposed Landscape Masterplan is very weak and does not take account of the rural setting in terms of boundary treatment and planting proposals for open space areas.*

- It is noted that the survey of existing vegetation referred to in the cover letter does not appear to have been submitted.
- It is recommended that clarification should be sought in accordance with the Environment (Parks) Report and to require that the omitted survey be provided.

(vii)

**Re. FI Point 7:**

- The site contains approximately 5,391 m<sup>2</sup> of open space, which represents just under 20% of the total site area. The schedule further specifies that approximately 2,697 m<sup>2</sup> of the open space is "flat," representing just under 10% of the total site area.
- The schedule refers to numbered open spaces, but there does not seem to be any accompanying plan indicating their locations. This limits assessment and clarification should be sought accordingly.

(viii)

**Re. FI Point 8:**

- The Urban Roads & Street Design (Planning) report recommends that permission be granted.

(ix) **Re. FI Point 9:**

- The Traffic: Regulation & Safety Report recommends that permission be granted.

(x) **Re. FI Point 10:**

- The Area Engineer's Report seeks the following clarification of the further information received:
  1. On review of submitted documentation, I am concerned that the proposed development relies heavily on the vehicle for safe connectivity to nearby services and local schools. As part of the assessment for this application it is imperative that pedestrian connectivity to the local school on the opposite side of the village is improved. The applicant has submitted a proposal which includes a pedestrian crossing linking the development to an existing footpath south of the L2779. The applicant shall note that the existing footpath south of the L2779 carriageway ends abruptly prior to the junction of the L2779 with the L2777 and forces pedestrians onto the carriageway at this point. Due to health and safety concerns regarding an increase in footfall using the existing layout to connect to the local school in Kerry Pike I recommend a revision of submitted proposals.
  2. The applicant details road widths of 6m at the frontage of the proposed development following construction of proposed footpaths. The applicant shall note that the footpath on the southern side of the L2779 is not the Local Authorities desired width and therefore the proposed development shall be set back to allow future widening of this footpath to 2m without having to reduce the carriageway to less than 6m.
  3. The applicant has submitted a site layout detailing sightlines of 59m. However, due to the given location the applicant shall submit sightlines of 90m each direction of the proposed entrance. Sightlines shall be measured to the nearside road edge.
  4. The applicant has not submitted details of traffic calming on the approaches to the proposed development. Due to the given location, from the Western approach in particular, the proposal submitted is unacceptable.

5. The applicant details new footpath construction along the L2779. Clarification is sought on the proposed road drainage at kerb lines.
6. An existing land drain originating from the proposed development is discharging surface water onto the L2779. This land drain shall be diverted within the proposed site and surface water shall be disposed of on site. The applicant shall submit a proposal as part of this application.

Recommendation:

- Request Clarification of Further Information

**3.2.5. Clarification of Further Information was requested, requiring the following:**

1. The response provided to Item no. 3 of the Further Information Request is not considered to be adequate. Submit revised plans to show:
  - a. Details for the proposed retaining walls which have been omitted from the key in the Site Layout Boundary Walls plan.
  - b. The omission of Unit No. 2 with a revised landscaping plan illustrating planting to soften the impact of level differences in this area.
2. The survey of existing vegetation, as requested in Item No. 6 of the Further Information Request and referred to on page 13 of the cover letter provided in the response, does not appear to have been submitted. This survey shall be submitted to facilitate review of the proposed landscaping and boundary treatments.
3. Clarify where the numbered open spaces and flat open spaces referred to in the schedule, provided in response to Item No. 7, are located. The open spaces and flat open spaces shall be shown on a site layout plan.
4. Environment (Parks)
  - a) The applicant's reluctance to relocate an access gate to agricultural land from a residential road is not acceptable. Agricultural land by its very nature will attract heavy agricultural machinery during various seasons which is incomplete conflict with vehicular traffic to access persons homes, it also creates a major safety risk for children at play within the residential area. The reference that the access operates well for the farmer is of no relevance to this

proposed development. There is adequate space west of the proposed residential access road to accommodate an access road to the adjoining field, the entrance to both access roads can be shared.

- b) The proposed Landscape Masterplan is very weak and does not take account of the rural setting in terms of boundary treatment and planting proposals for open space areas.

#### 5. Area Engineer

- a) On review of submitted documentation, I am concerned that the proposed development relies heavily on the vehicle for safe connectivity to nearby services and local schools. As part of the assessment for this application it is imperative that pedestrian connectivity to the local school on the opposite side of the village is improved. The applicant has submitted a proposal which includes a pedestrian crossing linking the development to an existing footpath south of the L2779. The applicant shall note that the existing footpath south of the L2779 carriageway ends abruptly prior to the junction of the L2779 with the L2777 and forces pedestrians onto the carriageway at this point. Due to health and safety concerns regarding an increase in footfall using the existing layout to connect to the local school in Kerry Pike I recommend a revision of submitted proposals.
- b) The applicant details road widths of 6m at the frontage of the proposed development following construction of proposed footpaths. The applicant shall note that the footpath on the southern side of the L2779 is not the Local Authorities desired width and therefore the proposed development shall be set back to allow future widening of this footpath to 2m without having to reduce the carriageway to less than 6m.
- c) The applicant has submitted a site layout detailing sightlines of 59m. However, due to the given location the applicant shall submit sightlines of 90m each direction of the proposed entrance.  
Sightlines shall be measured to the nearside road edge.



- d) The applicant has not submitted details of traffic calming on the approaches to the proposed development. Due to the given location, from the Western approach in particular, the proposal submitted is unacceptable.
  - e) The applicant details new footpath construction along the L2779. Clarification is sought on the proposed road drainage at kerb lines.
  - f) An existing land drain originating from the proposed development is discharging surface water onto the L2779. This land drain shall be diverted within the proposed site and surface water shall be disposed of on site. The applicant shall submit a proposal as part of this application.
6. Environment - The information provided on the management of waste is not sufficient. More detail on how waste will be managed and disposed of needs to be submitted.

### 3.2.6. **Third Report (21/12/2021)**

(i) **Re. Further Information (FI) Point 1:**

- The applicant has provided details of the proposed retaining walls and revised plans showing the omission of unit no. 2, in accordance with the request.
- The details provided and the revised proposal is considered acceptable.

(ii) **Re. Further Information (FI) Point 2:**

- A landscape survey in the form of a report has been submitted.
- The details provided and the revised proposal is considered acceptable.

(iii) **Re. Further Information (FI) Point 3:**

- A public open space layout plan has been provided.
- Due to the omission of unit no. 2, the quantum of open space provided has increased.
- The CFI response table indicates that a total of 6,528.11m<sup>2</sup> of open space has been provided, out of which 2,855.35m<sup>2</sup> is flat open space. This amounts to 23.73% and 10.38% of the total site area, respectively.

- The location and quantum of public open space is considered acceptable.

(iv) **Re. Further Information (FI) Point 4:**

- No alteration has been made to the proposed access, although a written justification has been provided. A revised landscape masterplan has been submitted.
- The Environment Parks report states:

The revised farm access is not acceptable, access for farm machinery, stock etc. must be independent of the estate access road.

The existing access to the field behind the site of the proposed development hugs the hedge on the western boundary of the site, this is independent of the access road to the estate and, therefore satisfactory, this can be upgraded to address any concerns about gradients.
- The report recommends that permission be granted for the planning application with a condition attached.
- The condition requires the farm access to be independent of the estate access.
- The Planning Authority concurs with this recommendation.
- It is recommended that a condition requiring revised plans to show independent access be attached to any grant of planning permission.

(v) **Re. Further Information (FI) Point 5:**

- Revised plans and additional information has been submitted in response.
- The Area Engineer's Report recommends that permission be granted.

(vi) **Re. Further Information (FI) Point 6:**

- More details regarding waste management has been provided.
- The Environment Report recommends that permission be granted.

(vii) **Development Contributions**

- The updated Development Contributions Report sets out revised calculations.

- The amount payable under the General Development Contribution Scheme is €169,951.05.
- The proposal is not subject to the Supplementary Development Contribution Scheme.

### 3.2.7. Other Technical Reports

#### **Environment Waste Management Control**

Final Report:

- The revised farm access is not acceptable. Access for farm machinery, stock etc., must be independent of the estate road.
- The existing access to the field behind the site of the proposed development hugs the hedge on the western boundary of the site. This is independent of the access road to the estate and, therefore, satisfactory. This can be upgraded to address any concerns about gradients.
- The Landscape Masterplan is satisfactory.
- Conclusion: No objection to a grant of permission subject to the farm access being independent of the estate access.

#### **Area Engineer's Report**

Final Report - No objection subject to 14 no. Conditions.

#### **Urban Roads & Street Design**

Final Report - No objection subject to 4 no. Conditions.

#### **Traffic Regulation and Safety Report.**

Final Report - No objection subject to 5 no. Conditions.

#### **Drainage Division Report**

No objection subject to 7 no. Conditions.

## **Archaeology Report**

No objection subject to 1 no. Condition.

## **Contributions Report**

Final Report – Total Supplementary Contributions €169,951.05

### **3.2.8. Prescribed Bodies**

#### **Transport Infrastructure Ireland:**

No objections raised.

#### **Inland Fisheries Ireland**

No objections raised.

## **4.0 Planning History**

### **4.1.1. Appeal Site**

**P.A. Ref. 18/6729** Permission Granted by Cork City Council on the 28/2/2019 for the construction of 6 no. dwelling units (change of layout from that previously permitted residential development under Cork County Council Ref. 01/3276 and extended under Ref. 13/4089 and Ref. 18/4591) and modifications to the previously permitted disposal of foul and surface water discharges and all ancillary site development works. Applicant: O'Flynn Construction (Cork) Unlimited Company.

**P.A. Ref. 18/4591** Extension of Duration of Permission Granted by Cork County Council on the 20/6/2018 for the construction of 32 no. dwelling houses, entrance, treatment plant & associated site works. This was previously extended under P.A. Ref. 13/4089. Applicant: O'Flynn Construction (Cork) Unlimited Company.

**P.A. Ref. 17/6275** Permission Granted by Cork County Council on the 1/12/2017 for the construction of 5 no. dwelling houses (changes and amendments to part of development approved under Planning Reg. No. 01/3276 and subsequently extended under 13/4089) consisting of: 1) The replacement of house type D1 in site

No. 1 with proposed new house type D3 and the replacement of house type G in site No. 2 with proposed new house type D2; 2) Revised entrance locations to sites nos. 1 and 2; 3) The replacement of houses type A in sites numbers 13, 14 and 27 with house type B; 4) All associated site development works. Applicant: O'Flynn Construction Co. Limited.

**P.A. Ref. 13/4089** Extension of Duration of Permission Granted by Cork County Council on the 19/3/2013 for the construction of 32 no. dwelling houses, entrance, treatment plant & associated site works, extension of duration to permission granted under planning ref. No. 01/3276

**P.A. Ref. 01/3276** Permission Granted by Cork County Council for the construction of 32 no. dwelling houses (as recorded on the Planning Authority report).

#### 4.1.2. **Adjacent sites to the southeast**

**P.A. Ref. 2240915 and ABP Ref. PL28.314061** Currently ON APPEAL to An Bord Pleanála. Permission granted by Cork City Council on the 14/6/2022 for the demolition of an existing boundary wall and gated access, and 2 no. existing animal shelters and the construction of a 2-storey commercial building including signage, with ground floor pharmacy and 1 no. medical consulting room, and 4 no. medical consulting rooms and ancillary services at first floor; 31 no. residential housing units to include: 3 no., 4-bed detached dwellings, 8 no. 4-bed semi-detached dwellings, 16 no. 3-bed semi-detached/end of terrace dwellings, 2 no. 3-bed end of terrace dwellings, and 2 no. 2-bed mid-terrace dwellings; car parking; 1 no. new access; new footpath along the public road; public lighting; provision of a new boundary wall with fence, 1 no. new gated access and 1 no. relocated gated access to an existing dwelling; 1 no. new internal access with entrance pillars to an existing dwelling; and all associated site development, drainage and landscaping works.

**P.A. Ref. 194570** Permission Granted on the 24/2/2020 for the demolition of an existing dwelling house, demolition of outbuildings used as a garden nursery and demolition of polytunnels, and the construction of 21 No. dwelling houses and all associated ancillary development works including access, roads, parking, footpaths, drainage, landscaping, sewage pumping station, storm water attenuation tank and amenity areas.

**P.A. Ref. 18/7417** Permission Granted on the 29/3/2019 for the Construction of 20 no. dwelling houses (changes and amendments to part of the development approved originally under Planning Reg. Nos. 92/291 and 92/292) consisting of changes to the site layout, house types and levels for house nos. 105-119 and 123-127 as follows: 1. Amendments to house locations and house levels; 2. Amendments to the location and levels of roads; 3: Amendments to the design of House Types H, H1, J & J1, including plan and elevational changes; 4. All associated site development works.

#### 4.1.3. **Adjacent sites to the northwest**

**P.A. Ref. 2039213 and ABP Ref. PL28.308650** Permission Granted on Appeal to construct 13 dwelling houses.

**P.A. Ref. 2039116 and ABP Ref. 308657** Permission Granted on Appeal to construct 13 dwelling houses and all associated ancillary development works, including access roads, parking, footpaths, drainage, landscaping and amenity areas.

**P.A. Ref. 194557** Permission Granted on the 14/10/2019 for Phase 1 of a residential development consisting of the removal of all existing glasshouses (4no. in total), the removal of 1 no. existing water tank, the removal of 2 no. raised tanks and the removal of 2 no. sheds and the construction of 22 no. dwelling houses (10 no. houses will have an option of a rear extension, and 4 no. houses will have an option of a rear sunroom) and all associated ancillary development works, including access, roads, parking, footpaths, drainage, landscaping and amenity areas.

## 5.0 **Policy and Context**

### 5.1. **Development Plan**

#### 5.1.1. **Cork City Development Plan 2022-2028**

The site is located within the administrative area of Cork City Council, which was adopted on 27th June 2022 and came into effect on 08th August 2022. Relevant provisions are referenced below.

**Zoning:** The site is zoned 'ZO 01 Sustainable Residential Neighbourhoods', with the objective 'To protect and provide for residential uses and amenities, local services and

community, institutional, educational and civic uses'. (Development Plan Map 17 and Section 12.24).

Adjoining lands to the north and east are zoned ZO 20 City Hinterland.

Section 3.22 Residential Density

Objective 3.3 New Housing Supply

Objective 3.4 Compact Growth

Objective 3.5 Residential Density

Objective 4.5 Permeability

Chapter 4 Table 4.6: Car Parking Zones. The Appeal site is located in Zone 4.

Table 11.13: Maximum Car Parking Standards.

Section 11.61 Residential Development

Section 11.66 New Residential Development

Section 11.69 Residential Density

Section 11.74 Residential Mix

Objective 11.3 Housing Quality and Standards

Section 11.108 Private Space for New Houses

Section 11.112 Public Open Space in Housing Developments

Objective 11.5 Private Amenity Space for Houses

Chapter 12 Land Use Zoning Objectives

Section 12.24 Zoning Objective 1: Sustainable Community and Neighbourhood Development

## **5.2. Cobh Municipal District Local Area Plan 2017**

The appeal site is located within the village of Kerry Pike as identified under Section 5.2.24 of the Cobh Municipal District Local Area Plan 2017.

Relevant provisions include the following;

5.2.18 The vision for Kerry Pike to 2023 is to secure a modest increase in the population of the settlement to retain and improve local services and

facilities and to strengthen infrastructure provision and public transport connections.

#### 5.2.19

Kerry Pike is an extensive linear village located approximately 3 kilometres west of Cork City, immediately north of the Shournagh River valley. It has a large residential component and like many villages close to the city, it has relatively few services and community facilities. Services include school, a public house, a GAA pitch and a basketball court.

#### 5.2.21

To allow the village to develop in an orderly manner, it is important that proper infrastructural improvements are made. In particular, the road network has to be upgraded with improved facilities for pedestrians and cyclists and the risk to water quality must be overcome.

#### 5.2.23

It is considered that new development in Kerry Pike over the next ten years should not exceed 30 units in total. This figure is a reflection of the ability of the character and grain of development in the village and the village topography to accommodate further expansion rather than a reflection of its infrastructural capacity. If improved waste water treatment infrastructure is not achieved then the development potential of Kerry Pike will be limited to 10 individual dwellings with their own waste water treatment facilities because of their cumulative environmental effects.

#### 5.2.24

To allow new development to respect the pattern and grain of existing development it is considered that any new individual housing schemes should normally not exceed 20 units. Development must be of an appropriate density to facilitate integration with the landscape.



**5.2.1. Cork City Council General Contribution Scheme 2023-2029 & Supplementary Development Contribution Scheme 2023-2029**

**5.3. Other Relevant Government Policy / Guidelines**

Project Ireland 2040 - National Planning Framework

Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (2009) and accompanying Urban Design Manual: A Best Practice Guide (2009).

Development Contributions, Guidelines for Planning Authorities (2013)

Development Management, Guidelines for Planning Authorities (2007)

**5.4. Natural Heritage Designations**

The nearest Natura 2000 European Site to the appeal site is the Cork Harbour SPA (Site Code: 004030), approx. 10 km southeast of the site.

**5.5. EIA Screening**

5.5.1. An Environmental Impact Assessment (EIA) Screening Report was not submitted with the application. Regarding EIA thresholds, 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.)

5.5.2. It is proposed to construct a residential development containing 59 no. dwellings units, as revised by way of clarification of further information submitted. Therefore, the number of dwellings proposed is well below the threshold of 500 dwelling units. The

site has an overall area of c. of 2.75 ha and is located on lands zoned 'ZO 01 Sustainable Residential Neighbourhoods', within an existing built-up area but not in a business district, and is, therefore, well below the applicable threshold of 10 ha.

5.5.3. The site is adjoined by residential development to the east and west along the Kerry Pike Road, and agricultural lands to the north and east. The introduction of residential development will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of landscape or natural/cultural heritage. The proposed development is not likely to have a significant effect on any European Site (as outlined in Section 7.5 of this Report). There is no hydrological connection present, which could significantly impact nearby watercourses (whether linked to any European site or other sensitive receptors).

5.5.4. 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 Cork City Council, upon which its effects would be minimal.

5.5.5. 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 site is located on lands zoned 'ZO 01 Sustainable Residential Neighbourhoods' with the objective 'To protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses' under the Cork City Council 2022-2028 and was subject to the results of the Strategic Environmental Assessment of the Cork City Council Development Plan 2022-2028, 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),

- 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 conclude 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 (EIAR) or a determination in relation to the requirement for an EIAR is not necessary in this case (See Preliminary Examination EIAR Screening Form).

## **6.0 The Appeal**

6.1.1. Two appeals (first-party and third-part) were received from the following:

- O' Flynn Construction Co. Unlimited Company (First Party Appeal)
- Frank O'Brien (Third Party Appeal).

### **6.2. Grounds of Appeal**

6.2.1. The grounds of appeal of both parties are summarised separately below accordingly.

#### **6.2.2. First Party Appeal**

6.2.3. A first-party appeal was received from Coakley O'Neill Town Planning Consultants representing the Applicant O'Flynn Construction (Co.) Unlimited Company, against Condition Nos. 26 and 27 attached to the notification by Cork City Council to grant permission for the proposed development, under P.A. Ref. 21/40189. The Appellant addresses the grounds under the headings (i) exceptionality and (ii) no basis of calculation set out in the conditions. The grounds of appeal are summarised under these headings below accordingly:

6.2.4. Exceptionality

- Section 48(2)(c) of the PDA 2000 allows Planning Authorities to require special contributions for specific exceptional costs related to public infrastructure and facilities.
- The Development Management Guidelines 2007 require the basis of exceptional cost calculations to be explained in a condition and the apportionment to the specific development to be transparent.
- The Development Contributions Guidelines 2013 specify that special contributions are for the provision of particular public infrastructure or facilities that benefit the specific requirements of the proposed development.
- The Planning Authority reports did not identify or address the exceptionality of the intended public footpath provision for the proposed development. Accordingly, there is no basis upon which a special contribution condition can be imposed on the permission of the proposed development.
- The concept of exceptionality is relative and can only be determined by reference to the norm of proper planning and sustainable development in the area.
- Provision for public footpaths is part of the normal infrastructural requirements of an urban area, as evidenced by the Cork City Development General Contribution Scheme (2020), which includes €17.5m for pedestrian facilities in the city.<sup>4</sup>
- The provision of public footpaths is a basic norm of proper planning and sustainable development in any urban area, and its cost cannot be exceptional.
- No evidence has been provided that public footpaths in excess of the norm will be provided, so there is no evidence of exceptional cost.
- Provision and improvement of public footpaths is an everyday function of the Local Authority and a long-held objective in the proposed development of urban areas, including Kerry Pike.
- Adopted planning policies in relevant statutory plans imply a requirement for high-quality public footpaths in all city urban areas and are not specific to the subject site.
- The provision of public footpaths is a basic norm of proper planning and sustainable development in any urban area, and its cost cannot be exceptional.

- No evidence has been provided that public footpaths in excess of the norm will be provided, so there is no evidence of exceptional cost.
- Provision and improvement of public footpaths is an everyday function of the Local Authority and a long-held objective in the proposed development of urban areas, including Kerry Pike.
- The provision of public footpaths is not an exceptional infrastructure requirement or cost.
- Whether the public footpaths benefit the proposed development is irrelevant.
- Public footpaths are part of the general functions of the Planning Authority and in line with its view of proper planning and sustainable development.
- The provision or improvement of public footpaths on the existing public roadway is not an exceptional infrastructure requirement. Therefore exceptional costs do not arise.
- No specific exceptional costs arise that are not covered in the Development Contributions Scheme
- The Applicant should not be required to pay any financial contribution.

6.2.5. No basis of the calculation of the special contribution set out in the conditions

- The conditions do not state the basis of the calculation of the special contribution set out.
- The 2007 Guidelines describe this as essential content of such conditions.
- It is not open to the Board to calculate a special condition based solely on what it considers to be fair or reasonable in all circumstances.
- The calculation of a special contribution must identify specific costs and comply with Guidelines and legal certainty. The basis of calculation is an essential element of the condition and Section 48 of the Planning and Development Act.
- A proposal that relies solely on the Board's judgment for fairness and reasonableness would not be permissible.

- The Board has not been provided with evidence of the proportion of the benefit of the proposed footpath compared to other existing residents in the area or future development sites.
- The Board has not been given any evidence of the extent to which the costs of the proposed footpath would be exceptional.
- The Appellants submit that the costs outlined in Conditions 26 and 27:
  - Are not due to exceptional infrastructure requirements, as the city's General Development Contribution Scheme already allocates €175m for pedestrian facilities.
  - Do not solely benefit the subject site, but rather a larger area of residents and landowners.
  - Lack explanation for the calculation of the financial contribution.
- Cork City Council is planning to improve road and pedestrian infrastructure in Kerry Pike, and the Applicants are willing to pay their fair share of the costs of these works.
- Condition No. 40 of the Planning Authority's decision requires the Applicant to pay approximately €170,000, in accordance with the Council's General Contribution Scheme. The payment will fund the proposed infrastructure works.
- The conditions that require the payment of special development contributions, in this case, amount to double charging, are inequitable and are not supported by the legislation governing such planning conditions. It is on this basis that this appeal is being made.
- The crux of the appeal revolves around whether the costs outlined in Condition Nos. 26 and 27 are considered specific exceptional costs as defined by Section 48(2)(c) and Section 48(12)(a) of the Planning and Development Act 2000 and are not covered under a general development contribution scheme.
- Section 48(17) of the PDA 2000 defines Public Infrastructure and Facilities. Footpaths, traffic calming measures, and road upgrades are already included in City Council's General Development Contribution Scheme, 2020.
- €17.5m is earmarked for the development of pedestrian facilities.

- The proposed conditions fail to show that specific exceptional costs giving rise to special development contributions are not already covered by the General Contribution Scheme.
- Existing businesses, community facilities, and residents along the public road will benefit from works covered under the proposed conditions.
- It cannot be argued that the works are solely beneficial to the subject development.
- No basis of calculation has been provided for how the costs are apportioned to the proposed development.
- It is unclear whether due cognisance has been given to the application of costs to other future development in the immediate area.
- The special development contributions as proposed by Cork City Council do not come within the scope of section 48(2) of the Planning and Development Act and therefore are unjustified.

#### 6.2.6. **Third-Party Appeal**

A third-party appeal was received from Frank O'Brien, who resides at Ballycannon, Kerry Pike in Cork and owns an 8-acre field adjoining the appeal site to the north. The following concerns are raised in the grounds of appeal:

- Condition No. 2 of the Planning Authority's decision is objected to as it removes a proposed access that is required for the use of the adjoining 8-acre field, which has been used by the Appellant safely since 1981.
- It is unreasonable for the proposed entrance to be removed as it is professionally designed and will have no impact on the estate.
- The entrance is located just before the estate road meets the public road.
- The Appellant's use of the farm access is small but important and will go unnoticed.
- In comparison, large, heavy refuse trucks will most likely be in and out of the estate 52 times each year.
- The estate roadway being moved south away from the northern boundary and the continuous line of houses proposed on the northern side make the entrance even

more necessary as it's the only possible position left to provide safe gradient access to the field.

- The previous full planning permission on the development site had a roadway running alongside the field and a farm access, setting a precedent for farm access to be allowed.
- The Irish Farmers Association supports the appeal.
- In the event of heavy rain, the nearest line of houses may be flooded from the Appellant's field, and remedial work and retaining structures will be essential. The Appellant cannot be held responsible for this.
- There are no spare car parking spaces for visitors to the 60 no. houses, which may lead to people parking on footpaths.
- The public green area needs to be larger as the houses have little space each.
- The absence of facilities such as a creche, shops, supermarket, doctor's surgery, chemist, and hairdressers in the village suggests that the new development may be too large.
- The position of the farmer and neighbour must be considered, as they will be the most affected by the possibility of trespass and anti-social behaviour doubling when the number of houses increases from 32 to 60.

6.2.7. Supporting documentation lodged with the appeal includes the following;

- Letter from the Irish Farmers Association, dated 13<sup>th</sup> January 2022, stating the following;
  - The Irish Farmers Association is writing in support of Mr. Frank O'Brien's planning appeal.
  - Agriculture is a vital component of Ireland's economy, contributing significantly to the country's GDP.
  - It is important to support Irish farmers as they face strong competition from imports and rising costs.



- Mr. O'Brien is a full-time farmer in Kerry Pike who sold 7 acres of his land for development, but he retained a contractual right of way to access the remaining 8 acres through the land that was sold.
  - Over the years, several successful planning applications have been made by O'Flynn Construction for the development of the land Mr. O'Brien sold.
  - However, the latest planning application granted by Cork City Council increased the number of houses on the plot from 32 to 60 and omitted the previously included farm entrance, citing the interest of orderly development and safety.
  - Mr. O'Brien believes that this decision is wholly unsatisfactory, as he has a contractual right to access his land through the new development to carry on his legitimate business of farming.
  - The proposed entrance would allow him to pass only one house while accessing his remaining land.
  - The Irish Farmers Association is in full support of Mr. O'Brien's appeal.
- Site layout plan of the proposed development, showing the farm access along the northern boundary.
  - Site layout plan of a previously permitted development showing the farm access along the northern boundary.
  - Map showing the Appellant's land ownership in Kerry Pike.
  - Schedule of Conditions attached to planning permission issued by Cork City Council under P.A. Ref. 21/40189.

### 6.3. Planning Authority Response

6.3.1. The Council's response is detailed in a report from the Development Contributions Section, as follows;

- Condition 26: A special contribution of €250,000 is required from the applicant for the construction of a new footpath connecting the proposed development to existing footpaths in Kerry Pike village, including associated drainage works and public lighting, in the interest of public safety.

- The proposed 2m footpath will cover a total distance of 730m, connecting the proposed development to Mitchell's Court.
- 500m of the footpath will be on the same side of the road as the development, and 230m will be on the opposite side of the road.
- The purpose of the footpath is to improve connectivity between the development and Kerry Pike Village, connecting to existing footpaths in the area.
- 10 public lights will be installed along with necessary drainage works.
- The map in the submission highlights the area where the footpath will be located.
- Additional works necessary but not covered by the special contribution include a junction realignment between Healy's Bridge and L2779 to improve visibility for motorists and pedestrians due to consistently high traffic volume.
- Kerry Pike Special Contribution Calculations:
  - Footpaths:
    - 2m footpath, 730m long, between proposed development and Mitchell's Court
    - 500m on one side and 230m on the other side of the road
    - Rate per meter length of 2m footpath: €120
    - Cost for footpath: €87,600
  - 10 public lights at €10,000 each: €100,000
  - Drainage, etc. €30,000
  - Design, planning & contract admin (20%): €43,520
  - Total cost: €261,120
  - Special contribution amount: €250,000
  - Cost per meter: €342.47
  - Cost per house: € 4,166.67
- The above breakdown does not include land acquisition or junction realignment costs, which will be borne by the Council.

- Pedestrians seeking to access Kerry Pike village on foot would need to pass through a section of the L2779 road if the development proceeded without the works described in condition 26.
- Photo submitted showing a view of the L2779 road from Mitchell's Court towards the development site.
- The City Council has made an effort not to burden the developer with excessive costs by excluding junction realignment from the requested special contribution and rounding down cost estimates.
- The requested amount of €250,000 is deemed an appropriate contribution to the exceptional costs the Council will incur in providing critical connectivity between the proposed development and Kerry Pike village.
- The process of seeking funds for the Kerry Pike connectivity upgrade is in the early stages.
- Approved funding to date includes NTA 2022 allocation of €75,000 for Kerry Pike works in 2022.
- The requested funding will be used to complete preliminary design and statutory processes, carry out Stage 1 Road Safety Audits, and identify and progress land acquisition requirements.
- It is expected that more funding will be made available in the future.
- The primary benefit of these works will be to significantly improve connectivity between the development and Kerry Pike village, with a risk to pedestrian safety if the development proceeds without these works.
- With 60 units in the development, it is anticipated that there will be daily foot traffic between the development and Clogheen Kerry Pike National School.
- While the Council is committed to upgrading connectivity in Kerry Pike, it is noted that the proposed development will increase demand on existing public infrastructure in the area.
- General contributions for roads/transport are used as capital for public infrastructure and facilities.

- Special contributions are still appropriate for developments that will significantly increase demand on services.
- Works specified in the special contribution must benefit the proposed development, as required by legislation.
- Section 48 (1) of the Planning and Development Act 2000 (as amended) stated.
- Condition No. 27 stated.
- The works required: controlled raised pedestrian crossing and associated traffic calming measures
- Purpose of the works: to provide safe access from the footpath associated with Condition 26 to the existing footpath south of the development
- Traffic calming measures, particularly road narrowing, will be required due to the high traffic levels and speed along the L2779
- The additional cost of traffic calming measures will be borne by the local authority
- The exact location of the crossing is not yet agreed upon, but the aim is to position it where there are the best sight lines in both directions and as close to the entrance of the development as feasible
- The costing of the special contribution is based on an estimate from the end of 2020 for a new crossing (without a raised table) at Assumption Road, which totaled €82,301.57 (€54,253.90 + 1/3 of Preliminary Costs of €84,143.00)
- The Council has made a conscious effort to be conservative in their calculation of the special contribution and not pass the entire financial burden of these works on to the developer
- Anticipated that the true cost of the works required will be substantially higher with the addition of the raised table and necessary traffic calming measures, with the balance being borne by the Council
- The Council has requested that the developer pays a reasonable proportion towards the works that will specifically benefit the development.
- A crossing is needed near the proposed development for residents to safely cross and access Kerry Pike Village.

- The location of the development necessitates a crossing in the interest of safety, even though further connectivity works are planned for the area.
- As the development will be the primary beneficiaries of the crossing, it is appropriate for the developer to contribute towards the exceptional costs incurred by the Council in facilitating the crossing.
- Summary provided of the costs associated with the construction of Assumption Road, broken down into different categories (amount and percentage):
  - Site clearance: €325.00 (0.60% of total)
  - Earthworks: €3,712.00 (6.84% of total)
  - Drainage and service ducts: €8,758.00 (16.14% of total)
  - Pavements: €16,494.80 (30.40% of total)
  - Kerbs, footways and paved areas: €3,210.00 (5.92% of total)
  - Traffic signs and road markings: €8,652.00 (15.95% of total)
  - Electrical work for road lighting and traffic signs: €3,584.10 (6.61% of total)
  - Structures designed by the contractor: €3.00 (0.01% of total)
  - CCTV survey of road drainage systems: €550.00 (1.01% of total)
  - Fencing and environmental noise barriers: €2,400.00 (4.42% of total)
  - Structural concrete: €1,315.00 (2.42% of total)
  - Brickwork, blockwork and stonework: €5,250.00 (9.68% of total)

Grand Summary - of the total costs associated with the construction of Assumption Road, broken down by parts:

- PART 1 - Preliminaries: €84,143.00 (33.37% of total)
- PART 2 - Blackrock Road: €68,001.80 (16.57% of total)
- PART 3 - Linden Avenue: €45,784.00 (18.16% of total)
- PART 4 - Assumption Road: €54,253.90 (21.51% of total)

## 6.4. Observations

6.4.1. A third-party observation was received from the Clogheen / Kerry Pike Community Association of the Community Centre, Kerry Pike. The issues raised are summarised as follows;

- Concerns were previously raised in a submission to Cork City Council on the 14<sup>th</sup> June 2021, which will be considered as part of the assessment.
- The reason for not appealing the Grant of Planning was due to the contribution imposed on the Developer towards pedestrian safety through footpaths and traffic calming measures.
- The Developer, O'Flynn Construction, will benefit substantially from the proposed new Planning Permission by almost doubling the number of units on the site.
- Barry & Associates Consulting Engineers, on behalf of the Applicant, stated that any deficiencies in existing infrastructure beyond the proposed pedestrian crossing to existing footpath infrastructure are outside the control of the Applicant, and improvements can only be reasonably completed by the Local Authority.
- The Developer's submission also states that a contribution to the cost of such improvements can be levied on the Applicant by the Local Authority by way of planning levies.
- The Developer appears unwilling to make any contribution towards critical and essential traffic calming and footpaths.
- The area around the proposed development lacks a footpath that would allow pedestrians to safely access the amenities and facilities in Ballycannon Park, including the National School, GAA Pitch, Tennis Court, Walkway, Ravenscourt Garden Centre & Cafe, The Rest Bar, and RAJ Restaurant. This poses a significant danger to children walking to school and all pedestrians.
- The Association notes that there is no footpath serving the three main business premises in the village, including Ravenscourt Garden Centre & Café, The Rest Bar, and the RAJ Indian Restaurant, which poses a hazard to pedestrians and is the area with the most foot traffic.

- The proposed development will add an additional 60 houses to the area, which will substantially increase traffic volumes in this already dangerous area for pedestrians.
- New residents of the development will be unable to safely commute to the village without motor vehicles.
- The Association believes that without adequate infrastructure in place, the proposed development is premature and will exceed the maximum number of new units permitted under the Local Area Plan (LAP), which would be contrary to proper planning and sustainable development of the area.

## 6.5. Applicant's Response

6.5.1. Coakley O'Neill Town Planning Ltd. responds to the Planning Authority's submission in response to the grounds of appeal on behalf of the Applicants O Flynn Construction (Co.) Unlimited Company, as follows;

- Cork City Council's submission outlines their plans to develop public infrastructure in Kerry Pike and enhance connectivity in the village, using €75,000 funding from the NTA to commence preliminary design.
- The submission argues that a special contribution is appropriate for developments that significantly increase demand on services and benefit from the works specified, even if the Roads/Transport element of the general contribution is applied as capital for public infrastructure and facilities.
- However, the submission does not explain how the condition meets the terms of section 48(2)(c) of the legislation, which requires the costs demanded to be specific and exceptional and not covered by the Council's current General Contribution Scheme.
- The Council's argument that "developments which will significantly increase demand on services" warrant a special development contribution conflicts with legislation.
- The applicants have agreed to pay a fair and equitable share of the costs for the provision of a public footpath and crossing, which will benefit the proposed development.

- The Planning Authority's decision to grant permission includes a condition (No.40) that levies approximately €170,000 for the proposed public footpath works, in accordance with the provisions of the Council's General Contribution Scheme.
- The Applicant argues that imposing special development contributions in this instance amounts to double charging, is not equitable, and is not supported by the legislation governing such planning conditions.
- The proposed public infrastructure works in Kerry Pike, including the public footpath identified in Condition No.26 of the City Council's permission, will benefit the entire village and are being partially funded by the NTA.
- The works identified in the special contribution conditions are considered public infrastructure and facilities according to S.48(17) of the Planning and Development Act 2000 (as amended) and are already included in the Council's General Development Contribution Scheme, which allocates €17.5m in expenditure for the development of pedestrian facilities.
- The Council's submission fails to provide a clear rationale for why the costs associated with the works identified are specific and exceptional, and therefore merit the imposition of a special contribution on the grant of permission.
- The Board has not been provided with any evidence of the extent to which the costs of the proposed works will be exceptional.
- The Council now provides indicative costings of the works involved to support the imposition of Condition No.27, but fails to provide a clear rationale as to why these costs are specific or exceptional.
- The Council will bear the balance of the true costs of the works, which it suggests will be substantially higher.
- Special development contributions proposed by Cork City Council are unjustified as they do not come within the scope of section 48(2)(c) of the PDA 2000.

## 6.6. Further Responses

- 6.6.1. Further to the Planning Authority's submission and Applicant's response, a further response was received from the Clogheen / Kerry Pike Community Association. This submission fully supports the position of Cork City Council in relation to the Special



Contributions applied to the grant of permission. The submission states that it is only right, proper and fair that the developer makes reasonable contributions, as attached to the grant of permission, towards the critical and essential traffic calming and footpath, which are required in this area of the village.

## **7.0 Assessment**

7.1. I have reviewed the proposed development and the correspondence on the file. I note the Planning Authority was satisfied that the proposed development accords with the policies, objectives and residential standards of the Cork City Council Development Plan. I am satisfied that the proposed development is acceptable in principle, in accordance with the zoning objective of the site. Having examined the application details and all other documentation on file, I consider that the main issues in this appeal are those raised in the grounds of appeal. I am satisfied that all other issues were fully addressed by the Planning Authority and that no other substantive issues arise. The main issues in the appeal are as follows;

- Development Contributions
- Agricultural Access to Adjoining Lands
- Other Issues.

These issues are addressed below accordingly.

## **7.2. Development Contributions**

7.2.1. The Applicant has submitted a first-party appeal against the development contributions imposed by the Planning Authority under Conditions Nos. 26 and 27 of the grant of permission for the proposed development. Under Section 48(10)(b) of the Planning and Development Act, 2000 (as amended), an appeal may be brought to the Board where an applicant for planning permission considers that the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the Planning Authority. Condition Nos. 26 and 27 of the grant of permission require the following;

**Condition No. 26:** A special contribution of €250,000 shall be paid by the Applicant for construction of a new footpath to connect from the proposed development to existing footpaths in Kerry Pike village together with associated drainage works and public lighting. Reason: In the interest of public safety.

**Condition No. 27:** A special contribution of €100,000 shall be paid by the Applicant for the construction of a controlled raised pedestrian crossing and associated traffic calming measures to safely connect the proposed development to the existing footpath south of the L2779. Reason: In the interest of public safety.

7.2.2. The applicant's grounds of appeal regarding this issue are detailed in Section 6.2.2 above and can be summarised as follows;

- Section 48(2)(c) of the PDA 2000 allows planning authorities to require special contributions for specific exceptional costs related to public infrastructure and facilities.
- The Development Management Guidelines 2007 require the basis of exceptional cost calculations to be explained in a condition and the apportionment to the specific development to be transparent.
- The Development Contributions Guidelines 2013 specify that special contributions are for the provision of particular public infrastructure or facilities that benefit the specific requirements of the proposed development.
- The Planning Authority reports did not identify or address the exceptionality of the intended public footpath provision for the proposed development. Accordingly, there is no basis upon which a special contribution condition can be imposed on the permission of the proposed development.
- The provision of public footpaths is a basic norm of proper planning and sustainable development in any urban area, and its cost cannot be exceptional.
- The conditions do not state the basis of the calculation of the special contribution set out.
- The calculation of a special contribution must identify specific costs and comply with Guidelines and legal certainty.

- The Board has not been provided with evidence of the proportion of the benefit of the proposed footpath compared to other existing residents in the area or future development sites.
- The Appellant submits that the costs outlined in Condition Nos. 26 and 27 are not due to exceptional infrastructure requirements, as the Cork City Council's General Development Contribution Scheme already allocates €17.5m for pedestrian facilities, do not solely benefit the subject site but rather a larger area of residents and landowners, and lack explanation for the calculation of the financial contribution.
- Condition No. 40 of the Planning Authority's decision requires the Applicant to pay approximately €170,000 in accordance with the Council's General Contribution Scheme.
- In this case, the conditions that require the payment of special development contributions amount to double charging, are inequitable and are not supported by the legislation governing such planning conditions. It is on this basis that this appeal is being made.
- The crux of the appeal revolves around whether the costs outlined in Condition Nos. 26 and 27 are considered specific exceptional costs as defined by Section 48(2)(c) and Section 48(12)(a) of the Planning and Development Act 2000 and are not covered under a general development contribution scheme.

7.2.3. Having regard to the foregoing, it is my view that the main issues raised in the grounds of appeal are (i) the exceptionality of the intended public footpath provision and (ii) the basis of the calculation of the special contributions.

7.2.4. Section 48 (1) of the Planning and Development Act 2000 (as amended) sets out how

“A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities)”.

7.2.5. Sections 48.(2)(c) states that

“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”.

7.2.6. Sections 48.(17) specifies “*public infrastructure and facilities*” as meaning

(a) the acquisition of land,

(b) the provision of open spaces, recreational and community facilities and amenities and landscaping works,

(c) the provision of roads, car parks, car parking places, surface water sewers and flood relief work, and ancillary infrastructure,

(d) the provision of bus corridors and lanes, bus interchange facilities (including car parks for those facilities), infrastructure to facilitate public transport, cycle and pedestrian facilities, and traffic calming measures,

(e) the refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, surface water sewers, flood relief work and ancillary infrastructure,

(f) the provision of high-capacity telecommunications infrastructure, such as broadband,

(g) the provision of school sites, and

(h) any matters ancillary to paragraphs (a) to (g).]

“special contribution” is defined as meaning “a special contribution referred to in subsection (2)(c)”.

7.2.7. As detailed previously, the relevant Conditions imposed by the Planning Authority in the grant of permission are as follows;

**Condition No. 26** A special contribution of €250,000 shall be paid by the Applicant for construction of a new footpath to connect from the proposed development to existing footpaths in Kerry Pike village together with associated drainage works and public lighting. Reason: In the interest of Public Safety.

**Condition No 27** A special contribution of €100,000 shall be paid by the Applicant for the construction of a controlled raised pedestrian crossing and associated traffic calming measures to safely connect the proposed development to the existing footpath south of the L2779. Reason: In the interest of Public Safety.

**Condition No. 40** Prior to the commencement of the proposed development, the Developer shall pay or enter into an agreement with the Planning Authority to pay a contribution to Cork City Council in respect of the following classes of public infrastructure and facilities benefiting development in the City of Cork and that is provided or that is intended to be provided by or on behalf of Cork City Council, in accordance with the General Development Contributions Scheme ("the GDCS scheme"):

Class 1 - Roads, Transportation Infrastructure and Facilities

Class 2 - Water and Drainage Infrastructure and Facilities excluding Water and Wastewater

Class 3 - Parks, Recreation, Amenity and Community Facilities

The present value of the contribution as determined under the GDCS made by Cork City Council on the 14th September, 2020 is €169951.05, which sum is subject to indexation in accordance with the Consumer Price Index prevailing at the date of payment and subject further to such exemptions or reductions as apply to the proposed development having regard to the provisions of Tables 5 and 6 of the GDC Scheme.

Reason: To comply with the General Development Contribution Scheme 2020-2022, which was adopted by Cork City Council on 14<sup>th</sup> September, 2020, and in the interests of the proper planning and sustainable development of the area.

7.2.8. Cork City Council's current General Contribution Scheme 2023-2029 & Supplementary Development Contribution Scheme 2023-2029 came into effect on the 13<sup>th</sup> February, 2023. Section 1.9 of the Scheme refers to 'Special Development Contributions' and states the following;

A special contribution may be imposed under Section 48(c) of the Act where exceptional costs, not covered by the Scheme, are incurred by the Council in

the provision of a specific infrastructure or facility (the particular works will be specified in the planning conditions when special contributions are levied).

Only developments which will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to the An Bord Pleanála (“the Board”).

- 7.2.9. It should be noted that the subject application permitted by Cork City Council was assessed under the Cork City Councils’ General Contribution Scheme 2020-2022 & Supplementary Development Contribution Scheme 2020-2022, which was adopted by the Council on the 14<sup>th</sup> September 2020. Section 10 of this scheme refers to ‘Special Development Contributions’ where the same terms apply to that under the current General Contribution Scheme 2023-2029. Appendix 1 of the Cork City Council’s General Contribution Scheme 2020-2022 sets out specific estimated costs of €17.5 million for pedestrian facilities, under classes of infrastructure referring to Roads/Transportation Infrastructure and Facilities. However, Appendix 1 of the current Cork City Councils’ General Contribution Scheme 2023-2029 does not explicitly make provision for pedestrian facilities and instead makes provision for transport and mobility with estimated costs of €10,225,000.00 and streets / public realm infrastructure with estimated costs of €336,173,426.00. For the benefit of the Board, I have provided copies of both below.

**Table 1: General Development Contribution Scheme 2020-2022 (Appendix1)**

<b>Classes of Infrastructure</b>	<b>Estimated Costs</b>
<b>Park, Recreation, Amenity &amp; Community Facilities</b>	€m
Parks (Provision & Upgrading)	58
Amenity Walks (Provision & Upgrade)	10
Sports Facilities	30
Arts & Cultural Facilities	31
Amenities & Facilities	20
Libraries	25
Archives	3.2
Museum	1
Community Facilities	10
Recycling Infrastructure including Civic Amenity Sites /Bottle banks	3
<b>Sub Total</b>	<b>191.2</b>
<b>Stormwater Management Infrastructure &amp; Facilities</b>	
<b>Sub Total</b>	<b>10.6</b>
<b>Roads/ Transportation Infrastructure &amp; Facilities</b>	
Pedestrian Facilities	17.5
Quay Walls & Flood Related Works	20
Public Transport Initiatives	70
City Centre Management Strategy	25
Cycle Network Improvements	10.25
Parking Improvements	10
Public Lighting	35
Traffic Signals	13
Bridges	132.5
Urban Streets Upgrades	38.8
Major Roads Upgrades	32.3
<b>Sub Total</b>	<b>404.35</b>
<b>Total: All Classes of Infrastructure &amp; Facilities</b>	<b>606.15</b>

**Table 2: General Development Contribution Scheme 2023-2029 (Appendix1)**

<b>Classes of Infrastructure</b>	<b>Estimated Costs</b>
<b>Parks, recreation, amenity and community facilities</b>	
Parks Creation and Amenities	€148,000,007.00
Playgrounds and MUGA	€500,000.00
Active Recreation Infrastructure Study Shortfall Projects	€30,000,000.00
Culture Facilities	€21,049,898.00
Community Hubs	€21,120,000.00
Libraries	€44,501,367.98
Community Facilities	€20,072,500.00
<b>Sub Total</b>	<b>€285,243,772.98</b>
<b>Stormwater Management</b>	
<b>Sub Total</b>	<b>€34,700,000.00</b>
<b>Roads, transportation infrastructure and facilities</b>	
Car Parks	6,580,000.00
Transport and mobility	€10,225,000.00
Streets / public realm	€336,173,426.00
<b>Sub Total</b>	<b>€352,978,426.00</b>

7.2.10. Having regard to the provisions under Sections 48(17) of the Planning and Development Act 2000 (as amended), it is my view that the construction of a new footpath to connect the proposed development to existing footpaths in Kerry Pike village together with associated drainage works and public lighting and the construction of a controlled raised pedestrian crossing and associated traffic calming measures to safely connect the proposed development to the existing footpath south of the L2779 would comprise public infrastructure. The question, therefore, is whether or not this public infrastructure would comprise specific exceptional costs not covered by the Council's Development Contributions Section in respect of public infrastructure and facilities which benefit the proposed development, as set out under Section 48 (2)(c) of the Planning and Development Act 2000 (as amended).

7.2.11. The Council's Development Contributions Section response to the Applicant's grounds of appeal is detailed in Section 6.3 above. In summary, it is stated that Condition No. 26 requires a special contribution of €250,000 for the construction of a new 2m wide footpath, covering a total distance of 730m to connect the proposed development to existing footpaths in Kerry Pike village, including necessary drainage works and the installation of 10 no. public lights in the interest of public safety. The footpath will be 500m on the northern side of the road (same as the proposed development) and 230m



on the other side of the road. The primary aim of the footpath is to improve connectivity between the proposed development and Kerry Pike village. The total cost breakdown of the special contribution is €261,120, which includes the cost of the footpath, public lights, drainage works, design, planning & contract administration. The cost per meter of the footpath is €342.47, and the cost per house is €4,166.67.

7.2.12. The Council notes that the above costs do not include land acquisition or junction realignment costs between Healy's Bridge and the L2779, which will be borne by the Council. The Council highlight how the primary benefit to undertaking these works will be to significantly improve connectivity between the proposed development and Kerry Pike Village. If the proposed development were to proceed without these works, there would be a significant risk to anyone travelling between the proposed development and Kerry Pike Village on foot. Given the size of the proposed development, it is anticipated that there will be daily foot traffic between the proposed development and Clogheen Kerry Pike National School. The Council notes that the developer will not bear excessive costs, and the requested special contribution amount is considered appropriate.

7.2.13. In addition to the footpath, the Council has requested a controlled raised pedestrian crossing and associated traffic calming measures to provide safe access from the footpath associated with Condition No. 26 to the existing footpath south of the development. The estimated cost of the crossing is €82,301.57, and the exact location is not yet agreed. However, the aim of the Council is to position it where there are the best sight lines in both directions and as close to the entrance of the development as feasible. The additional cost of traffic calming measures will be borne by the local authority, and the Council has made a conscious effort not to pass the entire financial burden of these works on to the developer.

7.2.14. The Council expects that the primary benefit of these works will be to significantly improve connectivity between the development and Kerry Pike village, with a risk to pedestrian safety if the development proceeds without these works. The Council consider the proposed development will increase demand on existing public infrastructure in the area, and the general contributions for roads/transport are used as capital for public infrastructure and facilities. However, special contributions are still appropriate for developments that will significantly increase demand on services.

- 7.2.15. The Council has requested that the developer pays a reasonable proportion towards the works that will specifically benefit the development. As the development will be the primary beneficiaries of the crossing, the Council consider it is appropriate for the developer to contribute towards the exceptional costs incurred by the Council in facilitating the crossing, even though further connectivity works are planned for the area.
- 7.2.16. The Applicant's response to the Planning Authority's submission is detailed in Section 6.5 above. I also note and consider the comments and issues raised in the observation received from the Clogheen / Kerry Pike Community Association, as detailed in Sections 6.4 and 6.6 above.
- 7.2.17. Having regard to the foregoing and the documentation on file, it is my view that while the Council has detailed the costs associated with Condition No. 26 and the proposed footpath, it has not adequately demonstrated that these costs are exceptional and specific to the development site and not covered under the General Development Contribution Scheme 2023-2029. While the Council has noted that pedestrians seeking to access Kerry Pike village on foot would need to pass through a section of the L2779 road without the works described in Condition No. 26, it has not provided evidence of the proportion of the benefit of the proposed footpath compared to other existing residents in the area or permitted / future development sites. As detailed on the map submitted, the footpath on the northern side serves almost the entire length of Kerry Pike village, starting from the appeal site. I refer the Board to other existing residential and commercial development in Kerry Pike along the L2779 road and recently permitted development to the northwest and southeast of the appeal site along the L2779 where existing and future pedestrians would use the proposed footpaths. In the absence of this evidence, it is my view that the special contribution costs imposed under Condition No. 26 are unsubstantiated. As stated in the Development Contributions, Guidelines for Planning Authorities 2013 (pg. 5), only developments that will benefit from the public infrastructure or facility in question should be liable to pay Special Development Contributions.
- 7.2.18. Furthermore, while the Council has stated that the proposed development will increase demand on existing public infrastructure in the area and that special contributions are appropriate for developments that will significantly increase demand on services, the Council has not adequately addressed whether the conditions that require the

payment of special development contributions in this case amount to double charging, having regard to the development contribution costs of €169,951.05 imposed under Condition No. 40. As stated in the Development Contributions, Guidelines for Planning Authorities 2013 (pg. 11), the practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner.

7.2.19. Notwithstanding this, I consider the proposed construction of a controlled raised pedestrian crossing and associated traffic calming measures would specifically benefit the proposed development and significantly improve connectivity between the development site and Kerry Pike village and improve pedestrian safety. It is my view that such work are specific and exceptional to the development site and therefore warranted under Condition No. 27 imposed by the Planning Authority. The Council has provided a cost breakdown of the Special Contribution for the proposed pedestrian crossing and associated traffic calming measures based on an estimate from 2020 for a new crossing without a raised table at Assumption Road. In the absence of evidence to demonstrate otherwise, I consider these costings transparent, fair and equitable for the purposes of estimating the special contributions imposed under Condition No. 27 and would not amount to double charging.

7.2.20. In conclusion, I recommend that Condition No. 26 imposed by the Planning Authority should be REMOVED and that the special development contribution requirements under Condition No. 27 be RETAINED.

### **7.3. Agricultural Access to adjoining lands**

7.3.1. The third-party Appellant has raised an objection to the proposed development on the basis that Condition No. 2 of the Planning Authority's decision removes a proposed farm access required for the use of the adjoining 8-acre field, which has been safely used by the Appellant since 1981. The Appellant contends that the proposed entrance is professionally designed, has no impact on the estate, and is positioned just before the estate road meets the public road. The Appellant highlights the significance of their use of the farm access, which they consider to be small but important and likely to go unnoticed. Furthermore, the Appellant points out that large, heavy refuse trucks are expected to be in and out of the estate 52 times each year. The Appellant emphasises that the entrance is essential due to the estate roadway being relocated to the south,

away from the northern boundary, and the proposed continuous line of houses on the northern side of the estate road. The Appellant draws attention to the fact that the previous full planning permission on the development site had a roadway running alongside the field and a farm access, which established a precedent for farm access to be allowed.

7.3.2. The Planning Authority, in its initial report and in response to the Council's Parks Department report, sought additional information from the Applicant. Specifically, the Authority requested that the proposed farm access gate be relocated to the western boundary, independent of the residential access road. In response to the Applicant's submission of further information, the Planning Authority report references the Council's Parks Report, which expresses concern over the Applicant's reluctance to relocate the access gate to agricultural land. The Parks Report argues that such heavy machinery would conflict with vehicular traffic accessing homes, posing a significant safety risk to children at play in the residential area. According to the report, the fact that the farmer's access works well is irrelevant to the proposed development. The Parks Report states that the western area of the proposed residential access road provides sufficient space to accommodate an access road to the adjoining field, with both access roads sharing the entrance. The Planning Authority requested that the Applicant address this issue by clarifying further information. The Applicant submitted a revised proposal that eliminates one house (unit no. 2) from the original site layout plan. The Applicant contends that the revised proposal does allow for the possibility of a separate farm access along the western boundary of the site. However, the Applicant notes that the farmer of the adjoining land has expressed concern that this access is too steep for machinery access. The farmer prefers that the access be located as per his contractual agreement, which the Planning Authority has approved under two previous planning permissions at this site.

7.3.3. The Applicant acknowledges that, with the revised design omitting house no. 2, only one house would have an entrance off the road that would be used by any agricultural vehicles. Nonetheless, the Applicant argues that, for all practical purposes, the section of the road up to the farm access is no different in terms of its width and the number of entrances located off it than the existing main public road that the development accesses from.

- 7.3.4. In response to the clarification of further information submitted, the Planning Authority references the Council's Parks Department report, which concluded that the revised farm access is unacceptable. The Parks Department report recommends that access for farm machinery and stock should be independent of the estate access road. The report observes that the existing access to the field runs along the western boundary, separate from the access road to the estate. The report further notes that this access could be upgraded to address any concerns regarding gradients. The Planning Authority concurs with this recommendation and, on this basis, imposed Condition No. 2. This condition requires that the Applicant submit revised plans omitting the farm access through the proposed estate to the Planning Authority for written approval prior to the commencement of development.
- 7.3.5. To establish whether or not the Council was correct in imposing Condition No. 2, several issues need to be addressed. Firstly, the safety of the agricultural access along the western boundary, as recommended by the Council's Parks Department, must be assessed, particularly in relation to the gradient along the western boundary. Secondly, the impact of the proposed access to the adjoining field through the estate on vehicular and pedestrian safety must be evaluated.
- 7.3.6. To establish a safe and practical access route for agricultural vehicles, it is important to consider the gradient along the western boundary of the site. The proposed agricultural access route recommended by the Council's Parks Department would require agricultural vehicles to traverse a slope that rises from 65.7m OD along the road entrance to 75m OD at the northwestern corner of the site over a distance of c. 63m. This yields a gradient of 14.76% which is considered steep. Such a steep gradient poses a significant safety risk for vehicles, especially during inclement weather conditions. Furthermore, the access route along the western boundary is currently unsurfaced, which means that it is not suitable for heavy agricultural vehicles. It should also be noted that the access route, as stipulated by the Council's Parks Department, has not been subject to review by the Council's Transportation Department for vehicular safety and accessibility.
- 7.3.7. It is my view that the proposed agricultural access to the adjoining field through the proposed estate is unlikely to have an adverse impact on vehicular and pedestrian safety, provided that the access route is not used for the movement of livestock along the road. Only one house within the proposed estate would have an entrance off the

road that would be used by any agricultural vehicles. Furthermore, it is noted that the proposed farm access route is segregated from the estate route for a distance of c. 45m, which negates the potential for any conflicts between agricultural and residential traffic at this location. Moreover, the frequency of trips to and from the adjoining field would be limited due to the low-intensity agricultural use of the field. Therefore, it is my view that the potential for any road safety hazards/conflicts would be minimal. In consideration of the proposal submitted and revised by way of further information, the Council's Area Engineer's report and the Council's Traffic Regulation and Safety Report outline no objections to the proposed farm access route through the estate subject to standard conditions. These reports provide a clear indication that the proposed shared access route has been thoroughly evaluated and deemed acceptable in terms of road and pedestrian safety. I also note that permission was previously granted for gated farm access along the northern boundary from the proposed estate road, as granted permission under P.A. Ref. 18/6729. On this basis, and in the absence of evidence to demonstrate otherwise, I recommend that Condition No. 2 be removed and replaced with a Condition requiring that the access road and farm access route through the estate shall not be used for the physical movement of livestock to or from adjoining land, in the interest of vehicular and pedestrian safety.

#### **7.4. Other Issues**

- 7.4.1. The third-party Appellant has raised additional issues related to the proposed development. One concern is the potential flooding of nearby houses during heavy rainfall from the appellant's field, which may require remedial work and retaining structures. The Appellant asserts that they cannot be held responsible for the flooding. Additionally, the Appellant highlights the lack of available parking spaces for visitors to the 60 proposed houses, which may result in people parking on footpaths. The Appellant also notes that the public green area should be larger, as the houses themselves have limited space. Moreover, the Appellant points out the absence of essential facilities such as a creche, shops, supermarket, doctor's surgery, chemist, and hairdressers in the Kerry Pike village, which could suggest that the proposed development is too large. Finally, the Appellant has emphasized the importance of considering the position of the neighbouring farmer, who will likely be most affected by the possibility of trespass and anti-social behaviour, which could double when the

number of permitted houses increases from 32 to 60 (reduced to 59 by way of further information response).

- 7.4.2. Regarding the issue of flooding, it is important to note that the site is not located in a flood zone, as detailed on the OPW Flood Maps. The Council's Drainage Section Report dated 05/07/2021 refers to the issue of flood risk and confirms the Applicant's assessment of flood risk as per Section 6 of the Engineers Report submitted is acceptable, subject to conditions. The Planning Authority has imposed specific conditions relating to drainage, stormwater sewers, and swales, including Conditions Nos. 6, 7, 8, 9, 10, 11, 12, and 13. It is my view that these conditions are appropriate, and in the absence of evidence to demonstrate otherwise, the risk of flooding to the proposed development is low. Therefore, permission should not be refused on this basis.
- 7.4.3. In relation to parking, the site is designated as Car Parking Zone 4, according to Table 4.6 of the Cork City Council Development Plan 2022-2028. The proposed development provides 2 no. car parking spaces per unit, as stated in the further information response report prepared by Coakley O'Neill Planning Consultants. This complies with the Maximum Car Parking Standards set out in Table 11.13 of the Cork City Council Development Plan, which requires 2 no. car parking spaces for 3/3+ residential dwellings plus a maximum of 0.25 Spaces for visitor parking. While not explicitly stated or demarcated, adequate on-street parking is available within the proposed residential estate. The Council's Traffic: Regulation and Safety report deemed the car parking provided for the proposed development acceptable. On this basis, I am satisfied that adequate car parking is provided within the proposed development in accordance with the Development Plan car parking standards.
- 7.4.4. Regarding the issue of public open space, the location of open space within the proposed development is detailed in Dwg No. 20034-1014-1. The stated total open space is 6,528.11 sq.m. and flat open space is 2,855.35 sq.m. This constitutes 23.7% and 10.3%, respectively, of the overall site, which has a stated area of 2.75 hectares. This complies with Section 11.112 of the Cork City Council Development Plan, which requires 15% open space for residential development on greenfield sites.
- 7.4.5. Regarding the Appellant's concerns regarding trespassing and anti-social behaviour on adjoining land, these are civil issues and are outside the planning code. Therefore,

these concerns do not provide a valid basis for refusing permission for the proposed development.

- 7.4.6. In conclusion, based on the information provided, I recommend that the proposed development should not be refused permission in relation to the Appellant's concerns regarding flood risk, open space provision, car parking provision, and trespassing / antisocial behaviour.

## **7.5. Screening for Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the absence of a clear, direct pathway to the nearest European site, the Cork Harbour SPA (Site Code: 004030), approx. 10 km southeast of the site, no Appropriate Assessment issues arise, and it is not considered that the development to be retained would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. I recommend that permission be granted, subject to conditions, for the reasons and considerations below.

## **9.0 Reasons and Considerations**

- 9.1. Having regard to the provisions of the Cork City Council Development Plan 2022-2028, the 'ZO 01 Sustainable Residential Neighbourhoods' zoning of the site, the pattern of development in the area, and the layout and design of the proposed development, it is considered that, subject to compliance with the Conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and would be acceptable in terms of pedestrian and traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.



## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 03<sup>rd</sup> day of September 2021 and the 26<sup>th</sup> day of November 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity</p>
2.	<p>The permitted development is for the construction of 59 no. houses only (14 no. four-bedroom houses, 37 no. three-bedroom houses and 8 no. two-bedroom houses) on the subject site.</p> <p><b>Reason:</b> In the interest of clarity.</p>
3.	<p>The access road and farm access route through the estate shall not be used for the physical movement of livestock to or from adjoining land.</p> <p><b>Reason:</b> in the interest of vehicular and pedestrian safety.</p>
4.	<p>The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.</p> <p><b>Reason:</b> To prevent flooding and in the interests of sustainable drainage.</p>
5.	<p>(a) All foul sewage and soiled water shall be discharged to the public foul sewer. Details of proposals to discharge and connect to the existing wastewater network in Kerry Pike, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of any development on the site.</p>

	<p>(b) Only clean, uncontaminated stormwater shall be discharged to the surface water drainage system.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>Prior to the commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann (formerly Irish Water).</p> <p><b>Reason:</b> In the interest of public health</p>
7.	<p>The site access arrangements and the internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, shall be in accordance with the detailed requirements of the planning authority for such works. Details of the site access arrangements and the internal road network serving the proposed development shall be submitted to and agreed in writing by the planning authority prior to the commencement of development.</p> <p>All residential parking spaces shall be constructed so as to be capable of accommodating future electric vehicle charging points with a minimum 10% of spaces to be fitted with functional electric vehicle charging points.</p> <p><b>Reason:</b> In the interests of amenity and of pedestrian and traffic safety.</p>
8.	<p>Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
9.	<p>The site shall be landscaped, generally in accordance with the Landscape Masterplan and Landscape Information Drawings submitted to the Planning Authority on the 26th day of November 2021, in accordance with the detailed requirements of the planning authority. Detailed landscaping proposals shall be submitted to, and agreed in writing with the planning authority, prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity and biodiversity.</p>

10.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables crossing or bounding the site shall be relocated underground as part of the site development works, at the developer's expense.</p> <p><b>Reason:</b> In the interests of visual and residential amenity.</p>
11.	<p>(a) The areas of the development for Taking in Charge shall be agreed in writing with the planning authority, prior to the commencement of development on site.</p> <p>(b) All areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.</p> <p>(c) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.</p> <p><b>Reason:</b> To provide for the satisfactory future maintenance of the development in the interest of residential amenity.</p>
12.	<p>Proposals for the development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs and numbers shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.</p> <p><b>Reason:</b> In the interest of urban legibility, and to ensure the use of locally appropriate place names for new residential areas.</p>

13.	<p>No residential unit shall be occupied until all roads, footpaths, public lighting, underground services, car parking and landscaping have been completed to the satisfaction of the Planning Authority.</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>
14.	<p>All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>
15.	<p>Prior to the commencement of any works associated with the development hereby permitted, the developer shall submit a detailed Construction Environmental Management Plan (CEMP) for the written agreement of the planning authority. The CEMP shall incorporate details for the following: collection and disposal of construction waste, surface water run-off from the site, on-site road construction, and environmental management measures during construction, including working hours, noise control, dust and vibration control and monitoring of such measures. A record of daily checks that the construction works are being undertaken in accordance with the CEMP shall be kept at the construction site office for inspection by the planning authority. The agreed CEMP shall be implemented in full in the carrying out of the development.</p> <p><b>Reason:</b> In the interest of residential amenities, public health and safety.</p>
16.	<p>Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. These measures shall be implemented as part of the development.</p> <p><b>Reason:</b> In the interest of wildlife protection.</p>
17.	<p>Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning</p>

	<p>authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any unit.</p> <p><b>Reason:</b> In the interests of residential amenity and public safety.</p>
18.	<p>Site development and building works shall be carried out only between the hours of 0700 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
19.	<p>(i) Noise during site clearance and construction shall not exceed 65 dB(A) and the peak noise shall not exceed 75 dB(A) when measured at any point off site.</p> <p>(ii) Noise from the premises shall not exceed the background levels by more than 5 dB(A) during the period 0800-2200 and by more than 3 dB(A) at any other time when measured at any external position at a noise-sensitive premises.</p> <p>(iii) Prior to commencement of development the Applicant shall submit for the agreement of the Planning Authority the acoustic louvres in the openings of the plant rooms.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
20.	<p>Prior to the commencement of any house in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p>

	<p><b>Reason:</b> To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
21.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and 3 (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p><b>Reason:</b> To comply with the requirements of Part V of the Planning and Development Act 2000, as amended and of the housing strategy in the development plan for the area.</p>
22.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space 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 of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> To ensure the satisfactory completion of the development.</p>
23.	<p>A special contribution of €100,000 shall be paid by the Applicant for the construction of a controlled raised pedestrian crossing and associated</p>

	<p>traffic calming measures to safely connect the proposed development to the existing footpath south of the L2779.</p> <p><b>Reason:</b> In the interest of public safety.</p>
24.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

---

Brendan Coyne  
 Planning Inspector

14<sup>th</sup> March 2023