



An
Bord
Pleanála

Inspector's Report

ABP-315494-23

Development

(1) 58-bedroom nursing home with auxillary facilities (2) part demolition of and erection of a new extension to churchtown lodge, a protected structure and change of use to 10 bedroom respite care facility (3) car parking and amended vehicular access and (4) connection to public mains services.

Location

Churchland Quarters, Carndonagh, Co. Donegal.

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

22/50174

Applicant(s)

Glasheady Investments Ltd.

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

First Party v Condition

Appellant(s)

Glasheady Investments Ltd.

Observer(s)

N/A.

Date of Site Inspection

25th of July 2023.

Inspector

Stephanie Farrington

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.7463ha, is located to the south of Carndonagh town centre. The site is triangular in shape and is bounded by the R244 Regional Road to the west and by the L1232-1 Local Road along its eastern boundary. The site is currently occupied by a Churchtown Lodge which is listed as being of regional importance on the NIAH due to its artistic and architectural merits. The Architectural Heritage Impact Assessment submitted in response to Donegal County Council's request for further information identifies the building as a Proposed Protected Structure. Access to the site is provided from the R244. At present no footpaths are provided along the site boundaries.

2.0 Proposed Development

2.1. The proposed development, as described within the public notices, comprises the construction of a 58-bedroom nursing home with auxiliary facilities, part demolition and erection of a new extension to Churchtown Lodge, a Protected Structure and change of use to a 10-bedroom respite care centre facility, car parking and amended vehicular access and connection to public mains services.

2.2. The application is accompanied by the following documentation:

- Application Cover Letter, Application Form and Public Notices
- Planning Statement
- Architectural, Engineering and Landscaping Drawings

2.3. The following additional documentation was submitted in response to the Donegal County Council's request for further information:

- FI Cover Letter Response
- Architectural Heritage Impact Assessment
- Stage 1 & 2 Road Safety Audit
- Car Park Assessment

2.4. The following was submitted as unsolicited further information:

- Revised proposals for storm and foul network connection to public services in Donagh Park.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Donegal County Council issued a notification of decision to grant permission for the development subject to 16 no. conditions. The following conditions are of relevance to the grounds of appeal:

Condition 3 (b) (ix):

Prior to the commencement of development the person taking benefit of the planning permission shall, following consultation with the Local Roads Authority, submit to the Planning Authority, for the agreement in writing of the Planning Authority, a revised site layout to a scale of 1:250 that clearly shows the following:

(ix) The provision of a two meter wide footpath to the entirety of all public road frontage to the application site.

(d) The footpaths required under Part (ix) of part 3 of this condition shall be constructed by the Local Roads Authority.

Reason: In the interest of traffic safety.

Condition 15:

Applicant (or person at the relevant time entitled to the benefit of the permission) shall pay the sum of €56,000 (Fifty Six Thousand Euro) to the Planning Authority as a special contribution under Section 48 (2) (c) of the Planning and Development Act 2000 in respect of the construction of a two metre wide footpath along the entire public road frontage of the application site which will facilitate the development.

This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate.

Where the works in question:

- (i) Are not commenced within five years from the date of payment to the Authority of the contribution, or final instalment thereof; or

- (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;
or
- (iii) Where the Local Authority decides not to proceed with the proposed works or part thereof, the contribution shall be refunded to the applicant together with any interest that may have accrued over the period while held by the Local Authority. Where a 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 works, which have been carried out.

Reason: It is considered that the developer should contributor towards the specific exceptional costs which are incurred by the Planning Authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Condition 16:

Developer shall pay a contribution in respect of public infrastructure and facilities benefitting the development in the area of the Planning Authority that are already provided or are intended will be provided by the Planning Authority, The amount of contribution will be as set out below and is determined in accordance with the “Donegal County Council Development Contribution Scheme 2016-2021” (made under Section 48 of the Planning and Development Act, 2000 (as amended)). The total contribution and breakdown of same in respect of the different classes of public infrastructure and facilities provided/to be provided by the Authority are:

Total New Additional Commercial Floor Area (,3383.2sq.m.) - €16,001.59

Deficit of 33 no. car parking spaces €94,299.48

SUBTOTAL €110,301.07

50% reduction for additional floor are to building listed on the National Inventory of Architectural Heritage & Development on a brownfield site within a settlement centre
€55,150.53

TOTAL €55,150.53

The total contribution shall be paid to the Council prior to commencement of development unless the Council have agreed in writing beforehand to facilitate phased payment of contributions in which event as part of any such agreement the Council may require the giving of security to ensure payment.

Reason: To facilitate provision of capital works.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planner's Report (28/03/2022)

The initial planner's report recommends a request for further information. The following provides a summary of the key points raised:

- The report raises concern in relation to the impact of the proposal on the existing NIAH listed building on the site.
- Section 3 of the planner's report refers to Internal Report's received. This outlines that no report was received from the EE Roads Office.
- The report cross refers to the points raised within the Conservation Officers Report and Road Design Report and the recommends a request for further information.
- The report outlines that the site is not located within, proximate to or directly linked with any Natura 2000 site. It can be excluded beyond reasonable doubt that the proposed development will have a significant effect on any Natura 2000 site.
- A request for further information is recommended in respect of the following:
 - Item 1: Revised site layout plan illustrating the provision of a pedestrian footpath on the R244 to the proposed buildings and parking facilities, offset of the development boundary adjacent to the R244 to provide a 3m footpath adjacent to the development, a maximum 6m radii at entrance and exit lanes to the development to reduce vehicle speeds, drainage design and lighting proposals.

- Item 2: Auto track drawing illustrating refuse vehicles manoeuvres within the site.
- Item 3: Road Safety Audit Stage 1&2.
- Item 4: Submission of an Architectural Heritage Impact Statement, revised plans including measures to enhance the physical, visual and landscape setting of the property.

Further Information Planner's Report 09/11/2022

The report provides a summary and assessment of the applicant's response to the planning authority's request for further information. In terms of Item 1 of the FI request the report refers to discussions with the Area Engineer in respect of the provision of a 2m wide path along the entire frontage of the local road to the east of the site. It is stated that this was not requested within the FI request but can be addressed by means of condition in the instance of a grant of permission.

The report recommends new public notices in accordance with the requirements of Article 35 of the Planning and Development Regulations 2001 (as amended) on the basis that the FI response contains significant revised plans.

Planner's Report 06/12/2022

The report recommends a grant of permission subject to conditions in accordance with the following reasons and considerations:

"Having regard to the location of the site within an area zoned as Established Development" within the Settlement Centre of Carndonagh Town, outside of and removed from any sensitive designations, to the nature and scale of the development and the policies of the current development plan, it is considered that subject to compliance with the conditions below, the proposed development would not injure the amenities of the area, would not be prejudicial to public health and would not endanger public safety by reason of a traffic hazard. Accordingly, it is considered that the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area".

3.2.2. Other Technical Reports

E.E. Roads (01/03/2022)

The report recommends further information in relation to (1) adequacy of route of diverted stream (2) provision of a 2m wide footpath along LP231 as well as R244 (3) Applicant to address proposed storm and sewer connections through third party lands.

Area Engineer Correspondence (30/11/2022)

- This email correspondence sets out the estimated costs for a footpath along the public road adjoining the appeal site as follows: €56,000 (280m x 2m @ €200/m).

Road Design Report (14/03/2022)

The Road Design Report recommends a request for further information in respect of the following:

- Revised site layout plan illustrating the provision of a pedestrian footpath on the R244 to the proposed buildings and parking facilities, offset of the development boundary adjacent to the R244 to provide a 3m footpath adjacent to the development, a maximum 6m radii at entrance and exit lanes to the development to reduce vehicle speeds, drainage design and lighting proposals.
- Submission of an Auto track drawing illustrating refuse vehicles manoeuvres within the site.
- Submission of a Road Safety Audit Stage 1&2.

Architectural Conservation Unit (25/03/2022)

The report outlines that the proposal is not sympathetic to the integrity of the existing NIAH structure on site, Churchtown Lodge. The report recommends a request for further information including submission of an Architectural Heritage Impact Assessment/Conservation Method Statement and revised plans to retain the physical, visual and landscape setting and integrity of the property.

Architectural Conservation Unit (08/11/2022)

The report recommends a grant of permission subject to conditions.

Building Control (25/02/2022)

No objection.

3.3. **Prescribed Bodies**

Department of Housing, Local Government and Heritage (09/03/2022)

The report recommends the undertaking of pre- development Archaeological Testing and submission of a written report to the Planning Authority and Department in the event of a grant of permission.

3.4. **Third Party Observations**

2 no. third party observations were submitted during the initial public consultation phase. The following concerns were raised:

- The observation from David Cawley raises concern in relation to the siting of the proposed overflow car park relative to existing residential properties and potential for impact on residential amenity through noise and loss of privacy.
- No landscaping proposals are submitted to ensure privacy of adjoining dwellings to the south.
- Private storm and foul sewers are proposed through 3rd party lands.

4.0 **Planning History**

None recent.

5.0 **Policy Context**

Development Plan

5.1. Donegal County Development Plan 2018-2024

- 5.1.1. The site is located within the town of Carndonagh and is zoned as “*Established Development*” on Map 5 of the Seven Strategic Towns Local Area Plan (2018-2024) with an objective “*To conserve and enhance the quality and character of the area, to*

protect residential amenity and to allow for development appropriate to the sustainable growth of the settlement”.

5.2. Donegal County Council Development Contribution Scheme 2016-2021

5.2.1. Section 1.2 of the Scheme relates to General Development Contributions. This outlines that under Section 48 of the Planning & Development Acts, 2000-2015 planning authorities may prepare a Development Contribution Scheme (DCS) in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the local authority's functional area. The Scheme identifies the types of public infrastructure that can be funded under the scheme including:

- a) *The acquisition of land.*
- b) *The provision of open spaces, recreational and community facilities and amenities and landscaping works.*
- c) *The provision of roads, car parks, car parking places, sewers, waste water and water treatment facilities, service connections, watermains and flood relief work.*
- d) *The provision of bus corridors and lanes, bus interchange facilities (including carparks for those facilities) infrastructure to facilitate public transport, cycle and pedestrian facilities and traffic calming measures.*
- e) *The refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, sewers, waste water and water treatment facilities, service connections or watermains.*
- f) *The provision of high capacity telecommunications infrastructure, such as Broadband.*
- g) *The provision of school sites,*
- h) *Any matters ancillary to paragraphs (a) to (g).*

5.2.2. Section 1.3 relates to Special Development Contributions and outlines that:

“A Planning Authority may, in addition to the terms of a General DCS, 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 the Local

Authority in respect of public infrastructure and facilities which directly benefit the proposed development. The planning condition must specify the particular works carried out, or proposed to be carried out, to which the contribution relates and where the works in question are either not commenced by the planning authority within 5 years of the date of payment of the contribution (or final instalment, if paid by phased payment), or where the Local Authority decides not to proceed with the proposed works, the contribution shall be refunded together with any interest that may have been accrued. In the event that works to which the contribution relates has commenced but has not been completed within 7 years of the date of payment or final instalment then the contribution shall be refunded in proportion to those works that have not been carried out”.

5.2.3. Section 3.0 relates to Proposed Infrastructure Provision. This outlines that: *“The types of ‘public infrastructure and facilities’ that can be funded by the Development Contribution Scheme are identified at Section 1.2 above. A schedule of potential infrastructural projects which may be partially funded from DCS income is presented at Appendix I”.*

5.2.4. Table 2 sets out the Schedule of General Exemptions. Section 3.3 relates to Exemptions and Reductions. Table 3 sets out the Schedule of Town/Village Centre Reductions/Exemptions. The following is of relevance:

1 (a) Re-use of existing derelict/vacant buildings, 1(b) New build on vacant brownfield site and 1 (c) demolition and rebuild on brownfield sites:

- 0-100m = 100% reduction
- 101-200m = 50% reduction
- 201m + = 0% reduction

5.2.5. Section 4.0 relates to Notes on Implementation of the Scheme. Section 4.1 of the Scheme relates to the duration of the scheme upon adoption. This outlines that the Scheme will operate between 2016-2021 unless it is revised within that period. If a new Scheme is not adopted prior to the expiry date of this Scheme, this current Scheme will also remain operational after these dates until a new scheme is adopted.

- 5.2.6. Section 4.3 of the Scheme outlines that Works in Lieu Works in lieu shall not be considered under this 'General' Development Contribution Scheme. Appendix 1 of the Scheme set out a Schedule of Potential DCS Projects. This includes reference to Public Footpaths and Lighting Countrywide.

5.3. Ministerial Guidelines

Development Contributions Guidelines for Planning Authorities (2013)

- 5.3.1. The Guidelines provide guidance on the drawing up of development contributions. Under section 48 of the Act, planning authorities must draw up a development contribution scheme (a general development contribution scheme) in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme.

Development Management Guidelines (2007)

- 5.3.2. Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act), advising that 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.
- 5.3.3. Although there is no entitlement to appeal against the principle of attaching a condition formulated in accordance with a general or supplementary scheme, the contribution requirements of any such scheme may be the subject of a valid appeal where the applicant considers that the terms of the scheme in question were not properly applied. The planning decision should clearly set out how the relevant terms were interpreted and applied to the proposed development; as well as being best practice this will help to minimise unnecessary appeals.

5.4. Natural Heritage Designations

The nearest designated European sites to the appeal site, including SAC's and Special Protection Areas (SPA's) include the following:

- North Inishowen Coast SAC (IE 0002012)- 3.7km
- North Inishowen Coast pNHA – 3.7km
- Carndonagh Wood p NHA – 0.5km
- Magheradrumman Bog SAC (IE 000168) – 5.3km
- Magheradrumman Bog p NHA (IE 000168) – 5.3km
- Lough Fad West p NHA- 6.3km
- Bulbin Mountain p NHA – 10.1km
- Slieve Snaght Bogs NHA- 3 km
- Trawbreaga Bay SPA (IE 004034)- 3.7km

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been submitted by Harley Planning Consultants on behalf of the applicant in respect of Condition no. 15 of the notification of decision of Donegal County Council to grant permission for the development. The following grounds of appeal is set out:

- The appeal is made under Section 48 (13) (a) of the Planning and Development Act 2000 and on that basis the Board shall restrict its determination to the matter under appeal.
- The appeal is specifically against Condition no. 15 of PA Ref: 22/50174.
- It is considered that the imposition of this special development contribution is wrong as the identified works (public road footpath) is already included in the General Contribution Scheme adopted by Donegal County Council.
- Section 2 of the appeal refers to the provisions available for Planning Authority's for the imposition of development contributions on developments.

- The appeal outlines that there are 2 fundamental flaws which undermine the validity of the imposition of Condition no. 15 of the permission. In this regard it is stated that (1) the works identified as “special” are already provided for and covered in the adopted County Donegal DCS 2016-2021 and (2) secondly that the benefit deriving from the works identified, are more widespread and applicable to all developments in the general vicinity.

(1) Works are covered by the Development Contribution Scheme

- The appellant makes a case that the imposition of Condition 15 represents a double charging of the development the Development Contribution applied under Condition 16.
- Section 3.2.3 of the appeal refers to the specifics of the Development Contribution Scheme 2016-2021 and the types of “public infrastructure and facilities” that can be funded by the DCS (as detailed in Section 1.2 of the Scheme). The appeal outlines that the provision of public footpaths falls under sub paragraph (h) which refers to any matters ancillary to paragraph (a) to (g). In this regard it is stated that footpaths are ancillary to the provision of roads, car parks and car parking spaces as identified under paragraph (c).
- The appeal furthermore refers to Appendix 1 of the DCS which specifically lists public footpaths and lighting throughout the Country as potential capital DCS projects. In this regard it is stated that public footpaths form part of infrastructural projects covered by the scheme.

(2) Widespread benefits of the Works

- The appeal outlines that the proposed works have substantial widespread benefits to other developments in the vicinity.
- Extensive residential development in the area which benefit from the provision of infrastructure has general development contributions imposed under the Donegal DCS 2016-2021.
- The appeal outlines that the Development Management Guidelines for Planning Authorities outline that *“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” (Paragraph 7.12 page 14). The appeal outlines that the Planning Authority has not properly applied the Ministerial Guidelines, as the special infrastructure has widespread benefits beyond the proposed development.

Conclusion

- The special development contribution imposed under Condition no. 15 is considered invalid as its basis has not been fully evidenced and explained in the planning decision.
- The decision document fails to identify the basis for the calculation, including how it was apportioned to the particular development. The contribution was not raised by the planning authority at preplanning or further information stage. No opportunity to consider the additional costs was afforded to the applicant.
- The Board is requested to delete Condition no. 15 from the planning authority’s decision.

6.2. Planning Authority Response

6.2.1. The appeal was circulated to Donegal County Council and no response was received. An Bord Pleanála issued a Section 132 request to Donegal County Council requesting the Planning Authority’s submissions/observations on the appeal which specifically addresses the following:

- Details of public infrastructure and/or facilities concerned.
- Details of costs incurred in relation to public infrastructure and/or facilities and calculations involved.
- How the public infrastructure benefits the development and how costs incurred are apportioned.
- The amount of funding received from the State or European Union.
- Whether infrastructure concerned constitutes any service provided for under the Development Contribution Scheme or supplementary Development Contribution Scheme.

6.2.2. Donegal County Council provided a response to the Section 132 request on the 11th of April 2023.

6.2.3. The response provides a rationale for the imposition of the development contribution having regard to the following reasons and considerations:

- 265m of a 2m footpath at 213euro per metre. An additional €13 is applied towards tactile paving, dished kerbing and signage.
- The development will not cover the costs of any pedestrian crossing facilities which will be covered by the Planning Authority.
- The development will provide a safe environment for vulnerable road users.
- The remainder of the funding (if required) will be provided by the Area Roads Office.
- The Area Roads Office is part financed by the General Development Contribution Scheme and the contribution charged under Condition no. 16 is to facilitate capital works.
- The development will have the benefit of the use of the entire pedestrian network its application site frontage will attend to.
- The site is at the edge of town and there is not a particularly substantial level of development further out the Regional Road.
- There is no supplementary development contribution in place in relation to the application site location.
- The Board is requested to uphold to decision of the planning authority and impose Condition no. 15.
- The Planning Authority considers that the sum of €56,000 is fair and reasonable.

6.3. Further Responses

6.3.1. Harley Planning Consultants provided a response to Donegal County Council's response to the grounds of appeal on behalf of the applicant. The following provides a summary of the points raised:

- The response outlines that the special development contribution imposed under Condition no. 15 relates to the provision of a footpath to the entirety of all public road frontage to the development site. The submission outlines that footpaths and lighting throughout Co. Donegal are specifically identified as potential projects in the County Donegal Development Contribution Scheme 2016-2021.
- The response furthermore reiterates that the provision of roads (sub paragraph (c)) and any matters ancillary to roads (sub paragraph (h)) are identified as types of “public infrastructure and facilities” that can be funded by the Donegal Development Contribution Scheme.
- A basic requirement for the imposition of a special development contribution scheme is that the projects are not covered by the adopted DCS.
- The Board is requested to delete Condition no. 15 of PA Ref: 22/50174.

7.0 Assessment

7.1. This First Party Appeal is solely against Condition no. 15 of PA Ref: 22/50174 which relates to development contributions. Therefore, the application is not considered ‘de novo’ and issue in question in this case is solely whether the Council’s Development Contribution Scheme has been properly applied.

7.2. Condition no. 15 of Donegal County Council’s notification of decision to grant permission for the development outlines the following:

Applicant (or person at the relevant time entitled to the benefit of the permission) shall pay the sum of €56,000 (Fifty Six Thousand Euro) to the Planning Authority as a special contribution under Section 48 (2) (c) of the Planning and Development Act 2000 in respect of the construction of a two metre wide footpath along the entire public road frontage of the application site which will facilitate the development.

This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate.

Where the works in question:

- (i) *Are not commenced within five years from the date of payment to the Authority of the contribution, or final instalment thereof; or*
- (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; or*
- (iii) *Where the Local Authority decides not to proceed with the proposed works or part thereof, the contribution shall be refunded to the applicant together with any interest that may have accrued over the period while held by the Local Authority. Where a 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 works, which have been carried out.*

Reason: It is considered that the developer should contributor towards the specific exceptional costs which are incurred by the Planning Authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

7.3. Under Section 48 of the Act, planning authorities have 2 mechanisms by which to require the payment of a contribution in respect of existing and/or proposed public infrastructure and facilities benefiting development:

- (1) In accordance with a development contribution scheme made under Section 48, and/or,
- (2) Where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

7.4. Regarding the facility to require payment under a development contribution scheme, the Donegal County Council Development Contribution Scheme 2016-2021 is the operative development contribution scheme for the Planning Authority, and it makes provision for the payment of a contribution at a set rate per square metre of development. I note that Condition No. 16 of the Planning Authority's decision requires payment of a financial contribution in accordance with the development contribution scheme.

7.5. A case is made within the first party appeal that Condition 15 would result in a double charging of contributions as the works are provided for under Donegal County

Council's Development Contribution Scheme 2016-2021 (DCS). In this regard I note that Condition 16 relates to the imposition of a contribution under the DCS.

7.6. The appeal outlines that the provision of footpaths throughout the Country is included within the definition of "public infrastructure and facilities" as set out in Section 1.2 under the following provisions. Section 1.2 of the scheme relates to General Development Contributions and outlines that the following types of "Public infrastructure and facilities" can be funded by the General Development Contribution Scheme.

- *(c) The provision of roads, car parks, car parking places, sewers, waste water and water treatment facilities, service connections, watermains and flood relief work.*
- *(h) Any matters ancillary to paragraphs (a) to (g).*

7.7. The appeal furthermore refers to Appendix 1 of the DCS which specifically lists public footpaths and lighting throughout the Country as potential capital DCS projects. In this regard, the appeal outlines that that public footpaths form part of infrastructural projects covered by the scheme.

7.8. The appeal outlines that the provision of a footpath along the perimeter of the site will have substantial widespread benefits to other developments in the vicinity and the imposition of the contribution is contrary to the guidance set out within the Development Management Guidelines for Planning Authorities.

7.9. I have reviewed the contents of the Donegal Development Contribution Scheme 2016-2021 and in particular the types of "public infrastructure and facilities" that can be funded under DSC as detailed in Section 1.2. clauses (c) and (h) of Section 1.2 "General Development Contributions" and Appendix 1 of the Scheme. I note that the wording of the Appendix 1 which lists "Potential Capital DCS projects" including public footpaths and lighting countrywide which can be partially funded.

7.10. Having visited the site and reviewed the application documentation I consider that the provision of a footpath to serve the proposed nursing home is a cost which is specific to the development. I consider that the footpath is required to serve the development by creating a safe environment for vulnerable road users who wish to access the development.

- 7.11. I refer to Section 1.3 of the Donegal Development Contribution Scheme which relates to Special Development Contributions and outlines that these relate to instances where “*specific exceptional costs not covered by a scheme are incurred by the Local Authority in respect of public infrastructure*”. In this regard I note that the applicant is proposing an active use on the site and no public footpath is provided along the perimeter of the appeal site.
- 7.12. Donegal County Council’s response to ABP Sections 132 request provides a justification for the imposition of the condition on the basis that the development will have the benefit of the use of the entire pedestrian network its application site frontage will attend to. The PA’s response furthermore outlines that the site is at the edge of town and there is not a particularly substantial level of development further out the Regional Road.
- 7.13. I note that the proposed Site Layout Plan submitted in support of the application illustrates that provision of a 2m wide footpath along the boundary of the site with the R244 (Drawing no. P-S-005 submitted with the FI response). The Stage 1&2 Road Safety Audit submitted in response to Donegal County Council’s request for further information outlines that the development includes: The provision of a new 2m footpath along the R244, extending from the Care Village exit to the junction with L1231. On the basis of the information provided by the planning authority and on review of the application I am satisfied that the provision of a footpath along the site boundary can be considered as a specific exceptional cost as provided for under the Development Contribution Scheme.
- 7.14. Regarding the facility to require a contribution towards specific exceptional costs, Section 48(2)(c) of the Act is clear that specific exceptional costs should arise in order to justify any request for a special contribution. Section 48(12) of the Act states that a condition requiring payment of a special contribution under Section 48(2)(c) ‘shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates’. In this regard I note that Condition no. 15 identifies the specific works to which the special development contribution scheme relates namely “*the construction of a two metre wide footpath along the entire public road frontage of the application site which will facilitate the development*”.

7.15. Section 7.12 of the Development Management Guidelines also outlines that for such a condition to be attached by a planning authority, it is essential that the basis for the calculation of a contribution should be explained in the planning decision, including identifying the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. I refer to the Area Engineers correspondence attached to the file dated the 30/11/2022 which informs the decision of Donegal County Council to grant permission for the development and sets out the following rationale for the estimated costs for a footpath along the public road adjoining the appeal site.

- €56,000 (280m x 2m @ €200/m).

7.16. I note that DCC's response to the Board's Section 132 request furthermore sets out the following basis for the application of the scheme:

- 265m of a 2m footpath at €213 per metre. An additional €13 is applied towards tactile paving, dished kerbing and signage.

7.17. I note the deviations in the calculation above based on the extent of public footpath identified between the planning authority internal reports and the Section 132 response. I do not consider that the planning authority has provided sufficient rationale for the increase in contribution from €200 to €213 per sq.m. of footpath. I consider that the amount of contribution should be amended within Condition 15 as follows:

- 256m x 2m at €200/m = €53,000

7.18. In my opinion Condition no. 15, as worded, meets the requirements of Section 48(12) and Section 7.12 of the Development Management Guidelines as it adequately specifies the works to be carried out. The Roads Report which informs the decision of DCC to grant permission for the development provides a basis for the calculation of the contribution, including the nature/scope of works and the expenditure involved.

7.19. Having regard to the issues raised, I do not consider that the levy imposed under Condition no. 15 would result in a double charging of contributions. I consider that the provisions of the Donegal County Council Development Contribution Scheme 2016-2021 have been correctly applied in this instance and I recommend the inclusion of Condition no. 15 subject to amendment.

8.0 Recommendation

8.1. I recommend that the planning authority be directed to AMEND Condition no. 15 of PA Ref: 22/50174 as follows.

Condition 15:

Applicant (or person at the relevant time entitled to the benefit of the permission) shall pay the sum of €53,000 (Fifty-Three Thousand Euro) to the Planning Authority as a special contribution under Section 48 (2) (c) of the Planning and Development Act 2000 in respect of the construction of a two metre wide footpath along the entire public road frontage of the application site which will facilitate the development.

This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate.

Where the works in question:

- (i) Are not commenced within five years from the date of payment to the Authority of the contribution, or final instalment thereof; or
- (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; or
- (iii) Where the Local Authority decides not to proceed with the proposed works or part thereof, the contribution shall be refunded to the applicant together with any interest that may have accrued over the period while held by the Local Authority. Where a 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 works, which have been carried out.

Reason: It is considered that the developer should contributor towards the specific exceptional costs which are incurred by the Planning Authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

9.0 Reasons and Considerations

The Board considered the Donegal County Council Development Contribution Scheme 2016-2021 is the applicable contribution scheme in this case and that the terms of the scheme have been correctly applied.

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.

Stephanie Farrington
Senior Planning Inspector

10th of January 2024