

An
Bord
Pleanála

Board Order
ABP-318046-23

Planning and Development Acts 2000 to 2022

Planning Authority: Fingal County Council

Planning Register Reference Number: F22A/0687

Appeal by Clondev Properties Limited care of John Spain Associates of 39 Fitzwilliam Place, Dublin in relation to the application by Fingal County Council of the terms of the Development Contribution Scheme made for the area in respect of condition number 2 of its decision made on the 15th day of June, 2023.

Proposed Development: Permission for development at this (circa 0.54 hectares) site. The subject site overlaps and will supersede part of planning permission (planning register reference number F18A/0306) adjoining to the west resulting in the omission of eight number apartments as permitted. The development will consist of: (1) demolition of existing residential dwelling Hollytree House (circa 449.2 square metres); (2) construction of 85 number residential apartments (35 number one bed, 37 number two bed units and 13 number three bed units) within a five to eight-storey (over undercroft) building, with all apartments served by private terrace or balcony; (3) access shall be via internal road branching south from Boroimhe Link Road L2300 serving permitted development (planning register reference number F18A/0306) adjoining to the west; (4) landscaped public open space in the northern part of the site fronting the Boroimhe Link Road L2300 (on lands zoned Open Space)

and additional public open space across the site and communal open space including children's play area; (5) provision of 50 number car parking spaces, 49 number at basement level (including two number disabled access spaces), all accessed via vehicular ramp and one number disabled access space at ground level; (6) provision of 293 number bicycle parking spaces, 218 number at basement level accessed via cycle ramp and 75 number bicycle parking spaces at ground level; (7) ESB substation, switch room, bin storage and bicycle storage at ground level at the southern perimeter, with green roof and PV panels at roof level, as well as plant at basement level and all associated works and infrastructure to facilitate the development; all at Hollytree House, Nevinstown, Swords, County Dublin as amended by the revised public notice received by the planning authority on the 19th day of May, 2023 .

Decision

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of conditions numbers 20 and 22 and directs the said Council to REMOVE condition number 20 and the reason therefor and to AMEND condition number 22 so that it shall be as follows for the reason stated.

22. 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 in January 2024, to the detailed submissions on file from the appellant and the planning authority, including submissions made in response to the notice, dated the 23rd day of February 2024, issued by the Board under section 137 of the Planning and Development Act, 2000, as amended, it is considered that the proposed development would incorporate 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 of the decision of the planning authority (planning register reference number F22A/0687) would be in accordance 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:-

In relation to condition number 20 (in respect of 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, and given the nature, scale and form of the development, including the extent and quality of open space provided therein, 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 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.



In relation to condition number 22 (in respect of 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 Fingal County Council Development Contribution Scheme 2021-2025 and specifically note 5, "Open Space Shortfall" which is the focus for in lieu calculations on matters such as development costs.


Chris McGarry

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

Dated this  day of  2024.