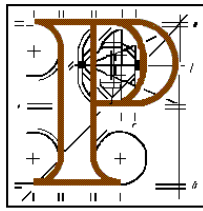


An Bord Pleanála



Inspector's Report

Development: Rehabilitation of twin foul sewers, including repair works to two underground tunnels and five access shafts (Liffey Siphons Rehabilitation Contract) which runs from the Phoenix Park, D8, south to Devoy Road, D8 (c3.4km).

Planning Application

Planning Authority: Dublin City Council
Planning Authority Reg. Ref.: 3827/15
Applicant: Irish Water
Type of Application: Permission
Planning Authority Decision: Grant Permission

Planning Appeal

Appellant: Irish Water

Type of Appeals: 1st v Conditions
Date of Site Inspection: 28th April 2016
Inspector: Dolores McCague

1 SITE LOCATION AND DESCRIPTION

- 1.1 The site runs for 3.4km mostly underground with six temporary compounds for the duration of the project including at: the raised central island at Devoy Road.
- 1.2 The subject site is situated at Devoy Road, Inchicore. It is a rectangular plot of open space/ground surrounded on all sides by roads. To the south, separated from the site by a public road, is the Grand Canal. The road running along the south (Devoy Road) serves a small number of houses to the east and west which face the Grand Canal and these short cul de sac roads terminate a short distance from the site. North of the site there are three roads, Stephens Road running diagonally north west within the Bulfin estate, Kincora Road running north, and O'Leary Road running east to Suir Road. The section of road to the south of the site is unnecessary as the housing it serves can be served equally well by the short lengths of road bounding the east and west of the open space.
- 1.3 The Grand Canal bank is several metres higher than the public road and surrounding area. At the south-eastern end of the subject site a palisade fenced compound, on the canal bank, encloses a small area which contains several structures including a vent pipe, this is associated with the Liffey Siphon and it is intended as part of the works to remove the compound and structures with only a vent pipe remaining at this location.
- 1.4 The public open space, known as 'the pitch', is higher than the road (c 0.5m) and surrounded by a high kerb. The tarmac surface has been repaired on a number of occasions. Timber (two) and steel (one) electricity/utility poles within the open space have associated overhead lines. There are also two utility cabinets along the north western boundary.
- 1.5 The area is a residential area of two storey semi-detached houses.
- 1.6 The site area is approx. 19.7m x 48.1m, or 947.57 sq m.

2 PROPOSED DEVELOPMENT

2.1 The proposed development comprises the rehabilitation of twin foul sewers, including repair works to two underground tunnels and five access shafts (Liffey Siphons Rehabilitation Contract) which runs from the Phoenix Park D8 south to Devoy Road D8 (c3.4km). The works include the demolition of two structures above the existing outlet chamber at Devoy Road and construction of three ground control kiosks/cabins at Devoy Road.

Six temporary compounds are to be used for the duration of the project

- The raised central island at Devoy Road, Inchicore
- Grassed area adjacent to the Cammock River, Turvey Ave
- Carpark adjacent to Trinity College Boathouse, Memorial Gardens
- Grassed area within the grounds of UCD Boathouse, Chapelizod Road,
- Carpark of Military Road, Phoenix Park, and
- Southern side of Chesterfield Ave at the junction with Acres Road.

The project includes the construction of new inlet chamber and decommissioning of an existing siphon outlet chamber at Devoy Road, Inchicore; demolition of two existing structures above the existing siphon outlet chamber at Devoy Road, Inchicore; and installation of above ground kiosks at Phoenix Park (1 kiosk) and Devoy Road, Inchicore (3 Kiosks).

3 PLANNING AUTHORITY DECISION

3.1 The planning application was lodged on the 15th October 2015.

3.2 Reports

3.3 City Archaeologist – 4th November 2015 – no objection subject to conditions.

3.4 Engineering Dept, Drainage Division – 5th November 2015 – no objection subject to conditions.

- 3.5 Conservation Officer – 23rd November 2015 – recommending further information re areas of cultural significance and input of a conservation architect
- 3.6 Roads & Traffic – 1st December 2015 – no objection subject to conditions.
- 3.7 Parks & Landscape – 7th December 2015 – 7 no conditions including no. 7 – Devoy Road – the landscape scheme for Devoy Park shall take on board existing park development proposals for this area (sketch attached). The hoarding surrounds of the works compound shall be painted green. The site is currently in tarmacadam but the reinstatement works should incorporate SUDS, as an objective of the City Development Plan in the interests of mitigation of stormwater management and protection of adjacent watercourses.
- 3.8 Planning – 9/12/2015 – recommendation to grant permission subject to 14 conditions.

Report includes: zoning – the 2011 – 2017 Dublin City Development Plan, of all the sites are zoned ‘Z9 – *to preserve, provide and improve recreational amenity and open space and green networks*’ public service installation which would not be detrimental to the amenity of Z9 zoned lands is a permissible use. All the sites are within Conservation Areas of the Phoenix Park, Rivers Liffey and Camac and the Grand Canal.

‘FC 41 – to protect and conserve the special interest and character of Architectural Conservation Areas and Conservation Areas in the Development management process’. It should be noted that the compounds are temporary and are required to facilitate the repair of essential infrastructure. The full duration of the works contract is estimated to be 12 months. As long as the overall proposal, such as reinstatement and landscaping works enhance the Conservation Area, then the proposal is acceptable in principle.

Other Policies are cited:

S 143 – to ensure the upgrading of wastewater infrastructure and to facilitate the provision and safeguarding of infrastructure corridors required to facilitate sustainable development in the city and region.

S 146 – in co-operation with the other local authorities to implement the recommendations, as appropriate of the Greater Dublin Strategic Drainage Strategy, subject to funding being available.

The Parks & Landscape Services Division's report has recommended on the requirement for landscape plans to restore the sites, in particular the Devoy Road site which was the subject of discussion at the pre application consultation meeting. There was preliminary work undertaken in 2009 by the Parks & Landscape Division to provide a landscape scheme, including play space, lighting, sitting area, sustainable urban drainage system and increased permeability, connecting the space to the banks of the Grand Canal. A condition could be used to ensure the enhanced reinstatement of this area in line with the existing park development proposals.

- 3.9 Decision to grant permission – 9th December 2015 subject to 15 conditions; including condition no 3.

Condition no 3 - The applicant shall comply with the following requirements:

i prior to the commencement of development Landscape plans for the restoration of each site shall be submitted to the Planning Authority for written agreement. The landscape plans shall be prepared by a competent landscape architect. Where the works are located in OPW parks the preparation of the landscape plan shall be in consultation with the OPW Parks Superintendent.

ii the landscape scheme for the restoration of Devoy Park area shall incorporate the existing park development proposals by the Parks and Landscape Division to provide a landscape scheme, including play space, lighting, sitting area, sustainable urban drainage systems and increased permeability, connecting the

space to the banks of the Grand Canal. Prior to the commencement of development the landscape scheme and outline specification, prepared by a landscape architect shall be submitted to the Planning Authority for written agreement. The landscape scheme shall have regard to the Guidelines for Open Space Development and Taking in Charge, copies of which are available to consult with the DCC Landscape Architect, Mr Kieran O'Neill, before submitting the information.

iii the agreed landscaping schemes shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within 3 years of planting shall be replaced in the first planting season thereafter. (The landscape scheme shall have regard to the Guidelines for Open Space Development and Taking in Charge, copies of which are available from the Parks and Landscape Services division).

iv All trees shown to be retained on the sites and adjacent to the site, shall be adequately protected during the period of construction as per BS 5837, such measures to include a protection fence beyond the branch spread, with no protection measures shall have regard to the Guidelines for Open Space Development and Taking in Charge, copies of which are available from the Parks and Landscape Services division).

v Alignment of hoarding shall not impact on existing trees or hedgerows on the UCD Boat Club site.

Reason: In the interests of amenity, ecology and sustainable development and the mitigation of stormwater management and protection of adjacent watercourses.

3.10 The decision was in accordance with the planning recommendation.

4 PLANNING HISTORY

Pre-planning meeting between representatives of Irish Water and DCC representatives (planning, archaeology, parks and drainage planning), 25th November 2014.

Irish Water Minutes of meeting of 25th November 2014 include - The planning application will be in Irish Water's name. Fingal County Council are the project managers. There will be a condition attached to the planning permission that an enhancement at Turvey Avenue and Devoy Rd. is provided.

DCC minutes of meeting of 25th November 2014 include – the consultation had started off as a Part 8 application from Fingal County Council as part of the Blanchardstown Regional Drainage Study (BRDS) proposals. Now it is proposed that it will be submitted as one planning application from Irish Water, (FCC Engineer to remain project manager). Some of the locations are located in residential areas, such as Devoy Road, or a public Park such as Turvey Ave, or sensitive landscapes, such as, Memorial Gardens and Phoenix Park. The main issues, therefore, were the finish of the hoardings which would be in place for a year+, enhanced landscaping works at Devoy Rd which is a residential area beside the Canal and Turvey Road, and the location of the kiosks at Devoy Road.

DCC minutes of a pre-planning meeting of 10th December 2013 include –

Proposers - a new kiosk /cabinet to house the new actuators will be required on the hard standing area across which the existing Liffey Siphons cross. A new chamber will be constructed on the hard standing area to house new penstocks. A works area will be required on the hard standing.

DCC - the hard standing area is down to become recreational and perhaps betterment of the area would help the planning application. A drawing showing a proposed landscaped area in place of the hard standing with the road on the canal side to become part of the landscaped area.

Proposers – to examine the possibility of 'soft landscaping' the hard standing area post construction of the chamber and installation of the new kiosk. This will be grassed only and will only occur if the entire hard-standing area is handed over during the construction process. Otherwise the hard-standing will be reinstated.

5 GROUNDS OF APPEAL

5.1 The first party appeal against conditions, submitted by Irish Water, can be summarised as follows:

5.2 The Liffey Siphons are twin 900mm diameter foul sewers approximately 3.4km in length. The siphons commence at an inlet chamber in the Phoenix Park and travel south, beneath the River Liffey and the River Cammock, and ultimately discharge into a Dublin City Council gravity network from a siphon outlet chamber. The outlet chamber is located in the northern bank of the Grand Canal, at Devoy Road at Inchicore. The siphons were constructed in the mid-1980s as part of the 9C sewer system connecting Blanchardstown area to the Grand Canal Sewer System and onward to Ringsend for treatment.

5.3 Hydraulic modelling carried out in 2000-2004 as part of the Greater Dublin Strategic Drainage Study (GDSDS) indicated that either one siphon was closed, or if both were open, that they were partially blocked. The Blanchardstown Regional Drainage Study (BRDS) proposals for 2011 and beyond require that both siphons are operational and available to carry flows of up to 2.7m³/second. Little if any maintenance of the siphons has taken place since their construction.

5.4 An assessment was carried out as part of the BRDS as to whether or not it is necessary to rehabilitate the siphons. A full asset survey of the siphons and associated chambers, hatchboxes and tunnels was carried out and it was determined that rehabilitation works are required. The following works were subject to the planning application:

Temporary compounds for the duration of the project

- The raised central island at Devoy Road, Inchicore
- Grassed area adjacent to the Cammock River, Turvey Ave
- Carpark adjacent to Trinity College Boathouse, Memorial Gardens
- Grassed area within the grounds of UCD Boathouse, Chapelizod Road,

- Carpark of Military Road, Phoenix Park, and southern side of Chesterfield Ave at the junction with Acres Road.

Construction of new inlet chamber and decommissioning of an existing siphon outlet chamber at Devoy Road, Inchicore.

Demolition of two existing structures above the existing siphon outlet chamber at Devoy Road, Inchicore

Installation of above ground kiosks at Phoenix Park (1 kiosk) and Devoy Road, Inchicore (3 Kiosks).

5.5 The appeal refers to condition 3 (ii)

5.6 The existing siphon outlet chamber is located in the northern bank of the Grand Canal adjacent to Devoy Road. The existing outlet chamber is to be rehabilitated and a gate valve chamber is proposed to be constructed upstream of the outlet chamber on the line of the existing siphon. Irish Water proposes to establish a site compound in close proximity to the vicinity of the outlet chamber. There is an existing hardstanding area approximately 10m from the existing outlet chamber that is bounded by O'Leary Road and Devoy Road. Irish Water proposes to install a temporary works compound on this hardstanding area. There is no requirement by Irish Water to amend the existing surface of this area in order to establish the compound. The location for the proposed gate valve chamber will also fall within the confines of the compound area. The gate valve chamber will consist of two actuated gate valves, one on each siphon, to facilitate future isolation of the siphons if necessary. The actuators are to be housed above ground in control kiosks.

5.7 Dublin City Council's (DCC) proposals for Devoy Road have not been subject to Part 8.

5.8 At pre-planning discussions DCC advised Irish Water that in the event of a grant of permission a condition would be attached seeking the hardstanding area to be reinstated with grass. Notwithstanding the without prejudice nature of discussions a planning application was submitted on this basis. It should also be noted that the existing overhead ESB lines that traverse the site will be undergrounded by Irish Water.

- 5.9 Irish Water is of the opinion that condition 3 ii should be amended or removed for the reasons:

Irish Water is a state-owned utility with responsibility for water services.

It is not Irish Water's role to provide public parks. Irish Water acknowledges that the location of the two kiosks on the area of hardstanding encroaches somewhat on the proposal for a court area at this location and consider their proposal to grass the entire hardstanding area during reinstatement justified. The undergrounding of the overhead lines will enable the development of the landscaping works in the future.

Condition 3 ii is contrary to section 7.3.5 of the Development Management Guidelines.

Irish Water understands that the landscaping proposals would be unauthorised works; not having been part of their planning application or subject to part 8.

The full realisation of the landscaping proposals requires the extinguishment of a road between the existing hardstanding area and the Grand Canal, which is beyond the remit and governance of Irish Water.

6 RESPONSES

6.1 Planning Authority Response.

- 6.2 The Planning Authority has responded to the grounds of appeal. The response includes:

- 6.3 Devoy Road site is laid out as a tarmacadam area, commonly referred to as 'the pitch'. The site is zoned '*Z9 – to preserve, provide and improve recreational amenity and open space and green networks*'. Chapter 6 of the Dublin City Development Plan

2011 – 2017 supports the creation of landscape spaces along the main green routes; as illustrated in Figure 11 of the Plan; the condition is supported by the Plan zoning and policies. Meetings of June 2013, 10th December 2013 and 25th November 2014 are referred to. The first with Fingal County Council, the second including the Parks Division; but as the project involved Local Authorities which have a number of responsibilities, the provision of this greenspace was not an issue. In the most recent pre-planning meeting the issue did arise.

- 6.4 Given the scale of the overall project, the Planning Authority remain of the view that a landscape scheme is justified after causing disruption to the local community by construction, such as undergrounding ESB power lines and works to the Liffey siphon for a period of at least a year.
- 6.5 Responding to issues raised in the grounds of appeal:
- 6.6 At all meetings of Dublin City Council, the 2009 proposals for landscaping the area have been presented by the Parks and Landscape Services Division as the preferred option.
- 6.7 The laying out of a park is exempt development; is not prescribed for the purposes of section 179 of the Planning Act and article 80 of the Planning Regulations and would not be subject to Part 8. As part of this current planning application the applicant proposed to grass the site at Devoy Rd.
- 6.8 Since the decision to grant planning permission Irish Water has had discussions with the Parks and Landscape Services Division, in which the following actions and works have been agreed:

Irish Water can comply with this part of the condition by:

Requesting that Bernard Seymour Landscape Architects update the Bulfin Estate Design Proposals (parks proposal for Devoy Road) to reflect the location of the Irish Water kiosks on the site;

Irish Water provide the north western corner of the park – i.e. L-shaped section of path, approx. 5 trees and two benches; and

Grass the remainder of the site.

Irish Water recognises that the proposed kiosks encroach somewhat on the proposed court area, therefore it would be justified that as part of the reinstatement works to the paved area, Irish Water will carry out the suggested works to comply with Condition 3(ii).

6.9 They suggest amendment of Condition 3(ii) as follows

The landscaping for the restoration of Devoy Road area shall include the existing park proposals by the Parks and Landscape Division to provide open space by updating the open space and landscape proposals from 2009 for the area prepared by a qualified landscape architect and under the supervision of qualified landscape architect, to undertake the landscape works on the north western corner of the proposed park including paths, trees and benches, and to provide in the remainder of the area new subsoil, as required, for the laying of a grass. Prior to the commencement of development the updated landscape plan and landscaping proposals, prepared by a landscape architect shall be submitted to the Planning Authority for written agreement. The applicant is advised to consult with the DCC Landscape Architect, Mr Kieran O'Neill, before submitting the information.

6.10 The amended condition is a reasonable compromise and is required to avoid possible future enforcement action.

6.11 **First Party Response to the Planning Authority Response.**

6.12 Arising from the pre-planning meetings and e-mail correspondence Irish Water's understanding was that the area known as the pitch was to be laid with grass. Such consultations should not prejudice the first party's right to appeal a condition that is deemed to be unreasonable and disproportionate.

- 6.13 Re. undergrounding of the overhead lines, it must be noted that these will be required works to realise the landscape plans at Devoy Road, would be a significant contribution to DCC's Parks and Landscape Services Division's proposals, and would improve the usability of the open space in its current form.
- 6.14 Irish Water did not include the proposals in their public notices or drawings and third party observations/submissions were not facilitated.
- 6.15 DCC did not address the issue of the requirement to extinguish a public road. There is a possibility that Irish Water will not be in a position to comply with the condition. The red line did not include the public road.
- 6.16 The landscape proposals have been presented by Dublin City Council as an outline sketch, whereby detailed design and specifications of the proposal have not been finalised. The condition refers to a landscape proposal rather than a final design and reaching agreement will be very challenging and has the potential to cause serious delays to this strategic project.
- 6.17 The rehabilitation will facilitate flow of $2.7\text{m}^3/\text{s}$ in comparison with $1.35\text{m}^3/\text{s}$ (due to the fact that both siphons are only partially opened). The siphons are a critical asset within the Greater Dublin Area. The works to the siphons falls within Irish Water's objectives; the provision of a park does not. Irish Water has serious concerns about the spirit of the condition in terms of the expectations and precedent it sets, which ultimately undermines Irish Water's ability to fulfil its role in water services.
- 6.18 They request the Board to amend the condition to:

The landscape proposals shall be carried out in accordance with landscape plan (Drawing No. C008113/618) submitted on the 15th October 2015.

7 POLICY CONTEXT

7.1 The Dublin City Development Plan 2011 – 2017 is the operative plan.

7.2 Relevant policies include:

7.3 It is the policy of Dublin City Council: (S 143) To ensure the upgrading of wastewater infrastructure and to facilitate the provision and safeguarding of infrastructure corridors required to facilitate sustainable development in the city and region; and (S 146) in co-operation with the other local authorities to implement the recommendations, as appropriate, of the Greater Dublin Strategic Drainage Strategy;

Regional Infrastructure (8.4.9) - Improvements to existing public transport infrastructure and water services are essential for improving quality of life and supporting the increases in density subject to funding being available and critical mass necessary to create a sustainable compact city which optimises the use of urban land. Water supply and drainage for Dublin is provided on a regional basis. A new long term source of water supply and additional regional wastewater treatment capacity is necessary to meet demand that will be created by projected population growth in the Dublin city region.

8 ASSESSMENT

8.1 This appeal is an appeal against a condition; in fact it is an appeal against part of a condition. The Board has the discretion, under Section 139 of the Planning and Development Acts, to restrict its consideration of the appeal to the condition referred to in the grounds. Having regard to the nature of the condition appealed; the provisions of the Development Plan; the wording of the condition, its subdivision into four parts, with each part being independent of the other parts, thereby enabling the part of the condition subject to appeal to be considered separately from the other parts; I consider that the Board should restrict its consideration of this appeal to condition 3, part ii, as referred to in the grounds of appeal.

- 8.2 The appeal therefore refers to part of the project, that occurring at Devoy Road, Inchicore and more particularly the reinstatement of the area post construction.
- 8.3 The Board should note that Dublin City Council (DCC) own the area of open space, known as the pitch, at Devoy Road, which is the part of the area the subject of the disputed condition. Other works at Devoy Road, not subject to the disputed condition, include an area on the bank of the Grand Canal, in the ownership of Waterways Ireland; and a site on the public footpath across the road (O'Leary Rd) from the pitch.
- 8.4 As owners of the land, Dublin City Council have given permission for the making of the planning application only. The letter of consent states that no agreement enforceable at law exists or shall be deemed to exist until an exchange of contracts has taken place. Therefore Dublin City Council is not restricted to a condition of this permission to achieve their objectives in relation to this land.
- 8.5 The proposed development, including the proposals in relation to the open space at Devoy Road, were the subject of pre-planning discussions and were also the subject of post decision discussions (between representatives of Irish Water and DCC) which appear to have taken place with a view to ironing out areas of dispute. Following the post decision discussions DCC's Parks and Landscape Services Division appears to have formed the view that they had reached a compromise solution with the first party. The first party's response to the planning authority's submission to the Board, following these discussions, indicates that no such agreement can be inferred.
- 8.6 It falls to the Board, therefore, to consider what reinstatement of the lands at Devoy Road, after its use as a depot, and the placement of two permanent upstanding features: kiosks 1200x600x1.3m high, within the open space, is appropriate,.
- 8.7 The other permanent upstanding features in this area: the kiosk near the junction of Kickham Rd and O'Leary Rd, and the vent pipe on the Grand Canal bank, where currently there are

structures to be demolished and a vent pipe; are not the subject of the disputed condition.

8.8 Arising from the revised condition proposed by DCC, it appears that the extent of works the planning authority now require are: commissioning Landscape Architects (preferably those who developed the landscape proposals in 2009) to update the landscape proposals to reflect the location of the Irish Water kiosks on the site and to provide landscaping at the north western corner of the park – i.e. L-shaped section of path, approx. 5 trees and two benches. Irish Water's proposals to grass the remainder of the area is no longer in dispute.

8.9 The relevant drawings include Drg No. C008113/618 - Rev 2 'proposed grass landscaping plan' and C008113/641 - Rev P2 'photomontage of kiosks Devoy Road'; and a drawing attached to Irish Water's submission dated 14th March 2016.

8.10 Irish Water appear to regard the dispute as one of principle: the spirit of the condition in terms of the expectations and precedent it sets.

8.11 Issues raised in the grounds include that:

The landscaping proposals have not been part of the planning application or subject to part 8 and could be unauthorised.

The condition could delay the project.

Pre-planning discussions should not prejudice their right to appeal.

Irish Water has responsibility for water services, not public parks.

The location of the two kiosks on the area of hardstanding encroaches somewhat on the proposal for a court area at this location. Their proposal to grass the entire hardstanding area during reinstatement justified. The undergrounding of the overhead lines will enable the development of the landscaping works in the future.

Condition 3 ii is contrary to section 7.3.5 of the Development Management Guidelines.

The full realisation of the landscaping proposals requires the extinguishment of a road between the existing hardstanding area and the Grand Canal, which is beyond the remit and governance of Irish Water.

8.12 The issues could be summarised under the headings of: discussions with the planning authority, prior to commencement conditions and delay to the project, unauthorised works, extinguishment of public right of way, and the question of whether or not the works the subject of the condition are reasonable, and it is proposed to deal with the assessment under these headings.

8.13 **Discussions with the Planning Authority**

8.14 The planning authority have supplied copies of minutes of pre-planning meetings and, in their response to the grounds of appeal, refer to a meeting between representatives of Irish Water and DCC to deal with the areas of dispute, at which DCC representatives formed the view that they had reached an agreed compromise solution with the first party.

8.15 I accept the first party statement that pre-planning discussions should not prejudice their right to appeal; nor indeed should post decision discussions, however it would be a reasonable expectation that agreements reached in such discussions would be honoured.

8.16 **Prior to Commencement / Delay to Project**

8.17 The Board should note that the wording of the condition requires that agreement must be reached with the planning authority prior to the commencement of development. The first party's concern, that the commencement of development could be delayed or compromised by this condition appears justified.

8.18 The revised wording, submitted by the planning authority, in response to the grounds of appeal, has a similar prior to commencement requirement:

‘Prior to the commencement of development the updated landscape plan and landscaping proposals, prepared by a landscape architect shall be submitted to the Planning Authority for written agreement’.

8.19 The Board should also note that the Development Management guidelines state that minor details will not need to be agreed before development commences, but could be negotiated during the construction phase. I consider that any revised wording should state that details be submitted for written agreement prior to the reinstatement works being carried out; this would not delay implementation of the project.

8.20 **Unauthorised Works**

8.21 Irish Water states its understanding that the landscaping proposals would be unauthorised works; not having been part of their planning application or subject to part 8.

8.22 The planning authority response is that the laying out of a park is exempt development; is not prescribed for the purposes of section 179 of the Planning Act (local authority own development) and article 80 of the Planning Regulations (development prescribed for purposes for section 179 of Act) and would not be subject to Part 8. They also point out that as part of this current planning application the applicant proposed to grass the site at Devoy Rd.

8.23 I am satisfied that landscaping the area, in a manner other than the provision of a grassed surface, would not be unauthorised development.

8.24 **Extinguishment of Public Right of Way**

8.25 The first party has concerns that Irish Water do not have the power to implement the condition which requires extinguishment of a public right of way, by removing a section of road along the Canal.

- 8.26 The landscape scheme to be submitted for agreement, per the decision condition, must include *increased permeability, connecting the space to the banks of the Grand Canal*. This would clearly involve the extinguishment of a public right of way, which the planning authority have the necessary powers to achieve, subject to due process. Irish Water on the other hand are unlikely to have been given powers for this purpose, since increasing permeability is not one of their functions.
- 8.27 The revised wording, submitted by the planning authority, in response to the grounds of appeal, does not have a similar requirement to link the open space to the Canal.
- 8.28 **Are the works the subject of the condition reasonable?**
- 8.29 The other issues raised in the grounds of appeal can be dealt with under this heading. I consider that the revised condition in the planning authority's response to the grounds of appeal, should be the basis for the assessment of the issue or reasonableness. The planning authority appear to have accepted that the condition as drafted in the decision requires modification.
- 8.30 The revised proposal states

The landscaping for the restoration of Devoy Road area shall include the existing park proposals by the Parks and Landscape Division to provide open space by updating the open space and landscape proposals from 2009 for the area prepared by a qualified landscape architect and under the supervision of qualified landscape architect, to undertake the landscape works on the north western corner of the proposed park including paths, trees and benches, and to provide in the remainder of the area new subsoil, as required, for the laying of a grass. Prior to the commencement of development the updated landscape plan and landscaping proposals, prepared by a landscape architect shall be submitted to the Planning Authority for written agreement. The applicant is advised to consult with the DCC Landscape Architect, Mr Kieran O'Neill, before submitting the information.

- 8.31 In relation to reasonableness the grounds of appeal states:
- Irish Water has responsibility for water services, not public parks.
- The location of the two kiosks on the area of hardstanding encroaches somewhat on the proposal for a court area at this location. Their proposal to grass the entire hardstanding area during reinstatement is justified. The undergrounding of the overhead lines will enable the development of the landscaping works in the future.
- Condition 3 ii is contrary to section 7.3.5 of the Development Management Guidelines.
- 8.32 I accept the first party's submission that the undergrounding of overhead electricity lines, which is part of their proposal, will facilitate the use of the site as open space and help to secure the planning authority's objective to upgrade the area. I also accept the submission that providing a grass surface, which requires the importation of soil for that purpose, will also facilitate the use of the site as open space and will help to secure the planning authority's objectives for the area.
- 8.33 The first party considers that the condition is in breach of the Development Management Guidelines 7.3.5 which requires that conditions should be reasonable. Irish Water has responsibility for water services, not public parks.
- 8.34 There are two aspects to the revised condition: the first is the requirement to prepare a landscaping scheme and the second is the provision of a landscaped area in a corner of the site, in accordance with the scheme; and subsoil in the remainder of the site.
- 8.35 Irish Water have temporary use of the site for use as a compound, and permanent use for the installation of 2 overground kiosks, which they agree encroaches to some extent on the proposal for a court area at this location. Encroaching on a court means that the entire layout of the landscaping scheme will need to be revisited.

- 8.36 Condition 3 i) requires landscaping proposals for each affected area of the twin foul sewers rehabilitation scheme; and is stated as follows:

i prior to the commencement of development Landscape plans for the restoration of each site shall be submitted to the Planning Authority for written agreement. The landscape plans shall be prepared by a competent landscape architect. Where the works are located in OPW parks the preparation of the landscape plan shall be in consultation with the OPW Parks Superintendent.

- 8.37 This condition has not been appealed. Therefore having regard to the fact that there will be permanent impact on the open space area and that the landscaping scheme prepared for the site will require amendment, I consider that the requirement to prepare a landscaping scheme is reasonable.
- 8.38 The second area of disagreement is the requirement to provide a landscaped area in the north western corner of the site. The landscaping works includes 'paths, trees and benches'. The planning authority have given further details of their requirements in their submission: they require an L-shaped section of path, approx. 5 trees and two benches. For the remainder of the area they require new subsoil for the laying of a grass. There does not appear to be disagreement in relation to the grassed area.
- 8.39 The works at this location will have a major impact on the open space, to such an extent that the proposals as submitted involve the reinstatement of an area, currently hard surfaced, with grass. The works in this area and the use of the entire open space as a compound from which work will be managed, will have a significant impact on the residents of the immediate area.
- 8.40 The two 1200 x 600 x 1.3m high kiosks will be quite noticeable features in an otherwise almost empty space and their impact would be considerably lessened by some planting; notably planting in the vicinity of the kiosks would be effective however I note the planning authority's request for the planting of trees 5 trees at the north west corner of the site. Having regard to the foregoing I consider that it would be reasonable to require the

provision of some of the landscaping scheme. It is a matter for Dublin City Council to determine whether providing soil, without seeding with grass, which would require immediate follow on work from Dublin City Council, is appropriate, or whether the first party should reinstate the remainder of the site by seeding with grass.

8.41 I advise that condition no 3 ii) should be amended.

9 RECOMMENDATION

In accordance with the foregoing assessment, I recommend that condition no 3 ii) should be amended to read as follows:

ii the landscape scheme for the restoration of Devoy Park area shall consider the proposals for the area as previously developed by Dublin City Council, in the context of the placement of 2 kiosks within the area. The revised scheme shall be agreed in writing with the planning authority prior to the commencement of the reinstatement works. Following agreement to the overall plan the developer shall carry out rehabilitation works comprising removal of the tarmac and laying of subsoil over the entire site, planting of 5 trees near the north western corner of the site and, subject to the agreement of the planning authority, the seeding of the entire area with grass.

Dolores McCague
Inspectorate

Date

Appendix 1 Map and Photographs