



An
Bord
Pleanála

Inspector's Report

ABP-313072-22

Development	Construction of dwelling house and all associated site works
Location	Derrymihan West, Castletownbere, Beara, Co. Cork
Planning Authority	West Cork County Council
Planning Authority Reg. Ref.	21606
Applicant(s)	John Brendan Harrington
Type of Application	Outline Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Appeal under S.48 (13)
Appellant(s)	John Brendan Harrington
Date of Site Inspection	None undertaken
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The site is located on the eastern approach to the town of Castletownbere in West Cork, approximately 50m to the west of the entrance to Dinish Island industrial estate. The site is located between two existing detached dwellings and can be classified as 'infill'. There is an existing footpath and public lighting on the road along the southern boundary of the site.
- 1.2. This is a first party appeal against a financial contribution condition which was attached to the Planning Authority's notification of intention to grant outline permission for the development of a house. As this is an appeal in respect of a condition requiring a financial contribution, the provisions of section 48 (13) of the Planning and Development Act 2000 apply and the Board is restricted to considering this matter alone and cannot consider the matter de novo. I have therefore confined my assessment to the condition in question.
- 1.3. Having regard to the nature of the appeal before the Board (i.e., a first party against a condition) and the information available on the file, a site inspection was not deemed necessary in this instance.

2.0 Proposed Development

- 2.1. On 3rd September 2021, outline planning permission was sought for the construction of a dwelling house. This included a new entrance, a 1m high wall along the southern boundary and connections to the public water and public sewerage systems.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 21st February 2022, the Planning Authority issued a notification of their intention to grant outline permission subject to 18 no. conditions. Condition no. 17 of the permission states:

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in

writing, the developer shall pay a special contribution of **€5,000.00** to Cork County Council, updated monthly in accordance with the Consumer Price Index from the date of grant of permission to the date of payment, in respect of specific exceptional costs not covered in the council's General Contributions Scheme, in respect of works to be carried out, for the provision of R-572 road and footpath improvement works as identified in the Castletownbere Transportation Study. The payment of the said contribution shall be subject to the following: -

(a) Where the works in question –

(i) are not commenced within 5 years of the date of payment of the contribution (or final instalment if paid by phased payment),

(ii) have commenced but have not been completed within 7 years of the date of payment of the contribution (or final instalment if paid by phased payment), or

(iii) where the Council has decided not to proceed with the proposed works or part thereof, the contribution shall, subject to paragraph (b) below, be refunded to the applicant together with any interest which may have accrued over the period while held by the Council.

(b) Where under sub-paragraphs (ii) and (iii) of paragraph (a) above, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

(c) Payment of interest at the prevailing interest rate payable by the Council's Treasurer on the council's General Account on the contribution or any instalments thereof that have been paid, so long and in so far as it is or they are retained unexpended by the Council.

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

3.2. Planning Authority Reports

3.2.1. Planning Reports

There are two Planning Reports on file dated 21st October 2021 and 21st February 2022, respectively. The Planning Officer in the initial report stated the principle of a dwelling house was originally accepted on this site in 2005 when two pairs of semi-detached houses were permitted. The report recommended further information be requested regarding a detailed landscaping plan and on an issue of compliance on the adjacent site, which is reflected in the decision of the Planning Authority.

Appropriate Assessment Screening was carried out and concluded that there is no likely potential for significant effects to any Natura 2000 site.

A second Planner's Report (dated 21st February 2022) refers to the further information submitted and considered that, having regard to the additional information, outline permission should be granted subject to 18 No. conditions.

3.2.2. Other Technical Reports

Area Engineer – No objection. Conditions recommended, including a condition requiring the payment of a special development contribution of €5,000.00 towards the costs of R-572 road and footpath improvement works identified in the Castletownbere Transportation Study.

4.0 Planning History

4.1. Appeal site:

05/370 – Permission granted for 4 houses

4.2. Adjacent site to the east:

10/370 – Permission granted for 1 house.

5.0 Policy Context

5.1. Planning and Development Act 2000, as amended

5.1.1. Section 48 of the Planning and Development Act 2000, as amended provides as follows:

48.—(1) 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).

(2) (a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

(c) 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.

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

(12) Where payment of a special contribution is required in accordance with subsection (2) (c), the following provisions shall apply—

(a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,

(b) where the works in question—

(i) are not commenced within 5 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under subsection (15)(a)),

(ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under subsection (15)(a)), or

(iii) where the local authority decides not to proceed with the proposed works or part thereof. The contribution shall, subject to paragraph (c), be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority,

(c) where under subparagraph (ii) or (iii) of paragraph (b), any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

5.2. Development Management Guidelines for Planning Authorities, June 2007

5.2.1. Section 7.12 states:

“‘special’ contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore, it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This

means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g., extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.”

5.3. Cork County Development Contribution Scheme 2015

The Cork County Council development contribution scheme provides for development contribution charges for residential development in the N & WCSP area, such as the subject site, at €19.04 per sq. m. Of this, €13.60 per sq. m. is applicable as the roads levy.

5.4. Castletownbere Transportation Study (December 2018)

- 5.4.1. The vision of the study is “to support the role of Castletownbere as the strategic hub on the Beara peninsula and in doing so create the infrastructure that enhances ease of movement and travel for all and improves the quality of life for the local and wider community”.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The applicant states that he wishes to appeal condition no.17 of the Planning Authority's decision to grant outline permission. The grounds of the appeal can be summarised as follows:

- States that the R-572 road and footpath improvement works identified in the Castletownbere Transportation Study are finalised and already underway, so there is no need for further proposed works to be carried out.
- Considers Condition no.17 to be onerous in addition to the standard development contributions condition (no.18).

6.2. Planning Authority Response

6.2.1. It is submitted that, in order for the Planning Authority to be entirely consistent, special development contributions have been charged for all developments that benefit from the improvements to the road and footpath on the R-572. A list of these development proposals and associated special development contributions is included with the response, which totals €637,898.00. It is also submitted that 'to allow this appeal would effectively result in the disintegration of the fair charging regime and undermine the Castletownbere Transportation Study and as a direct consequence result in unfairness to all those relevant parties who have paid their Special Development Contributions'.

7.0 Assessment

7.1.1. As the appeal is solely against the contribution condition (no.17), Section 48 (13) of the Act provides that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal, in effect the condition being appealed against and to considering the proper implementation of the Cork County Council's adopted scheme. In general terms, Development Contribution Schemes apply as a general levy on development and Special Contributions apply to particular developments where, for example, a

specific exceptional cost would arise for the authority, which is not covered by a Scheme or a Supplementary Scheme, resulting from the carrying out of the development in question.

- 7.1.2. The amount of €5,000.00 towards “works proposed to be carried out, for the provision of R-572 road and footpath improvement works as identified in the Castletownbere Transportation Study” in condition no. 17 is expressly stated as specific exceptional costs not covered in the Council’s General Contributions Scheme. As outlined earlier in this report, the specific explanation as to when a planning authority may require the payment of a Special Contribution is covered in Section 48(2)(c) of the Planning and Development Act 2000. It is clear that such a request should only be made in respect of a particular development, which is likely to incur specific exceptional costs not covered by the General Development Contribution Scheme of the Council, as stated within the condition attached to the grant of outline permission. They are in addition to the terms of the general scheme and might cover specific developments whereby the scale of the development and the demand the proposed development is likely to place on public services and facilities is deemed to be exceptional.
- 7.1.3. I note that the Frist Party considers condition no.17 to be onerous in addition to the standard development contributions condition (no.18) and the basis of his appeal is that the R-572 road and footpath improvement works identified in the Castletownbere Transportation Study are finalised and already underway, so there is no need for further proposed works to be carried out. In this regard, the Planning Authority, in their response to this appeal on 12th April 2022, have confirmed that the works are not complete outside of the development site and, therefore, would fall under Section 48(12) of the Act. I am satisfied that even if the works were complete a special development contribution could be applied.
- 7.1.4. I also note the contents of the Castletownbere Transportation Study, the purpose of which is to identify the transport strategy to address the traffic congestion, parking and active travel deficiencies within the network in Castletownbere. It is stated that the Study will guide future investment over the next 20 years. Junction improvements are outlined in Section 5.4¹ of the Study and, in this regard, the R572 / Dinish Island

¹ P.54, Castletownbere Transportation Study (December 2008), Final Report – Cork County Council

Junction is relevant to the appeal site. It is proposed to upgrade this junction to provide a right turn land onto Dinish Island. The benefits from these junction improvement works relevant to the appeal site include wider footpaths and new cycle tracks on both sides of the junction and public lighting.

- 7.1.5. I draw the Board's attention to the wording in the Development Management Guidelines and requote them hereunder as I consider them to be most relevant:
- "Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g., extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area."
- 7.1.6. I note the planning authority's response to the appeal and their list of levies collected to date, totalling €637,898.00. There is no information available as to the total cost of all the works that are identified in the Castletownbere Transportation Study and, consequently, it is unclear how the special development contributions have been calculated to date. I do acknowledge that certain works on the list presented by the planning authority would have merited a special development contribution i.e., the wharf extension and new quay at Dinish Island.
- 7.1.7. In relation to this appeal, I am satisfied that the costs are not incurred directly as a result of, or in order to facilitate, the development in question and are not properly attributable to it. Similarly, the benefit deriving from the infrastructure proposed under the Castletownbere Transportation Study is more widespread (e.g., extends to other lands in the vicinity) and it may be more appropriate to have a separate development contribution scheme for Castletownbere, per the Development Management Guidelines or that the costs of the Study / Project be integrated into the Section 48 scheme.
- 7.1.8. Having reviewed the application documents, the grounds of appeal and the planning authority's development contribution scheme, I conclude that the planning authority acted ultra vires its powers under the Planning and Development Acts, 2000 as

amended in attaching the requirement for a special contribution of €5,000.00. This contribution does not accord with the provisions of Section 48 (2) (c) of the Planning and Development Act, 2000 with reference to the payment of a special contribution and the said contribution is not amenable to being applied in accordance with the provision of Section 48(12) of the Act.

8.0 Recommendation

8.1. I recommend that condition no.17 be omitted from the grant of outline permission for the reasons and considerations set down below.

9.0 Reasons and Considerations

The Board considered that the contribution of €5,000.00 imposed under condition number 17 as a special development contribution for the road and footpath improvements is not in accordance with the provisions of Section 48(2)(c) of the Planning and Development Act 2000. The Board considered that the planning authority had failed adequately demonstrate specific exceptional costs proposed to be carried out relating to the contribution sought as required by section 48(12)(a) of the Planning and Development Act, 2000, as amended and determined that the condition should be removed.

Liam Bowe
Planning Inspector

23rd May 2022