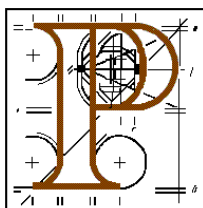


An Bord Pleanála



INSPECTOR'S REPORT

PL 06F 246453

DEVELOPMENT: Construction of residential development of two hundred and forty six dwellings comprising 147 houses and 99 apartments, new road connections and ancillary works to include landscaped open space, internal roads, paths public lighting utilities, drainage and surface water attenuation. (The development is a Phase 3 extension to the Millers' Glen Development.)

LOCATION: Lands north of Glen Ellan Road, with access from Glen Ellan Road and New Millers Glen County Dublin.

PLANNING APPLICATION

Planning Authority: Fingal County Council.
P. A. Reg. Ref: F15A/15
Applicant: Gannon Properties.
Decision: Grant Permission.

APPEALS

First Party Appellant: Gannon Properties
Type of Appeal: First Party against Conditions.
Third Party Appellant: Ashton Grove/Close Residents.
Observers: None

Date of Inspection: 12th July 2016.

Inspector: Jane Dennehy.

1. **SITE LOCATION AND DESCRIPTION:**

- 1.1 The site has a stated area of circa 5.8 hectares and is located at Oldtown approximately two kilometres to the north-west of Swords, immediately north of Mooretown and north east of Rathbeale. The Broad Meadow River and the Saucerstown Stream are at the northern boundary. A watercourse, a tributary of the Broad Meadow River, (understood to have been culverted circa 2000) traverses the eastern side of the site.
- 1.2 The subject Phase 3 site is to the north of the previously permitted Phase 1 development and the eastern boundary adjoins Ashton Broc and Castleview residential estates. To the south west are undeveloped lands which include permitted second phase development which come within the overall development lands within the area of the Mooretown and Oldtown Local Area Plan 2010.
- 1.3 At the time of inspection the appeal site and adjoining lands were fenced off and some site development works had taken place. An access road is adjacent to the Broad Meadow River Park which terminates adjacent to Aston Broc is to continue along the north of the site and onwards to the Swords Regional Park. Access at the southern end of the site is off Glen Allen Road was fenced off at the time of inspection and a little further to the west there is a site works compound at the time of inspection.

2. **PLANNING HISTORY.**

- 2.1 **P. A. Reg. Ref. F11A/436:** Permission was granted for Phase 1 comprising 245 dwellings and a crèche under F11A/436.
- P. A. Reg. Ref. F11A/473:** Permission was granted for Phase 2 comprising 224 dwelling and a village centre (1,510 square metres) on lands to the east of the overall development lands.
- 2.2 Permission has been granted for various modifications and revisions to the original grant of permission under P. A. Reg. Ref. F11A/436 for Phase 1. They comprise primarily of changes of house type and layout details. As a result there is small reduction overall in the total number of units originally permitted for Phase 1. Outline details follow:

P. A. Reg. Ref. F15A/0136: This application for modifications to the development permitted under P. A. Reg. Ref. F11A/436 on the adjoining Phase 1 lands comprising a subsection Phase 1E” It provides for omission of seventeen units and substitution of thirty three units

P. A. Reg. Ref. F14A/0471: Permission granted for revisions to the development permitted under P. A. Reg. Ref. F11A/436 providing for omission of fifty seven units and substitution of fifty four units.

P. A. Reg. Ref. F14A/0419: Permission granted for revisions to the development permitted under P. A. Reg. Ref. F11A/436 providing for omission of thirty four units and substitution of a total of thirty one units.

P. A. Reg. Ref. F14A/0130: Permission granted for revisions to the development permitted under P. A. Reg. Ref. F11A/436 in which there was no change in total units.

P. A. Reg. Ref. F13A/0185: Permission granted for revisions to the development permitted under P. A. Reg. Ref. F11A/436 providing for omission of sixty two units and substitution of sixty units.

3. THE PLANNING APPLICATION:

3.1 The application lodged with the planning authority on 21st August, 2015 is for two hundred and forty six dwelling and a crèche. It is an extension to the Millers Glen Development and is the third phase of a multi stage development within the area of a Masterplan and Oldtown/Mooretown Local Area Plan, 2010 in respect of which there are two prior phases have been permitted and are under construction. (P.A. Reg. Refs. F11A/436 and F11A/471 refer.)

3.2 The current proposal is for "Oldtown - Phase 3" which is the third in a series of applications for an overall development known as "Millers Glen", following on from Phases 1 and 2 previously permitted under P. A. Reg. Refs F11A/436 and F 11A/473 on adjoining lands. (The application corresponds to Phase 4 of the LAP) Although the Phase 2 lands are not as yet developed it is intended to proceed with Phase 3 first for reasons associated with the availability of strategic infrastructure for the subject lands which has already been constructed for Phase 1 and because it would provide for consolidation of the urban environment adjoining existing development and securing the river park.

3.3 The original application comprised Two hundred and forty six dwellings: consisting of:

134 houses:
22 four bed and,
112 three bed houses

and,

30 apartments and 82 duplex units comprising:
4 No four bed,
43 No three bed,
57 No two bed and,
8 No one bed units

3.4 The duplex units are in terraces and include thirteen two bed town houses. The apartments are in two, four storey pavilion blocks each with 22 no two bed units and eight one bed units. The Phase 3 proposal comprises two “character areas”; “Longview” in the southern and western ‘medium density’ area of the site which is similar to the permitted development in Phase 1 and “Parkside Lower” in the northern and north eastern area higher density apartment and duplex units are proposed.

3.5 Also provided for in the current application are:

New road connections with three junctions with vehicular access from Glenn Ellen Avenue to the south and a number of pedestrian/cyclist linkages through existing development adjoining the eastern boundary. Provision is also made for construction of a 500 metre section of the 500 metres of the Western Distributor Route from Glen Allen Avenue north-eastwards. (‘Oldtown Avenue’) (The first 500 metres having been granted under P. A. Reg. Ref. F11A/473),

Provision is also included for two areas of public open space, one at the north comprising a linear planted grass space and a central space with pedestrian paths, ancillary works to include landscaped open space, internal roads, paths public lighting utilities, drainage and surface water attenuation.

3.6 The application is accompanied by the following reports:

EIS (Addendum/EIR).
A copy of the Masterplan for the area of the Mooretown/Oldtown Local Area Plan,
Landscape and Performance Standards,
A Flood Risk Assessment report,
An Engineering Assessment report
An Architectural and Urban Design report,
A Construction Management Plan
Appropriate Assessment Screening Report.

3.7 A multiple item further information submission was requested by the planning authority prior to the determination of the decision. The information sought included details of phasing arrangements for the delivery of infrastructure and services and facilities allocation and distribution of Class 1 and Class 2 public open space; landscaping, Details regarding delivery of transport infrastructure and recreational and

related local service and facilities of the overall Millers Glen development and boundary treatment. In the request (under item 8, the applicant was also requested to provide for increased density in the northern section of the lands.

3.8 The detailed multiple item further information submission included:

An account of the schedule for implementation of the phasing programme for infrastructure provision in the LAP;

Details of lands to be ceded as part of the Regional Park;

Significant revisions to provide for Class 2 open space in the form of a number of pocket parks distributed throughout the scheme involving a small shortfall of the total requirement generated by the total bed space provision of 284 square metres and,

An increase of fifteen units from 246 to 265 units providing for increased density in the “Parkside Lower” section at the northern end of the site.

3.9 **Technical Reports:**

The final report of the Parks and Green Infrastructure Division indicates acceptance of Class 1 public open space provision and recommendations requirements by condition for:

- Provision of a compound plan for all phases of the overall Oldtown development showing all areas used as Class 2 space used in the calculations and,
- A financial contribution in lieu of shortfalls in class 2 public open space provision, the Archaeology Park being excluded from calculations according the LAP.

The final report of the **Water Services Division** indicate no objection subject to conditions of a standard nature

The final report of **Irish Water** indicates no objection and some recommendations that can be addressed by condition.

The **Report of the Transportation** Dept. of 26th January 2016 includes recommendations for modifications, to be addressed by condition to include:

Amendments to address over-reliance on on-street parking for the apartment units and pedestrian access.

A recommendation for works specified for Phases 1 and 2 of the LAP and access to third party and (for a different

developer) be complete prior to completion of Phase 1. (Some third party lands and prior grants of permission relate. Castlegrange junction and Rathbeale Road/Murrough Road junction are off site.)

The reports of **the Inland Fisheries Ireland** and **the Department of Arts Heritage and the Gaeltacht (National Monuments)** indicate no objection subject to conditions of a standard nature.

3.10 Decision of the Planning Authority.

By order dated, 23rd March, 2016, the planning authority decided to grant permission subject to thirty two conditions most of which are of a standard technical nature. The other substantive requirements of conditions also include:

Condition No 2: Revisions to the site layout (Ref 1432 PO4 (2nd February 2016), for reasons of compliance with the Local Area Plan comprising:

Omission of all units north of Road 1.0 (Blocks A1, A4, A5, C1 and C2), incorporating units 198 to 262 and, all units east of Road 3.6 incorporating units 117-119, units 180 to 197 in Block B, Unit 179, The gate lodge duplex and the crèche.

Termination of Road 1.0 at junction with Road 3.6.

Condition No 3 A maximum of 172 dwellings permitted.

Condition No 4 Provision for a suitably sized childcare facility at the sites of Unis 109-111 along with appropriate design, a secured outdoor play area and appropriate set down and collection areas Site layout, floor plans and elevation drawings to be submitted by compliance.

Condition No 7 Details of pedestrian access between Road 3.4 in the development and the adjoining residential development to be agreed by compliance for reasons of assurance of permeability.

Condition No. 8 (a) Completion and commissioning of wetlands discharging to the Broad Meadow River to be completed prior to construction.

Condition No. 11 Compliance submission for details of arrangements for delivery of for Class 1 and Class 2 public open space.

Condition No 30 S 48 Development Contribution Condition

Condition No 31 Security Bond Condition

Condition No 32 Payment of €868,575 payment in lieu of open space.

4. **STATUTORY POLICY AND STRATEGIC GUIDANCE.**

4.1 **County Development Plan:**

The operative county development plan is the Fingal County Development Plan, 2011-2017 according to which the site location is and is subject to the zoning objective: *“RA: To provide for new residential communities in accordance with approved local area plans and subject to the provision of necessary social and physical infrastructure.”*

4.2 The site location is also within the area of the Oldtown/Mooretown Local Area Plan, 2010 and subject to the policies, objectives and standards therein.

- Policy Objective OS02 relates to minimum public open space requirements and other criteria including a requirement for a minimum of ten percent of a development site to be designated for use as public open space.
- (Policy Objective BD 23 provides for a riparian strip ten to fifteen metres from watercourses free of development.
- Policy Objective OS25: states that SUDS (measures) do not form part of the open space provision except where it contributes in a significant and positive way to the design and quality of open space.
- Policy G 129: To ensure protection of streams watercourse and their corridors maintaining a riparian strip of 10 to 15 metres along watercourses and a thirty metre corridor along rivers indicated on the green infrastructure maps outside urban areas.

4.3 **Local Area Plan:**

The site location comes within the area of the Oldtown/Mooretown Local Area Plan, 2010, the duration of which was extended by Fingal County Council until 2020. The purpose of the LAP is to develop the Oldtown Mooretown lands in a coordinated sustainable way as an urban extension to Swords in with significant archaeological discoveries are integrated in a network of interconnected archaeological parks.

- 4.4 The Oldtown Mooretown lands which at the west of the Swords settlement boundary are within the area of the Local Area Plan (LAP) are divided by the Rathbeale Road. They comprise a total area of 111.5 hectares of undeveloped land of which eighty two hectares is the net development area providing for a population of circa 10,000 persons at a net density of 35 to 50 units per hectare and circa 3,400 units in total.
- 4.5 The subject lands of the current application and implementation of the LAP is in Section 4. Implementation of a Phasing Programme providing for the delivery of infrastructure and residential and mixed use development is specified in this section of the LAP..
- 4.6 The application site lands are designated as “Higher Density lands” in the northern section in the area to be known as “Parkside Lower” and as “medium density lands” in the area to be known as “Longview” to the south adjacent to the Phase 1 lands. An area within the northern site boundary adjacent to the Broad Meadow River is designated as Open Space and Riparian Corridor.
- 4.7 The Western Distributor Link Road (WDLR) forms a north east south west spine of transport infrastructure. Para 3.2.2 refers. It is to be known as Oldtown Avenue.

4.8 **Masterplan.**

A Masterplan was prepared on behalf of the applicant to guide the implementation of the Mooretown / Oldtown LAP. The lands include the site of the current Phase 3 proposal. The detailed Masterplan has been subject to a number of minor iterations and the Revision dated, June 2012 is included in the application. Six distinct character areas are identified which also relate to adjoining character areas in the overall development of the LAP lands. The application site is within two of the character areas known as The Mewswells and Parkside Lower.

4.9 **Statutory Policy Guidance and Standards.**

Relevant statutory guidelines issued under Section 28 of the Planning and Development Acts 2000-2015 include:

“Sustainable Residential Development in Urban Areas. Guidelines for Planning Authorities, Department of the Environment, Heritage and Local Government in 2009. (Residential Guidelines.)

“Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities”, Department of the Environment, Community and Local Government, December. 2015.

“Design Manual for Urban Roads and Streets”: issued under S 28 by the Department of the Environment, Heritage and Local Government. and the Department of Transport in 2012. (DMURS)

“Childcare Facilities: Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government. (Childcare Guidelines.)

“The Planning System and Flood Risk Management” issued under section 28 by the Department of the Environment, Heritage and Local Government in 2009). (Flood Guidelines.)

5. THE FIRST PARTY APPEAL.

- 5.1 An Appeal against Condition Nos. 2, 3 and 4 of the decision to grant permission was received from Conroy Crowe Kelly on behalf of the applicant on 19th April, 2016. The three appealed conditions, in which there are inter-related requirements, are:

Condition No 2 which contains a requirement for omission of a total of eighty nine units consisting of:

Blocks A1, A4, A5, C1 and C2 to the north of Road 1.0 (Units 198 to 262)

Units 117-119, Units 180 to 197 in Block B and Unit 179 (gate lodge) east of Road 3.6 and the Gate lodge and crèche.

Termination of Road 1.0 at Junction with Road 3.6.

Drawing 1432 P04 lodged with the planning authority on 2nd February 2016 refers

The reason is to provide for compliance with the Oldtown Mooretown Local Area Plan provisions.

Condition No 3 which for the purposes of clarity confirms a grant of permission for a total of 172 units.

Condition No 4 which contains a requirement for provision for a child care facility on Plot Nos. 109-111 with set down and collection areas and a secure outdoor play area. A compliance submission with revised site layout and floor plans and elevation drawings along with proposals for a set down and collection areas is required.

- 5.2 It is stated that the eighty nine of the two hundred and forty six units:
- include sixty four units that the applicant has agreed to transfer to the Iveagh Trust in fulfilment of Part V obligations;
 - is not necessary because it is shown that the lands are not on a flood plain and,
 - If the appeal against Condition No 2 is successful, Condition No 4 is unnecessary because the space would not be required for a crèche.
- 5.3 With regard to **flooding risk**, out of date information which has been superseded was relied on as a basis for the condition. It is stated that:
- The 1 in 1000 year flood plain is not in the LAP boundary or in Fluvial Flood Zone Map (No 12) within the SFRA for the LAP. The current FEMFRAMS Map and SFRA confirm.
 - The flood risk land is within the development boundary for Swords and was initially zoned in the 2005-2011 Fingal County Development Plan.
 - FEMFRAMS mapping had not been finalised at the time of adoption of the LAP. The condition was attached on basis of the higher level of FEMFRAMS whereas the site specific project stage assessment should have been considered. (Sequential approaches to flood risk assessment are recommended in The Planning System and Flood Risk Management (Nov 2009) issued by OPW/Department of Environment, Heritage and Local Government. (Flood Risk Guidelines).
 - The FEMFRAMS was not complete at the time of the adoption of the current development plan (Objective SW07 refers) Site specific FRA took place at masterplan and application stages.
 - The LAP Constrains and Opportunities map incorrectly shows the 1 in 1000 year flood plain on the subject lands. The 2010 FEMFRAMS Fluvial Map for Broad meadow River does not indicate flooding.
 - The 2010 FEMFRAMS Fluvial maps and SFRA Maps (Section 3.7 and Map 12) for the Draft county development show the lands free of flooding risk. Flooding risk lands are outside areas in Flood Zone A (1 in 100) and Flood Zone B (1 in 1000) (Extracts are shown in Figs 3 and 4 and s 4.6 of the appeal)
 - The SWOT analysis submitted with the Masterplan and accompanying map with the application for Phase 1 and Phase 2 included the 1% and 0.1% flood probability line which was derived from the FEMFRAMS current scenario fluvial flood mapping.
 - The FRA with the application refers to the FEMFRAMS flood extent map for the Broad Meadow River – Current scenario for flood events

up to the 1 in 100 return period and the closest node point is at the northern boundary of the Oldtown lands. It has a level of 9.64 OD Malin for the 1 in 100 return period and 0.23 m OD in the 1 in 10000 event. The lowest floor level proposed is 11.5 m OD Malin and 11.0 m OD for the road level. This provides a free board (20 % climate change factor) of 1.86 m for the 1 in100 and 1.27 for the 1 in 1000 return period. Therefore the risk of fluvial flooding is very low and there has been no need to propose flood mitigation.

- No justification test was provide for the Oldtown lands in the SFRA for the draft County Development plan because there is no flood risk for the in 1000 return period for the site.
- The planning authority never indicated that it was disposed towards a refusal of permission and did not seek further information in respect of the submitted FRA. It sought an increased density in the north east corner of the LAP area in the further information submission.

5.4 With regard to condition No 2, **Class 2 Open Space** was not “overstated” in the application.

- The shortfall in public open space provision is 284 square metres.
- The ‘deficit is made up by a ‘credit’ from Phase 1 which extends the amount generated by Phase 1: Phase 1 has 810.5 bed spaces which equates to 4,052.5 square metres. There is over provision in Phase 1 of 2,811.5 square metres. A total of 6,884 square metres is provided for Phase 1.
- The Phase 3 development borders the Broad Meadow River Park and the future Swords Regional Park. It will be served also by amenity open space.
- Surfeit open space in lieu of the eighty six houses beside the river park is contrary to sustainable development interests.

6. THE THIRD PARTY APPEAL

6.1 The appellant party comprises some of the residents of the adjoining development at Ashton Grove which adjoins the eastern side of the appeal site who welcome the proposed development in principle. It is requested that the two metre high wall between Ashton Grove and House No 113 be continued across Road 3.4 as far as the wall that forms the border between House 112 and Ashton Grove. Ashton Grove has 237 units whereas there are 468 units in Castleview.

6.2 The reasoning is on that basis that:

- The opening is not necessary as there are two other openings to Ashton Broc via The Copse and Road 3.17 within a short distance.

- At Castlevew there now is only one opening onto a green area, a reduction from the three originally intended to two and then to one.
- There is no direct routing to local amenities from the proposed opening and there were no plans when Ashton Brock was developed for the cul de sac to be opened to future development. A cul de sac has obvious benefits for the residents.
- The western end of the road is used as a play area because Ashton Grove is deprived of a green area and a play area.
- There is no access for wheelchair users or cyclists. The opening could be modified at Ashton Brock and the Copse in lieu of the opening at Ashton Grove.
- Permeability is unevenly distributed.
- Mature trees on the boundary of House No 112 (Road 3.4) and Ashton Grove should be retained instead of being replaced, in the interest of biodiversity.

7. PLANNING AUTHORITY OBSERVATIONS ON THE APPEALS.

7.1 A submission was received on 18th May, 2016 with observations on both appeals which are outlined separately in summary form below:

7.2 The First Party Appeal:

- The findings in the FEM FRAM fluvial flooding studies referred to in the appeal are acknowledged.
- The LAP is clear and unequivocal with regard to the extent of open space and the riparian corridor envisaged on the southern side of the Broad Meadow River and the location of higher density development to the north of the LAP lands.
- The open space and format of LAP land uses was determined with reference to the flooding risk information available at the time of the preparation of the LAP. The requirements of the conditions relate exclusively to this area.
- The scheme encroaches onto this area and is in contravention of the development plan unless there is a statutory amendment to the LAP to alter the extent of the open space and/or riparian corridor.

7.3 The Third Party Appeal.

- The issues in the appeal were considered in full.

- The development is a large residential scheme in line with the LAP which envisages pedestrian and cyclist connections between residential developments including links between the proposed development ad Ashton Grove and Close. S 3.1 states the pedestrian linkage between residential areas should be through existing open spaces and pedestrian routes generating permeability and integration in the wider context. The direct routes encourage usage and access to services and facilities and to green corridors.
- Appropriate pedestrian and cycle links must be provided for interconnectivity between existing and new developments, community infrastructure and associated area of public open space given the size of the area of the LAP.
- It is requested that the pedestrian and cyclist routes proposed and permitted in the application under P. A. Reg. Ref. 15/30 remain unaltered.

7.4 Should the decision to grant permission be upheld it is requested that the requirements of Condition No. 30 (S 48 development contribution), No 31 (security bond) and No. 32, (€868,575 payment towards amenity works. in lieu of open space provision) be included among conditions.

8. EVALUATION

8.1 The two appeals are considered separately below followed by a brief comment on any other issues based on an overall review of the application in the context of the overall development.

8.2 First Party Appeal

The three appealed conditions are interdependent, Condition No 3 being confirmation as to the total number of dwelling units permitted. This condition and the requirements of Condition No 4 for omission of three units to facilitate relocation of a crèche unit omitted under Condition No 2 may require revision or omission unless the appeal against Condition No 2 is rejected or the requirements are revised. (Consideration of the first party appeal under the provisions Section 139 of the Act, is not considered appropriate in this instance.)

8.3 Condition No 2.

The issues raised in the appeal against Condition No 2 can be considered under

- (a) Flooding Risk and,
- (b) Open space/riparian corridor – Statutory objectives.

8.4 **Flooding Risk.**

The applicant's contention, according to the appeal is that the rationale for the attachment Condition No 2 is primarily based on flooding risk. However the planning officer on behalf of the planning authority fully accepts the case made by the applicant to the effect that it has been established in the FEM FRAM studies carried out, following adoption (in 2010) of the Local Area Plan that there is no risk of flooding to the lands subject of the application. The current position, (which is agreed between the parties) can be confirmed by review of the Map 12 of the Fluvial Flood Zone Mapping dated, 02/12/2015 incorporated in the SFRA for the Draft Fingal County Development Plan, 2017-2023 that is attached to the appeal and other information included within the appeal.

8.5 It is also of note that further to the adoption of the LAP in 2010 considerable advances have been made with regard to research and assessment of flooding risk in north county Dublin and East Meath.

8.6 It is therefore considered that a justification test to establish whether new residential development could be accepted in principle is now totally irrelevant having regard to the recommendations in the Flooding Guidelines and the subject lands would not be categorised as Zone A or Zone B. The details of floor and road levels for the proposed development and the calculations provided, which include a freeboard allowance for the climate change factor have also been noted.

8.7 The remarks in the appeal as to the lack of clarification of the matter by the planning authority prior to the determination of the decision are understandable, particularly in view of the request for further information for an increase in density on the lands on which the units were omitted by condition and the lack of any reference to flooding risk.

8.8 It can be concluded that there is no basis on grounds of flooding risk to the lands to support the omission of development as required under Condition 2 and the agreement between the parties on this is noted.

8.9 **Open space/riparian corridor – Statutory objectives.**

The omission of the units and the crèche under Condition No 2 is necessary in that there is overlap in the layout into an area designated as open space which is also within the riparian corridor for the Broad Meadow River both of which are provided for in the LAP. (A riparian corridor of ten to fifteen metres to be retained free of development is

required for all waterways according to the Fingal County Development Plan, 2011-2017) (Policy Objective: G129 refers.) A possible reasoning for the zoning could be associated with retention of the established landscape characteristics and riverside trees, vegetation and biodiversity. The retention free of development as open space enhances the benefits to natural amenities and passive recreational potential of the Broad Meadow River linear park adjacent to the designated Regional Park. The argument in the appeal as to the benefits of a defined and 'straight and or 'urban' edge to the linear river park is appreciated. However, it does not justify the setting aside of the application of the statutory zoning and riparian corridor objectives to facilitate the proposed development.

8.10 Consideration of consent to extend the development into these lands which are adjacent to the higher density designated lands would be in material contravention of the statutory plan. As indicated by the planning officer in his observations on the appeal it would be necessary for statutory procedures for Variation of the Oldtown/Mooretown Local Area Plan 2010 to be invoked in order for a proposal for development in this area to be considered. This would be solely a matter for the planning authority at the request of the applicant. The objective within the county development plan relating to riparian corridors would potentially remain applicable.

8.11 It is considered that invocation by the Board of its powers under section 37 (2) (b) (ii) of the Planning and Development Acts, 2000, as amended, (The Act) to grant permission for development that is in material contravention of the development plan would not be appropriate in the circumstances of the current proposal, particularly in the context of Fingal County Council's broad ranging strategic policies and objectives relating to the future development of the area.

8.12 The effect of the omission required under Condition No 2 is to allow for Longview, which is in effect a continuation of the Phase 1 development to be completed in entirety and for part of Parkside Lower, the higher density element, which is on zoned lands to proceed. The development if constructed can achieve a relatively satisfactory completeness with the required omission of the units required to ensure consistency with the Local Area Plan.

8.13 **Condition No. 3.**

The appeal against Condition No 3 does not require specific consideration in that it provides clarity as to the total number of units permitted as a consequence of the required omissions. In this regard it is of note that the increase in density to 161 units provided for in the further information submission exceeded the maximum number of units for each application/phase allowable in the LAP.

8.14 As the condition is solely confirmation as to the total number of dwellings that would be permitted consequent to the requirements of Condition No 2 and 4 of the planning authority decision no comments are required. In the event that the appeal is upheld or the requirements of Condition Nos. 2 and 4 are revised, a corresponding revision to the total number of units in Condition No. 3, if a similar condition is to be attached, would be necessary.

8.16 **Condition No 4.**

The appeal against Condition No 4 requires consideration of the justification of the omission of three units to facilitate a crèche development the proposed crèche being omitted due to the location on lands to be retained free of development.

The requirements of Condition No 4 which are applicable, (unless the appeal against the conditions is upheld) provide for an alternative location for a crèche which is a requirement for development in excess of seventy five units according to the Childcare Guidelines.

8.17 The appeal argument with regard to the new location required is solely related to the reinstatement of the three dwelling plots that are omitted to facilitate the relocation of the crèche. It is considered that the position required by Condition No 4 is ideally located having regard to pedestrian and cyclist linkages, permeability in that it potentially encourages trips by means alternative to the private car and sustainable travel.

8.18 It is recommended that the appeal against Condition No 4 be rejected.

8.19 **The Third Appeal**

The appellant party which comprises residents of existing residential development adjacent to the eastern site boundary object to the provision for pedestrian and cyclist linkage through Ashton Grove. Having reviewed the LAP, Masterplan documentation and submissions of appellant and planning authority, it is concluded that the pedestrian/cyclist linkage through Ashton Grove is justified and functional in terms of permeability and convenience. Observations follow.

8.20 The linkage is convenient to the location (required by Condition No 4 of the decision to grant permission for the crèche (at plots 109-111) The opening provides pedestrians, cyclists and wheelchair users in the existing and proposed development with an alternative routing, along desire lines with linkage between the green north/south route, the cycle route along the Distributor Road at Glen Ellen Road between services and facilities at Applewood and at Oldtown, the Broad Meadow River Linear Park, the Regional Park and Oldtown Archaeology Park.

- 8.21 As the opening is confined to pedestrian, cyclist and wheelchair user access, potential for adverse impact on residential amenity is considered to be insignificant. The facility would be of significant benefit to public amenities and convenience for non -vehicular trips with origins and destinations within the local area. Measures such as the kissing gate indicated in the further information landscape masterplan and site layout plans make it necessary for cyclists to dismount. The wheelchair access is to be welcomed. Additional measures can be introduced to control cyclists speed if deemed necessary.
- 8.22 With regard to the use of the end of Ashton Grove as play area, it should be borne in mind that vehicular access is not proposed and measures area proposed and additional measures can be introduced to control cyclist's speed in the vicinity if required. It is noted also that there are alternative spaces along Ashton Avenue and at the riverside linear park which can be used as play areas.
- 8.23 There is little justification for an opening which is clearly provided for in the LAP and Masterplan to be omitted. It is a measure that fulfils the LAP/Masterplan policy objectives for permeability /linkage and the amenity at Oldtown/Mooretown. Measures for minimisation of barriers and obstructions and maximisation of permeability and accessibility benefitting non-vehicular circulation in line with the Local Area Plan policy are to be encouraged.
- 8.24 With regard to the reduction from three to one openings at Castlevue referred to in the appeal, it was noted during the course of the inspection that provision for the openings, as provided for in the design and construction of the development, had been fenced off as a means of converting the route to a cul de sac with no through route to pedestrians or cyclists. The erection of the barrier may have been implemented at the request of residents.
- 8.25 In view of the foregoing it is recommended that the appeal request for omission of the opening and for installation of two metre high walling at the eastern boundary (adjoining Ashton Grove) be rejected.

8.26 **Other Issues.**

It is clearly apparent that a very thorough and detailed evaluation of the original application was undertaken by the planning authority further to which a very detailed request for additional information was issued to the applicant. Comprehensive further information was provided to the planning authority regarding matters such as phasing and detail, for example, details of each house type to include finishes, layout of internal accommodation, and storage having regard to minimum standards.

- 8.27 The further information submission indicates a development which is considerably higher in quality and amenity potential than the proposal in

the initial application especially with regard to class 2 public open space distribution. With the exception of the matters in dispute by way of the appeals, there is relatively little reliance on resolution of detail by way of compliance with conditions which provides for clarity and this is commendable. Having regard to the *de novo* consideration of the proposed development, no other issues arise.

- 8.28 The request by the planning officer for inclusion, in the event that permission is granted of Condition Nos. 30 and 31 and 32 are noted. It is recommended that Condition No. 30 (s48 development contributions) and Condition No 31 (security bond) be attached as requested. However, with regard to Condition No 32 according to which there is to be arrangement for payment of a financial contribution of €868,575 in lieu of public open space provision is of concern. It appears that this contribution would not come within the provisions of sections 48, 48 (2) (c) or 49 of the Acts and therefore the requirement for the contribution is potentially *ultra vires* the planning authority's remit provided for within the Acts. The requirement for such a contribution has been omitted from the conditions on the draft order overleaf.

9. ENVIRONMENTAL IMPACT ASSESSMENT.

- 9.1 The proposed development is below the threshold for a mandatory EIS and therefore submission of an EIS with application and completion of Environmental Impact Assessment by a competent authority is not a statutory requirement.
- 9.2 This current application is Phase 3 – (Oldtown Planning Application PA-03) which is the third phase of a multiphase development within the area of the Oldtown-Mooretown LAP, 2010 (LAP) and it corresponds to a parcel of lands described as Phase 4 in the LAP. The total size of the multi-phase development for the LAP lands and, the total size of the previously permitted and the current proposal within the LAP lands exceed 500 units which is well in excess of the threshold above which a submission of a mandatory EIS is required. (According to the LAP which has thirteen 'sub-areas', the maximum number of residential units for which an application for permission for each 'sub area' can made is 250 which is sub-threshold.)
- 9.3 An EIS was lodged with the planning applications for Phase 1 and for Phase 2 of the Oldtown-Mooretown Area Plan lands. (P. A. Reg. Ref. F11A/436 and F11A/473 refer.) This EIS, in accordance with the requirements of the Local Area Plan, and by agreement between the applicant and the planning authority was for the development of the entirety of the multi-phase development of the Local Area Plan lands. Environmental Impact Assessment was subsequently completed by the planning authority for the entirety of the Local Area Plan lands, inclusive of lands subject of the current proposal. It is therefore considered that the likely significant effects on the environment have been assessed

under the previous applications and that submission of a further EIS is not required.

- 9.4 An addendum Environmental Impact Report (EIR) was lodged with the current application for Phase 3 the site of which corresponds to Phase 4 in the area of the LAP. This EIR contains a site specific assessment of environmental impacts for consideration in conjunction with the 'parent' EIS previously submitted with the applications for Phase 1 and Phase 2. (P. A. Reg. Ref. F11A/436 and F11A/473 refer.)
- 9.5 It is noted that comprehensive evidence based research is relied upon in the assessment of environmental impacts in the Addendum EIR and a range of appropriate mitigation measures have been outlined. If fully implemented the environment should be protected from adverse negative effects and it can be concluded that the proposed development would be acceptable in terms of effect on the environment.
- 9.6 Should the first party appeal be rejected and the requirements of Conditions 2, 3 and 4 are upheld the impacts directly attributable to the development permitted within this Phase 3 application are likely to be reduced owing to the omission of development on a significant area within the site. There is no doubt that the visual impact and impact by way of change to landscape character and flora would be considerably reduced and avoided to a significant degree by the retention of the lands at the northern end of the site free of development in accordance with the LAP.

10. **APPROPRIATE ASSESSMENT SCREENING.**

- 10.1 The applicant provided an appropriate assessment screening report with the application which has been consulted and the scope, methodology and evaluation within it are considered satisfactory for the purposes of appropriate assessment screening.
- 10.2 The site is not within or adjacent to any European sites. It is approximately two kilometres from the Malahide Estuary SAC (Site Code 0205) and Malahide Estuary SPA (Side Code 4025) The Malahaide Estuary is also a RAMSAR site (code 0833) as it is a wetland of international importance.

The qualifying interests for the Malahide Estuary SAC are.

Fixed coastal dunes with herbaceous vegetation (grey dunes) (2130) an Annex 1 priority habitat with bad status.

The remainder of the qualify interests which are listed below are Annex 1 Habitats with bad status.

*Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) (3120,*

Salicornia and other annuals colonizing mud and sand (code 1330)

Atlantic salt meadows (1220)

Mudflats and sandflats not covered by seawater low tide (code 1140)

The Conservation Interests for the Malahide Estuary SPA are.

<i>Pintail</i>	<i>Red status (wintering)</i>
<i>Light bellied brent goose</i>	<i>Amber (wintering)</i>
<i>Goldeneye</i>	<i>Red (wintering)</i>
<i>Dunlin</i>	<i>Red (Breeding and wintering)</i>
<i>Knot</i>	<i>Amber (Breeding and wintering)</i>
<i>Oystercatcher</i>	<i>Amber (Breeding and wintering)</i>
<i>Bar tailed Godwit</i>	<i>Amber (wintering)</i>
<i>Black tailed godwit</i>	<i>Amber (wintering)</i>
<i>Red breasted Merganser</i>	<i>Green (Breeding and wintering)</i>
<i>Golden Plover</i>	<i>Red (Breeding and wintering)</i>
<i>Grey Plover</i>	<i>Amber (wintering)</i>
<i>Great crested Grebe</i>	<i>Amber (Breeding and wintering)</i>
<i>Shelduck</i>	<i>Amber (Breeding and wintering)</i>
<i>Redshank</i>	<i>Red (Breeding and wintering)</i>
<i>Wetlands and Waterbirds.</i>	

- 10.3 Golden plover and Dunlin have highly unfavourable conservation status, Goldeneye and Know have unfavourable conservation status and Grey plover and black tailed Godwit have intermediate unfavourable conservation status. These species are declining at local and at national level. The remaining species have favourable conservation status. Threats to Waterbirds which can be displaced are related to human activity particularly walking, recreational disturbance, pollution fisheries and aquiculture and habitat loss.
- 10.4 The generic conservation objectives are to maintain or restore the favourable conservation condition of the habitats and species for which the SAC and SPA have been selected. (No specific conservation objectives have been published to date).
- 10.5 The following European sites come within fifteen kilometres of the application site.

South Dublin Bay Special Area of Conservation [Site 0210],
South Dublin Bay and River Tolka Estuary Special Protection
Area (4024),
North Dublin Bay Special Area of Conservation (site 0206)
North Bull Island SPA (Site Code 4006),

- 10.6 The objectives are based on attaining favourable conservation status for the habitats and species for which the sites have been selected. These sites are not considered to be within a zone of influence and lack direct and indirect source – pathway linkage.
- 10.7 Poulaphouca Reservoir which is an SPA (Site Code 4063) is considered to be in the zone of influence being that the reservoir is the source of water supply for the proposed development. Features of interest include the Greylag Goose and the Lesser black backed Gull. The limited quantity of water taken by the development relative to the overall supply from the reservoir would be minimal and insignificant in terms of impact on the Poulaphouca SPA.
- 10.8 The proposed development on the site which is within the catchment of the Broad Meadow River involves site clearance including removal of trees and woodlands, removal of materials off site, infrastructure development and construction of a residential development incorporating a crèche. The site which is in the catchment of the Broad Meadow River is at within Oldtown to the north west of Swords which is the third phase of a suburban development in the area of the Oldtown/Mooretown Local Area Plan. Included in the master plan are proposals for parks and green spaces and a riverside park along the Braodmeadow River.
- 10.9 Storm water attenuation and storage is to an open pond prior to discharge to the river conforming to SUDS standards with outfall will be controlled by hydrobrake flow control devices.
- 10.10 Wastewater will be piped to the municipal treatment plant at Swords and onwards after treatment to the Broad Meadow River and in turn to the Estuary by license. Upgrade works to increase the plant's capacity the sufficiency of which must be established prior to commencement of construction will provide for current and future expansion of the Swords area.
- 10.11 Source Pathway linkage for impact on the Malahide Estuary exists via surface and waste water collection and disposal at construction and operational stages. Potential risks to aquatic life are sedimentation from harmful substances that harm aquatic life at construction and loss of permeability.
- 10.12 The Eastern River Basin Management Plan seeks to attain good ecological status the estuary waters being unsatisfactory at present but ambient water quality should improve following completion of the upgrade works to the treatment plant.

- 10.13 Proposals to provide for avoidance of pollution or a pollution accident is recommended and incorporated in the EIS and EIS Addendum Report and in the construction management plan. Ecological monitoring is to be undertaken during construction stage.
- 10.14 During normal operation no increase in natural levels to the estuary will occur so efforts to attain good ecological status would be unaffected.
- 10.15 With attenuation and management practices in place for the control of sedimentation of pollutant substances in place there is little or no risk to European sites.
- 10.16 Urban expansion is associated with loss of habitat but green infrastructure is preserved and no significant recreational pressure that might impact on waterbirds at Malahide Estuary is anticipated.
- 10.17 Taking into consideration the nature and scale of the proposed development and the characteristics of the Malahide Estuary Special Protection Area and Malahide Special Area of Conservation in particular and other European sites located within 15 kilometres of the site and having regard to the .Appropriate Assessment Screening report provided with the application a screening determination has been reached.

10.18 **Conclusion:**

It is reasonable to conclude on the basis of the information available which is considered adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have significant effect on The Malahide Estuary SPA, (Site code 4025) the Malahide Estuary SAC, (Site Code 0205) or any other European site, in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment is therefore not required.

DECISION

Grant Permission on the basis of the reasons and considerations set out below:

REASONS AND CONSIDERATIONS.

Having regard to the Fingal City Development Plan, 2011-2017 according to which the majority of the site is within an area subject to the zoning objective RA: *“to provide for new residential communities in accordance with approved local area plans and subject to the provision of necessary social and physical infrastructure”* and, in entirety within the area of the Oldtown/Mooretown Local Area Plan 2010 it is considered that subject to compliance with the conditions the proposed development would not be seriously injurious to the natural amenities of the area, or the residential the future occupants and of residential properties in the vicinity, would not endanger public health by reason of flooding risk and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars lodged with the planning authority on 22nd January, 2016 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development shall be amended to provide for a total of 172 dwellings, a crèche and open space facilities as follows:-
 - (a) All dwelling units positioned to the north of Road No 1.0 and the dwelling units east of Road 3.6 shown on site layout plan Ref 1432 P04 lodged with the planning

authority on 22nd January, 2016 shall be omitted in entirety and the lands retained free of development and utilised as public open space with associated pedestrian and cyclist linkages.

- (b) Unit Nos. 109-111 shall be omitted and substituted with a crèche facility incorporating outdoor play facilities and set down and collection areas. The crèche facility shall be in accordance with the recommendations set out in, "*Childcare Facilities, Guidelines for Planning Authorities*" issued by the Department of the Environment in 2001.
- (c) Road No 1.0 shall be amended so that it terminates at the junction with Road 3.6

Prior to the commencement of development the applicant shall submit for the written agreement of the planning authority revised site layout plans and, floor plan, section and elevation drawings for the crèche facility.

Reason: To ensure consistency with the Oldtown Mooretown Local Area Plan, 2010, national policy for provision for childcare facilities, public amenity and the proper planning and sustainable development of the area.

3. Prior to the commencement of the development the applicant shall submit and agree in writing with the planning authority full design details for the proposed pedestrian linkage between the development at Road 3.4 and the existing residential development adjoining the eastern boundary of the site.

Reason: In the interest of clarity, appropriate permeability and the interests of the proper planning and sustainable development of the area.

4. Prior to the commencement of the development the applicant shall submit and agree in writing with the planning authority a time frame for the implementation of the works required under Section 4 – 'Phasing and Implementation' of the Oldtown Mooretown Local Area Plan to include time and mechanism for delivery of upgrade works at Rathbeale Road/Murrough Road Junction and Castlegrange junction.

Reason: To ensure consistency with the Oldtown/Mooretown Local Area Plan, 2010 and the interests of the proper planning and sustainable development of the area.

5. Water supply and drainage arrangements, including attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services and shall include the following:

(a). Prior to construction works, the proposed wetlands to discharge to the Broad Meadow River shall be completed and commissioned in accordance with the requirements of the planning authority.

(b) The final design of attenuation and detention arrangements shall be submitted to and agreed in writing with the planning authority and shall include the finished levels, gradients, boundary treatment and planting if applicable.

Reason: In the interest of public health and orderly development.

6. Prior to the commencement of construction and to the occupation of the development the applicant shall submit to the planning authority confirmation in writing (from Irish Water) availability of sufficient capacity following upgrade works at Swords Treatment Plant and confirmation of a connection agreement for connection directly or indirectly to the wastewater network and public water supply.

Reason: In the interest of public health, orderly development and the availability of adequate services infrastructure facilities.

7. Details of the materials and finishes including textures and colours for the external facades, roof materials and boundary walls for of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the development.

Reason: In the interest of visual amenity and clarity.

8. Proposals for a naming and numbering scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The proposed names shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements marketing signage relating to the naming scheme for development shall be erected until the developer has obtained the planning authority's written agreement.

Reason: In the interests of orderly development

9. Public lighting shall be provided in accordance with a scheme, to include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

11. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Detailed proposals for measures for the management of dust emissions to provide for the protection of adjoining properties shall be included. This plan shall be prepared in accordance with the "*Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects*", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of orderly and sustainable development.

12. Site development and building works shall be confined to the hours of 0800 hrs to 1900 hrs. Mondays to Fridays excluding Bank Holidays and 0800 hrs to 1400 hrs. Saturdays. Deviation from these times will only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: In the interest of residential amenity.

13. Details for public open space provision and landscaping details shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development and shall include provision for the following requirements:

- (a) design, layout and time frame details for the delivery of Class 1 open space to include a schedule of works;
- (b) Detailed proposals for play areas which shall be made available for use prior to the occupation of the development;
- (c) Full details of landscaping for Class 2 public open space and incidental public spaces inclusive of specifications and schedules for planting, lighting, fixtures and seating and boundary treatment where applicable.

Reason: In the interest of visual amenity and the residential amenities of future occupants.

14. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and,
- (b) implement in entirety the Remedial and Reductive measures set out in section 13.6 of the Addendum Environmental Impact Report submitted with the application on 21st August, 2015 and shall submit report, containing the results of the assessment, to the planning authority for written agreement prior to construction.

Reason: In the interest of protection and preservation of order to conserve the archaeological heritage of the area.

15. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

- 16 Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

- 17 Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion of roads, sewers, watermains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The security to be lodged shall be as follows -

- (a) an approved insurance company bond in the sum of €688,000.00 or
- (b) a cash sum of € 430,000.00 to be applied by the planning authority at its absolute discretion if such services are not provided to its satisfaction.

Reason: To ensure the satisfactory completion of the development.

18. 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 the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

**Jane Dennehy,
Senior Planning Inspector.
18th July, 2016.**

***Note:** It is noted that reference is made on the conditions attached to the planning authority decision to drawings submitted on 2nd February, 2016 It has been established that no submission with drawings or modifications to the application were submitted to the planning authority on that date other than copies revised public notices which were published at the planning authority's request. The conditions do not include any references to the date of lodgement of the revised public notices with the planning authority, (2nd February, 2016) for the purposes of clarity.*