An Coimisiún Pleanála

Inspector's Report

PL-501353-KY-26

Development	Change of use from mobile home and Caravan park to residential use. demolition of existing building and construction of 45 residential units and associated site works
Location	Lios Iarr Estate, KIlleen, Tralee, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	25/60788
Applicant	Rodcliff Construction Ltd.
Type of Application	Permission
Planning Authority Decision	Grant, subject to conditions
Type of Appeal	First-Party appeal against financial contribution conditions
Appellant	Rodcliff Construction Ltd.
Observer(s)	None
Inspector	Gary Farrelly

1.0 **Introduction**

1.1. The Commission should note that this is a first party appeal against two financial contribution conditions of the decision of Kerry County Council to grant permission for the proposed development. The appeal against condition number 2 is brought under Section 48(10)(b) of the Planning and Development Act 2000, as amended (herein referred to as “the Act”), and relates to the improper application of the terms of the Council’s general development contribution scheme. The appeal against condition number 3 relates to the requirement for a special development contribution under Section 48(2)(c) of the Act.

1.2. The Commission should note that no other appeal has been brought by any other person against the decision of the planning authority to grant permission. Therefore, in the absence of such appeal, and as per Section 48(10)(c) and 48(13)(b) of the Act which does not prevent the PA from making the final grant of permission, as well as Section 48(13)(a) of the Act, it should be noted that it is not open to the Commission to determine this application as if it had been made to it in the first instance, but only the matters under the subject appeal.

2.0 **Site Location and Description**

2.1. The subject site has a stated area of 1.074 hectares and is located within the townland of Killeen which is situated within the town of Tralee, County Kerry. The site comprises of an existing mobile home and caravan park to the north of the town and is accessed from the regional road R-556 (also known as the Ballybunion Road). Existing residential estates are located to the south of the site (Redwood Park) and to the west of the R-556 opposite the entrance to the site (Lios Ard). There is existing footpath infrastructure to the south of the existing entrance to the subject site which extends for approximately 80 metres along the frontage of Redwood Park before it then terminates south of the estate. There is also existing footpath infrastructure located to the west of the R-556 and directly opposite the site which provides pedestrian connectivity to the town centre of Tralee.

3.0 Proposed Development

3.1. The proposed development is for the change of use of an existing mobile home and caravan park to a new residential development comprising of 45 no. units. The units (updated at further information stage) will comprise of 19 no. three-bed terraced houses, 6 no. semi-detached houses (2 no. three-bed and 4 no. four-bed) and 20 no. apartment units (10 no. 1-bed and 10 no. 2-bed). A new entrance to the site is proposed north of the existing site entrance and it is proposed to provide footpath infrastructure along the frontage of the site which bounds the R-556.

4.0 Planning Authority Decision

4.1. Decision

The planning authority (PA) decided to grant permission by Order dated 22nd April 2026, subject to 23 no. conditions. The relevant conditions to this appeal are the following:

Condition 2

Prior to the commencement of development, the developer shall pay a contribution of €111,688.00 to Kerry County Council (Planning Authority) in respect of Roads & Transport and Community & Amenity infrastructure benefiting the development. This total also includes a contribution towards the Tralee and Killarney Levy. This contribution is broken down as follows:

Roads & Transport - €29,770.40

Community & Amenity - €37,889.60

Tralee & Killarney Levy - €44,028.00

The amount of this contribution is calculated in accordance with the Council's prevailing Development Contribution Scheme and may be increased from January 1st, 2027, and annually thereafter (unless previously discharged) in line with the Wholesale Price 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 Councils 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 Special Development Contribution of €90,000 to Kerry County Council (Planning Authority) towards the cost of providing pedestrian facilities on the R556 to ensure the safe movement for pedestrians from the proposed development towards the town centre.

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.

4.2. Planning Authority Reports

Planning Report

The area planner's planning report assessed the proposed development on a number of issues including development contributions. A detailed calculation was carried out for the general development contributions which amounted to a total of €111,688. There was no breakdown provided on the special development contribution of €90,000.

Other Technical Reports

- Tralee Municipal District Office (*reports dated 29/10/25 and 20/04/26*) – This office outlined no objection to the proposed development subject to conditions including the payment of a special development contribution of €90,000 towards the cost of providing pedestrian facilities on the R556 to ensure the safe movement for pedestrians from the proposed development towards the town centre.
- Flooding and Coastal Unit (*report dated 08/10/25*) – This unit outlined no objection to the proposed development.

- County Archaeologist (*report dated 29/09/25*) – This report outlined no objection to the proposed development.
- Housing Estates Unit (*reports dated 19/09/25 and 09/04/26*) – This unit outlined no objection to the proposed development.
- Environment Department (*report dated 20/04/26*) – This department outlined no objection to the proposed development.

4.3. **Prescribed Bodies**

None

4.4. **Third Party Observations**

There were a number of objections from local residents submitted to the PA. However, the Commission should note that there have been no third party appeals against the decision of the PA to grant permission and therefore Sections 48(10)(c) and 48(13)(a) of the Act apply to this appeal.

5.0 Relevant Planning History

PA ref. 25/60133 (subject site)

On 23rd April 2025, Rodcliff Construction Ltd was refused permission for the change of use of the existing mobile home and caravan park to a residential development of 46 no. units. There were 5 no. reasons for refusal including on the basis of the site being located in an unzoned area outside the Tralee town boundary.

6.0 Legislative Context

Planning and Development Act 2000, as amended

Section 48 Development Contributions

(1) A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is

provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

(2)(a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(2)(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.

(3)(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

(10)(b) An appeal may be brought to the Commission where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

(10)(c) Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal. provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

(12) 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,

(13)(a) Notwithstanding sections 37 and 139, where an appeal received by the Commission after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under section 37 of the decision of the planning authority under that section, the Commission shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.

(13)(b) Notwithstanding section 34(11), where an appeal referred to in paragraph (a) is received by the Commission, and no appeal is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal furnishes to the planning authority, pending the decision of the Commission, security for payment of the full amount of the special contribution as specified in the condition referred to in paragraph (a).

7.0 Policy Context

Kerry County Council Development Contributions Scheme 2017

4. Development Contribution Charges

This Development Contribution Scheme (DCS) is based on the costs and expenditure for future infrastructure projects. Future infrastructure costs fall into one of two main categories:

1. Roads and Transport Infrastructure, e.g. road projects, public lighting, flood relief work.
2. Community and Amenity Infrastructure, e.g. cycle and walk ways.

Development Contribution charge of €1,500 per residential unit which includes €660 for roads and transport and €840 for community and amenity. Furthermore, in addition to €1,500, residential units over 125sqm are charged at €20 per sqm. An additional €12 per sqm applies for residential units as part of the Tralee and Killarney Levy. The purpose of this levy is to assist in the delivery of infrastructure and enhancement of the public realm in these towns.

6. Change of Use and Intensification of Use

Development contributions when applied to change of use applications in previous Schemes were reduced by 50%. In order to support the policies of Kerry County Council which promote development in our towns and villages, it is proposed to maintain this reduction for the redevelopment of vacant sites and change of use applications within the development boundary of settlements. Permission for a change of use in town centres where the change of use does not lead to the need for new or upgraded infrastructures/services or where there is no additional demand placed on existing infrastructure, they shall be exempt from Development Contributions. All other change of use applications (including those where there is an increased demand for infrastructure/services) shall be subject to development contributions at the standard rate subject to a reduction of 50%.

<u>Appendices: A. List of Projects to be funded by DCS</u>

Public infrastructure and facilities that can be funded by this mechanism are:

(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.

Development Contributions Guidelines for Planning Authorities (2013)

It is stated 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 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 by the condition and only developments that will benefit from the public infrastructure or facility should be liable to pay the development contribution.

Development Management Guidelines for Planning Authorities (2007)

Section 7.12 states that ‘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.

8.0 The Appeal

8.1. Grounds of Appeal

The applicant has appealed Condition Number 2 and Condition Number 3 of the decision of the PA on the following grounds:

- It is respectively requested that the Commission appropriately recalculates and amends Condition Number 2 and removes Condition Number 3.
- The application is for a change of use and intensification of use and therefore this should be supported by a 50% reduction in development contribution charges as set out in Section 6 of the 2017 Kerry County Council Development Contributions Scheme. This should apply to both the general development contribution as well as any special contribution (should it apply) in order to promote redevelopment of such brownfield sites.
- The imposition of condition number 3 requiring a special contribution in the sum of €90,000 on top of the general contribution in Condition 2 represents double charging, is proportionally excessive in nature and is not supported by the legislation governing such planning conditions.
- The local authority has not outlined a transparent case for such a special contribution and has failed to provide a proper basis or costs for same. The 2007 Development Management Guidelines state that it is essential that the basis of the calculation of the exceptional costs be explained in a condition, and

that the nature and scope of the works and the apportionment to the specific development must be transparent. A request was made to the local authority for the basis for the contribution, however, no reply was received.

- The provision of pedestrian facilities, traffic calming measures and road upgrades are already included within the Council's General Development Contribution Scheme.
- The existing businesses, community facilities and residents along the public road would also benefit from the works covered under the special contribution. Therefore, it cannot be argued that the works and costs identified are specific to the subject development.
- There are a total of 261 residential units served by the relevant section of the R556. A special contribution was applied by the PA to the adjoining Redwood residential estate in 2017 which totalled €37,500. This would be the equivalent of €62,250 in 2026 allowing for consumer price index cost increase of around 66%.

8.2. **Planning Authority Response**

The PA did not issue a response to the applicant's grounds of appeal. On 22nd June 2026, the Commission requested information from the PA in the form of a breakdown of the development contribution calculations. However, the PA did not respond to this request.

9.0 Assessment

9.1. Having regard to the nature of the first party appeal, to the fact that no other appeal has been brought by any other person against the decision of the PA to grant permission, to the provisions of Section 48 of the Act, including Sections 48(10)(c) and 48(13)(b) which does not prevent the PA from making the final grant of permission, as well as Section 48(13)(a) which limits the Commission to only determine the matters of a special contribution condition appeal, and having regard to all relevant documentation on file, including the reports of the PA, and having regard to relevant local, regional and national policies and guidance, including the Development

Contributions Guidelines for Planning Authorities (2013) and Section 7.12 of the Development Management Guidelines for Planning Authorities (2007), I consider that the substantive issues to be determined in this appeal are the following:

- General Development Contribution (Condition 2)
- Special Development Contribution (Condition 3)

General Development Contribution (Condition 2)

9.2. The first party appellant contends that the development contribution amounting to €111,688 conditioned by the PA under Condition 2 has not been properly applied as it has not taken into account Section 6 of the Kerry County Council Development Contribution Scheme 2017 (herein referred to as "the DCS"). The Commission should note that Section 6 of the DCS includes for a 50% reduction of the standard rate of contribution for the redevelopment of vacant sites and change of use applications within the development boundary of settlements (including change of use applications which lead to increased demand for infrastructure and services). I note that such reduced contribution provision within the DCS is in accordance with Section 48(3)(c) of the Act.

9.3. The Commission should note that the PA has not provided a response to the applicant's detailed grounds of appeal. Furthermore, it should be noted that it did not respond to a request from the Commission on 22nd June 2026 to provide a breakdown of the development contribution calculations.

9.4. I note that Section 4 of the DCS sets the development contribution requirements for residential units before any reductions under Section 6 are taken into account. Section 4 of the DCS stipulates a contribution of €1,500 per residential unit as well as an additional €20 per sqm for residential units above 125sqm together with a €12 contribution towards the Tralee and Killarney Levy. I have reviewed the PA's planning report and note that the area planner did provide a breakdown of the €111,688 calculation. The Commission should note that I am satisfied that the PA's calculation of the standard rate of contribution is in accordance with the requirements of Section 4 of the DCS.

9.5. However, I note that the PA did not apply a 50% reduction of the standard rate in accordance with Section 6 of the DCS. It is my view that this reduction should have been applied due to the nature of the proposed development being a change of use application from a mobile home and caravan park and to its location within the settlement boundary of Tralee. It is my view that the Commission should direct the PA to amend the condition to a total contribution of €55,844 (i.e. 50% of €111,688) in this regard.

Special Development Contribution (Condition 3)

9.6. The first party appellant also contends that the special contribution amounting to €90,000 imposed by the PA under Condition 3 represents double charging, is not specific or exceptional to the subject development and does not include a basis for the cost calculation. It is contended that the reasoning for the contribution towards the cost of providing pedestrian facilities on the R556 is already provided for within the general development contribution.

9.7. I have reviewed the PA's planning report and note that there is no basis for the special contribution calculation provided. Furthermore, the report from the Tralee Municipal District Office (which recommended the condition) provides no breakdown of the cost calculation and only stipulates a payment of €90,000 "*towards the cost of providing pedestrian facilities on the R556 to ensure the safe movement for pedestrians from the proposed development towards the town centre*". Additionally, such breakdown of costs was not issued by the PA in response to the Commission's request on 22nd June 2026.

<u>Specification of Particular Works</u>

9.8. Firstly, the Commission should note that Section 7.12 of the Development Management Guidelines for Planning Authorities (2007) (herein referred to as "the 2007 Guidelines") outlines that the nature and scope of the works to which the special contribution relates needs to be identified in order for it to be amenable to implementation under Section 48(12) of the Act. Having reviewed the PA's reports, including the internal report from the Tralee Municipal District Office, I consider that the nature and scope of the works proposed to be carried out by the local authority as part of the contribution have not been sufficiently specified in accordance with Section 48(12)(a) of the Act. Having regard to this, I consider that the condition imposed by the PA does not comply with Section 48(12)(a) of the Act.

Basis for the Cost Calculation

9.9. Secondly, Section 7.12 of the 2007 Guidelines outlines that it is necessary for the expenditure involved and the basis of the contribution calculation as well as how it is apportioned to the development to be identified in order for it to be amenable to implementation under Section 48(12) of the Act. I note that the PA has not provided a breakdown of the costs and there is no information file on how the PA calculated a contribution of €90,000 for the proposed development. Having regard to this, I consider that the condition does not comply with Section 48(12)(a) of the Act in this regard.

Specific Exceptional Costs

9.10. Finally, the Commission should note that Section 48(2)(c) of the Act states that a special contribution can only be levied in respect of a particular development where specific exceptional costs not covered by a general development contribution scheme are incurred by the local authority in respect of public infrastructure and facilities which benefit the proposed development. I note that Section 7.12 of the 2007 Guidelines outlines a circumstance where this might be warranted where the costs are incurred directly as a result of, or in order to facilitate, the development in question. Section 7.12 also states where the benefit deriving from the particular infrastructure or facility is more widespread consideration should be given in adopting a revised contribution scheme.

9.11. Having reviewed the reports of the PA, I note that no concerns have been raised regarding the proposed development in terms of pedestrian or traffic safety. The Tralee Municipal District Office required the applicant to construct footpath and cycling infrastructure along the frontage of the development with the R556 and the PA conditioned this requirement under Condition 16(d). The applicant has stated that these works will be carried out. Therefore, having regard to the information on file, I am not satisfied that the PA has demonstrated that the costs are incurred directly as a result of or in order to facilitate the proposed development.

9.12. Furthermore, I note that Appendix A of the DCS outlines that the provision of roads, pedestrian facilities and traffic calming measures are funded by the DCS. Therefore, I am in agreement with the first-party appellant and consider that such pedestrian infrastructure and facility works are already catered for within the DCS. I also am in agreement with the first-party appellant that the works would not only benefit the proposed development but would also benefit the wider community.

9.13. Accordingly, I consider that the proposed pedestrian infrastructure and facility works on the R556 do not represent specific exceptional costs and which are not covered by a development contribution scheme. Therefore, I consider the special contribution condition proposed by the PA does not come within the scope of Section 48(2)(c) of the Act.

10.0 Recommendation

It is my recommendation to the Commission that it directs the planning authority to amend and remove conditions attached to its grant of permission for the reasons and considerations set out within Section 11 below. The direction should incorporate the following:

- Condition Number 2 should be **AMENDED** to a contribution of €55,844.
- Condition Number 3 should be **REMOVED**.

11.0 Reasons and Considerations

Having regard to Section 48 of the Planning and Development Act, 2000, as amended, to the terms of the Kerry County Council Development Contribution Scheme 2017, including Section 6 which allows for a 50% reduction for change of use applications within the development boundary of settlements, to the nature and location of the proposed development on a mobile home and caravan park within the settlement boundary of Tralee, to the detailed submission of the applicant, and to the information on file from the planning authority, it is considered that the standard development contribution rate of €111,688 is subject to a 50% reduction. Additionally, it is considered that the special development contribution condition of €90,000 towards the cost of providing pedestrian facilities on the R556 in order to ensure the safe movement for pedestrians from the proposed development towards the town centre does not come within the scope of Section 48(2)(c) and Section 48(12)(a) of the Planning and Development Act 2000, as amended. This is due to the particular works proposed by the planning authority not being sufficiently specified, the basis for the cost calculation, including how it is apportioned to the proposed development, not being identified, the fact that the provision of roads, pedestrian facilities and traffic calming measures are already funded by the Kerry County Council Development Contribution Scheme 2017 as set out in Appendix A of same, and the fact that the proposed works would not only benefit the proposed development but would provide a much wider benefit to the wider area. It is considered that the works associated with the special development contribution condition do not represent exceptional or specific costs in terms of public infrastructure, and accordingly, the condition would not be warranted.

<u>Declaration</u>

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Gary Farrelly
Planning Inspector

20th August 2026