



An  
Bord  
Pleanála

Board Order  
ABP-309808-21

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## Planning and Development Acts 2000 to 2021

**Planning Authority: Fingal County Council**

**Associated Reference Number: ABP-306074-19**

**WHEREAS** by order dated the 30<sup>th</sup> day of March 2020 An Bord Pleanála, under An Bord Pleanála Reference Number ABP-306074-19, granted subject to conditions a permission to Kimpton Vale Limited care of John Spain Associates of 39 Fitzwilliam Place, Dublin for development comprising 211 number apartments and all associated site works, Windmill, Porterstown, Clonsilla, Dublin 15:

**AND WHEREAS** Condition Number 27 attached to the said permission 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 development contribution to be paid in accordance with Condition Number 27,

**AND WHEREAS** the matter was referred by the developer to An Bord Pleanála on the 8<sup>th</sup> day of March 2021 for determination,

**AND WHEREAS** the Board is satisfied that the matter at issue is the amount of financial contribution to be paid,

**AND WHEREAS** the Board had particular regard to the provisions of section 34(5) of the Planning and Development Act 2000, as amended, the Development Contributions Guidelines for Planning Authorities (2013), the Fingal County Development Contribution Scheme 2016-2020 (under Section 48, Planning and Development Act, 2000, as amended, and Fingal County Development Plan 2017-2022,

**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 Condition Number 27 was correctly applied,

## **REASONS AND CONSIDERATIONS**

Having regard to-

- (a) The Fingal County Development Contribution Scheme 2016-2020 (under Section 48, Planning and Development Act, 2000, as amended, and Fingal County Development Plan 2017-2022;

- (b) Conditions attached to An Bord Pleanála Reference Number ABP-306074-19, under which planning permission was granted for the provision of 211 number apartments in four number blocks (Block J, K, L and M), comprising of 10 number studio units, 68 number one-bed units and 133 number two-bed units, above an existing basement.
- (c) Section 34(4) of the Planning and Development Act 2000, as amended, which states: Conditions under subsection (1) may, without prejudice to the generality of that subsection, include all or any of the following:
  - (m) conditions for requiring the provision of roads, including traffic calming measures, open spaces, car parks, sewers, watermains or drains, facilities for the collection or storage of recyclable materials and other public facilities in excess of the immediate needs of the proposed development, subject to the local authority paying for the cost of the additional works and taking them in charge or otherwise entering into an agreement with the applicant with respect to the provision of those public facilities;
- (d) Section 34(5) of the Planning and Development Act 2000, as amended, which states: The conditions under subsection (1) may provide those points of detail relating to a grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination.

The Board considered that the point of detail in dispute regarding Condition Number 27 of previously permitted An Bord Pleanála Reference Number ABP-306074-19 in terms of Section 34(5) and 34(4)(m) of the Planning and Development Act 2000, as amended, and have decided that Condition Number 27 was correctly applied by the planning authority in respect of a contribution towards public infrastructure and facilities benefiting development in the area of the planning authority.

The Board concluded that the application of a financial contribution is applicable in this instance and can see no evidence of overcharging by reason of class of contribution sought. This application is for the provision of 211 number apartments in four number blocks (Block J, K, L and M), comprising of 10 number studio units, 68 number one-bed units and 133 number two-bed units, above an existing basement.

### **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.

  
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**Paul Hyde**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

Dated this *26<sup>th</sup>* day of *MARCH* 2022.