

An
Bord
Pleanála

Board Direction
BD-017072-24
ABP-318046-23

The submissions on this file and the Inspector's report were considered at Board meetings held on 15/02/2024 and 09/07/2024.

The Board treated this case under section 48 of the Planning and Development Act, 2000, as amended. The Board also decided that the planning authority be directed, as follows:

Remove condition 20

Amend condition 22 as follows.

The developer shall pay to the planning authority a financial contribution in lieu of playground facilities, in accordance with the terms of note 5 'open space shortfall' 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. 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. The shortfall in playground facilities for the purposes of this condition is set at 198 square metres.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Reasons and Considerations

Having regard to the nature, scale and extent of the proposed development, including the provision of public open space therein, to the pattern of development in the area including immediately adjoining permitted development incorporating public open space, to the totality of the relevant provisions of the Fingal County Development Plan 2022-2028, to the provisions of the '*Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities*' issued by the Department of Housing, Local Government and Heritage, issued in January 2024, to the detailed submissions on file from the appellant and the planning authority, including submissions made in response to the Section 137 notice, dated 23rd February 2024, from the Board, it is considered that the proposed development incorporates a sufficiency of public open space on site and that a contribution towards play facilities is warranted and therefore, the removal of condition number 20 and the amendment of condition number 22 under Fingal County Council Ref: F22A/0687, would be consistent with the proper planning and sustainable of the development

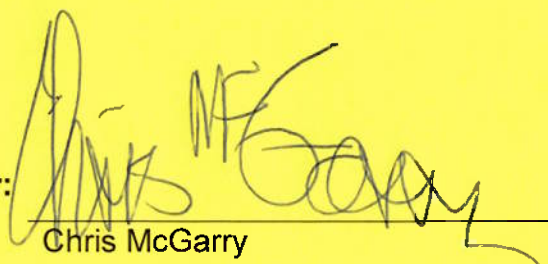
In deciding not to accept the recommendation of the Inspector to apply condition number 20 and to omit condition number 22 of the decision of the planning authority, the following is noted.

On condition 20 (related to a shortfall of open space) the Board noted the commentary of the Inspector at page 16 of his report, to the effect that the planning authority has determined and calculated a shortfall in open space and that a contribution can and has been applied. However, the Board determined having regard to the specific facts of the case and noting that the application of a contribution in lieu is a discretion, that given the nature, scale and form of the development, including the extent and quality of open space provided therein, that, that an in lieu contribution would not be warranted in this instance. On this point, the Board considered that the open space provided as part of the proposed development

is in excess of 12% of the overall site area and is of a form that is usable and appropriate for the proposed scheme. In reaching this determination, the Board considered the '*Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities*' issued by the Department of Housing, Local Government and Heritage, issued in January 2024, wherein it is stated that for the purposes of calculating open space provision, it can include areas used for nature-based urban drainage and other attenuation areas where they form part of an integrated open space network. The Board also considered broadly the issue of public open space quantum within residential development as articulated in the 2024 Guidelines.

On condition 22 (related to a shortfall in playground facilities), the Board determined that a form of financial payment in lieu would be appropriate, and in this regard noted the content of Objective DMSO50 of the Fingal County Development Plan 2023-2029 which states as follows, 'require the monetary value in lieu of play facilities to be in line with the Fingal County Council Development Contribution Scheme'. The Board noted the content of the current Contribution Scheme and specifically note 5, '*open space shortfall*' which is the focus for in lieu calculations on matters such as development costs.

Board Member:



Chris McGarry

Date: 23/07/2024