



An
Coimisiún
Pleanála

Inspector's Report

PL-500466-KY-25

Development	Construction of 16 number houses and ancillary site-works, (all in lieu of houses on sites 31 to 38 and 54 to 58 of granted planning ref no. 17-980) and the modification of and the construction of roads, services and ancillary works as granted under planning permission ref no. 17-980.
Location	Shronedarragh, Barraduff, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2560406
Applicant(s)	Xdev Real Estate Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Xdev Real Estate Limited
Observer(s)	None

Inspector

Jennifer McQuaid

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1.0 Site Location and Description

- 1.1. The subject site is part of an existing housing estate, which is part occupied and partly under construction. The estate is located within Barraduff Village, Co. Kerry and accessed off the national route N72 and the regional route R570. The lands are zoned for residential use and are fully serviced. The subject site is approximately 11km east of Killarney town centre, Co. Kerry.
- 1.2. This planning appeal should be read in conjunction with the adjacent appeals: ACP: PL-500469-KY-25: PA Reg: 2560412: Permission granted for 14no. dwelling and all associated site works. Currently under appeal for Development Contributions. ACP: PL-500468-KY-25: PA Reg: 2560411: Permission granted for 20 no. dwelling and all associated site works. Currently under appeal for Development Contributions.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - 16 dwellings and all ancillary site works.
 - Modification of and the construction of roads, services and ancillary works as per granted under planning reference 17980.

3.0 Planning Authority Decision

3.1. Decision

Gant subject to 31 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- A Masterplan for the overall estate submitted including phase 2, 3, 4, 5 and 6. planning application ref: 2560411 refers to Phase 5, planning application Ref: 25/60412 refers to Phase 6, planning application ref: 2461013 refers to Phase 3. The overall density will be increased form 20uph to 25uph.

- As Phase 5 and 6 are to be accessed of the N72 within the village speed limits, the TII have requested further information.
- Further information requested in relation to site drainage plan.
- Further information requested in relation to landscaping
- Further information in relation to Traffic and Transport Assessment and Road Safety Audit.
- Detailed required in relation to the permitted creche, noted it is not yet constructed, or included on any future phase plans.

Further Information report

- Further information submitted and acceptable. In relation to the creche, a creche has been built and is in operation and was recently extended. An additional creche is not feasible in the village and the current creche caters for the recent developments and the housing estate to the west currently under construction.

3.2.2. Other Technical Reports

- Archaeologist: No recorded monuments in the area, no mitigation is required.
- Housing Estate Unit: No objection subject to conditions in relation to paving, parking spaces, ducting for EV chargers, estate road section, bin store material, fencing, lateral clearance, fire hydrants, planning bond.
- Environmental Assessment Unit: It is considered that standard construction stage water management measures are implemented and operational stage nature-based solutions to storm water management measures incorporated – as per the requirements of the CDP, there is no realistic pathway for impact to this SAC. It is considered that these proposals can be screened out for AA – with scientific certainty.
- Municipal District Engineer: Further information requested in relation to Traffic and Transport Assessment and Road Safety Audit. Further information received and acceptable.
- Roads Maintenance and Operational Services Section: No objection subject to conditions including a specific development contribution of €33,500 towards

roads infrastructure which is adjacent to and serves this development and a development bond of €85,000.

3.2.3. Conditions

- Condition 2: Prior to commencement of development, the developer shall pay a contribution of €16,080.00 to Kerry County Council (Planning Authority) in respect of Roads & Transport and Community & Amenity Infrastructure benefiting the development. This contribution is broken down as follows:

Roads & Transport - €7,075.20

Community & Amenity - €9,004.80

The amount of this contribution is calculated in accordance with the Council's prevailing Development Contribution Scheme and may be increased from January 1st 2026 and annually thereafter (unless previously discharged) in line with the Wholesale Prices Indices – Building and Construction (Capital Goods) as published by the Central Statistics Office unless the Scheme is superseded by a further Development Contribution Scheme adopted by the Council.

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefiting the development, as provided for in the Council's prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act (as amended) and that the level of contribution payable should increase at a rate in the manner specified in that Scheme.

Condition 3: Prior to the commencement of development, the developer shall pay a contribution of €33,500.00 to Kerry County Council (Planning Authority) in respect of public infrastructure and facilities benefiting the proposed development, as a special contribution within the meaning of Section 48 (2) (c) of the Planning and Development Act, 2000 towards the cost of implementation of the following schedule of works:-

<u>Proposed Infrastructure and Facilities</u>	<u>Estimated Cost</u>
Enhanced footpath and pedestrian crossing linkages to services such as Bus Stop, Church and Shops; upgrades to its junction access with the N72 and associated enhancements including undergrounding of utilities within the village centre along the N72.	€33,500.00

Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefiting the development and identified in the Stage 1 & 2 Safety Audit, in accordance with the provisions of Section 48 of the Planning and Development Act, 2000.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland: It is considered to be at variance with official policy in relation to control of development on/affecting national roads. It is recommended that (i) a Traffic and Transport Assessment (TTA) is carried out to assess the impacts of the proposed development in accordance with the guidelines outlined in the TII Traffic and Transport Assessment Guidelines 2014, and (ii) a Road Safety Audit (RSA) should be carried out in accordance with TII Publications.

3.4. Third Party Observations

None received.

4.0 Planning History

ACP: PL-500469-KY-25: PA Reg: 2560412: Permission granted for 14no. dwelling and all associated site works. Currently under appeal for Development Contributions.

ACP: PL-500468-KY-25: PA Reg: 2560411: Permission granted for 20 no. dwelling and all associated site works. Currently under appeal for Development Contributions.

PA reg: 2461013: Permission granted for 23 no. dwelling and all ancillary works.

PA Reg: 2460644: Permission granted for 11 dwellings and all ancillary works and retention of works carried out under planning reference 05/2462.

PA Reg: 17980: permission granted to complete the unfinished estate granted under planning reg: 05/2462 for 72no. dwellings.

PA Reg: 074197: Permission granted for wastewater plant and all associated site works.

PA Reg: 052462: Permission granted to demolish existing buildings and construct retail/office buildings, 13no. apartments, creche with 2no. apartments, ATM and 132 residential units.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2022-2028.

Volume 6 Development Management Standards & Guidelines, Section 1.3.4 relates to Development Contributions.

Killarney Municipal Area Local Area Plan 2018-2023.

The site is located within the development boundary of Barraduff Village.

Development Contribution Scheme 2017

The DCS is based on the costs and expenditure for future infrastructure projects.

Future infrastructure costs fall into one of two main categories:

1. Roads & Transport infrastructure, e.g., Road projects, public lighting, flood relief work.
2. Community & Amenity Infrastructure, e.g., Cycle & walkways, sport facilities, arts/heritage, libraries, burial grounds, school facilities.

As there are different projects associated with each of the two categories, a separate development contribution shall apply based on capital costs.

Section 5 relates to Reductions.

Section 6 relates to Change of Use & Intensification of Use. Development Contributions when applied to change of use applications in previous Schemes were reduced by 50%.

Appendices A relates to a list of projects to be funded by DCS.

Development Contributions – Guidelines for Planning Authorities (2013)

With regard to the types of Development Contribution Schemes, it is noted that development contributions provide the only statutory mechanism for capturing planning gain as part of the development management process. There are three types of development contribution schemes with the following applicable to the subject development:

General Development Contribution Schemes: Under section 48 of the Planning and Development Acts, planning authorities must draw up a 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 in operation in the area of the planning authority.

Development Contributions are to support economic development and should consider measures to support new or existing enterprises such as reduced contributions rates and deferral of payment. With respect to Retention Permission, the guidelines state that 'no exemption or waiver should apply to any applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications.

Development Management – Guidelines for Planning Authorities (2007)

Section 7.12 of the Guidelines provides guidance on planning conditions relating to development contributions. Any scheme may be the subject of an appeal where the applicant considers that the terms of the scheme were not properly applied. To help minimise unnecessary appeals, the planning decision should clearly set out how the relevant terms were interpreted and applied to the proposed development.

Section 8.12 of the Guidelines refers specifically to appeals in respect of development contribution conditions and reiterates that an appeal against a contribution condition can only be made where the applicant contends that the terms of the contribution scheme have not been properly applied.

OPR Practice Note PN03 2022.

Section 3.16 relates to Conditions requiring financial contributions or Ceding of Lands

Special development contributions are provided for in Section 48 (2)(c) of the 2000 Act for specific works which benefit the individual development. These relate to costs associated with works that are not covered by the planning authority's Development Contribution Scheme. Any works in respect of which the special contribution is being levied must be specified in the condition. Any contributions required by way of conditions must be strictly in accordance with the provisions of such sections.

5.2. Natural Heritage Designations

The site is not located within a designated site. The nearest sites are:

- Killarney National Park, Macgillicuddy Reeks and Caragh River Catchment pNHA & SAC (site code: 000365) is located approximately 300m east of the subject site.
- Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC & pNHA (site code: 000365) is located approximately 2.5km south of the subject site.
- Killarney National Park SPA (site code: 004038) is located 10km to the west of the subject site.

5.3. EIA Screening

- 5.3.1. The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore does not require preliminary examination or environmental impact assessment. See Form 1 (attached).

5.4. Water Framework Directive

5.4.1. The subject site is located in an urban area to the Barraduff Village, there are no streams or rivers in close proximity to the site. The proposed development comprises of the residential development within an existing permitted development; the appeal relates solely to the special development contribution. No water deterioration concerns were raised in the planning appeal. I have assessed the proposed development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seeks to protect and, where necessary, restore surface & ground water body in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively. The reason for this conclusion is as follows:

- Nature of works of residential development within zoned lands.
- Distance from nearest water bodies.
- Connection to public water and public sewer.

I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal have been submitted from the applicant. The concerns raised are:

- Appeal against Condition 3 for special contribution.

- No consideration has been given to the history of the development site, the amounts already conditioned and the amounts paid:

This development was only partially developed (approximately 21%) and unfortunately due to the economic crash the developer went into liquidation. The total contributions under Conditions 4 to 7 amounted to €1,125,759. A total of €802,788 was paid to the Planning Authority i.e. 71% was paid no refunds were given by the Planning Authority.

Under planning ref: 17-980, condition 3 of sought Special Contributions of €180,500. This was appealed and reduced to €77,150 by An Bord Pleanála. The final contributions related to:

- (a) Provision of pedestrian crossing on the N72 €50,000,
- (b) Contribution towards upgrade of public footpath along R570 from adjacent to number 1 Coill Darrach to junction with N72 (circa 70 metres) €22,750
- (c) Contribution towards upgrade of public lighting along R570 between proposed development and junction with N72 (one light) €4,400

The contributions have been paid in full and confirmation of same is attached. No works have been done on the ground relating to these works.

It should be noted that the N72 pedestrian crossing was for the full cost and no apportioned cost was allowed here.

Planning Application ref. no's: 24/60644, 24/61013, 25/60406, 25/60411 and 25/60412 are all within the planning envelope of Planning Ref No's: 05/2462 and 17/980.

The applicant is of the opinion that given the history of the site sufficient Special Contributions have already been considered and paid and new contributions would be unreasonable and possibly a double charge, request removal from the application.

- Works as described are not Specific Exceptional costs: the works as described are enhanced footpath and pedestrian crossing linkages to services such as Bus Stop, Church and Shops; upgrades to its junction access with the N72 and associated enhancements including undergrounding of utilities within

the village centre along the N72. This is a vague works description and there is nothing specific or exceptional about these works. There is no buildup to the costings, there is no apportioned amount or detail given. The works described for the Special Contribution are not specific exceptional costs as per sections 48(2)(c) & 48(12) of the P&D Act and the subsequent guidance given in 2007 and 2013 and therefore condition 3 should be removed.

- Works already covered in the General Contributions of the Development Contributions Scheme. General contributions have been conditioned in Condition 2 under the heading of Roads & Transport and under the heading of Community & Amenity. The Development Contribution Scheme, Appendix A includes “Town centre Enhancement Works” under the category Roads & Transport. In Category Community & Amenity Projects list of indicative works includes “Improvements to streetscapes, including for the undergrounding of overhead power lines in towns and villages, including Rathmore, Gneeveguilla, Tarbert, Portmagee & Waterville.
 1. Even though the works described are vague, the works are covered in Points (b) and (h) in Appendix A of the DCS.
 2. The PA have sought contributions under condition 2 which cover in Roads and transport as per DCS.
 3. The PA have sought contributions under condition 2 which cover in Community & Amenity as per DCS.
 4. The DCS is based on 2015 and 2021 projections, the villages/specific project names mentioned serve now only as indicative and without the adoption of a new DCS, Barraduff Village Works must be at this stage be considered as included.
- Specific Precedent in Bord Pleanála ref no. ABP-301156-18 (PA Ref: 17980). In section 7.2.1 of the Inspector’s report (ABP-301156-18), the Inspector considers:

Item 1: Pedestrian crossing of N72: and the Inspector’s finding are “it is considered that the proposed levy in respect of this element of the works is

justified and should be retained". These works have therefore already been considered, conditioned and paid for under planning ref: 17980.

In section 7.2.5, the Inspector considers:

Item 5: Contribution towards upgrade of public lights, footpaths and the undergrounding of services within the Village centre along the N72. And the inspectors findings are: given the nature and scope of the works proposed constitute works which would have been foreseen when both the Development Plan and the GDCS were drawn up and adopted, it is considered that these works are neither exceptional nor specific to the proposed development and could be funded, at least in part, from the GDCS. Accordingly, this element of the levy should be omitted.

Condition 3 of the Decision describes the works as enhanced footpath and pedestrian crossing linkages to services such as Bus Stop, Church and Shops; upgrades to its junction access with the N72 and associated enhancements including undergrounding of utilities within the village centre along the N72.

The works seem to be consistent with what has already been considered in the previous permission under ref: 17980 by both the PA and ABP. There is no significant impact from the revised permissions. Condition 3 is unreasonable and a double charge.

- Precedents: ABP 301156-18 special contribution reduced from €180,500 to €77,150, ABP 306401-20 reduced from €224,000 to €92,250, ABP 320288-24 the condition is removed.
- The contribution is based on the safety audit, however there is no reference to any works in the Safety Audit matching the Condition 3 works.
- Lack of clarity and overlap with works required in planning ref: 07980 & 05/2462. The location of the works is unclear and may be overlapping with N72 junction works and other works required under planning ref: 17980 & 052462.
- Kerry County Council have cash deposits and bonds to carry out the works i.e.:

- €117,181 2019 from the WK O'Connor Ltd. Bond planning ref 052462 and
- €192,263 2022 as of 2022 from the Glencon Contractors Ltd. Bond Planning Ref: 17980
- Xdev Real Estate Ltd have engaged and agreed with Kerry County Council to complete an agreed list of outstanding works on their behalf.
- KCC have now imposed an additional bond under condition 6 for works between the development and the N72 junction.
- There appears to be an overlap/doubling up of works/security here and any element of overlap/doubling up should be removed.
- The total from planning reference 2560406, 2560411 and 2560412 amounts to €106,000.

6.2. Applicant Response

- As above

6.3. Planning Authority Response

- None

6.4. Observations

- None

6.5. Further Responses

- None

7.0 Assessment

- 7.1. This appeal has been brought to An Coimisiún Pleanála under the provisions of section 48(2)(c) of the Planning and Development Act, 2000 (as amended) and relates solely to Condition No. 3 of PA reg. ref: 2560406. This condition requires the applicant to pay a financial special contribution of €33,500.00 in respect of enhanced

footpath and pedestrian crossing linkages to services such as Bus Stop, Church and Shops; upgrades to its junction access with the N72 and associated enhancements including undergrounding of utilities within the village centre along the N72 as provided for in the Kerry County Council Development Contributions Scheme 2017.

7.2. In the above context, as this appeal relates to a Special Development Contribution only, I consider that the Commission is required to apply the Development Contribution Scheme as adopted by Kerry County Council and not to evaluate the merits of the planning application as if it was made to it in the first instance. The Commission is confined solely to the consideration of whether the terms of the relevant Development Contribution Scheme have been properly applied.

7.3. Having regard to the limitations imposed on the Commission under section 48(10) Planning and Development Act, 2000 (as amended), I will limit my assessment accordingly under the following headings:

- Condition No. 3 – Special Contribution

7.4. **Condition No. 3 - Special Contribution**

7.5. Condition No. 3 was applied by the Planning Authority as a special contribution towards expenditure that is proposed to be incurred by the Planning Authority in respect of enhanced footpath and pedestrian crossing linkages to services such as Bus Stop, Church and Shops; upgrades to its junction access with the N72 and associated enhancements including undergrounding of utilities within the village centre along the N72. The condition was applied in accordance with the provisions of Section 48(2)(c) of the Planning and Development Act 2000 and a contribution sum of €33,500 was specified.

7.6. Planning History

7.7. The subject site has a long history, originally permission was granted under planning reference planning authority reference 05/2462. The development commenced but unfortunately due to the economic crash, the development was not completed.

7.8. In 2018, planning permission was granted under Planning Authority reference: 17980 and condition 3 was appealed to An Bord Pleanála under planning reference ABP-301156-18, and subsequently, condition 3 was amended and read as follows:

The developer shall pay the sum of €77,150 (seventy seven thousand, one hundred and fifty euro)(updated at the time of payment in accordance with changes in the Wholesale Price – Building and Construction (Capital Goods), published by the Central Statistics Office), to the Planning Authority as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of the following works:-

Provision of pedestrian crossing of N72	€50,000
Contribution towards upgrade of public footpath along the R570 from adjacent to number 1 Coill Darrach to junction with N72 (circa 70 metres)	€22,750
Contribution towards upgrade of public lighting along R570 between proposed development and junction with N72 (one light)	€4,400

This contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority might facilitate. The application of indexation required by this condition 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.

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

In 2022 planning permission under reference 22484 was granted to convert the unfinished commercial units to 16 apartments. These were completed in 2024.

In 2024 and 2025 a series of applications to revise planning permission granted under 17980 in a phased manner were submitted:

2460644: Phase 2: houses in 13 to 18 Heather Grove and 1 to 5 Elm Drive

2461013: Phase 3: 1 to 23 Alder Close

2560406: Phase 4: 1 to 8 and 15 to 22 Hawthorn Drive

2560411: Phase 5: 9 to 14 and 23 to 30 Hawthorn Drive and 15 to 20 Hazel Drive.

2560412: Phase 6: 1 to 14 Hazel Drive.

A letter has been submitted from Kerry County Council confirming that Condition no. 3 of planning reference ABP-301156-18 has been paid for the special contribution of €77,150. The applicant has stated that no works to date have been carried out.

7.9. Section 48(2) (c) of the Planning and Development Act, 2000 as amended.

7.10. Section 48 (2) (c) of the Planning and Development Act, 2000 clearly 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 a scheme, require the payment of a special contribution in respect of a particular development where *specific exceptional costs* not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development”. Further provisions as regards the payment of any such special contribution are set out in Section 48(12) as follows:

“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”.

7.11. Accordingly, three essential requirements or characteristics are necessary to justify attachment of a “special contribution” condition. Under this subsection of the Act, 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.

The condition attached by the PA in respect of special development contributions outside of the S.48 or S.49 Development Contribution Schemes should be assessed systematically against the above tests.

7.12. In respect of a development, the condition does outline that the special contribution is towards “enhanced footpath and pedestrian crossing linkages to services such as Bus Stop, Church and Shops; upgrades to its junction access with the N72 and associated enhancements including undergrounding of utilities within the village centre along the N72”. Roads Maintenance and Operational Services Section of KCC have requested a specific development contribution of €33,500 towards roads infrastructure which is adjacent to and serves the development.

As this roads infrastructure would directly benefit the development with enhanced footpath and pedestrian crossing linkages to services such as Bus Stop, Church and Shops; upgrades to its junction access with the N72 and associated enhancements including undergrounding of utilities within the village centre along the N72.

7.13. There are no further details provided in the Roads Maintenance and Operational Services Section report of KCC as to the reasoning or justification for the special

contribution request. There are two access points in and out of the subject site, there is an existing junction north of the subject site onto the N72 and a further junction along the R570 to the east. The junction along the R570 to the east is within the blue line boundary for the overall masterplan site. The junction to the north with the N72 is outside the red line and blue line boundary of the subject application and overall masterplan site. In addition, no concerns were raised in the planning report in relation to the sightlines or upgrades required at the junction with the N72 or the requirement to provide enhanced footpath and pedestrian crossing linkages to services such as Bus Stop, Church and Shops or in relation to associated enhancements including undergrounding of utilities within the village centre along the N72. It is my opinion that works requiring the undergrounding of utilities within the village centre are covered under condition 19 in relation to a Road Opening Licence.

- 7.14. I note the reason included with condition 3 states it is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefiting the development as identified in the Stage 1 & 2 Safety Audit, in accordance with the provisions of Section 48 of the Planning and Development Act, 2000.
- 7.15. I have reviewed the Stage 1 Safety Audit and the Traffic and Transportation Assessment, and no issues were identified with the junction along the N72 and furthermore no concerns were raised by the engineers of KCC.
- 7.16. In my opinion, as no concerns were raised by the engineer or by the planner in relation to sightlines at the junction with the N72 and the requirement for possible upgrades at the junction of the N72
- 7.17. Accordingly, I consider, the required works lack specificity which undermines the test for “specific exceptional costs” and further fails to adhere to the requirements as set out in Section 48(12)(a) of the Act that the condition specify the particular works carried out, or proposed to be carried out, by the local authority to which the contribution relates. The Development Contributions, Guidelines for Planning Authorities Section 7.12 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.

“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’.

- 7.18. Noteworthy is that specific exceptional costs must be incurred as a result of or in order to facilitate the development, the works required are in relation to “enhanced footpath and pedestrian crossing linkages to services such as Bus Stop, Church and Shops; upgrades to its junction access with the N72 and associated enhancements including undergrounding of utilities within the village centre along the N72”
- 7.19. The proposed works outlined are not required for the proposed development, a footpath is in place along the N72, and no details are provided in relation to the works required at the footpath along the N72 in order to facilitate the development. In addition, no concerns were raised in relation to the junction of the proposed development with the N72, and no further details are provided in relation to what the upgrades are required or in relation to the undergrounding of utilities within the village centre along the N72.
- 7.20. It is worth noting that under planning reference ABP-301156-18, Condition 3 of planning reference 17980 was amended and a special contribution of €50,000 was applied for the provision of pedestrian crossing of the N72 and I note this has been paid and confirmed by Kerry County Council, therefore, I consider the pedestrian crossing linkage has been addressed. Therefore, I do not consider that the special contribution meets the essential requirements or characteristics necessary to justify the attachment of a special contribution condition in relation to “in respect of the development”.
- 7.21. In regard to the costs, I consider that the condition fails to accord with the guidance within the Development Management Guidelines, as the decision does not provide

any basis for the calculation of the contribution, including the nature/scope of works and the expenditure involved. I would highlight to the Commission that the special contribution has been “estimated” as per condition No. 3. No clarification has been provided on how the €33,500 contribution amount was estimated. No breakdown of the estimated cost per work has been outlined. I consider this approach also fails to meet the requirements of Section 48(2)(c), which requires that the exceptional cost should be specific. An estimated costing is, in my opinion, not adequately specific, to meet the requirements of Section 48(2)(c).

7.22. I note the applicant is required to pay a development contribution of €7,075.20 in respect of Roads & Transport and €9,004.80 in respect of Community & Amenity. I have reviewed the Development Contributions Scheme 2017 and Appendices A provides a list of projects to be funded by the DCS; this includes “Town centre Enhancement Works” under the category Roads & Transport Infrastructure Projects. In category Community & Amenity Projects list of indicative works includes “Improvements to streetscapes, including for the undergrounding of overhead power lines in towns and villages, including Rathmore, Gneeveguilla, Tarbert, Portmagee & Waterville. It is further noted that Appendix A includes a list of public infrastructure and facilities that can be funded:

- (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, wastewater and water treatment facilities, service connections, surface water mains and flood relief work.
- (d) The provision of bus corridors and lanes, bus interchange facilities, infrastructure to facilitate public transport, cycle and pedestrian facilities, and traffic calming measures.
- (e) The refurbishment, upgrading, enlargement or replacement of roads, carparks, car-parking places, sewers, wastewater and water treatment facilities, service connections or surface water mains.

- (f) The provision of high-capacity telecommunication infrastructure, such as broadband.
- (g) The provision of school sites, and
- (h) Any matters ancillary to paragraphs (a) to (g).

7.23. Therefore, in my opinion, the proposed works and costs can be covered by a Development Contribution Scheme made under Section 48 or 49 of the Act.

7.24. Therefore, on the basis that the works proposed are not specified or required in order to facilitate the development, in addition, the cost provided are only estimated and no basis is provided for the calculation, nor has an explanation been provided as to why the costs cannot be covered the general contribution scheme. I consider that the special development contribution imposed does not comply with the criteria as set out 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. 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. Accordingly, I could recommend that Condition no. 3 is removed.

8.0 AA Screening

8.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located in an urban area of Barraduff Village; there are no streams or rivers in close proximity to the site. The proposed development comprises of residential development on zoned lands; the appeal relates to a special contribution solely. The site is not located in a designated area; the nearest protected site is Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment pNHA & SAC (site code: 000365) is located approximately 300m east of the subject site. No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

The reason for this conclusion is as follows:

- Nature of works of residential development on zoned lands.
- The distance nearest European site and lack of hydrological connections.
- Connection to public water and sewer.
- Standard construction stage water management measures implemented and operational stage nature-based solutions to storm water management measures incorporated.

I conclude, on the basis of objective information, 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.

Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

- 9.1. I consider that the Planning Authority incorrectly applied the terms of the section 48(2)(c) of the Planning and Development Act, 2000 as amended in respect of a development, specific exceptional costs must be incurred as a result of or in order to facilitate it and, such costs cannot be covered by a Development Contribution Scheme made under Section 48 or 49 of the Act. in the calculation of the amount payable under Condition No. 3. I recommend that Condition No. 3 be REMOVED from the final grant.

10.0 Reasons and Considerations

- 10.1. Having regard to:
- a. Section 48(2)(c) of the Planning and Development Act, 2000 as amended.
 - b. The Development Contribution Guidelines for Planning Authorities (2013).

c. The Kerry Development Contribution Scheme 2017.

In respect of Condition No. 3, the Commission, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered that the condition failed to meet the requirements of Section 48(2)(c) of the Act and should thus be omitted.

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.

Jennifer McQuaid
Planning Inspector
3rd March 2026

Appendix A: Form 1 - EIA Pre-Screening

Case Reference	PL-500466-KY-25
Proposed Development Summary	Construction of 16 number houses and ancillary site-works, (all in lieu of houses on sites 31 to 38 and 54 to 58 of granted planning ref no. 17-980) and the modification of and the construction of roads, services and ancillary works as granted under planning permission ref no. 17-980.
Development Address	Shronedarragh, Barraduff, Killarney, Co. Kerry.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed	The appeal relates solely to special contribution condition no. 3 of grant of permission under planning reference 2560406.

<p>type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	

<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ Date: _____