



An
Bord
Pleanála

Inspector's Report ABP-317705-23

Development	Medical Centre and all associated site works.
Location	Castlebank, Ardnacrusha, Co. Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	2348
Applicant(s)	Edmund Irwin
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party – Special contribution condition
Appellant(s)	Edmund Irwin
Observer(s)	None
Date of Site Inspection	19 April 2024
Inspector	Claire McVeigh

1.0 Site Location and Description

- 1.1. The 0.576ha site is located in Castlebank lands within the settlement boundary of Ardnacrusha, Co. Clare. Ardnacrusha is defined as a small village within the metropolitan area (key component of the Limerick-Shannon Metropolitan Area Strategic Plan) in terms of the settlement hierarchy in County Clare.
- 1.2. The subject site is located on the northern side of the L3056 close to the junction with the ESB's Ardnacrusha Hydroelectric Power Station which lies to the south of the L3056 alongside Ardnacrusha tennis club and pitch and putt golf course.

2.0 Proposed Development

- 2.1. It is proposed to construct a single storey medical centre (162 sq. m gross floor area) with car parking (17 no. spaces), drop off layby and new footpath and vehicular access to join with the public road.
- 2.2. A new water supply connection is proposed. Wastewater is proposed to be treated with a shared on-site treatment system (approved under 22/98) and surface water to be disposed of via a soakpit.

3.0 Planning Authority Decision

3.1. Decision

On the 5th July 2023 the planning authority granted permission for a medical centre and all associated site works at Castlebank, Ardnacrusha, Co. Clare, subject to 10 no. conditions.

Condition no. 9 requires the applicant to pay prior to the commencement of development a contribution of €2,916.00 to Clare County Council in respect of public infrastructure and facilities benefiting development in the area in accordance with the terms of the development contribution scheme made under Section 48 of the Planning and Development Act 2000, as amended.

Condition no. 10 requires the applicant to pay prior to commencement of development a Special Development Contribution to Clare County Council towards

the provision of a footpath from the proposed development to the existing footpath to the east side of the site. The stated amount of €23,000 is subject to annual revision with reference to the Wholesale Price Index (Building and Construction) in accordance with Section 48 (2) (c) of the Planning and Development Act 2000, as amended.

All other conditions are generally standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Area Planner's initial report assessed the development in terms of the 'Mixed use' land use zoning (MU1), however, noted a concern regarding the ad-hoc treatment of the mixed use lands, notwithstanding the submission of a schematic masterplan, as well as concerns regarding the layout of the site, ambulance access/egress, proposed parking and pick-up/drop off details and proposals for sharing WWTS with the proposed pre-school facility approved under Reg.Ref 22/98.

Further information was sought in respect to the stand-alone nature of the application given the site-specific zoning objective that lands to provide for services and amenities of the village developed concurrently with the adjoining residential (LDR2) and recreation (REC 1). Details sought with respect to the shared use of the proposed wastewater treatment system and if there are any proposal to connect additional buildings to the treatment system. A revised design and potential siting proposals to address visual amenity concerns, revised carparking, drop-off areas and ambulance provision and landscaping and outdoor play. Following receipt of further information decision to grant permission.

3.2.2. Other Technical Reports

Road Design Planning Report – Initial report requested further information in respect to parking and access proposals. Following receipt of FI confirmation that the criteria listed in the FI request have been met.

Environment Section Planning Report – A shared DWWTs is proposed with the pre-school permitted under 22/98. The proposed system is suitably designed to provide adequate treatment of the discharge from this dwelling [sic].

The Environment section does highlight the potential future operational issues arising from two separate commercial developments using a shared wastewater treatment system. Issues regarding responsibility, maintenance, upkeep and repair of a shared treatment system could result in a system operating at a less than optimal condition, or even a failure of the system. Further information was sought.

Department of Physical Development (Environment) – Based on the maximum total loadings for the designed plant, the max. daily discharge for 18 PE would be 2.7m³. The current proposed loading is 11PE, therefore not anticipated that a discharge licence would be required for the shared developments.

Taking in charge team – This commercial development does not have any housing element to it, therefore the taking in charge team have no comment.

Fire Authority – No objection.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

Planning register reference 22/98 permission granted to Edmund Irwin (September 2022) for a preschool facility, entrance and all associated site works.

Planning register reference 22/716 permission granted to John Irwin (January 2023) for a dwelling house and all associated site works.

Planning register reference 21/1098 permission granted to Patrick Irwin (January 2022) for a dwelling house, access roadway and all associated site works.

Planning register reference 20/103 permission granted to Edmund Irwin (July 2020) for a dwelling house, entrance and all associated site works.

Planning register reference 08/1656 permission refused, applicant Joe McMahon (July 2009) for the construction of 16 four-bedroom detached dwellings, 12 four

bedroom semi-detached dwellings, 49 three bedroom semi-detached dwellings, 3 terraced dwellings, creche, retail unit, doctors surgery and associated site works.

Planning register reference 07/71 (An Bord Pleanala PL03.225129) permission refused, applicant Joe McMahon (March 2008) for 181 houses only, entrance, roads, services (incorporating temporary pumping station), landscaping and associated site works.

Reason for refusal: The proposed development, by virtue of its scale, density, design and layout, would constitute a suburban form of housing estate in a rural village, which is not designated for major expansion and which does not have the range of physical, community, educational and commercial services or the transport facilities required to support such development. The proposed development would, thereby, fail to provide for the orderly, planned development of Ardnacrusha, seriously injure the character and amenities of the area, contrary to policy H5 of the South Clare Economic Corridor Local Area Plan, 2003 and conflict with the Residential Density Guidelines for Planning Authorities issued by the Department of the Environment and Local Government in September 1999. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Planning register reference 062078 planning permission refused, applicant Joe McMahon (October 2006) for the construction of 29 two storey with converted attic detached houses, 3 two storey detached houses, 66 two storey 4 bedroom with converted attic semi-detached houses, 38 two storey 3 bedroom semi-detached houses, 40 two storey 3 bedroom terraced houses, creche, entrance, roads, services (incorporating pumping station), landscaping and associated site works.

5.0 Policy Context

5.1. Development Plan

Ardnacrusha and Parkroe Volume 3b Shannon Municipal District (Excerpts)

The subject site is located within the settlement boundary and zoned as Village Growth Area 2 (VGA2), as illustrated on map 68 Ardnacrusha and Parkroe.

...Ardnacrusha, located on the northern banks of the River Shannon, is synonymous with the hydro-electric power station constructed in 1929 which at that time met 90% of Ireland's energy needs. Since then, the village has grown northwards and eastwards to include Parkroe.

...The village is served by a public water main (Roo West Water Supply via the Roo West Reservoir) with adequate capacity for existing development and the target population. The village is not served by a public wastewater treatment system.

Ardnacrusha is predominantly residential in nature and would benefit from the provision of more social, recreational and community facilities to enhance the quality of life of its residents. There is currently no primary school in the settlement with nearby Parteen National School serving a large catchment area including Ardnacrusha. The provision of preschool and health care/medical facilities would significantly enhance the quality of life in the village and help to reduce car trips.

Specific Objectives

- To encourage the development of social and community facilities for the benefit of existing and future residents, so that Ardnacrusha and Parkroe retain sustainable and vibrant communities.
- To improve cycle and pedestrian linkages between residential areas, the convenience shop and the public house and investigate the feasibility of further improving the footpath network throughout the village.

Any changes on existing residential lands or development of areas identified for village growth will be strictly contingent on the provision of appropriate wastewater treatment facilities that can fully demonstrate that there will be no adverse effects on the receiving environment, or water courses or adjacent ecological designations. All lands identified for village growth should incorporate sustainable urban drainage systems and shall include detailed proposals for landscaping and tree retention and include for biodiversity-friendly planting. Development proposals for housing shall also ensure that provision is made for footpath connection to the core area of the village.

...Walking and cycling should be promoted as part of linked trips with public transport. The pedestrian and cycling environment and permeability between

residential areas, retail and community facilities should be strengthened. Limerick City to Westbury and Ardnacrusha along the Corbally Road (R463) is identified as a Primary Radial Route in the LSMATS cycle network. Provision of safe pedestrian/cycle access across the Ardnacrusha Bridge should also be provided.

5.2. Natural Heritage Designations

Approximately 2 km Lower River Shannon Special Area of Conservation (Site Code 002165) and 5.4km from the River Shannon and River Fergus Estuaries SPA (Site Code 004077).

Approximately 2 from the Knockalisheen Marsh proposed Natural Heritage Area (Site Code 002001).

5.3. EIA Screening

See completed Form 1 on file. Under the provisions of section 48 (13) (a) the Board shall determine only the matters relating solely to a condition dealing with a special contribution. Preliminary examination and/or EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant is appealing condition no. 10, 'special contribution', of the decision to grant permission and contends that:

- A special development contribution, of €23,000, has already been attached to the subject site in respect to planning register reference 22/98 (Permission granted in September 2022 for the construction of a pre-school facility). It is put forward that to levy a total of €46,000 for the same short section of footpath seems very excessive and puts the viability of the medical centre project into doubt.
- Clare County Council's development contribution scheme states that provision of roads and pedestrian facilities are included in the general development contribution levies. The council are wrong to levy an additional special

contribution for what will be a public footpath serving the area. Cites precedent PL03.311994 (Planning register reference 21372) where the Board rules that pedestrian linkage contributions are included in the council development schemes.

6.2. Planning Authority Response

- Having regard to the planning history of the site and noting that the proposal is a separate development to that as permitted under 22/98, it was considered appropriate to apply the same development contribution in this instance.
- The provision of a footpath at this location will require significant costs in terms of land acquisition etc. and as such it was considered to appropriate to apply same.

Further to Board's letter of 1st September 2023 requesting details of the calculation involved, the basis on which the calculation was made and the specific provision in the scheme on which the calculation was based the following was response from the planning authority was received:

- The amount calculated [100m of 2m wide macadam footpath to the junction at a rate of €215/m] was based on that used for the previous application, PL Ref. 22/98, following discussions with the area engineer.
- As there is no footpath at this location and noting that the lands are outside the applicant's ownership, the costs would be incurred directly as a result of, and to facilitate the subject development.

6.3. Observations

- None.

6.4. Further Responses

Further to the Planning Authority's response the applicant has submitted further comments:

- Restating previous grounds of appeal and puts forwarded the wider benefit of the provision of the footpath in respect to providing connectivity locally from the village to the ESB houses, tennis courts and back path walkway. Pedestrians are currently walking along the edge of the public roadway, so the footpath is badly needed for public safety irrespective of any development on the subject site.
- The levy of €46,000 in total for both the pre-school and medical centres is putting the viability of these badly needed local facilities in doubt when combined with large construction inflation. Drawings included of the footpath and medical centre and pre-school (DRW002_rev 2 x2).

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, the reports of the local authority and having inspected the site, and having regard to the relevant local, regional, national policies and guidance, I consider that the substantive issue in this appeal to be considered is:

- Whether the condition meets the essential requirements or characteristics to justify attachment of a 'special contribution' condition.

7.2. *Essential requirements or characteristics to justify attachment of a 'special contribution' condition.*

7.2.1. The planning authority in the decision to grant permission for the medical centre attached two financial contribution conditions namely:

- Condition No. 9 for a contribution of €2, 916 under the 'Development Contribution Scheme 2017-2023 (under Section 48, Planning and Development Act, 2000 as amended), and
- Condition No. 10 requiring the payment of €23,000, figure subject to annual revision with reference to the Wholesale Price Index (Building and Construction), as a special development contribution towards the provision of a footpath from the proposed development to the existing footpath to the east of the site.

- 7.2.2. The attachment of the special development contribution, under condition no. 10, is the core ground of appeal by the applicant, as detailed in 6.1. I note that a special contribution has also been applied to the subject lands in respect to a separate planning application for a pre-school facility (September 2022). The applicant is concerned that an additional special contribution condition has been attached to the subject application essentially to go towards the provision of the same footpath and, furthermore, considers that the special contribution has been attached in error as the provision of pedestrian facilities are included in the general contribution scheme.
- 7.2.3. The subject site as delineated in red is much larger than that of the pre-school application (22/98) and encompasses the previously granted pre-school site, and I note that the proposal as granted by the planning authority permits the shared use of the WWTP granted originally for the pre-school facility. The applicant has indicated their larger landholding outlined in blue which is all designated as Village Growth Area 2 in Volume 3b, as noted in section 5.1.
- 7.2.4. Section 48(2) (c) of the Planning and Development Act 2000, as amended sets out the special requirements that justify the imposition of special contribution conditions as follows:

“A planning authority may, in addition to the terms of the scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development”.

- 7.2.5. Accordingly, three essential requirements or characterises are necessary to justify the imposition of a ‘special contribution’ condition. Under s48(2)(c) the payment must be required:
- a) In respect of a development,
 - b) Specific exceptional costs must be incurred as a result of or in order to facilitate it, and
 - c) Such costs cannot be covered by a Development Contribution Scheme made under Section 48 or 49 of the Act.

- 7.2.6. Under the first test (a) I am of the opinion that a payment is required in respect of a development and meets with this test.
- 7.2.7. Secondly having regard to the test under (b) I am of the view that costs as a result of the development, including land acquisition given the lands to provide a footpath are outside of the applicant's ownership, will be incurred to facilitate safe pedestrian access to the proposed medical centre from the existing footpaths east of the subject site. I acknowledge the planning authority's further response providing the methodology for the special contribution but note that this appears to be based on a fixed rate per metre. No details have been provided for a specific costed footpath scheme design. I am of the view that the condition relating to an uncoded project does not pass the 'specific test'.
- 7.2.8. Thirdly whether such costs are already covered by a Development Contribution Scheme I refer to Appendix 1 of Clare County Council's Development Contributions Scheme 2017-2023 (Adopted 24th April 2017) which sets out the capital programme. Under Section 2. The following are listed as covered under the general contribution scheme:
- Footpaths - Extensions to and remediation of existing footpath infrastructure.
 - General Improvement Schemes – Streetscape improvement works and pedestrian linkages in the 2 Municipal Districts.

The intention of the special contribution included in Condition 10 is to provide funding for a new footpath from the medical centre to link with the existing footpath to the east of the site. As such I am of the opinion that it the footpath would extend the section of footpath, as proposed, within the subject site and extend to the existing footpath along the L3056 east of the subject site. As such, I consider the provision of a footpath in this context is provided for under the General Contribution Scheme and fails to pass the test under (c). I consider that the provision of 100m of 2m wide macadam footpath should, therefore, not be included for as a special contribution and it fails to meet the essential requirements or characteristics to justify attachment of a 'special contribution' condition.

8.0 AA Screening

- 8.1.1. Under the provisions of section 48 (13) (a) the Board shall determine only the matters relating solely to a condition dealing with a special contribution. As such, the requirements S177U of the Planning and Development Act 2000, as amended, do not apply.

9.0 Recommendation

I recommend that condition 10 should be REMOVED.

10.0 Reasons and Considerations

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that Condition no. 10 relates to an uncosted project, no details have been provided for a specific costed footpath scheme design, and fails to meet the 'specific exceptional costs test' and furthermore, the intention of the special contribution to provide funding for a new footpath from the medical centre to link with the existing footpath to the east of the site is already provided for under the Clare County Council's General Development Contribution Scheme (2017-2023) therefore directs the said Council to:

- (a) REMOVE condition number 10 and the reason therefore.

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.

Claire McVeigh
Planning Inspector

11 June 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317705-23		
Proposed Development Summary	Medical centre and all associated site works.		
Development Address	Castlebank, Ardnacrusha, Co. Clare		
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	
		No	✓ Soley relates to a condition dealing with a special contribution 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			
No			
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				
Yes				

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

Inspector: _____ **Date:** _____