



An
Bord
Pleanála

Inspector's Report ABP 318768-23

Development	Construction of 10 no. dwellings, access road, shared surface home zone, parking and all associated site works.
Location	Headford. Co. Galway.
Planning Authority	Galway Co. Council.
Planning Authority Reg. Ref.	2360434.
Applicant(s)	Monica Hynes.
Type of Application	Permission.
Planning Authority Decision	To grant permission.
Type of Appeal	First Party-v-Conditions.
Appellant(s)	Monica Hynes.
Observer(s)	None.
Date of Site Inspection	18 th April 2024
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located in Headford. Co Galway. It comprises a greenfield site which is located on the eastern side of the R334, c 0.5 km from the centre of the town. The site is bordered on the north side by a vacant single storey dwelling and on the south side by a bungalow. The roadside boundary is formed by a pole and rail fence and ground levels fall away from road level towards the rear of the site.
- 1.2. The site is located within the 50 kph speed limit and the centreline of the regional road is marked by a continuous white line. There is a footpath extending along the front of the site and while it breaks along the front of the houses to the south, thereafter it continues along the roadway into Headford.
- 1.3. The area is characterised by ribbon development along the regional road on the approach to the town.

2.0 Proposed Development

- 2.1. The proposal as described in the public notices submitted with the application seeks the construction of 10 no. houses, access road, shared surface home zone and shared parking, together with all associated site works and services.
- 2.2. The layout would include 4 no. semi-detached two storey dwellings facing the regional road and 6 no-semi detached two-storey dwellings to the rear with access provided off the regional road. Open space would be provided along the edge of the regional road and to the rear of the site. The houses would be connected to the public mains supply and the public sewer.
- 2.3. The documents submitted with the application included the following:
 - Design & Planning Statement.
 - Traffic and Transport Statement.
 - Appropriate Assessment Screening Report

Further information on the application was sought on June 23rd, 2023 on the following matters

- adequate provision of open space for the scheme, including the omission of Unit 7 and Unit 8 and the reorientation of Unit 9 and Unit 10 to maximise public open space provision.
- a reduction in the overall height of the dwellings to integrate with surrounding developments.
- Details of infiltration tests undertaken on site and clarification that the proposed surface water infiltration measures satisfy minimum distance requirements set out in TII Standards.
- Confirmation from Irish Water that connections to proposed water and wastewater infrastructure can be facilitated.

2.4. The information submitted in response to further information on 02/11/23 was to the satisfaction of the planning authority. A revised layout plan was submitted showing a reduction in the number of houses to 8 no. (Units 7 & 8 omitted) and the reorientation of Units 5 & 6, an increase in open space provision and improved passive surveillance, enhanced turning area, improved landscaping and bin storage areas. The overall height of the dwellings was reduced, and a contextual elevation submitted. Infiltration test results were submitted together with a letter of feasibility from Irish Water.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 27 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **planning officer's** report notes that the site is zoned 'Residential Existing' with the following objective.

To protect, provide and improve residential amenity areas within the lifetime of this plan.

To facilitate the provision of high quality new residential developments at appropriate densities with layout and design well linked to the town centre and community facilities. To provide an appropriate mix of houses sizes, types and tenures in order to meet household needs and to promote balanced communities.

The planning officer noted that housing at this location is regarded as infill development and considered appropriate. There are no recorded monuments on the site and the site is not located within an identified flood risk area. The applicant submitted an AA Screening Report. The planning authority concludes that the proposed development by itself or in combination with other plans or projects would not have a significant effect on any European sites and no further assessment is required.

The proposal which consists of a small scheme of 10. No house is significantly below the EIA threshold of 500 units and there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary stage and a screening determination is not required.

3.2.2. Other Technical Reports

Roads & Transportation Department report of 16/6/23 in relation to proposed surface water drainage measures requested details of infiltration tests, confirmation that measures comply with minimum distance requirements and confirmation that connections to public water and wastewater infrastructure can be facilitated by Irish Water. Conditions are recommended in the event of a grant of permission.

3.3. Prescribed Bodies

None submitted.

3.4. Third Party Observations

An observation was received from John Canty & Joan Burke on the following matters:

- the height of the two-storey houses which are out of keeping with the adjacent bungalows facing the public road,

- proximity of dwellings to boundary and potential overlooking and overshadowing impacts.
- New boundary wall which would be 6ft forward of adjacent wall and which would restrict views of oncoming traffic.
- devaluation of property.

4.0 Planning History

The most recent applications on the site were as follows:

21/1085: Permission sought for 12 no. houses with connection to services on the site. The application was withdrawn.

08/1302: Permission granted on part of the site for a mixed-use development comprising 5 no. retail units with associated basement storage, 12 no. residential units and associated site works and services.

5.0 Policy Context

5.1. Development Plan

5.2. The operative development plan is the **Galway County Development Plan 2022-2028**.

5.3. Under the provisions of the development plan Headford is identified as a small growth town in the settlement hierarchy. These towns have an important function in supporting the development of local areas (Policy SS5 Small Growth Towns).

The site is located within an area zoned 'Residential Existing' in the Headford Zoning Map (Volume 2 of the Plan).

5.4. Natural Heritage Designations

The closest European sites are as follows:

- Lough Corrib SAC (Site code:000297), c 1.15km from the site.
- Lough Corrib SPA (Site code:004042), 4.41km from the site.

5.5. EIA Screening

5.6. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The development contribution scheme and supplementary development contribution schemes have not been properly applied in respect of the development.
- Condition No. 26 references 'supplementary road measures at R334 Gateway transitional zone'. The applicant is not aware of any specific supplementary measures that are planned to be put in place at this location.
- The recently adopted plan does not specify any proposed works on the gateway transitional zones to the town.
- The applicant is seeking clarification on what specific supplementary road measures that have been planned at the proposed site which would require the imposition of a special development contribution, how the figure of €50,000 was arrived at, the timescale for the works, confirmation that any contribution made in respect of any proposed works will be ring fenced for this specific project.
- Galway County Council should enter into an agreement with the applicant to ensure that any funds paid are returned if not used for the proposed works in an appropriate timeframe.
- Clarity on how the cost of any proposed works are apportioned amongst all parties that will benefit from the proposed works.

- The Special Development Contribution clause notes that contributions will be applied in respect of specific public infrastructure/facilities that incur exceptional cost that are not covered by the general contribution scheme.
- Condition No 26 states that the Special Development Contribution will cover the reinstatement of line marking/footpaths that will be damaged during construction. The applicant contends that these items are an integral part of the general development contribution which imposes a charge of €7.50 per sqm for all houses, specifically for 'Roads, Footpaths and Transportation Charge'.
- Permission was granted for a development on the opposite side of the R334 and a similar condition was not applied (19/373).
- It would appear that the charge imposed for roads under the general contribution scheme has been calculated incorrectly. The figure of 1,073 sq. m which describes the floor area of all dwellings relates to the original application which referenced 10 houses. The number of dwellings was reduced to 8 no. in response to further information. Based on the reduced floor area of 885.2 sq.m the charge should be €6,639.

6.2. Planning Authority Response

None

7.0 Assessment

7.1. Introduction

The appeal relates solely to the financial contributions imposed by the planning authority under Condition No 26 and Condition No 27. No other appeal have been made. This assessment is therefore confined to the conditions that have been appealed.

It is contended that the terms of the Development Contribution Scheme have not been properly applied under Condition No 27, as the omission of 2 no. units in response to further information has resulted in a reduced gross floor area which has not been correctly calculated. The payment of a Special Contribution of €50,000

under Condition No 26 is also challenged on the basis that the works specified are already covered by the contribution payable under the Development Contribution Scheme (Condition No 27).

7.2. Condition No 27

The legislative provisions provide that the Board, in considering this type of appeal has to decide whether or not the terms of the Development Contribution Scheme have been properly applied by the planning authority. It cannot inquire into nor determine the merits or otherwise of the Scheme itself. The appellants has expressly argue that the terms of the Scheme have not been properly applied and the appeal is accepted as valid on this basis.

Condition No 27 of the planning authority's decision reads as follows:

Unless otherwise agreed in writing with the planning authority prior to commencement of development, the applicant/developer shall pay €33,871.50 to the Planning Authority, unless a phased payment schedule has been agreed in writing, with the Planning Authority. The charge has been calculated using the Development Contribution Scheme adopted by Galway County Council in accordance with the provisions of Section 48 of the Planning and Development Act (as amended).

Reason: So that the developer shall pay an equitable portion of the cost of the services which facilitates and/or which will facilitate the proposed development.

The makeup of the sum is detailed below:

Development Sub-Area	Development Sub-Type	Charge Code Description	Number of Units	Unit Charge	Line Charge
Sub Area 1	Residential	Recreation & Amenity	8	€2152	€17,216.00
	Residential	Roads	1073m2	€7.50	€8,047.50
	Residential	Economic & Community Development	8	€1076	€8,608.00
				Total	€33,871.50

The adopted scheme is the Galway County Council Development Contribution Scheme 2016, which was revised from August 1st, 2019. For the purposes of the scheme, the county is divided into two sub areas. Sub Area 1 applies to towns and villages with adopted Local Area Plans and development within the GTPS. Sub Area 2 applies to all other areas.

The site of the proposed development is located within the development boundary of Headford town (Volume 2 of the development plan) and within Sub Area 1 for the purposes of the development contribution scheme. Under the scheme the following charges apply for residential development:

	Description	Revised charge with effect from August 1 st 2019
1a	Recreation/Amenities (single house)	€2152.00
1b	Roads, Footpaths and Transportation Charge	€7.50 per sqm for all houses irrespective of size
1c	Economic and Community Development (applies to all development of five or more units (in LAP areas only)	€1076.00 per unit

The gross floor area of the original proposal for 10. No dwellings was 1073 m² and the planning authority calculated the contribution for Roads on that basis (1073 x €7.50). However, the number of houses, and consequently the gross floor area of the development, was subsequently reduced in response to the request for further information. Details of the floor areas of each of the houses is provided in the Proposed Site Layout Plan P(01)(03) submitted with the response. The applicant is correct and notes that the omission of 2 no dwellings and the alterations proposed to other units in the scheme results in a gross floor area of 885 m² and the correct development contribution in respect of Roads should therefore be €6639. The charges for 'Recreation & Amenity' and 'Economic & Community Development' are correct which means that the total amount of contribution payable by the applicant under the terms of the adopted Development Contribution Scheme (as amended) amounts to €32,463.

I accept that the planning authority has correctly applied its current Development Contribution Scheme, but has erred in the calculation of the contribution required. I

consider that the Board should direct the planning authority to AMEND the condition so that it reflects the reduction in contribution required in accordance with terms of the Scheme.

7.3. Condition No 26

The second matter raised in the appeal relates to the Special Contribution required under Condition No 26.

Condition No 26 reads as follows:

'A special contribution of €50,000 should be attached to any grant of permission. This is to facilitate installation of supplementary road measures at R334 Gateway transitional zone (and ancillary works) as required to include necessary road improvement works and to reinstate line markings/footpaths along the site frontage which will be damaged during the construction of the project.'

Reason: So that the developer shall pay an equitable portion of the cost of the facilities that are provided or intended will be provided by or on behalf of Galway County Council, which will facilitate the development'.

7.4. Section 48(2)(c) of the Planning and Development Act 2000, as amended, sets out the legislative requirements for the imposition of a special contribution. These include that the contribution must be in respect of a 'particular development' where 'specific exceptional costs not covered by a scheme' are incurred by a local authority in respect of public infrastructure and facilities 'which benefit the proposed development'. Section 48(12)(a) requires that such a condition should 'specify the particular works' to which the contribution relates such that if the works are not carried out the provisions under section 48(12)(b) as to repayment with interest come into play.

7.5. I consider that the wording of Condition No 26 is vague and in my opinion does not meet the mandatory requirements of section 48(2)(c) and 12. The nature, extent and scope of the works involved (*installation of supplementary road measures at R334 Gateway transitional zone (and ancillary works)*) are not adequately described and it is not possible to determine if exceptional costs not covered by the General Contribution Scheme apply. The planning authority has not furnished details of the specific exceptional costs that will benefit 'the particular development'. The basis for the calculation of the special contribution, including how it is to be apportioned to this

particular development is not explained in the technical reports of the council. The planning authority did not respond to the grounds of appeal, which could have provided clarity in this regard. It is unclear therefore if the costs arise directly as a result of, or in order to facilitate the development in question and are properly attributable to it.

- 7.6. I do not consider that the planning authority has demonstrated the basis for the imposition of this condition, or provided sufficient evidence to show how the proposed works would benefit this particular development. I do not consider that it can be concluded that the special contribution required under Condition No 26 is justified by reference to the provisions of the Act. I would, therefore, conclude that the applicant's case is reasonable and that the Board should require the removal of Condition No 26.

8.0 Recommendation

- 8.1. In the light of the above assessment, I recommend that the Board should determine this application under section 48 of the Planning and Development Act, 2000, as amended.

9.0 Reasons and Considerations

- 9.1. It is considered that the financial contribution under condition 26 is not a valid special contribution that complies with the provisions of section 48 of the Planning and Development Act, 2000 (as amended) as the specific nature and scope of the works proposed and how they will benefit the particular development have not been properly described. I recommend that the planning authority be directed to REMOVE Condition No 26.
- 9.2. It is considered that the terms of the current Development Contribution Scheme for the area have been properly applied in this instance. I consider that the floor area upon which the contribution has been calculated was an error, and that the contribution should be reduced accordingly. I recommend that the planning authority be directed to AMEND Condition No 27 as follows:

The developer shall pay to the planning authority a financial contribution of €32,463 (Thirty two thousand four hundred and sixty three euros) 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: *It is a requirement of the Planning and Development Act 2000 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.*

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.

Breda Gannon
Planning Inspector

24th April 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP 318768-23		
Proposed Development Summary	Construction of 10 no. dwellings, access road, shared surface home zone, parking and all associated site works.		
Development Address	Headford. Co. Galway		
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	YES
		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		Class.....	EIA Mandatory EIAR required
No		No	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)
No		N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____**Date:** _____