Inspector's Report

PL-501196-KY-26

Development	Construction of 83 dwellings and a creche facility together with associated site works. A Natura Impact Statement (NIS) was submitted to the Planning Authority with this application.
Location	Cloghers, Tralee, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	2560574
Applicant(s)	Homelands Projects Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission + Conditions
Type of Appeal	First Party Normal Planning Appeal
Appellant(s)	Homelands Projects Ltd.
Observer(s)	None
Date of Site Inspection	None
Inspector	Irené McCormack

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1.0 Site Location and Description

1.1. The site is located c.1km southwest of Tralee town centre which provides a good range of services and community facilities.

1.2. The subject site is c. 2.3 ha. and is generally rectangular in shape. The subject lands are in agricultural use under grass at present and can be considered to be a greenfield site. The site is bound to the west by 2no. existing dwellings.

1.3. Access is proposed to the site via the now constructed residential development granted by An Bord Pleanála in December 2024 following a third-party appeal (ABP-315526-22) Kerry County Council (Planning Application Ref. 22/630.

2.0 Proposed Development

2.1. The development comprises the construction of 83 no. residential dwellings comprising of: 17no. semi-detached 4-bed dwellings, 36no. semi-detached 3-bed dwellings, 8no. 3-bed townhouses, 10no. 2-bed townhouses, 8no. 2-bed apartments and 4no. 1-bed apartments and a creche facility (with the capacity to accommodate 36 no. children) The proposed development will include provision for car parking, including EV charging points and bicycle parking. The provision of private, communal, and public open spaces; internal roads and pathways; hard and soft landscaping and boundary treatments; waste storage; plant; signage; a new vehicular and pedestrian access from the Ballyard Road through the residential development permitted under application Ref: 22/630 and Appeal Ref: 315526-22; public lighting; all associated site development works; and all drainage and foul sewer infrastructure and network works including connections to the existing networks and nature-based SuDS measures.

2.2. A Natura Impact Assessment (NIS) accompanied this application.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 26 no. conditions. Of relevance is condition no. 3.

Prior to the commencement of development, the developer shall pay a contribution of €119,000 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 & Development Act, 2000 towards the cost of implementation of the following schedule of works:-*

➢ *Provision of additional and enhanced roadway infrastructure serving this development - €340,000.00 (35% Contribution to apply)*

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

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial Planners Report dated 29th August 2025 recommended the additional information be sought in relation to design and layout, traffic, boundaries, open space, archaeology, landscaping , car parking and Planning Enforcement Issues and Compliance with Conditions of the granted by An Bord Pleanála in (ABP-315526-22) [KCC PRN 22/630] noting that the site will be accessed via this development.

The Planners Report dated 26th March 2026 considered that the response to the additional information provided a reasonable rationale to the requested information. It is considered any issues arising can be addressed by way of condition in the event of a grant of permission. The internal KCC reports were noted and did not raise any further issues. On balance, it was considered that the proposed development, having regard to site location, zoning, relevant policies and objectives, would not be visually obtrusive or out of character with the other properties in the area and would not seriously damage the amenities of the adjoining area.

3.2.2. Other Technical Reports

County Archaeologist – Report notes that there are no recorded monuments listed in the Record of Monuments & Places in the immediate area of the development site. The application is accompanied by an archaeological impact assessment including geophysical survey, which notes that no definitive archaeological features were identified. The assessment goes on to state that pre-development archaeological testing will be carried out and a licence application for this testing has been submitted. The results of this testing should be submitted and reviewed prior to any grant of permission.

KCC Housing Capital Unit – Standard Part 5 condition to apply.

Fire Officer – No objection.

KCC Flooding Coastal and Marine – No objection subject to conditions.

KCC Environment - No objection subject to conditions.

Housing Estate Unit – A number of points and questions raised but no objection to the principle of development.

KCC Ecologist – No objection subject to conditions.

KCC Roads and Transportation (26th March 2026) – Report recommended a Special Contribution of €119,000 be applied based on the provision of additional and enhanced roadway infrastructure serving this development -€340,000.00 (35% Contribution to apply).

3.3. **Prescribed Bodies**

TII – No objection raised.

HSE – Environmental Health Service - No objection subject to conditions.

An Taisce - Issues raids as regards additional tree planting, archaeology, Water Framework Directive, Appropriate Assessment, Climate Action Social and Community infrastructure and artificial lighting.

3.4. **Third Party Observations**

The PA report notes six no. submissions were received. In brief, the following concerns were raised :

- Traffic impact, access arrangements, pedestrian and cycle safety
- Design, scale and layout
- Creche capacity
- Visual impacts
- Residential amenity
- Drainage

4.0 **Planning History**

Site

None

Noth of Site

The subject site is accessed from the development to the North, granted under ABP Reference:315526-22 (KCC PRN 22/630)

ABP 315526-22 /KCC 22/630 – Permission granted on 21/02/2024 for 52 residential units and associated site works Ballyard Road, Cloghers, Tralee, Co. Kerry.

I draw the Commissions attention to condition no. 3 of the permission granted by the Planning Authority. Condition no. 3 stated

Prior to the commencement of development, the developer shall pay a contribution of EUR 137,200.00 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…..

This condition was omitted from the grant of planning permission by An Bord Pleanala on 21st February 2022 on the basis that no evidence has been provided of exceptional cost of its provision.

5.0 **Policy Context**

5.1. **Kerry County Council Development Contributions Scheme 2017**

The scheme establishes the Planning Authorities policy is respect to the imposition of development contributions.

Section 4 sets out Development Contribution Charges and states:

'This 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 & walk ways, 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.

Infrastructure costs associated with the projects listed in Appendix A for each category are:
• Roads & Transport Infrastructure €13,570,000

• Community & Amenity Infrastructure €15,450,000

Of these total infrastructure costs 40% are being apportioned to proposed development. This means that the intention of this scheme is to raise €5,428,000 for Roads & Transport Infrastructure projects and €6,180,000 for Community & Amenity Infrastructure projects.'

Residential & Creach Contributions are set out as follows in the Scheme:

Development Contributions

	Roads & Transport	Community & Amenity (per m² unless otherwise stated)	Total
Residential	€660 per unit	€840 per unit	**€1,500 per unit**
Residential per m² over 125m²	€8.80	€11.20	**€20.00**
Residential Extension per m² over 40m²	€5.28	€6.72	**€12.00**
Commercial Buildings (including extensions)	€9.30	€8.70	**€18.00**

Appendix A - List of Projects to be funded by DCS Public infrastructure and facilities that can be funded by this mechanism are:

(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, car-parks, car-parking places, sewers, wastewater and water treatment facilities, service connections or surface water mains.

(f) The provision of high capacity telecommunications infrastructure, such as broadband.

(g) The provision of school sites, and

(h) Any matters ancillary to paragraphs (a) to (g).

5.2. **Kerry County Development Plan 2022-2028**

Under the Plan, the subject site is zoned as R1 New/Proposed Residential. The objectives of these zonings is to '*provide for new residential development in tandem with the provision* *of the necessary social and physical infrastructure*.'

The development of residential dwellings is identified as being permissible under the Land Use Zoning Matrix of the Plan.

The site is further identified in the Plan as site no. 17 in the Tralee – Settlement Capacity Audit of Zoned Lands, identifying that the site is serviceable, has road access and footpaths with a potential to yield up to 80 residential units

Killarney – Settlement Capacity Audit of Zoned Land								
ID	Zoning	Road Access	Footpaths	Public Lighting	Foul/storm Sewer	Water Supply	Tier	Area (ha)
T-17	R1	✓	✗	✓	✓	✓	2	4.33

5.3. **Planning and Development Act, 2000 (as amended)**

Section 48(2)(c)

(c) 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.

Section 48 (12) (a)

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.

Section 48 (17) defines ''public infrastructure and facilities''

** (The List of Projects to be funded by DCS Public infrastructure and facilities as set out in Appendix A of the KCC Contribution Scheme reflects Section 48 (17) of the Act).

5.4. **Ministerial Guidelines**

<u>Development Contributions Guidelines for Planning Authorities (2013)</u>

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.

Special Development Contributions

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

5.5. **Development Management Guidelines (2007)**

Section 7.12 of the Guidelines 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 and Development 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. 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.

Section 7.12 sets out the following as regards ‘Special Contributions’

‘special’ contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the

Planning Act; therefore, it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. 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. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal.

5.6. **Natural Heritage Designations**

Not relevant in this instance.

6.0 **EIA Screening**

Not relevant in this instance.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

The first party appeal against condition 3 is summarised below: -

- Section 48(2)(c) relates to 'specific exceptional costs, not covered by the general contribution scheme'.
- Development Management Guidelines (2007) establish that is essential that the basis for the calculation of the contribution should be explained and that the nature/scope of works and the apportionment to the specific development must be transparent.
- The Development Contributions Guidelines for Planning Authorities (2013) establish that the special contribution must benefit very specific requirements for the proposed development.
- The Planning Authority (PA) fail to address the exceptionality of the intended roadway infrastructure in the vicinity. Accordingly, no basis for the special contribution condition.

- No evidence has been provided that road infrastructure outside of normal infrastructure requirements of the Local Authority will be provided.
- It is noted that the PA under condition no. 11 of KCC 22/630 /ABP 315526-22 required the developer to deliver a pedestrian crossing on the L-2016 in addition to the public footpath along the western boundary of the site. This has been delivered in full.
- It is argued that it is important not to confuse exceptionally with benefit. While it is not disputed that the scheme would benefit from public infrastructure the question is whether the specific exceptional costs should be borne by the applicant.
- In this respect road infrastructure forms part of the general functions of the LA.
- It is further set out that there is no real basis for the calculation of the contribution. The works required are not identified in the report nor is it identified how the subject site should and would benefit from the infrastructure to warrant payment of 35% of the cost associated with such works.
- It is argued that the costs set out in Condition no. 3 are not as a result of exceptional infrastructural requirements and are not specific to the development site. In addition, the basis for the calculation is not robust or reasonable.

Conclusion

- The first party set out that a contribution is appropriately levied by condition no. 2 in accordance with the general contribution scheme. Condition no. 3 in this instance amounts to double charging.
- Public Infrastructure is defined in Section 48 (17) of the PDA 2000 and already included in the Council's Development Contribution Scheme. The proposed condition fails to demonstrate specific exceptional costs not already covered by the scheme.
- It is argued that the works identified are not specific to the site and will benefit the wider community.
- The basis of calculation provided including how the costs are apportioned to the proposed development is unreasonable and it disproportionately attributes the cost of works to the subject development and has failed to give due cognisance to the application of costs to other existing and potential proposed developments as well as the works provided for by the applicant under KCC22/630/ABP315526-22.

7.2. **Planning Authority Response**

A response was received on 15th June 2026. The submission sets out the Special Contribution breakdown as follows:

1. Upgrade of footpath infrastructure to provide connectivity from the proposed development to the town centre : - €61,200.
2. Upgrade of Healy Cross Junction improvement works (sight distance): -€57,800.

7.3. **Observations**

None

7.4. **Further Response/Submissions**

A further submission was received from the first party on 6th July 2026 in response to the submission from the PA dated 15th June 2026. In brief the response notes the following:

- It is set out that the PA's submission does not provide a justification for the imposition of the special contribution.
- The clarification provided fails the legislative requirements for seeking to impose such a condition.
- The works identified as part of the normal infrastructural requirements of the LA and they are no way exceptional.
- The PA have not provided any basis for the proportional attribution of the cost identified on the applicant.
- The response reiterates the argument set out in the original appeal submission.

8.0 **Assessment**

8.1. This first party appeal is solely against Condition no. 3 of Reg. Ref. 25/60574, which relates to a financial contribution. Therefore, this appeal is not considered 'de novo' and the only issue in this case relates to whether the Kerry County Council Development Contribution Scheme 2017 was properly applied.

8.2. Condition no. 3 states:

Prior to the commencement of development, the developer shall pay a contribution of €119,000 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 & Development Act, 2000 towards the cost of implementation of the following schedule of works:-*

➢ *Provision of additional and enhanced roadway infrastructure serving this development - €340,000.00 (35% Contribution to apply)*

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

8.3. The first party appellant contends that the contribution should not have been applied on the basis that the cost of implementation of this infrastructure is already captured under the Planning Authority's General Contribution Scheme. Therefore, they submit that the imposition of this special contribution under Condition no. 3 amounts to double charging and is contrary to the provision of the Development Management Guidelines. They also submit that the subject works are already accounted for under the Local Authority's General Contribution Scheme.

8.4. Kerry County Council Development Contribution Scheme was adopted on the 25th of July 2017. Appendix A of the Scheme refers to the different classes of public infrastructure and facilities and it sets out a list of projects to be funded by the Development Contribution Scheme. The first party highlighted in their appeal that the current Kerry Development Contribution Scheme identifies public infrastructure and facilities covered by the Scheme and include:

(d) The provision of bus corridors and lanes, bus interchange facilities, <u>infrastructure to facilitate public transport, cycle and pedestrian facilities, and traffic calming measures</u>.

(e) <u>The refurbishment, upgrading, enlargement or replacement of roads,</u> car-parks, car-parking places, sewers, wastewater and water treatment facilities, service connections or surface water mains.

8.5. Section 48(2)(c) of the Planning and Development Act 2000, as amended, stated that Planning Authorities may require the payment of a special development contribution in respect of a particular development where specified exceptional costs not covered by the General Contribution Scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. By way of further clarification in this respect, I note that Paragraph 7.12 of the 'Development Management, Guidelines for Planning Authorities, 2007, states the following:

"*Special contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. A condition requiring a special contribution must be amenable to implementation under the terms of Section 48(12) of the Planning Act; therefore, it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis of the calculation, including how it is apportioned to the particular development*."

8.6. The requirement to provide further justification for the imposition of a special development contribution is reinforced in the Development Contributions Guidelines for Planning Authorities (2013) which sets out that '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 <u>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.</u> Only developments that will benefit from the public infrastructure or facility in question should be liable to pay the development contribution'.

8.7. The first party submit that the Planning Authority have failed to address the exceptionality of the intended roadway infrastructure in the vicinity. Accordingly, there is no basis for the special contribution condition as no evidence has been provided that road infrastructure outside of normal infrastructure requirements of the Local Authority will be provided over and above those set out in Appendix A of the KCC Contribution Scheme 2017. The Commission will note the List of Projects to be funded by DCS Public infrastructure and facilities as set out in Appendix A reflects consistency with Section 48 (17) of the Planning Act 2000, as amended ''public infrastructure and facilities''. I further note that pursuant to condition no. 11 of KCC 22/630 /ABP 315526-22 the developer has already delivered a pedestrian crossing on the L-2016 in addition to the public footpath along the western boundary of ABP 315526-22 and the subject site is accessed from this development.

8.8. I draw the Commissions attention to the response to this appeal from the LA received on 15th June 2026. The submission sets out the Special Contribution breakdown as follows:

- Upgrade of footpath infrastructure to provide connectivity from the proposed development to the town centre : - €61,200.
- Upgrade of Healy Cross Junction improvement works (sight distance): -€57,800.

It is unclear how these works will benefit the 'specific requirements' of this scheme over and above the already established development in the area, in any case the works identified by the PA would, in my opinion, come under the class of infrastructure set out in (d) and (e) of Appendix A of the Kerry County Council Development Contribution Scheme and the list of projects to be funded by the Development Contribution Scheme. In this regard, I agree with the first party that subject works are already accounted for under the Local Authority's General Contribution Scheme and the PA response received on 15th June 2026 does not provide a justification for the imposition of the special contribution.

8.9. Therefore, I agree with the first party that no evidence has been provided that road infrastructure outside of normal infrastructure requirements of the Local Authority will be provided. I would tend to agree that it would appear that there is an element of double charging.

8.10. As such the Planning Authority have failed to address the exceptionality of the intended roadway infrastructure in the vicinity. Accordingly, no basis for the special contribution condition has been identified.

9.0 Recommendation

It is considered that the planning authority incorrectly applied the terms of the Kerry County Council Development Contributions Scheme 2017 in including condition No. 3. It is, therefore, recommended that the planning authority be directed to omit Condition No. 3.

10.0 Reasons and Considerations

On the basis of the information on the file, it is considered that the terms of the Kerry Council Development Contribution Scheme 2023-2026 were incorrectly applied in this instance

I confirm that this report represents my professional planning assessment, judgement and opinion of 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.

Irené McCormack
Senior Planning Inspector
24th July 2026