

An
Bord
Pleanála

Board Direction
BD-016310-24
ABP-317436-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 10/05/2024.

WHEREAS by Order dated the 12th day of March 2018, An Bord Pleanála, under planning register reference number ABP-300045-17 granted, subject to conditions, a permission for a development comprising the construction of 14 number dwellings and associated works on land west of 1-10 The Orchard, Oldtown, County Dublin

AND WHEREAS condition number 17 attached to this permission states:

The developer shall 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 planning authority required the developer to pay a standard contribution of €253,161.88 and an additional contribution of €52,824 in lieu of a shortfall in open space in order to comply with the terms of condition number 17 of this permission.

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 financial contribution under condition number 17 of this permission shall be determined under the provisions of the Fingal Development Contribution Scheme 2016-2020, being the applicable scheme at the time of payment and the amount of the contribution is governed by the rate set out in Section 9(a) of this Scheme, indexed to the date on which payment is made.

Having regard to:

- (a) Sections 34(5) and 48 of the Planning and Development Act 2000, as amended,
- (b) the Fingal County Council Development Contribution Scheme 2016-2020,
- (c) An Bord Pleanála appeal reference ABP-300045-17 (planning authority register reference F17A/0357), including the Inspector's Report, Board Order and condition number 17 of that grant of permission specifically,
- (d) the submissions on file, and the planning history of the referral site,

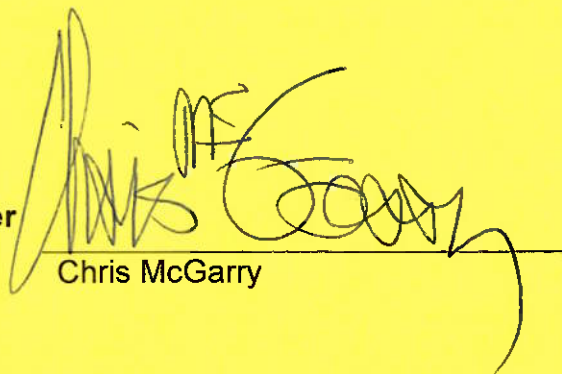
the Board considers that the Fingal County Council Development Contribution Scheme 2021-2025 has been incorrectly applied by the planning authority, as that Scheme is effective in respect of permissions granted from 1st January 2021. In this regard the provisions of the Fingal County Council Development Contribution Scheme 2016-2020 apply to permission ABP-300045-17. Furthermore, the Board considers that, while the 2016-2020 Scheme states that the rates of contribution therein shall be effective from 1st January 2016 to 31st December 2020, it separately states that indexation in accordance with the Chartered Surveyors of Ireland Construction Tender Price Index will apply annually on 1st January. There is nothing in the 2016-2020 Scheme which states that the annual indexation stops on 1st January 2021. Finally, the Board noted and agreed with the Inspector that while the

Development Contribution Scheme 2016-2020 does allow for discretionary financial contributions in lieu of all or part of the open space requirement for a particular development, that this issue was specifically addressed by An Bord Pleanála under the Inspector's report under permission ABP-300045-17 and that no such contribution forms a part of condition no. 17 of that permission.

The Board therefore determines that the sum to be paid under condition number 17 of An Bord Pleanála appeal reference number ABP-300045-17 should be (2378sq.m x €76.14) with an annual indexation in accordance with the Chartered Surveyors of Ireland Construction Tender Price Index, at the time of payment.

Note: The Board noted the consideration of the Inspector that the relevant scheme is the Development Contribution Scheme 2021-2025. However, as set out above, the Board determined that the relevant Scheme for this permission is the Development Contribution Scheme 2016-2020, and that the phrase in Condition no. 17 '*shall be subject to any applicable indexation provisions of the Scheme at the time of payment*' means applicable indexation from the Scheme relevant to the planning permission, rather than the Scheme which happens to be in place at the time of payment. As noted above, the 2021-2025 Scheme is clear that it is effective in respect of permissions granted from 1st January 2021, and therefore does not apply to permission ABP-300045-17.

Board Member



Chris McGarry

Date: 15/05/2024