



An
Bord
Pleanála

Inspector's Report 314951-22

Development	New Foul Sewer to facilitate Irish Water to complete Kilcummin Sewage Scheme and connection of Pairc Chuimin to same , turning bay to serve pumping station and construction of 34 houses.
Location	Pairc Chuimin, Kilcummin, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22/660
Applicant	Barth O'Neill
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	Third Party v Decision to Grant First party v S.48 condition
Appellant	Barth O'Neill Denis Duggan
Observer	None
Date of Site Inspection	14 th July 2023
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site is located within the development area of Kilcummin village which is approximately 6 km to the northeast of Killarney town. The site of 1.09 hectares is adjacent to a recent housing development, Pairc Chuimin, on the south western outskirts and through which it is accessed. The site is otherwise adjoined by agricultural land and forestry. A culvert/stream bounds the southern side of the site.
- 1.2. The village has a number of local amenities including a post office, national school, community centre, nursing home and GAA club and at time of inspection, footpath and streetscape enhancement works were being carried out. The village urban form is relatively loose and there is one other housing development to the north to which there is a connecting footpath, in addition to a number of one-off houses on the approaching roads in the vicinity. The subject site is not connected by a continuous footpath to the village. There is short stretch of a footpath along the public road which is confined to the frontage of the Pairc Chuimin housing development site. The subject site is fenced and gated off from the existing housing and has the appearance of an active construction/brownfield site with hardcore surfacing and plant and machinery evident at time of inspection. While the gate was locked, photographs of the site were feasible from this vantage point.

2.0 Proposed Development

- 2.1. Permission is sought for:
 - Construction of **34 dwellings** to the rear of the existing housing in Pairc Chuimin through which it is proposed to access the development site. It is an expansion of this development and includes a variety of house types with 30 semi-detached units and a terrace of 4 units. The layout incorporates a .08 ha green space alongside the new Irish Water pump station in addition to 3 residual open space areas of 100, 130 and 340 sq.m. 17 visitor car park spaces are proposed with one disabled space in addition to 2 off street spaces from 33 of the 34 houses.
 - Laying of a **new foul sewer in the road network** to facilitate Irish Water in the completion of the Kilcummin Sewage Scheme and connection of Pairc Chuimin.

(This facilitates the decommissioning and removal of the private wastewater treatment facility and sand filter within the development site.)

- Construction of a **turning bay** to serve the new Uisce Eireann pumping station.

2.2. The application documentation includes:

- **Planning report:** This sets out the development plan context by reference to the Killarney Municipal District LAP 2018-2024 which sets a target of 30% of new housing in the built-up area of Killarney and Castleisland and 15% in a number of towns including Kilcummin, hence the concentration of zoned lands in the area. The Kilcummin Zoning Map 3.2 identifies the site as Existing Residential in the zoning map within the settlement boundary. It refers to the planning history and the 2009 application where permission was granted for 9 houses. The construction of 34 houses by way of modification to the previously permission - PL08. 248967/ PA ref 16-247.
- The **development mix** consists of 4 x two-storey terraced 3 bed dwelling houses 6 x two-storey 3 bed semi detached dwelling houses and 24 semi detached houses that will be **interchangeable** as to their type being either a type B two-storey 3 bed semi or a type C 2 1/2 storey 4 bed to send me detached to its Home Office space and bedroom / TV room in a attic, associated parking, development works and services. The statement sets out the principles underlying the general design approach and main elements of the scheme.
- **statement in support** of the application : This explains a new foul sewer to facilitate Irish water in the completion of the Kilcummin sewage scheme and the connection of Pairc Chuimin to same. The provision of a turning bay to serve the permitted pumping station granted America PA right 17- 97.
- **Design Statement:** This addresses section 13.3 of the county development plan and the relevant guidelines: sustainable urban housing design standards for new apartments guidelines for planning authorities. The proposed boundary treatment incorporates retention of the existing sod and stone ditch and associated screening to the northern and southern boundaries. Where the houses abut roads, pedestrian ways and public spaces the boundary walls to be made from the block and capped walls of two metres in height with rendered and painted finish. Dwellings to include concrete post and timber fences 2 metres high around

the private rear garden space between the houses behind the building line. The front garden areas to be open planned without physical boundaries as per existing treatment. A minimum of 2.5 metres is provided between dwellings. Topography and existing natural features are incorporated into the overall open space. The density is stated to be equivalent to 33 units per hectare based on the site boundary however as part of a wider scheme the overall density of the estate is 19.8 units per hectare. from the top opposed usable open area is 11.5% first the percentage of useful open area for the overall estate is 12% . provision for electrical charging points to be incorporated.

- The **Road safety audit** identifies issues with, junction radii, public lighting, signage tactile surface at pedestrian crossing, sweep for HGV access, pumping station (conflict with unit 111

3.0 Planning Authority Decision

3.1. Following a request for further information and submission of satisfactory details the planning authority decided to grant permission subject to 33 conditions.

- Condition no. 2 requires a section 48 contribution of **€1500 for each dwellings type BD and E** in respect of **public** infrastructure and facilities benefitting the development in the area, the value being in accordance with the Development Contribution Scheme.
- Condition no. 3 requires a section 48 contribution of **€2146 for each dwellings type C** in respect of **public** infrastructure and facilities benefitting the development in the area, the value being in accordance with the Development Contribution Scheme .
- Condition no. 4 requires **a section 48 (2)(c) special contribution of €198,103** towards specified works.
 - 23.85% contribution towards overall cost to provide a 4.55m wide cycle/walkway for 400m.
 - Link from Pairc Chuimin Estate to Kilcummin Village Centre and to services within the village such as the national school, church, footpath, field Park post office and shop.

- Condition 5 requires a bond for €200,000.
- Other conditions are of a standard nature. condition 21 addresses removal of the existing sand filter.

3.2. Planning Authority Reports

3.2.1. In the final assessment the planning authority is satisfied that:

- The on-site waste treatment plant is to be decommissioned in accordance with previous permission 04/1528
- The Road Safety Audit is to the satisfaction of the Area engineer.
- The concerns of Housing Estate division have been addressed and matters can be further addressed by condition.
- Part V has been agreed with Housing Department
- Childcare facilities not entirely appropriate at back housing development. The permitted change of use to residential at front of existing estate is noted as is the case for no need for such historically.
- Proposals for surface water have been submitted.
- The footpath levy condition for the housing permitted under 04/1528 was paid in full but then refunded as it had not been used within the required time frame.
- The town Engineer now requires a special contribution towards the cost of the footpath in line with modern standards.
- Permission previously granted on appeal ref PL08.248967 for housing on this site.
- The overall layout for 34 houses is well laid out and acceptable.
- The Appropriate assessment screening report conclusion in respect of potential for significant effects on the Natura 2000 site is acceptable.

3.3. Other internal technical reports

Municipal District engineer: 29/9/22: This report raises no objection subject to conditions relation to roads and transportation and associated drainage.

- The report recommends a contribution towards the footpath provision. A set of drawings is attached.

- Total cost is estimated at €830,702 for the provision of an approximate 4.4m wide pathway over a distance of 400m connecting the estate to the village.
- A breakdown of future houses is calculated based on zoned land and amount to 499 units of this 119 units are attributed to the subject applicant which includes the existing Paric Chuimin houses (i.e. 85 existing plus 34 proposed in Parc Chuimin. The total cost is broken down:

Construction	720,702
Eircom	50,000
Esb	10,000
Public Lighting	25,000
Land acquisition	25,000

A set of drawings is attached which show the Kilcummin Village Safety Improvement Schem 'Pairc Chuimin-Village Footpath cycleway subject to detailed survey of private property to confirm all proposed setback distances. (dated 29-01-21 It shows a 1.7m wide cycle way and 1.8m footpath all to tie in with the existing footpaths.

Housing Estates: 21/7/22 Further information required re details of design for access/road layout / car parking and access to pumping station. Updated 23/9/22 and no objection subject to outstanding details re: signs, fire hydrants and provision of pedestrian crossing within the development /further RSA, boundary treatment around houses ad ditch/public spaces, disable parking provision and access to house no.119 (1m lateral clearance required., 109 and 68

Biodiversity Officer: (5/8/22) No direct impacts identified. there is no likely significant effect on European Sites using the source pathway effect model. In this regard it is noted that the site is disturbed ground not supporting annexed habitats or species. Other ecology conditions recommended concerning landscaping and drainage.

County archaeologist: No issues

Housing (27/9/22) Applicant has liaised with division re statutory obligations and compliance.

Environment: (9/8/22) Further information required regarding conflict with onsite waster water treatment plant and chronology of decommissioning plant and filtering

area. (27/9/22) Condition recommended for removal of existing sand filter, bunding provision, control of silt/sediment discharge/run-off, and waste management.

3.4. Third Party Submissions:

Objection relates to Inadequate provision for footpaths to the village. Leading to traffic hazard and safety issues for pedestrians and road users.

3.5. Prescribed Bodies

Irish Water/Uisce Eireann: (9/8/22) No objection subject to conditions regarding signing of a connection agreement and adherence to standards and conditions and capacity being subject to constraints of Irish Water Capital Investment Programme,

4.0 Planning History

4.1. Existing housing in Pairc Chuimin, Clashnagarrane

- 4.1.1. ABP ref PL08.246784 - Permission for Converting an existing building (near estate entrance) constructed as a creche under Reg. ref: 04-1528 to two no. semi-detached dwelling houses
- 4.1.2. ABP ref PL08.246790 - Permission for Retain and complete/construct 6 no. semi-detached houses granted under ref: 06/2062, and construct 1 no. house and site works granted under ref: 09/842
- 4.1.3. PA ref 04/1528 - permission for 85 dwellings, a crèche and waste water treatment system, and subsequent permissions (06/2062, 09/842) for amendments and extension of the appropriate period. March 2005. Planning authority register reference 06/2062 ABP ref PL08.219918, permission granted for amendments to layout and house types, May 2007. Planning authority register reference 09/842 permission for additional detached houses at sites adjacent to 77 and 18., August 2009.

4.2. The site

- 4.2.1. 248967 refers to permission for 33 housing units re Reg.Ref 04/1528 and 06/2062 detached creche, decommission wastewater treatment plant and sand polishing filter and construct foul sump and pumps, Condition two states that construction work on the site shall not commence until such time that the proposed Kilcummin sewage

scheme is completed and commissioned. This followed the quashing of the Board's decision refuse permission on grounds of prematurity in the absence of a timeline for the provision of the Kilcummin Sewerage Scheme.

- 4.2.2. CH08.312063 refers to a withdrawn objection to the Irish Water Compulsory Purchase (Kilcummin Sewerage Scheme) Order 2021 in relation to lands relating to the site of the permitted pumping station and surrounding lands for construction and access. The objection was by the application in the subject case.
- 4.2.3. ABP ref 248355 refers to permission for development of part of the Kilcummin sewage scheme to construct a wastewater pumping station and gravity sewer crossing the river Deenagh within Killarney National Park. The pumping station is the same as that within the subject site around which the subject site adjoins. In this case an NIS was submitted as part of the application and noted that there were no annexed habitats present on the site and that the primary concerns related to unnamed stream adjacent to the site and the Deenagh river however in terms of construction impacts and having regard to the information presented in support of the proposed development together with the reports the inspector was satisfied that the construction phase of the pumping station is unlikely to have any significant effects. The proposed crossing of the river Deenagh that gave rise to potential concerns in terms of impacts is in separate location from the subject site. It is further noted that the information available suggests that there is adequate capacity within the Kilcummin WWTP to accommodate the loading from Kilcummin and the operation of the pump station is considered acceptable. Nor were there new operational issues considered to arise in relation to the area of the river crossing.

5.0 Policy Context

5.1. Kerry County Development Plan

- 5.1.1. Kilcummin is District Town in Map 3.3 Volume 4 of the Development Plan set amid a rural area under significant urban influence. Such towns are defined as those that serve the rural hinterland as service centres. The town shows marginal growth over 2016-2022 and has a housing target of 31 units in the Development Plan period. 2.2ha of land is zoned. Cluster development can be facilitated in line with objective

514. It is not in a visually sensitive landscape as delineated in MAP K which relates to the area.

5.2. Killarney Municipal District LAP 2018-2024

- 5.2.1. Kilcummin is promoted as a district town in settlement strategy in this LAP. Section 3.7 sets out the issues and aims for form and function.
- 5.2.2. Wastewater Infrastructure: The existing foul and surface water sewer system is stated to be at capacity. The existing system is a combined foul and storm drainage system and measures to deal with storm waters are required. Irish Water is noted to have been granted planning permission to upgrade the sewerage network in the village.
- 5.2.3. Road Infrastructure and Transport : The road network within the village is identified as requiring upgrading to include adequate pedestrian and cycling infrastructure. A footpath is noted to connect the Radharc na Sléibhte housing estate with the village however no footpath connecting Páirc Chuimín with the village is flagged. **Objective KN-GO-04, supports the provision of adequate pedestrian facilities to improve connectivity between existing developments and the village.** It is further stated that adequate public parking provision is available adjoining the community park and near the national school and that the provision and extension of footpaths and public lighting, the undergrounding of services and the implementation of some minor traffic calming measures will create a more attractive and safer village centre.

5.3. Planning and Development Act 2000, as amended

- 5.3.1. Section 48 (12) applies:

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.

5.4. Development Management Guidelines

- 5.4.1. Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act). Development contribution conditions may only be attached if they accord with the provisions of either section 48 or section 49 of the Planning Act and these are based on the application of the terms of one or more development contribution schemes which have been formulated and adopted in accordance with those sections of the Act, **or on the need for a special financial contribution.**

5.5. Development Contributions Guidelines for Planning Authorities

- 5.5.1. Section 1 clarifies the use of special development contributions: 'A special development contribution may be imposed under section 48(2)(c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development, such as a new road junction or the relocation of piped services. The particular works should be specified in the condition. Only developments that will benefit from the public

infrastructure or facility in question should be liable to pay the development contribution. Section 2 supporting Economic Development states that planning authorities are required to include a range of measures in accordance with overriding principles of proper planning and development. This includes a range of waivers and avoiding double charging which is contrary to the spirit of capturing planning gain.

5.6. The Kerry County Council Development Contribution Scheme 2017

- 5.6.1. The General Scheme relates to the site. As a point of clarification, the site is outside the Killarney and Environs areas mapped in the scheme. There is a graded amount toward housing units depending on size of units and this is toward roads and transport and community and Amenity infrastructure in the county. There is also a category for utility power lines at €1000 /km. 'Development of utilities shall be subject to a development contribution. They are to be charged at a rate of €1,000 per structure. Utility supply lines, e.g. water or gas lines, are subject to a Community & Amenity contribution of €1,000 per kilometre.'

5.7. Section 28 Ministerial Guidelines and Government policy

- 5.7.1. **Sustainable and Compact Settlements (January 2024):** This guidance advocates compact development in central serviced locations. A key element in urban expansion is sustainable and efficient movement thereby ensuring places are well connected and accessible by sustainable modes, that quality of journey is equally important and that places are perceived as safe and are not dominated cars.
- 5.7.2. **Climate Action Plan 2024.** Following CAP23 this seeks to continue to expand our walking, cycling and public transport networks in order to reorient our transport systems to a more sustainable basis and to facilitate widespread behavioural change to a healthier, safer, and more people-focused vision for transport. Action JM/24/6Support regeneration, repurposing and sustainable development of walking and cycling tracks and trails, and waterways. Section 15.2.4 identifies the role of the local authorities in implementing this shift. The provision of safe and accessible walking and cycling infrastructure is key to encouraging modal shift away from private car use and towards walking and cycling. The role of local authorities in the development of active travel infrastructure cannot be overstated, and the increase in

the capacity of active travel teams has already helped to deliver hundreds of kilometres of new and improved cycling and walking infrastructure around the country

- 5.7.3. **The National Sustainable Mobility Policy (SMP)**, (April 2022): sets out Government's strategic policy framework for supporting walking, cycling and public transport use in Ireland to 2030, laying the foundations for the required system change in transport that will help achieve net-zero emissions by 2050. It is accompanied by an Action Plan to 2025 aimed at expanding sustainable mobility options across the country, managing daily travel demand more efficiently, and reducing the journeys taken by private car.

5.8. Natural Heritage Designations

- 5.8.1. The nearest site is the Killarney National Park McGillicuddy's Reeks and Caragh River catchment SAC (site code 000365) at a distance of approximately 80 metres to the southeast of the site.

6.0 The Appeal

6.1. Third Party Grounds of Appeal

- 6.1.1. This appeal is based on traffic hazard due the inadequate road alignment and **absence of footpath infrastructure between the proposed development and the village**. This is based on the road alignment of the local road from the estate entrance to the village, its capacity for a footpath and the vehicle volumes. E.g. it is inadequate for a passing vehicles while a pedestrian is walking. It is submitted that there have been a number 'close-calls' and accidents which have caused injury (submitted to be well known to Kerry County Council). In the previous application 14 letters of objection were submitted it is submitted that permission was originally based on false drawings but suggested that a footpath could be provided. This is evidenced in the appellant's opinion by the repeated unsuccessful efforts of the council engineers to put a footpath in place over the last 18 years. Permission will put more lives at risk. It is estimated that 70 people would occupy these dwellings and would be at risk in addition residents in the 90 houses in the estate. There is

essentially no guaranteed provision of a separate footpath serving any of these houses from the estate to the village centre.

6.2. First Party Grounds of Appeal

6.2.1. The applicant is appealing condition 4 requiring **a special financial contribution of €198,103** on the basis that the council, in the opinion of the appellant's legal agent has unreasonably charged for a footpath which has been previously subject to a paid contribution, and which is in any event incorrectly calculated based on the length of footpath among other perceived errors. The grounds are based on:

- Planning history: The agent for the applicant refers to the special contribution made already in respect of the footpath works (estimated at 90,000 by KCC) road works and public lighting and argues that the full payment should be refunded on the basis of partial works being of no benefit by reference to a judgment on similar issues e.g. in the case of the incomplete Barna By-Pass and supporting documentation in relation this correspondence and difference of opinion in some regard is appended. The case is further made that there is some double charging as there is an overlap of existing and proposed footpath areas and even more so if taking account of what is submitted to be claimed by KCC to have been carried out as per Appendix 7 of the appeal.
- Current planning: The basis of 119 houses is factually incorrect – there are confirmed to be 94 existing
- res judicata and double jeopardy, estoppel and functus officio: in the context of the area engineer's report, it clarified that KCC confirm that they have built part of the infrastructure as set out in Appendix 7 and that cycle lanes and walkways are covered by the general contribution scheme (details in Appendix 8) and that the condition 4 represents a duplication charges in respect of such works. In the cases of 230019 and 226287 the Bord did not attach a special contribution on grounds that it was already included in the general scheme.
- The law against retrospectivity in the context of the area engineers report: the contribution is calculated to include infrastructure for houses already constructed and not subject of the permission under appeal.

- Evidence based costing. The engineer's report does not substantiate costings. The applicant engaged an Independent Quantity Surveyor and applied 2022 data for cycle/pathway. (appendix 9) This amounts to €267047 for works 25000 for land acquisition as per area engineer's report and taking account of vat and land acquisition the total figure is estimated at €328,099 as compared to €860,702. It is submitted that the area engineer's costing is not measured against any actual comparable data and figures are arbitrary and not evidence based as is reasonably required. The constitutionality of section 48(13(a)) is questioned by reference to the absence of right to an oral hearing and cross examination of witnesses. There is reference to unfairness in case law *Garvey v Ireland*, *Dellway v NAMA*, *Mallak v Min for Justice*, *Equality and Law Reform* and *Coffey and Ors. v Kerry County council*
- What a lawful decision should have incorporated: there is no credit for the constructed footpath estimated at 216.7m – it is submitted 45.8% of the now levied footpath has been constructed and paid for. The maximum levy can only be towards the balance (54.2% of the costs.) By applying the area engineer's rates it is estimated that remaining works amount to €637,808. By apportioning the cost to 34 dwelling out of an outstanding total of 380 future dwelling this equates to €52,364 using the KCC costings but only €26,937 using the applicant's surveyor evidence-based costing.
- Penal provisions: It is submitted that condition 4 is unlawful by reference to Statute which require no looseness or ambiguity in the imposition of financial charges. This is supported by reference to a decision in the case of *Inspector of Taxes v Keirnan* and the publication 'Administrative Law in Ireland.'
- Miscellaneous legal issues: The drawings on which the costs are based are 'draft' and therefore not finalized which is contrary to the meaning in the terms 'specific exceptional cost' in section 48 (2)(c) and 'particular works' in subsection (12). There is therefore no lawful basis to attach the condition. While the provision for a refund is conceded it is submitted that the condition is for finalised, approved and substantially advanced works.
- Incorrect distance: the distance is measured by the appellant to be 350.55metres and not 400metres and therefore a total cost at €728006 for this revised length result in a pro rata cost for 34houses at €48,194

- Incorrect description: The appellant cites the areas engineers contextual reference to footpath [works] and possible intention of 'football field' which is past the village core and may explain the excessive charge.
- Jurisdiction of the board when considering appeals under section 48 (10): this is submitted to be very limited and confined to the merits of the scheme.
- Application of jurisdiction: An Bord Pleanála is stated to not have unfettered discretion to adjudicate on facts before it and is limited to looking at whether the special contribution scheme is lawful or not by reference to *an Taisce v McTigue Quarries Ltd.* Reference is made to criteria as to whether works are specific or not and benefit a wider area in the context of other Bord cases.
- Expenditure for a 'particular' development: it is submitted that generality of the footpath scheme for wider area including some 380 houses to be built is not special or particular.
- The special contribution is unlawful and must be rejected.

6.3. Third Party Response

6.3.1. Remains of the view that permission should be refused on grounds of public health, traffic safety, residential amenity and private property rights. Specific points:

- The drawings (in relation to the public footpath provision) were not part of the planning application and were 'withheld from scrutiny' during the application process yet subject of discussion between the applicant and KCC – this is a violation of private property rights.
- Condition 4 which makes reference to the same footpath in these drawings is submitted to be unlawful on the basis of its interference with private property rights e.g. the curtilage of homes
- Set back distances are unclear in the detailed proposed council footpath drawings. The appellant would like further clarity and time to consider these drawings.
- The pricing of other persons land is unfair and inappropriate and without consent.
- The outcome and judgment in the case *Ashbourne Holdings v An Bord Pleanála* is used as reference to support the inappropriate nature a condition concerning other person's rights such as provide for in condition 4.

- The first party appeal is understood to be based condition 4 being incorrect in terms of proposed planning and development – being not defined.
- There are no plans/land use and construction arrangements for the village link paths provide by the developer and it is suggested it would be unlawful in the applicant's response notwithstanding the suggestion that design solutions are feasible while respecting property rights. This however is disputed in the context of what is stated to have been misleading information by the developer /applicant for the housing constructed in Pairc Chuimin. E.g. misleading dimension demonstrating a footpath without relying on private property. Essentially KCC is demonstrating favouritism. And in effect the applicant's case is contradictory.
- Details of correspondence for 2004 in relation to footpath width and alignment is cited (PA ref 1528/04) and the inaccuracies of details and claims and lack of feasibility are submitted in effect to be evidenced by the lack of construction by with the development or KCC. This is underlined by the lack of access to 'necessary lands'.
- Permission for the housing was on the assumption of a footpath being acquired without the need to acquire any roadside except certain lands owned by St. Brendan's Trust but these circumstances are no different in the subject case.

6.4. Planning Authority Response

- 6.4.1. In its response, (23/11/2022) to the first party appeal against the special contribution condition and associated costings, the planning authority includes detailed memo by the Senior Executive Engineer of the Municipal District which
- confirms the distance of 400m with a map and drawings showing footpath works to include the southern side of the road from the estate entrance to the national school.
 - explains that the existing c. 50m length of footpath fronting the Pairc Chuimin needs to be part of the footpath and cycleway provision and upgrade to comply with current National Cycleway Standards.
 - Sets out a breakdown of the costs of construction totaling €720,702 euros in Appendix 3 of the memo - Pairc Chuimin – Estimates- sheet 1 provides . This

estimate was prepared by the council engineering staff and is based on the costs of comparable works within the Killarney municipal district

- 6.4.2. Regarding the costings provided by the first party, there are some comparable elements but overall they do not take account of the provision of itemised elements such as a wall and the provision for a wider wide footpath/cycleway. Also estimates in respect of Eircom costs for undergrounding of 290 metres of overhead services to allow for the provision of the cycleway and walkway, the ESB costs up to €10,000 for connection to its network and charges for the undergrounding of networks and costs of €25,000 for public lighting for the provision of eight new public lights and the upgrading of four existing public lights.
- 6.4.3. It is also pointed out that at the time with the application the council did not have access to a detailed breakdown of costs from the individual utilities companies with this particular scheme. However, the estimates are based on the local authority experience of the previous charges provided by these companies to carry out similar work and to give them current raising costs these estimates could potentially increase. The estimate cost of €25,000 for land acquisition is based on the costs of the local authority acquiring similar lands by agreement.
- 6.4.4. The drawings are marked draft for discussion only in order to provide necessary infrastructure however the local authority will need to acquire the necessary land from a third party and will need to discuss the proposal with the third party, therefore the drawings are marked draft. Infrastructure is designed in accordance with national guidelines and specifications which is the desired design of the council. The drawings marked 'detailed survey of private property required to confirm all proposed setback distances' as at the time of the design the local authority did not have the permission of the landowner to enter their lands. However from visual inspection from the public road and local knowledge of ground conditions, the design for this type of proposed works is considered accurate. This is endorsed by the planner who has nothing further to add to the assessment carried out as part of the planning application process.

6.5. Irish Water/Uisce Eireann

- 6.5.1. On acknowledging both appeal grounds, this body clarifies that the development subject to the appeal includes proposed improvements to an existing access road.

Irish water is progressing the development of the wastewater pumping station (ABP reference PL08.248355) which forms part of the €9 million investment in the area which will ensure compliance with EU and Irish wastewater regulations. The proposed access arrangements will facilitate improved access and egress to the pumping station which would in turn facilitate the operation and maintenance of the Irish water pumping station.

6.6. Applicant's counter response 20/12/2022

- 6.6.1. The applicant considers the KCC response which is confined the footpath length and costing detail and does not address the other 11 point to constitute an agreement between the parties on those 11 matters.

The applicant is not satisfied with costing details provided in 2022.

7.0 EIA Screening

- 7.1. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) requires mandatory EIA 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.)

- 7.2. The proposed development is for 34 no. housing units and a utilities connection on a site c. 1.09 ha within designated development land in the village boundary of Kilcummin. The proposed development is considered to be sub-threshold in terms of EIA having regard to Schedule 5, Part 2, 10(b) (i) and (iv) of the Planning and Development Regulations 2001 (as amended). Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant threshold, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

8.0 Assessment

8.1. Issues

- 8.1.1. The proposal is primarily for 34 houses on a site in zoned land within the development boundary of Kilcummin village. Permission is also sought for foul sewer connections from Pair Chuimin development to the new pumping station around which the site wraps. Access arrangements to the pumping station are also part of the proposed design layout. Previously permission had been granted for similar housing on appeal in May 2018 subject to the completion of the upgrading of the Kilcummin Treatment Plan. This is now at advanced state of completion. The third party appeal is against the decision on grounds of prematurity pending a feasible footpath and concerns about traffic safety.
- 8.1.2. The first party has appealed the amount of special contribution required in condition 4. This based on a number of detailed grounds relating to legality and fairness having regard to planning history, costing, footpath length and existing works and seeks, at the very least, a reduction in the apportioning of the share of the total cost of related work to the proposed houses.
- 8.1.3. I consider the principle of development on residential zoned land within the development boundary of the village in the manner proposed in terms of layout accords with the settlement hierarchy and strategic approach to prioritising sustainable development through compact urban form and in a scale that is appropriate to Kilcummin settlement. Having reviewed the particulars of the appeal I am satisfied that the salient matters to be considered are:
- Traffic Hazard and principle of footpath
 - Special Development contribution towards footpath and cycle path: principle, basis of calculation, apportioning to proposed development
 - Appropriate Assessment

8.2. Traffic hazard and principle of footpath

- 8.2.1. The case is made that the road alignment of the road to the village centre from the front of the estate is narrow at around 5.5m at its narrowest . It is also submitted to very busy with a very large daily vehicle load due to its strategic position between

Killarney and outlying areas. The situation is such that it is inadequate for passing vehicles while a pedestrian is walking. It is submitted that there have been a number of 'close-calls' and accidents which have caused injury (submitted to be well known to Kerry County Council). In the previous application 14 letters of objection were submitted and it is submitted that permission was originally based on false drawings which suggested that a footpath could be provided. This lack of feasibility is evidenced by the repeated unsuccessful efforts of the council engineers to put a footpath in place over the last 18 years. Permission will accordingly put more lives at risk.

- 8.2.2. In response the applicant makes the case that this matter has been previously addressed on appeal and that a footpath was originally funded by the applicant by way of a special contribution condition attached to the permission for the housing (now constructed). The fact that it has not been constructed is stated to be a matter for the location authority in so far as it has the statutory powers available to implement such a scheme and was partly funded by the applicant.
- 8.2.3. Notwithstanding the location of the site within the development boundary, I consider the lack of footpath to be an undesirable situation in that the principle of permitting a development that encourages car dependency is inconsistent with the aims of the development plan policy. Section 2.1.3 of the Killarney Municipal District Plan for example states a strategic issue is to provide opportunities for residential development to be part of a design-led healthy neighbourhood which is defined as having connected street patterns which encourage active forms of transportation such as walking, cycling, and transit. To this end it is stated, 'the development of brownfield sites in the urban core will be a central objective of this plan. In terms of specific objectives, 'OS 11 seeks to facilitate improvements to the town and village centres with an enhanced streetscape appropriate shopfront design and provision for improved street lighting public footpaths and street furniture. Such policies and objectives are clearly supported by national policy and guidance as referenced in section 5.7 of this report. CAP24 identifies the role of local authorities in the delivery of walking and cycling infrastructure so as to implement CAP24 aims.
- 8.2.4. Accordingly the provision of a c. 400m footpath between plan-led housing to the nearby village centre where there is a range of services and where the footpath extends, is consistent with sustainable transport and planning and is supported by

the respective national policy and guidance. While the connecting footpath as initially intended has not been constructed yet, I note there are clearly on-going improvements (associated in part with the upgrading of the public sewer/network) in the village and I consider the planning authority in its comments which includes the drawing dated 2021 and subject to detailed survey clearly demonstrates an intention to deliver a footpath connection. In order to achieve this, it has costed the works and apportioned the percentage to the subject development. The details of this are subject of the first party appeal.

- 8.2.5. The third party has a particular issue with the lack of feasibility of the footpath and raises the concern of prejudicing third party rights by presuming such works could proceed. A Grant of permission in this case however does not confer such rights. In the first instance I would point out that a permission does not confer development or access rights to the applicant or developer outside the application site.
- 8.2.6. With respect to exclusion of details relating to the footpath outside the site, this is not within the scope of the application. Aside from the fact that the drawings have been made public by inclusion on the file as supporting documentation of a planned project, the subject application other than providing funds towards such does not shape the footpath design. The Board has no powers to approve, alter or refuse the planned public road works other than as part of Local authority project seeking consent from the Board. Minor works are typically exempted development under section 4(1) of the Act. I consider the issue for consideration is that the provision of a footpath is a planned objective in the Development Plan. The Kilcummin Plan as set out in the Municipal District LAP specifically includes an objective for the provision of such. The documentation provided in relation to the design is indicative of the feasibility of a particular scheme in compliance with a wider objective and serves to provide a schedule of works and costs so as to calculate a special contribution and it is not a contract of works. I would also point out that the objective is to provide a footpath for the benefit of the village as part of a democratically adopted plan. The detailed mechanism is not confirmed and is implied with the term 'Draft stage' which respects the property rights of potentially affected properties.
- 8.2.7. I consider it important to emphasise that this is not a remote greenfield site kilometres from services – it is within walking distance and in this way accords with criteria set out in the most recent residential settlement guidance. I do not consider it

unreasonable to suggest that there are design solutions to connectivity. I note in this regard the adjoining lands zoned 01 Strategic Reserve Land and there also indicative walkways to the village on the same side as Pairc Chuimin. In the event of the council having to work in a more horizontally restricted alignment along the public road, there are also options such as traffic calming measures to ultimately achieve the footpath objective in the adopted development plan. I do not consider the grant of permission serves to change any circumstances that would prejudice third party or private property rights.

- 8.2.8. I further note that frontage of undeveloped lands on the same side of road to the village primarily relates to lands zoned for development and so development of such lands would likely apply the same criteria requiring a footpath and would be for the benefit of lands and the village by way of improved accessibility though alternative modes of transports and thereby reducing potential for traffic hazard. Contributing towards such, and its viability, is also for the wider benefits of the area.
- 8.2.9. Having regard to the development plan objective which specifically requires a footpath and to the direct benefits it will have in facilitating the development and as supported by good planning practice and guidance I consider the principle of supporting a footpath through the requirement of funding towards the provision of such is a necessary part of a grant of permission.
- 8.2.10. In view of the forgoing, I do not consider it reasonable to refuse permission on grounds of prematurity pending footpath completion or traffic hazard.

8.3. Special Development Contribution

Issues

- 8.3.1. The general development contribution scheme is applied by the planning authority and is based on the number of proposed housing units and the respective floor areas where the threshold is exceeded for the basic rate. This scheme provides for budgeted infrastructure and services in the administrative area from which the development will benefit. There is no dispute on this. The first party issue relates to the special contribution condition only. The comments regarding the limitation of considering the Development contribution Scheme do not therefore apply. I also

consider the question of constitutionality of section 48(2)(c) to be outside the scope of the Board's considerations.

- 8.3.2. Condition no. 4 as attached by the planning authority requires a section 48 (2)(c) special contribution of €198,103 towards specified works. This constitutes a 23.85% contribution towards overall cost to provide a 4.55m wide cycle/walkway for 400m – a Link from Pairc Chuimin Estate to Kilcummin Village Centre and to services within the village such as the national school, church, footpath [football] field, Village Park, post office and shop. (I consider the applicant's suggestion that the footpath should read as football to make some sense but is minor typo and does not confuse the point being made.)

Principle of applying a special contribution to the nature and extent of footpath
/cyclepath

- 8.3.3. The legal agent for the applicant refers to the special contribution made already in respect of the footpath works (estimated at €90,000 by KCC) road works and public lighting and argues that the full payment should be refunded on the basis of partial works being of no benefit by reference to a legal judgment on similar issues in the case of the incomplete Barna By-Pass and supporting documentation in relation to this correspondence and difference of opinion in some regard is appended. The case is further made that there is some double charging as there is an overlap of existing and proposed footpath areas and even more so if taking account of what is submitted to be claimed by KCC to have been carried out as per Appendix 7 of the appeal.
- 8.3.4. I accept that footpath works were previously funded and that the small area (fronting the estate) provided could be understood to overlap with the works currently subject of condition 4 and therefore an effective double charging would be unreasonable. The planning authority makes it clear that the works specification has altered and it also notably includes cycle path provision and upgrade which is not, I consider unreasonable in view of the current standards that have changed. It is also in line with the current development plan. I therefore do not consider the nature and extent of the works, as currently proposed and required and which meet with the current objectives and standards, to be covered by the previous special contribution. In any

event monies were refunded due to incomplete works by the local authority and as provided for in The Act. While there is some dispute on this, I do not consider the process of refunding of a contribution in relation to a separate case to be within the scope of the subject appeal. While it may be construed to be double charging the provision for refunding of contributions provides for this event.

8.3.5. With respect to the length of footpath intended to serve the development, I note the draft drawings and am satisfied that a 400m length footpath/cyclepath on the southern side of the road from Pairc Chuimin public entrance to the village as mapped will directly benefit the residents of proposed housing. The further extension of housing, as proposed and without provision for such pedestrian/cyclist connection, would not constitute sustainable and orderly planning in my judgement. It will also benefit existing residents in Pairc Chuimin, although I do not consider it reasonable to retrospectively charge for these constructed houses being outside the subject development site. Furthermore, in the event that the 400m of pathway is not constructed the Act provides for a refund. In terms of widths and tying in I note the set of drawings is attached which show the Kilcummin Village Safety Improvement Schem 'Pairc Chuimin-Village Footpath cycleway subject to detailed survey of private property to confirm all proposed setback distances' (dated 29-01-21) shows a 1.7m wide cycle way and 1.8m footpath all to tie in with the existing footpaths. I consider the 'subject to survey' allows for some margin of variance.

8.3.6. In respect of the criticism of generalities and lack of particulars I am of the view that the details in the Senior Executive Engineers report for Municipal District as supported with the drawing and as further supported in the specific development plan objective constitutes a particular scheme for the purposes of section 48(2)(c).

8.3.7. Accordingly I consider it reasonable that the developer should contribute towards the specific exceptional costs of the provision of a footpath (upgrading where necessary) and cycleway to current standards along the public road serving the site from the entrance to Pairc Chuimin to the village centre over a distance in the order of 400m.

Costings

8.3.8. The applicant disputes the costs on the basis of being arbitrary and unsubstantiated. Significantly reduced costs are put forward as provided by an Independent Quantity Surveyor (engaged by applicant) applying 2022 data for a cycle/pathway. The total

figure is estimated at €328,099 as compared to €830,702. It is submitted that the engineer's costing is not measured against any actual comparable data and figures are arbitrary and not evidence based as is reasonably required. The planning authority's response of 23/12/22 confirms the costings. Appendix 3 of the memo - Pairc Chuimin – Estimates- sheet 1 provides a breakdown of the council's works costs of construction totaling €720,702 euros. This estimate was prepared by the council engineering staff and is confirmed to be based on the costs of comparable works within the Killarney municipal district which were procured by Kerry County Council. The applicants surveyor does not take account of the provision of itemised elements such as a wall and a wider wide footpath/cycleway, Eircom costs for undergrounding of 290 metres of overhead services, ESB costs for connection to its network and charges for the undergrounding of networks and for public lighting. , the estimates are based on the local authority experience of the previous charges provided by these companies to carry out similar work . the estimate cost of 25,000 for land acquisition is based on the costs of the local authority acquiring similar lands by agreement. I consider this to be of sufficient detail having regard to the circumstance raised in the third party appeal assessment. The cost Breakdown is:

Construction	720,702
Eircom	50,000
Esb	10,000
Public Lighting	25,000
Land acquisition	25,000
Total	€830,702

Apportioning

- 8.3.9. To apportion costs, a breakdown of future houses is calculated based on zoned land and amounts to 499 units. Of this, 119 units are attributed to the subject applicant which includes the existing Paric Cuimin houses, i.e. 85 existing plus 34 proposed in Parc Chuimin. I concur that the existing houses should be excluded. The existing houses in Pairc Chuimin total 94 as set out by the applicant. This means total cost should apply to 405 units which raises the unit to 2051.12. Applying this to 34 units gives a total contribution of €69,737.96.

8.3.10. I consider the provision of a footpath would benefit the development by providing active means of transport between the housing and services within the village. I consider the costs to be reasonable and apportioning the proposed development on the basis of 34 units out of 405 likely future units is reasonable. I accordingly consider the attachments of condition for special contribution towards the provision of footpath/cyclepath, which I consider to constitute a particular form of benefitting infrastructure, to comply with the requirements of section 48. I do not consider there is any reasonable basis to omit this condition.

8.4. Other matters

- 8.4.1. While the overall layout is compatible with the existing housing development, I note a few matters that would enhance the scheme and that could be addressed by condition. With respect to landscaping I note the application is silent on the matter of existing boundary trees and hedgerows within and bounding the site. The landscape plan does not indicate existing features. Maximum retention and protection of such features are desirable. I note the garden depths along the eastern side are relatively shallow and there may be scope to realign houses by shortening front curtilages.
- 8.4.2. I also consider that the quality of open space/turning areas and parking could be enhanced by a minor modification of landscaping to create shared spaces and this could be addressed by condition but is limited in area. The end house elevations could be modified to enhance overlooking of the open spaces and this could be done amongst the new houses but it would be unfair to impose new elevational arrangements where existing houses are established without proper notification. I do not consider this by itself to warrant a redesign and could be addressed by condition for 3 of the houses within the new layout.
- 8.4.3. In view of best practice for housing layout and facilities and use, I recommend that conditions be updated to reflect construction and detailed elements of the proposed housing scheme while taking account of the planning authority requirements.

8.5. Appropriate Assessment

8.5.1. **Description:** I have considered the housing proposal and utilities connection in light of the requirements of S177U of the Planning and Development Act 2000 as amended. The subject site is located 80m from the edge of the Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Sote Code 000365). The proposed development comprises the construction of 34 houses on a site where ground works have taken place as part of wastewater treatment plant works and as part of the extension for a housing estate previous permitted

8.5.2. **Potential impact mechanisms from the project:** As the site is removed from any European Site, being 80m from the edge of the SAC no direct impacts arise. Furthermore as the site is disturbed ground and lacks any annex species or habitats of significance the impact on the site flora and fauna is unlikely to have any impact on potentially supporting habitats or species.

Sources of impacts may arise from construction activities and disturbance and from housing occupancy and waste/run-off and disturbances.

8.5.3. **European Sites at Risk:** With reference to the potential impact mechanisms from the proposal I consider the following European Site and qualifying features are potentially at risk.

Table 1: European sites at risk from impacts of the proposed development			
effect mechanism	impact pathway zone of influence	European sites	qualifying interest features at risk
construction works	Run-off via drain to river downstream	Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC	Water reliant species Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] Euphydrias aurinia (Marsh Fritillary) [1065] Petromyzon marinus (Sea Lamprey) [1095] Lampetra planeri (Brook Lamprey) [1096] Lampetra fluviatilis (River Lamprey) [1099] Salmo salar (Salmon) [1106]
construction noise	Disturbance from machinery		Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303]

			Euphydryas aurinia (Marsh Fritillary) [1065]
human disturbance at operational stage	Noise and lights		
resource requirements	Water demand		Water dependant habitats
surface water wastewater discharge	Waste water discharge		Water quality reliant species

8.5.4. While there are other European Sites within 15km, they are outside the water catchment and I concur with the Biodiversity Officer's report that no other site are likely to be significantly effected having regard to the site characteristics and the absence of source pathway receptor connection.

8.5.5. **Likely significant Effects on the European Site alone**

- The main pathway from the site to the River Deenagh which forms part of the outer reaches of the SAC is via a drain that has been substantially culverted. A small area bounds the site at the southern periphery but at this point it is about 250m via the water channel to the River. I note the comments of the Biodiversity officer that works are unlikely to cause any pollution event and the likelihood of contaminated run-off is a low risk and that significant effects on water quality from construction works could be excluded. Having regard to the limited scale of works, separation distance and riparian buffer I consider that with standard best practice construction methods, significant effects are unlikely to arise such that would undermine the water reliant species that are of conservation interest in this SAC.
- The air borne species in this SAC are potential vulnerable to disturbance due to noise and machinery at construction stage and human occupation an associated light spill. I note that the site and the River Deenagh in the vicinity is well outside the foraging catchment of known roosts as identified in the maps on the NPWS website. Normal measures to protect hedgerows and bat species generally would further serve to ensure the LHB if foraging is not disturbed. I further note the

extensive woodland cover in the area providing a buffer between the development and the European site. The Marsh Fritillary species is dependent on devil's-bit scabious being present and this is unlikely to be on the disturbed ground or adjacent woodland. In view of the scale of development and unlikely presence of these species in the vicinity, I consider that significant effects are unlikely to arise such that would undermine the conservation of species that are of conservation interest in this SAC.

- At operational stage, as the housing is in serviced zoned lands with access to a public sewer and public water supply and there no is objections or capacity issues arising from the relevant bodies in this regard, I do not therefore consider significant effects on water quality or water levels in such circumstance to be likely.
- In terms of cumulative impact, it is noted that water pumping station and treatment plant have consent and no appropriate assessments arose.

8.5.6. I conclude that the proposed development would not have a likely significant effect on any European site either alone or in combination with other plans or projects. It is therefore determined that appropriate assessment stage 2 under section 177B of the planning department Act 2000 is not required. This conclusion is based on:

- the limited zone of influence of potential impacts restricted to the immediate vicinity of the proposed development,
- the standard pollution controls that would be employed regardless of proximity to a European site and effectiveness of same
- distance from European sites and the absence of a meaningful pathway to any European site.

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

9.0 Recommendation

Having regard to the submissions on file, the provision of the development plan and the planning history and the proper planning and sustainable development of the area, I recommend a Grant of Permission subject to amended conditions.

I consider it reasonable that the developer should contribute towards the specific exceptional costs of the provision of a footpath (upgrading where necessary) and cycleway to current standards along the public road serving the site from the entrance to Pairc Chuimin to the village centre over a distance in the order of 400m. I consider it reasonable that the local authority's costs and length of footpath form the basis of the contribution amount but that the existing constructed houses be excluded. I accordingly recommend that the amount be modified to reduce the total contribution as calculated by the planning authority.

10.0 Reasons and Considerations

Having regard to the provisions of the Kerry County Development Plan 2018-2028, the Killarney Municipal District Local Area Plan 2018-2024 and the specific objective to provide for footpaths connecting the housing to the village, to the status of the wastewater pumping station, to the nature and scale of the development proposed and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the proposed development would not constitute a traffic hazard or give rise to serious injury of the amenities of the area. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

Furthermore, it is considered reasonable that the developer should contribute towards the specific exceptional costs of the provision of a footpath (upgrading where necessary) and cycleway to current standards along the public road serving the development site from the entrance to Pairc Chuimin to the village centre over a distance in the order of 400m.

Conditions

1. 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 to the planning authority on the 6th day of September 2022 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.

Reason: In the interest of clarity.

2. Prio to commencement of development the applicant shall submit a final site layout map and house plans for the written agreement of the planning authority and in these shall:
 - (a) specifically identify the sites where house types B and C are proposed to be constructed,
 - (b) replace house type F on site number 119 with type D,
 - (c) modify the houses on site numbers 105, 110 and 93 so as to provide habitable room windows overlooking the green areas to the side, and
 - (d) stepping forward of houses on plots 86-93 and 110-119 in the order to increase distances from the site perimeter boundary ditch.
 - (e) Revised parking with adequate clearance for house site number 68, 109 and 119.

Reason: In the interest of clarity, to protect the existing hedgerow and trees in the interest of ecology and to ensure a good standard of development.

3. Construction work on the house sites shall not commence until such time as the proposed Kilcummin Sewerage Scheme is completed and commissioned.

Reason: In the interest of orderly development.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. Prior to the commencement of development, the developer shall enter into water and/or waste water agreement(s) with Uisce Éireann.

Reason: In the interest of public health.

6. The external materials, colours and finishes shall harmonise with existing development

Reason: In the interest of visual amenity.

7. The internal road and vehicular circulation network serving the proposed development, including turning bays, junctions, parking areas, footpaths, and kerbs shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets. Drawings and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of amenity and of traffic and pedestrian safety.

8. The development, including all roads, footpaths, verges, public lighting, open space, foul, water and surface water drains, attenuation infrastructure and all other services, as permitted under this development, shall be carried out and completed in accordance with the “taking-in-charge” standards of the planning authority.

Reason: In the interest of proper development and in order to comply with national policy in relation to the maintenance and management of residential estates.

9. A comprehensive site boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall provide for the maximum retention of existing trees and hedgerow and include the following:-

- a) proposed locations of trees to be retained and Measures for the protection of those trees shall be submitted to, and agreed in writing with, the planning authority before any trees are felled
- b) Proposed locations of trees to be planted and other landscape planting in the development, including details of proposed species and settings;

b) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity and ecology

10. Trees to be removed on site shall be felled in late summer or autumn. Any disturbance to bats or badger setts on site shall be in a manner to be agreed in writing with the planning authority on the advice of a qualified ecologist.

Reason: In the interest of nature conservation.

11. A concrete block wall of two metres in height, capped and plastered on both sides, shall be constructed along all side boundaries of the rear gardens unless otherwise agreed in writing with the planning authority. Where existing site boundary ditch is being retained to the South and northeast of the site childproof fencing 1.2 metres in height should be erected on the development side of the boundary ditch. A site plan indicating such details shall be submitted for written agreement of the planning authority prior to commencement of development

Reason: In the interests of orderly development and residential amenity.

12. Public lighting shall be provided in accordance with ISO EN13201 and with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house. The developer shall be responsible for the payment of all public lighting bills until the public lighting has been shown to be in compliance with the requirements of the planning authority and taken in charge by the local authority

Reason: In the interests of amenity and public safety

13. Each proposed house shall be used and occupied as a single dwelling unit for residential purposes and shall not be sub-divided or used for any commercial purposes (including short-term letting) without a separate planning permission.

Reason: In the interest of clarity and to ensure the maintenance of a residential community.

14. 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.

Reason: In the interests of visual and residential amenity.

15. Site development and building works shall be carried out between the hours of 0800 and 1900 Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

16. The construction of the development shall be managed in accordance with a site-specific detailed Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including, bunding of temporary oil facilities, containment of contaminants and protection of water quality, dust suppression, wheel washing, decommissioning and removal of existing sand filter for the waste treatment plant, noise management measures and off-site disposal of site preparation and construction/demolition waste.

Reason: In the interests of public health and pollution prevention.

17. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials within each house plot shall be submitted to, and agreed in

writing with, the planning authority prior to commencement of development.
Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

18. Prior to the commencement of any house unit 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 or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units 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.

Reason: 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.

19. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority. The area required by Kilcummin Sewerage Scheme pumping station permitted under planning register reference number 17/97 and An Bord Pleanála appeal number PL 08.248355 shall remain free from development.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

20. All the recommendations of the stage 1/2 Road Safety Audit for the proposed development shall be implemented. Prior to the commencement of development all documentation generated from this implementation shall be submitted to the

written agreement of the planning authority. A stage 3 Road Safety Audit shall be carried out at the completion of the proposed development with the recommendations acted upon.

Reason: in the interest of traffic and pedestrian safety.

21. 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.

Reason: 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 of the area.

22. The development hereby permitted shall be carried out and completed at least to the construction standards set out in the "Recommendations for Site Development Works for Housing Areas" issued by the Department of the Environment and Local Government in November 1998. Following completion, the development shall be maintained by the developer, in compliance with these standards, until taken in charge by the planning authority.

Reason: To ensure that the development is carried out and completed to an acceptable standard of construction.

23. 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.

Reason: To ensure the satisfactory completion of the development.

24. The developer shall pay a financial contribution of €69,737.96 to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of public infrastructure in the form of a proposed cycleway/walkway, over a distance of 400m, linking Pairc Chuimin Estate to Kilcummin Village centre and its facilities therein, which will benefit the proposed development. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.

25. 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.

Reason: 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

Note: I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Suzanne Kehely
Senior Planning Inspector

5th June 2024

Appendix 1 –

Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-314951-22			
Proposed Development Summary	New Foul Sewer to facilitate Irish Water to complete Kilcummin Sewage Scheme and connection of Pairc Chuimin to same , turning bay to serve pumping station and construction of 34 houses			
Development Address	Pairc Chuimin, Kilcummin, Killarney, Co. Kerry.			
1. Does the proposed development come within the definition of a ‘project’ for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary

				Examination required
Yes	X	Class 10(b)(i) of Part 2: threshold 500 dwelling units	The connection to the pumping station is ancillary	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	314951-22	
Proposed Development Summary	New Foul Sewer to facilitate Irish Water to complete Kilcummin Sewage Scheme and connection of Pairc Chuimin to same , turning bay to serve pumping station and construction of 34 houses.	
Development Address	Pairc Chuimin, Kilcummin, Killarney, Co. Kerry.	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p>	<p>The proposed development comprises the construction of 34 houses in zoned land in a designated settlement area and adjacent to housing development surrounded by a mix of developments . The proposed development would not be exceptional in the context of the existing built environment.</p>	No
<p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>During the construction phase the proposed development would generate waste during demolition, excavation and construction including the removal of a sand filter associated with a replaced private wastewater system. Given the moderate scale of the proposed building I do not consider that the level of waste generated would be significant in a local, regional or national context. Moreover the connection to the pumping station and public sewer network is a positive development regulating waste emissions. No significant waste, emissions or pollutants would</p>	No

	arise during the construction or operational phase due to the small scale of development and capacity indicated by Uisce Eireann and subject to standard conditions.	
Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? Are there significant cumulative considerations having regard to other existing and/or permitted projects?	The proposed development would consist of a 34 dwellings as an extension to 94 dwelling. I do not consider this to be exceptional in size in the context of the adjacent housing estate. Owing to the serviced urban nature of the site and the facilitation of upgraded services, I consider that there is no real likelihood of significant adverse cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.	No No
Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location? Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	The application site is not located in or immediately adjacent to any European site. The closest site is Killarney National Park McGillicuddy's Reeks and Caragh River catchment SAC (site code 000365) at a distance of approximately 80 metres to the southeast of the site with limited hydrological links. There is a small extent of open drain in the vicinity of the site to which discharge will be managed. The site is otherwise located within a serviced area and the site will be connected to public foul sewers. I consider that subject to a CEMP and agreed method of removing the sand filter there is no significant risk posed with potential for the proposed development to affect other environmental sensitivities in the area.	No No
Conclusion		
There is no real likelihood of significant effects on the environment. EIA not required.		

inspector: _____ Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)