



An  
Bord  
Pleanála

**Board Direction  
ABP-316217-23**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on 24/06/2024.

The Board decided this referral in accordance with the following draft order:

**WHEREAS** by Order dated the 2<sup>nd</sup> day of February 2021, An Bord Pleanála, under application reference number ABP-307965-20, granted subject to conditions a permission to Bartra Property (Clonross) Ltd, for development comprising the construction of 29 apartments and all associated site development works:

**AND WHEREAS** Condition No. 9 of An Bord Pleanála decision under ABP-307889-20 required the developer to pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**AND WHEREAS** the developer and the Planning Authority failed to agree on the amount of the contribution to be paid pursuant to Condition No. 9, and on the

application of the terms of the relevant Development Contribution Scheme in compliance with the terms of this condition and the matter was referred by the developer to An Bord Pleanála on the 6<sup>th</sup> day of April 2023 for determination:

**AND WHEREAS** the Board is satisfied that the matter at issue is to determine the amount of the contribution to be paid by the developer pursuant to Condition No. 9:

**AND WHEREAS** the Board had particular regard to the provisions of Section 34(5) of the Planning and Development Act 2000, as amended; the Fingal County Development Plan 2017-2023; the Fingal County Development Plan 2023-2029; the Fingal Development Contribution Scheme, 2021-2025 and the documentation submitted by the referrer and the Planning Authority:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that the units in question are social housing units which are provided by an Approved Housing Body and it is not confirmed by the Housing Department of Fingal County Council that the development contributions are not due. The housing units are therefore not exempt from the requirement to pay development contributions, for the purposes of the applicable Development Contribution Scheme (Sub-Section 11(i)(h) of the Fingal Development Contribution Scheme, 2021-2025) made under section 48 of the Planning and Development Act, 2000, as amended.

### **Reasons and Considerations**

Having regard to Section 34(5) of the Planning and Development Act 2000, as amended, the provisions of the Fingal Development Contribution Scheme, 2021-2025, the submissions on file, and the planning history of the site, the Board considered that the residential units are deemed to be social housing units which are being provided by an Approved Housing Body but for which it is not confirmed by the Housing Department of Fingal County Council that the development contributions are not due, for the purposes of the respective Development Contributions Scheme

described above, and that development contributions under Condition No. 9 be determined on this basis. The amount of the contribution above is therefore €206,928.00 as provided for in the Fingal County Council Development Contribution Scheme 2021- 2025 (under Section 48, Planning and Development Act, as amended) and subject to any exemption provided in accordance with an agreement made under Part V of the Planning and Development Act, as amended.

### **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

In disagreeing with the recommendation of the Inspector, the Board noted its role is to determine the proper application of the terms of the Scheme. The term referred to the Board in this regard is Sub-Section 11(i)(h) of the Fingal Development Contribution Scheme, 2021-2025 which states inter alia that social housing units shall be exempt where they are provided by an Approved Housing Body and it is confirmed by the Housing Department of Fingal County Council that the development contributions are not due. The Board had regard to the fact that the Housing Department of Fingal County Council did not confirm that the development contributions are not due. The Board therefore concluded that this term of the Scheme is not met in order to receive an exemption.

**Board Member:** Eamonn James Kelly **Date:** 25/06/2024  
Eamonn James Kelly