



## Development

Permission for residential development consisting of 218, three and four bed two storey houses and a crèche of (246sq.m.) to be built on a site of circa of 8.16ha which will form Phase 1 of development of the Boherboy Neighbourhood within the Fortunestown Local Area Plan (2012). The proposed development consists of two adjoining sites to be development by (a) Kelland Homes Ltd. for 111 dwellings and on the eastern side, bounded by the Corbally Stream and (b) by Durkan Estates Ireland Ltd. for 107 dwellings and a crèche on the western side, and in total provides for 17 detached units houses, 41 four bed semi-detached houses, 144, three bed semi-detached houses and 16, three bed terraced houses. The adjoining lands to the north are in the same ownership and form the remainder of the Boherboy Neighbourhood to be developed in the future with the Boherboy Road

bounding the site to the south. Access to the development will be via 2 vehicular access points from the Boherboy Road along with the provision of a roadside footpath at the Boherboy Road. The proposed development also includes for all associated site developments works, public open spaces, including alongside the Corbally Stream landscaping and provision of a pedestrian link to the District Park to the north east. Surface water will be attenuated within the site, with fallout to existing watercourses, with foul sewer and connected to a proposed new pumping station located at the northern end of the site on an overall site area of 17.48ha.

<b>Location</b>	Boherboy, Saggart, Dublin
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD15A/0388
<b>Applicant(s)</b>	Kelland Homes Ltd & Durkan Estates Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First and Third Party

<b>Appellant(s)</b>	Helen Grehan Kelland Homes Ltd. & Durkan Estates Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> October 2016
<b>Inspector</b>	Joanna Kelly

## 1.0 Site Location and Description

- 1.1. The appeal site, an irregular rectangular shape with a stated site area of 17.48ha, is located on zoned lands west of Saggart village and south of the Citywest area. The site is bounded by the Boherboy Road to the south, residential developments to the north and eastern boundary (Carrigmore and Corbally estates respectively) and agricultural lands to the west. There is an existing single storey residential property immediately west of the site, accessed off Boherboy Road which is the third party appellant's property.
- 1.2. It is proposed to locate the housing units in an area of approx. 8.16ha of the overall site area. The site is currently greenfield, consisting of grazing lands. There are ruinous agricultural structures on a small area of the site close to the Boherboy Road.
- 1.3. The Boherboy Road is a narrow windy local road with a steady traffic flow at time of inspection. There is a continuous white line along the site frontage. There is no grass verge or footpath in the vicinity of the appeal lands and sightlines from the existing access points to the appeal lands are impeded due to the curvature of the road and the existing hedgerow. This road meets the Blessington Road (N81) approximately 500m to the east of the appeal lands.
- 1.4. Pursuant to site inspection, it is noted that there are ditches/stream which carry water along the eastern boundary of the site which is currently fenced off from the developed lands to the east. There would also appear to be lands between this stream and the existing housing development the ownership of which is unclear.
- 1.5. The appeal lands rise steeply from north to south. Ponding was noted at time of inspection on the lower lying lands directly behind the existing residential development, Carrigmore Estate (see Plate 10). There is also a fall from the existing residential lands to the appeal site with an open ditch running along the northern boundary. There are EBS lines that traverse the site and there is a pylon located within the appeal lands west of Verschoyle Heights which is located on the portion of lands that would be subject to a future phase.
- 1.6. The general area could be described as a suburban area. Whilst the residential developments in close proximity to the appeal site are typical two-storey suburban

housing, there are higher density developments to the east accessed off the Citywest Road. Citywest Shopping centre is also located at its nearest point approx. 1km from the appeal lands.

## 2.0 Proposed Development

- 2.1. The applicant is seeking permission for residential development consisting of 218, three and four bed two storey houses and a crèche of (246sq.m.) to be built on a site of circa of 8.16ha which will form Phase 1 of development of the Boherboy Neighbourhood within the Fortunestown Local Area Plan (2012). The proposed development consists of two adjoining sites to be development by (a) Kelland Homes Ltd. for 111 dwellings and on the eastern side, bounded by the Corbally Stream and (b) by Durkan Estates Ireland Ltd. for 107 dwellings and a crèche on the western side, and in total provides for 17 detached units houses, 41 four bed semi-detached houses, 144, three bed semi-detached houses and 16, three bed terraced houses. The adjoining lands to the north are in the same ownership and form the remainder of the Boherboy Neighbourhood to be developed in the future with the Boherboy Road bounding the site to the south. Access to the development will be via 2 vehicular access points from the Boherboy Road along with the provision of a roadside footpath at the Boherboy Road. The proposed development also includes for all associated site developments works, public open spaces, including alongside the Corbally Stream landscaping and provision of a pedestrian link to the District Park to the north east. Surface water will be attenuated within the site, with fallout to existing watercourses, with foul sewer and connected to a proposed new pumping station located to the northern end of the site on an overall site area of 17.48ha.
- 2.2. House type A is a 4 bed semi-detached units with a floor area of 136.5sq.m. House type B is a semi-detached end unit with 4 bedrooms and a floor area of 137sq.m. House Type C is a 3 bed semi-detached unit with a floor area of 118sq.m. House Type D is a 3 bed semi-detached unit with a floor area of 118sq.m. House type E is a 3 bed semi-detached unit with a floor area of 106sq.m. House type F is a 3 bed semi-detached with a floor area of 121sq.m. House type G is a 4 bed semi-detached with a wider front and has a floor area of 133sq.m. This house type was revised at

further information stage so that there are dormers on the rear elevation. House type H is a 4 bed semi-detached unit with a floor area of 139sq.m. House type J is a 4 bed detached unit with 139sq.m. House type K is a 4 bed semi-detached unit with 139sq.m. House type L1, is a semi-detached 3 bed unit with a floor area of 118.5sq.m. House type M is a semi-detached, 3 bed unit of 119sq.m. House type M1 is a 3 bed semi-detached unit with a floor area of 119sq.m. House type N is a 3 bed unit of 118sq.m. House type P is a detached unit, 4 bed with a floor area of 139sq.m. House type Q and R are the terraced units and are 3 bed units with a 104sq.m. floor area. The only difference between the units are a minor external finish on the front façade.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority granted permission subject to 24 conditions.

Of note are the following conditions:

Condition 2 Phasing and delivery of community facilities

Condition 3 Drainage Infrastructure

Condition 4 Road infrastructure

Condition 6 Payment of a special contribution for provision of footpath and public lighting

Condition 21 Ecological survey for Japanese Knotwood

Condition 23 Financial Contribution

Condition 24 Security Bond

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The first planning report set out that EIA is not required in respect of the proposed development. Serious concerns were raised about the character and design of the future linkage to the District park and to existing housing estates. A number of rear gardens are steeply sloped and may need retaining walls which is at odds with the LAP provisions. Concerns were raised about impact from traffic and a complete TIA was required.

The report recommended further information in respect of indicative layout for the northern part of the site; detailed proposals for pathway/cycle link; details of retaining walls to rear of gardens; connectivity with other residential developments; details in respect of Part V; details of set-backs from infrastructural services; revised TIA; sightlines and public lighting and safety audit.

The subsequent planning report deals with the response to further information. The planner notes the key objective of the LAP to secure physical connections to existing residential development to the north and east. There is a new six-year road proposal which indicates a north south linkage across the site from Boherboy Road to the Carrigmore Estate and an east linkage which connects to Corbally Heath in the development plan. It is set out that in the event of a grant it is considered reasonable to attach a condition which requires delivery of these strategic road connections.

### 3.2.2. Other Technical Reports

#### Roads Department

21.06.2016 The frontage indicated on the site layout plan shows an abrupt kerbline change in the existing Boherboy road which is not acceptable. There is also inconsistency in the location of the proposed footpath from the landscape plan to the road layout. Sightlines are impeded by a culvert wall and would need to be set back. It is set out that in the absence of pedestrian/cycle links the application should be refused. The link through Corbally should be provided in this application. The report concludes by setting out that if permission is considered that conditions outlined in the report should be included.

### Water Services report

With regard to surface water there is no objections subject to conditions.

All finished floor levels to be 500mm above highest known flood level for the site.

Water and Foul Drainage referred to Irish Water.

### Environmental Health Officer

Conditions recommended.

### Housing Department

Applicant to liaise directly with housing department regarding Part V.

### Urban Design Comment

- It is set out that the stream and hedgerow in the centre of the site has been incorporated into the overall layout.
- The report notes that the connection between the open space along the southern edge of the site to the cycle link is poor. Link to the Corbally estate is a critical link as it will provide direct access to bus services along Citywest Road.
- The broader street network is generally designed in accordance with the LAP and will create a permeable and legible grid network. Internally vehicle movement is high.
- Large strip of residual land along the western boundary of the site which is attributed to configuration of site.
- With regard to sense of place, it is set out that the layout responds well to the requirements of the LAP by creating a legible structure with a series of defined link and focal points.



- Reference is made to DMURS and that carriageway widths should be redesigned to a maximum width of 5.5m.

### 3.3. Prescribed Bodies

#### TII

The proposed development is located in proximity to a future national roads scheme and national road schemes should be protected and kept free from any developments or accesses in accordance with national policy. Planning Authority to have regard to Chapter 3 of the DoECLG Spatial Planning and National Roads Guidelines.

#### Irish Water

Further information required. A greater set back required from two DCC operated arterial watermain traversing the north of the site along Road 10. Additional information required regarding the pumping station. Scada telemetry system to be provided in accordance with Irish water standards.

#### Inland Fisheries

The site is within the catchment of the Camac River, a recognised salmonid system. All construction works to be in accordance with construction management plan. Comprehensive surface water management measures must be implemented at the construction and operational stage to prevent any pollution of the Corbally/Camac catchment.

### 3.4. Third Party Observations

Submissions and observations were noted in the planner's report.

Issues raised include:

- District Park – Better access for all residents should be provided from the district park. The northern lands should be seeded with grass and left in a

reasonable state until developed to harmonise with district park. The view towards the Dublin mountains should be preserved as much as possible.

- Long term planning – Planning contributions should be targeted for local area. District park is currently in an incomplete state. Pro-active planning required to address anti-social behaviour.
- Poor passive surveillance on Boherboy edge of District Park – Houses facing onto the park is very important in improving ‘passive surveillance’. A pumping station is shown in an unusual location close to the edge with the District Park. This might encourage anti-social behaviour providing a hiding place and opportunities to create graffiti.
- Boundary Treatments – treatment of western boundary to protect grazing sheep is critical. Trees on this boundary are in third party ownership and should not be damaged.
- Drainage – there are concerns that drainage of adjoining lands will be adversely affected. It would appear that it is intended to pipe an existing drainage ditch.
- Privacy – proposal would result in a loss of privacy to property to the south-west of the site. Existing house and garden would be overlooked.

## 4.0 Planning History

No recent planning history noted with the appeal lands

## 5.0 Policy Context

### 5.1. Design Manual for Urban Roads and Streets

This manual seeks to achieve better street design in urban areas by facilitating the implementation of policy on sustainable living by achieving a better balance between all modes of transport and road users. The Guidelines set out that street networks should be designed to maximise connectivity between destinations to promote higher

levels of permeability and legibility for all users, in particular more sustainable forms of transport.

## **5.2. Development Plan**

The South Dublin Development Plan 2016-2022 is the statutory plan.

The land use zoning map provides that the site is zoned for new residential communities in accordance with approved area plans. There is a road objective contained within this map (6-year objective) running north-south through the site. A copy of which is enclosed as an appendix for ease of reference.

## **5.3. Fortunestown Local Area Plan 2012-2018**

The vision for the plan lands is to ensure that any further development integrates with existing development and public transport facilities, while addressing local needs including parks, schools and community facilities and the opportunities created by the Luas Line A1 extension, the merging community, the Citywest Shopping/District Centre and surrounding business parks.

The appeal site has a land-use zoning objective “A1 – to provide for new Residential Communities in accordance with approved Area Plans”.

Section 6.4 refers to Framework 4: Boherboy Neighbourhood and provides that “in order to incorporate the valuable heritage features that occupy Boherboy and respond to the rural character of the surrounding area, development of the Boherboy Neighbourhood will largely take the form of low density housing set amongst green corridors and parkland.

Section 6.4.1 deals with accessibility and movement. There is an objective BN1 that the first phase of development in the Boherboy Neighbourhood shall include for through routes to the Carrigmore and Saggart Abbey estates in a manner that

provides indirect access from the Boherboy Neighbourhood onto Fortunestown Lane, to the Fortunestown and Saggart Luas stops and onto Citywest Avenue.

Appendix 6 of the LAP deals with OPW and JBA Consulting Flood Risk Mapping.

#### 5.4. **Strategic Flood Risk Assessment for South Dublin County Council Development Plan 2016-2022**

Section 6.3.2.4 refers to highly vulnerable development in flood risk areas which includes lands in Fortunestown. Objective G17 as provided for in the LAP indicates that all planning application for residential and/or commercial floor space on sites in areas at risk of flooding

### 6.0 **The Appeal**

#### 6.1. Third Party Grounds of Appeal

- The appellant's lands adjoin the full length of the western boundary of the site, containing her private dwelling house plus the ruins of a former family home.
- Her lands are zoned for open space and the southern part of her lands are zoned for agricultural use.
- The Development Plan objectives for the area give no indication of any major improvements to Boherboy Road. There is a long-term objective to effectively by-pass the road with a new road, running in an alignment to the south of Boherboy Road.
- There are objectives to construct new roads through the lands subject of the proposed development. One such new road is to link the Boherboy Road northwards to meet Carrigmore Avenue. This is to intersect a further new road, running eastwards, through the appeal site to link the existing road network in Corbally Heath and on to the N82 National Secondary Road.
- Reference is made to the Fortunestown Local Area Plan 2012 and the identification of historic field boundaries in section 4.8 of the LAP along with

the policy to create an integrated network of biodiversity strips through the plan lands.

- The Boherboy area is within the catchment of the River Camac where there is a history of flooding downstream. The drainage ditch along the boundary to the appellant's lands is identified as a significant water course in this context.
- A filed plan attached to folio DN1494 and the folio documents showing the hedgerow plus the drainage ditch has been submitted. Having regard to the folio map and the documents of Folio DN1494, the proposed works would entail interference with the property of the appellant to which she does not consent.
- It is submitted that Units 041-046 are insufficiently removed from the boundary of the appellant. In respect of one of the proposed dwellings, no. 045, a dimension of 7.5m is shown (Drawing No. PS-05-RFI, proposed site plan part 1 submitted 21<sup>st</sup> June 2016) as the separation from the presumed boundary. This is not adequate to ensure retention of the hedgerow trees, whilst providing a back garden to the new house of adequate dimension. But the two houses immediately north, No's 043 and 044 have even shorter back gardens. House no. 041 is even closer. This is unsatisfactory in terms of protecting the amenity of the appellant's property.
- The two storey dwellings would result in considerable overlooking of the appellant's property at close range. The design of house type G was modified in the further information submission so that it is to be a dormer type house but without the potential addition of a further floor in the attic. Houses 041 and 042 retain the potential of an additional attic level conversion.
- The area of the application site adjacent to the appellant's property is identified in the LAP as "elevated landscape" and reference is made to the objective BN7a of the LAP to either avoid lands above the 150 contour or demonstrate design integration. It is submitted that the proposed development in respect of this part of the site would conflict with the aforementioned policy. It is set out that houses 041-046 should be omitted in addition to the omission of 047-049 as per the grant of permission.

- It is set out that there is a lack of consistency and there are some contradictory indications in the treatment of the western hedgerow and ditch. It seems inevitable that if the ditch is piped, the damage to the hedgerow and trees will be very significant. But, if the existing drain and hedgerow are to be retained, per proposed site plan part 1, the drainage works cannot be carried out.
- It is set out that the planning authority and the developer should pay reasonable attention to ensuring that the appellant's lands can be retained in farming use, given their zoning in the development plan. In this regard, the boundary conditions are of paramount importance, yet the issue has been left quite uncertain. The appellant is concerned that dogs will have unhindered access to her lands providing considerable difficulty for sheep farming.
- The lands along the watercourse on the eastern boundary of the development site (i.e. Kelland Homes lands) are identified in the CFRAMS and the LAP as at risk (1:100) as are lands further downstream. The Durkan lands are within 1:1000 year flood, however, with climate change and changes in rainfall patterns in recent years the applicability of 1:1000 flood risk designation is open to question.
- The proposed development is based on the SuDS concept for surface water drainage. In this case, it relies on rainwater butts to take much of the surface water from individual homes. It also entails proposed alterations to the drainage ditch along the western side of the development site and construction of swales in close proximity to the appellant's lands. There are concerns her lands will suffer overflow and that rainwater butts may not be an appropriate technology in periods of extreme rainfall.
- Boherboy road is a narrow, winding rural road which is not fit for purpose. The junction of the N81 national secondary road is heavily overloaded. The planning authority accepted the access onto Boherboy Road with some minor improvements including provision of a footpath and adequate sightlines at the access points. The TIA indicated that the road would be adequate to serve the development when in reality it is entirely unsuitable having regard to its substandard horizontal alignment, its restricted width and existing heavy

volume of traffic. An examination of the indicative drawings, show a need for significant engineering measures and possible encroachment onto third party property if the path is to be constructed.

- The achievement of sightlines requires the entire removal of the hedgerow along Boherboy Road notwithstanding the contrary on the landscape drawings.
- Additional residential traffic of the scale proposed would exacerbate existing hazardous conditions.
- There is an objective to build a road on a north-south alignment from Carrigmore to Boherboy Road through the site. Provision for this road should be incorporated clearly into the design for the proposed development. This has not been done and the future impact of the new road on the development subject of the current application is uncertain. The impact is that there could be three new road junctions in close proximity to each other, along this very substandard road. This matter should be clarified and appropriate modifications made.
- Condition 4 has sought to address several issues including a requirement to provide details of a new road link to Corbally estate. This should be properly incorporated into the design of the development subject to this application.
- The development is stated to be Phase 1 of a larger scheme amounting to more than 500 residential units. The planning authority concluded EIA was not required. It is set out that this decision should be re-assessed having regard to EU Commission guidance on the point.

## 6.2. First Party Grounds of Appeal

- The appeal pertains to condition 6, which relates to the payment of a special development contribution. It is also requested that aspects of condition 2 and 4 are clarified as set out in the notification of the grant of permission.
- Condition 6 – The works specified in the condition are on the public road i.e. Boherboy Road and have to be carried out in any case. It is submitted that the works should be carried out and paid for out of the development contribution

sought under condition 23. There is no necessity for the payment of a special contribution as these specific works proposed to be carried out are not specified as an objective either in the development plan or in the local area plan. It is requested that condition 6 is omitted as its purpose is not defined or made separate from works to be carried out by the local authority in the normal circumstances.

- Condition 2 – This sets out that a vehicular/pedestrian/cycle link is to be provided to Corbally Heath and carried out at the developer’s expense. The developer owns up to the centre of the stream along the eastern boundary of the site and is willing to provide a connection up to that boundary on lands under their control. The lands to the east of the stream and adjoining Corbally are outside the applicant’s control and delivery of the link through is the responsibility of the Council. The developers are willing to facilitate the construction of a connection/link if the lands are acquired by the local authority and to offset the costs against the contributions to be paid as required under condition 23. Wording of condition 2 should reflect the actual responsibility of the developers.
- The appeal against condition 2 (i), (ii) and (iii) are that the wording of same is not clear in terms of the wording at the end of the condition. There is ambiguity as to whether “unless otherwise agreed with the Planning Authority” applies to all sub-sections or whether it pertains to subsection (iii) only. It is requested that an additional clause also be included as follows “unless agreed to be determined by An Bord Pleanála.”
- Condition 4 – the appeal pertains to Condition 4 (iv). The wording of this condition appears to ask the developer to design and pay for the construction of works outside the boundary of the site and which did not form part of the application for permission as applied for and it is put forward that such works are the responsibility of the local authority.

### **6.3. Applicant Response to Third Party Appeal**

- The applicants have no intention of encroaching onto third party lands.



- It is set out that the arborist has confirmed that the majority of existing trees to the western boundary on an existing drainage ditch are outside the red line boundary and therefore there is no proposal to remove these trees. It is understood that the roots of these trees have not spread into the drainage ditch thus further protecting them from the proposed development by the separation of these from the subject site.
- It is not considered that the proposed development will have undue overlooking or any impact on the residential amenity of the appellant's property. The plans submitted include comprehensive landscaping proposals which detailed appropriate planting along the western boundary. Reference is made to the additional planting to be provided to the rear gardens of the proposed house units 42-45 and within the curtilage of units 40-46 which will include trees such as Silver Birch that grows to a height of 15-25m and scots pine that grows up to 35m.
- House types D,E,F and G which represent house no's 42-48 have no potential to accommodate an attic conversion.
- A flood impact assessment was carried out as part of the application. The site is located in Flood Zone C – “low probability”. The details were considered satisfactory by the planning authority.
- Numerous discussions have taken place between the Council and the applicants regarding works along Boherboy Road. The development plan and Local Area plan provide for an access onto this road. The other adjoining estates are not in the applicants' control and as such only access links up to those locations can be provided by the applicant.
- The applicant provided an indicative masterplan at further information stage which the planning authority were in agreement with. There is no impediment to the delivery of the roads objective contained in the development plan.
- It is submitted that all matters raised as a concern have been addressed satisfactorily. It is requested that permission be granted for the subject development.

#### 6.4. Planning Authority Response

The main points are summarised as follows:

- The only public interface between the proposed development and existing public infrastructure will be the Boherboy Road for a considerable period after development commences.
- The nearest shopping area will be Saggart Village accessible by roads taken in charge: hence, why a special contribution for a footpath was required.
- The Council consider that a 2m wide footpath with public lighting and roadside drainage would be required at a cost of €120,000. Land costs are estimated at €20,000 based on €100,000/acre and public lighting a further €60,000. Accommodation works are estimated at €220,000. In the event, that the development proceeds the Council will be required to subsidise the required footpath to the value of €120,000.
- The footpath is considered critical to the development as how else will residents walk to their shop
- The links to the north-east within the proposed development site have yet to be established.
- The link to the north is dependent on a third party having a development taken in charge while that to the east requires the construction of a bridge.
- It is set out that there are no other developments benefitting from the contribution.
- The provision of the additional infrastructure is wholly as a result of the proposed development. SDCC had no and have no plans to provide a footpath if no development takes place.

#### 6.5. Applicant's response to Planning Authority submission

The main points are summarised as follows:

- The applicants were at no stage made aware of the Local Authority's desire to build a footpath along Boherboy Road.

- Works specified are on the public road and outside the remit of the applicant.
- The Boherboy lands constitute the Boherboy neighbourhood which is part of the Fortunestown LAP and that the development put forward provides for a footpath connecting to the District Park which adjoins the Boherboy lands to the north-east. Access to same is catered for which will provide for access to the Citywest Shopping Centre, Luas services etc.
- A number of permission for development have been granted across the Fortunestown LAP area to date which demonstrates that the development of the area is proceeding including the provision of necessary infrastructure, services and facilities and as such Saggart village is not the only service centre.
- The footpath is not critical to the success of the proposed development given the other connections proposed by the applicant in this application.
- The response notes that should the Board consider it appropriate to attach condition 6 in principle the applicants do not object to contributing towards the cost of providing a footpath as long as it is the Local Authority that carry out said works; commencement of development is not held up and that the payment of such a contribution be carried out in a manner as outlined by the Council in that it is purely a contribution towards such infrastructure and not a requirement to pay for the footpath and requirements in its entirety.

## 7.0 Assessment

Having examined the file, considered the prevailing local and national policies, inspected the site and immediate environs and assessed the proposal, the appeal and all the submissions and documentation on file, I consider the key issues in my *de novo* assessment can be considered under the following headings:

- Principle of development
- Access and Connectivity

- Design and Layout
- Open Space
- Flooding
- EIA
- Appropriate Assessment
- First party appeal against conditions
- Other Issues

## 7.1. Principle of development

- 7.1.1. The appeal site is zoned in the South Dublin Development Plan, 2016-2022 for “*new residential communities in accordance with approved action plans*”. The Fortunestown Local Area Plan (LAP) is the relevant statutory plan and within this the appeal lands are identified as forming part of the Boherboy Neighbourhood Lands. The vision for these lands is to ensure that any further development integrates with existing development and public transport facilities while addressing local needs including parks, schools, and community facilities. The Luas Line is located approx. 900m north of the appeal lands (as the crow flies) with the Fortunestown Stop in close proximity to the Citywest Shopping Centre. The district park is also located north-east of the appeal lands north of the Corbally Heath residential development. Whilst there is a playground and playing pitch within this park, the tract of lands closest to the appeal site appear somewhat incomplete/unfinished as there is little landscaping to this area.
- 7.1.2. Having regard to the local policies, the principle of developing the subject site is acceptable. The LAP identifies the site as having valuable heritage features and that the development of this neighbourhood area will take the form of largely low density housing set amongst green corridors and parkland. It is within this context that the proposed residential scheme should be assessed, having particular regard of the LAP vision to ensure that any further development links in and integrates with the

existing services and infrastructure to ensure future occupants are part of a sustainable neighbourhood.

## 7.2. Access and Connectivity

- 7.2.1. Introduction: The Guidelines for Planning Authorities, Sustainable Residential Development in Urban Areas (Cities, Towns & Villages), advocate that the design of street layouts must start by considering people movement rather than vehicle movement. New residential developments should assess, *inter alia*, links to overall road network including bus services; access to bus-based and rail-based public transport; direct walking and cycling routes; access for people with disabilities; circulation routes for public services; residential streets with limited through motor traffic; *et al.* Both the *Design Manual for Urban Roads and Streets* (DMURS) and the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* advocate that careful consideration be given to the types of streets contained within new residential developments. Whilst some streets can cater for low to medium traffic movements, careful consideration should be given to the design so as to enhance the residential setting and limiting traffic speeds.
- 7.2.2. Boherboy Road: Access to the appeal site is proposed via the Boherboy road, a narrow sub-standard road with a continuous white line along the site frontage. The third party has raised concerns about increased traffic movements on the Boherboy Road. The appeal lands are currently only accessible from this road. The LAP provides that “*Phase 1 of development of the Boherboy lands may commence at the southern end of the lands with access off Boherboy Road provided that, prior to occupation of any dwelling, Phase 1 of development of the Boherboy lands includes for the provision of a footpath along Boherboy Road, including the preservation of trees where possible. This is necessary due to the extremely narrow, sub-standard nature of Boherboy Road where there is no footpath access to the site at present.*”
- 7.2.3. A Traffic Impact Assessment was submitted with the original application and identifies that counts were carried out at three key points: Junction of N81/Boherboy Road, Mill Road/Boherboy Road cross roads and the site access location on 13th October 2013. The applicant submits that the TIA demonstrates that the traffic activity arising from the proposed development could be accommodated without introducing any undue adverse impact to the operation of the adjacent road network.

With regard to the junction capacity results, it is set out that the development traffic is approximately 4% of the overall N81/Boherboy Road traffic volume. It is set out that the development's impact on the junction is likely to be a conservative assumption given the location of the proposed development in relation to Citywest and surrounding public transport network (bus and Luas). The provision of key connections as envisaged in the LAP is critical to the aforementioned statement, so as to encourage the modal shift referred to in the TIA. In the absence of direct and less circuitous routes to the bus corridor and Luas stop, the development will be car-dependent.

- 7.2.4. Further information was requested seeking a revised completed TIA which considered the options of coming through the existing residential development through the north and east of the site rather than onto the Boherboy Road; full database details in respect of packages used for modelling purposes; details of the proposed mitigation measures including drawings for the Boherboy/N81 junction where RFC is high; and consideration of impact on future road schemes in the area. The FI response indicates that the access through existing estates cannot be provided by the applicant as the lands in question are in third party ownership however possible links have been provided for. A CD on file provides the database information. With regard to the N81 Hollywood Cross to Tallaght Road improvement scheme no changes to carriageways are proposed. All mitigation measures refer to road markings only.
- 7.2.5. Given the land use zoning and serviced nature of the appeal lands, in conjunction with the site constraints, on balance it is considered that the proposal for an access onto Boherboy Road is acceptable and general accords with the provision of the LAP. While the proposal will inevitably have an impact on the junction of the Boherboy Road with the N81, it is considered that in the short term there is sufficient capacity at this junction to cater for the proposed development. However, due consideration is required as to whether the proposal as provided for by the applicants can provide the connections as set out in the LAP so as to reduce the car dependency and ensure adequate integration with existing services and facilities for future occupants.

- 7.2.6. Connectivity The Fortunestown Local Area Plan 2012 provides objectives in respect of the development of lands in this area and is very specific that the first phase of development in this neighbourhood shall include for through routes to the Carrigmore and Saggart Abbey estates; a pedestrian and cyclist link to the district park and rear of Citywest shopping centre; and shall include for cyclist and pedestrian circuit routes. (Objectives BN1, BN2 and BN3).
- 7.2.7. Whilst the applicant indicated possible future access links on the site layout plan and argues that such links are outside his control as estates have not been taken in charge, the LAP is clear that such links shall (my emphasis) be provided in Phase 1. In the absence of providing such links the proposed scheme will be car-dependent due to the circuitous access routes to public transport. Fortunestown Luas stop is located approx. 900m from the appeal site if access is provided through existing estates, alternatively access via the Boherboy Road and Citywest Road would be 2kms away, clearly not within walking distance. The connection of the Boherboy Neighbourhood to existing community facilities such as the Citywest Shopping centre, public transport routes, educational facilities is key to building a sustainable and integrated community at this location and accessibility and connectivity should therefore not be understated. The response to the appeal from the planning authority sets out that the Carrigmore estate is not taken in charge and it is unclear when or if it will be taken in charge. Therefore, the delivery of the more critical connection in terms of providing a through route to the local services is uncertain. The first party appeal refers to the carrying out of works (these connections) on the applicants' lands only and sets out that he cannot carry out works on lands outside his control.
- 7.2.8. Street Hierarchy: In general, the street hierarchy or movement function is not clearly defined in that there is no clear distinction between the various functions of the proposed roads/streets. Arguably, there is no hierarchy at all, as the proposed roads appear to perform the same function. There are no cul-de-sacs within this development; equally there is no main distributor or link road proposed. There is a notable absence of cul-de-sacs or "home zones" in this proposed development. Rather, there is a focus on creating or maximising the accessibility of vehicles to all areas, and whilst some measures are outlined to provide for traffic calming, the use of long continuous streets encircling all housing units will compound the dominance of vehicle movements through this development. Further, streets are typically 6m in

width, in excess of that advocated by DMURS, a point noted in the Urban Design comment from the local authority. A width of 5-5.5m is advocated for local streets. The lighting design report submitted in response to further information interestingly contains a layout highlighting roads, which would potentially carry heavier traffic flows. This represents a significant percentage of the overall network, which is attributable to the proposed layout of the housing units.

7.2.9. Linear Park and District Park: The delivery of the linear parkland along with high quality pedestrian and cycling facilities with maximum passive supervision from residential units to existing facilities is fundamental to the achievement of a high quality development reducing the need on the car. The linear park along the Corbally Stream does indicate the provision of pedestrian and cyclist paths and a potential connection to the district park to the north. Any development on these lands needs to ensure such paths and connections are provided in their entirety to reduce the dependency on the car. Whilst such paths can be delivered, as the applicant sets out they are only deliverable as is within his control to do so. Surveillance of this route is also an issue given that the delivery of housing units further north is entirely dependent on the future development of lands.

7.2.10. Corbally Estate: With regard to access to the Corbally estate, pursuant to inspection, it was noted that there is industrial style palisade fencing along this boundary of the site. The LAP indicates that a secondary street network is to be provided at this location. It is not clear if this development is taken in charge. It is considered that the applicant has/will provide future links in so far as it is within his capacity to do so. There are lands located between the appeal site and the Corbally estate the ownership of which is unclear. This in itself may give rise to complications in delivering the linkages. In any event, this link is considered crucial to ensure that future occupants are within walking distance of a public transport network.

### 7.3. **Proposed Design and Layout**

7.3.1. The overall layout of the proposed residential scheme of 218 housing units is confined to the southern portion of the Boherboy Neighbourhood area as identified in the Fortunestown LAP 2012. These lands are located on the higher ground reaching contours of 149m. The applicants in this case are owners of two separate but



adjacent plots of land which upon permission would be carried out in an integrated but separate manner. It is set out that this development represents Phase 1 of an overall residential neighbourhood planned at this location.

- 7.3.2. A design statement was submitted (Appendix A, Planning Report, Delphi Design Planning). This report notes that the shopping centre which is served by Fortunestown Luas stop acts as a retail and commercial focus for the area as well as a public transport node. The subject lands are within a 1km catchment of the Fortunestown Luas Stop. It also identifies that the District Park to the south west of the Citywest Shopping Centre has been delivered and is within walking distance of the subject lands and will be connected to same by a green corridor along the Corbally Stream. The applicant submits that the objective of the LAP vision has been met by the provision for a biodiversity strip with cycle and pedestrian paths to the District park to the north, with connections allowed into existing open spaces thus creating a network and by incorporating the central dry ditch into the scheme. It is set out that the indicative framework plan with respect to the Boherboy neighbourhood has been refined to reflect the practicalities of the separate land ownerships, topography, services, ESB and watermain wayleaves, road and services issues and design. It is submitted that the grid layout proposed accommodates connections to the surrounding areas, including the Carrigmore and Saggart Abbey residential estates and provides a framework for efficient urban blocks that meet standards for traditional housing typologies, establishes a hierarchy of streets and spaces and incorporates existing landscape features and habitats of value.
- 7.3.3. Whilst all house designs are dual aspect the proposed grid layout results in housing units that are dominated by streets without a clearly defined hierarchy as mentioned already. The house designs are repetitious with no real distinction in style or type proposed. The scheme is dominated by semi-detached 3 and 4 bed units. Very few terraced units are proposed and no 5 bed or larger family units that could be easily extended to without compromising on private amenity space are provided. The design of the houses with such small rear amenity space and narrow depths of gardens offer little potential in the future to extend or adapt the housing units. This is discussed in more detail in the open space section.
- 7.3.4. The third party has raised concerns of overlooking to her single storey dwelling from units proposed along the western boundary. I do not consider that overlooking will

arise. However, I do consider that these units appear cramped and awkwardly located along this narrow tract of land. The rear amenity space is minimal with depth of approx. 6m to the party boundary to unit 43. This in fact would be narrower if the hedgerow along this boundary is to be retained. The landscaping proposed along this party boundary would appear unsatisfactory given the height the trees indicated would grow to vis-a-vis the minimal rear amenity space and potential spread of the trees.

- 7.3.5. It is set out that all houses have been designed to front onto the street and public open spaces. The main active open space has been provided to the northern fringe of the housing units proposed with effectively only one boundary of this space overlooked by housing that would be delivered in this development. This is discussed in more detail hereunder.

#### 7.4. **Open Space**

##### Introduction

- 7.4.1. With regard to open space, the LAP provides that development of the Boherboy Neighbourhood will include for the protection and incorporation of the elements of the Corbally Stream and the hedgerows that run through Boherboy especially the stream and hedgerow along the eastern side of the neighbourhood into a linear park. There is a specific objective, BN5a, that a 10 metre (minimum) biodiversity strip (measured from the top of the bank) shall be reserved along both sides of the designated sections of the Corbally stream for flood management, landscape and biodiversity reasons. This biodiversity strip shall cater for a pedestrian/cycle path from the Boherboy Road to the public open space to the north-east (District park) as part of Phase 1 of development of the Boherboy lands. Objective BN6 and Objective BN7 of the LAP are specific in that development shall protect and incorporate its existing rolling topography and its existing hedgerows and streams. The level of cut and fill shall be kept to an absolute minimum and excessive use of retaining walls shall be avoided. There is a clear vision within the plan, supported by specific objective BN8 that the built form shall be orientated to create vistas of the Church Tower in Saggart Village to the north-west and the Dublin Mountains to the south. Development shall also incorporate and retain Corbally Bridge.

7.4.2. The appeal site is located within the “urban” landscape character assessment area (LCA) with the Athgoe and Saggart Hills located immediately south of the appeal lands. The latter LCA is dominated by the hills and foothills, elevation ranges around 150m OD in the lower areas around Rathcoole rising to a series of rounded hills such as Saggart (395m) and Knockannavea (396m). The appeal lands are located at the urban fringe, a transitional area, that has undergone much transformation in the last two decades with transport, residential and commercial developments in an area that would have been traditionally rural in character.

#### Public Open Space

7.4.3. The main public open space provision, approx. 0.9h, is being provided to the northern extremity of the proposed housing units. The achievement of passive surveillance of this space to ensure its integration and usability is contingent on the completion of another phase of development which is unacceptable. Public open space to serve the proposed units in this phase should be positioned to best serve needs of the future occupants of the units proposed without requiring residents to walk significant distances to public open space areas. Consideration has been given to the possibility of re-locating the public open space area to a more central location within the proposed scheme, however it is not considered that such could easily be achieved without a fundamental re-design of the scheme given the topography and specific objectives regarding hedgerow retention and protection of views. The scheme before the Board should be assessed on its own merits and whilst it is possible to make alterations/amendments by way of condition, in this instance given the fundamental redesign that would be required, this is considered inappropriate. It would be beneficial if a playground or other such facilities were provided for younger children. Such facilities would increase the number of users of the large open space area contributing to the passive surveillance of the area.

7.4.4. The applicants indicate the proposal will incorporate a parkland setting along Boherboy Road, however, the set back is considered to be more a derivative of the topography of the lands rather than the parkland setting it may provide. Whilst there is an objective within the LAP to retain hedgerow at this location, the reality is that the hedgerow will impede sightlines and as such will be required to be removed. The use of this open space along Boherboy Road as functional space should not be overstated. It is unrealistic for future occupants to use this space as play areas for

young children given its proximity to a busy road. No pedestrian crossing has been indicated to road 1 which is in close proximity to the entrance from Boherboy road.

- 7.4.5. There is a district park located to the north-east of the appeal lands, which serves the wider catchment area and it is proposed to link this development via the linear open space provided along the Corbally Stream which forms the eastern boundary of the site. This green corridor takes the form of a 10m wide strip running along the western boundary of the site. The open space does offer an opportunity to provide a cycling and pedestrian corridor with passive surveillance from nearby housing, however in terms of type of open space it is clearly more of a linear walkway rather than active recreational space. Bridge details have been submitted over the stream linking to Corbally estate however no details have been given as to how the current palisade fencing that exists and currently restricts movements along the stream from the existing housing estate would be removed. This is also clearly outside the remit of the applicant given that he does not own the lands. There would also appear to be a tract of land between the stream and the Corbally estate, the ownership of which is unclear.
- 7.4.6. In summary, the quantum of public open space is not an issue but rather the location of the large open space area in the context of the layout proposed which is not considered to provide a central focus and/or be within easy reach of the majority of units proposed. The residential units form a grid layout requiring most future occupants to walk to the main open space area which is remote from the majority of housing units in this phase. This gives rise to accessibility and surveillance issues and thus compromises the quality of this space. The application fails to demonstrate how the built form proposed will achieve the vistas of the Church Tower in Saggart Village. Whilst the vista to the Dublin Mountains has not been clearly identified, the linear layout of the internal roads will provide some views. However, there is an opportunity to provide public open space within the centre of the scheme incorporating existing hedgerow and providing a greater set-back of housing units ensuring an uninterrupted view from the lower lands and existing housing estate, in particular the Carrigmore estate back towards the Dublin Mountains.

### Private Amenity Space

- 7.4.7. There is a difference in levels of up to 20m across the appeal site. There are notable differences in levels between certain housing units and as such the functional and qualitative nature of the private amenity space has to be given careful consideration in the context of achieving optimal housing standards for future residents. For example, housing units 1-5 back onto units 6 and 25 where there is a difference of approx. 2 metres. Similarly, units 41 and 42 back onto unit 43 with minimal rear garden depth of approx. 8m where a difference of over 2m in ground levels arise. The depth of the rear gardens associated with units 1-5 are approx. 8m but in terms of garden this will be less when footpaths etc. are allowed for. Whilst there is no issue of overlooking due to orientation, the gardens are considered to be poor quality both in terms of quantum and functionality given the difference in levels that would be accommodated within such a small area. For example, the rear amenity space to unit 74 shows a depth of 8m on the site layout plan, however the cross section I-II indicates a rear depth of approx. 6m (allowing for footpath) giving rise to private open space of 36sq.m. which is unacceptable. The site layout plan indicates that an area of 69sq.m. has been provided. There is a slope and crib wall required to accommodate the difference in over 2m in levels.
- 7.4.8. There are other units where the quantum of private amenity space is considered unsatisfactory such as units 145-148. There is approx. 50sq.m. to the rear of these units which is considered unsatisfactory for 3 bed suburban housing. The overall site layout plan specifies the quantum of rear amenity space for each unit. However, in reality the actual quantum is far less and well below minimal standards provided for in the county development plan. Whilst the site plan indicates a scale, it also caveats that figured dimensions only should be used. However, there is ambiguity as to the actual quantum of private amenity space to the units as some dimensions appear correct whilst others are very clearly well below the figure specified. I am not satisfied that the figured quantum can actually be provided without amending the proposed layout. Again given the proposed layout and constraints of the site, it is considered that a fundamental review of the layout is required in order to ensure an adequate provision of rear amenity space for future residents.
- 7.4.9. The narrow depths in rear amenity space will also affect the potential for the units to accommodate extensions into the future. Where suburban style housing is being

developed they should allow for the greatest degree of flexibility and adaptability for future occupants ensuring greater social integration. The narrow depths in gardens and provision of crib walls are replicated throughout the site, limiting the ability to deal with such issue by way of condition. The lack of qualitative and adequate private amenity space would be detrimental to the future occupants of the proposed units. The proposal before the Board for consideration should therefore in my opinion be refused.

## **7.5. Flooding**

- 7.5.1. A flood risk assessment was submitted with the application prepared by Pinnacle Consultants. It identifies that Phase 1 of development currently a greenfield site extends to 8.16ha whilst the overall subject site extends to circa 17.78ha. It is set out that the site is not located in or near to any known historical flood plains. The report identifies a stream flowing along the eastern boundary adjacent to the site, prior to turning at right angles and flowing along the northern boundary adjacent to the Carrigmore Residential estate. There is a small ditch adjacent to the western boundary of the site, which connects into the stream at the north-western corner of the site, where the stream exits the site. There is no available surface water sewer for the proposed development and the surface water outfalls are to discharge to the existing on-site watercourses as currently exist. The report sets out that the evidence of any flooding within Phase 1 of the development is considered to be low risk. JBA's flood risk mapping as contained in the LAP of 1:100 year flood is considered indicative with no hydrological modelling of the stream carried out. The report sets out that the FFLs of the units have been set at a minimum of 500mm above the stream level, with the nearest unit being in excess of 20m away from the stream, separated by a riparian corridor, open space and a 5.5m wide access road.
- 7.5.2. Notwithstanding the claims by the applicant that the methods to be employed such as overland flow paths, infiltration trenches, attenuation storage tanks and restricted outflow controls, no details have been submitted to demonstrate that the existing stream bounding the site to which it is proposed to discharge all surface water on-site to has the capacity to cater for such run-off levels. At time of inspection, ponding was evident on the lower lying lands directly behind existing housing units in the

Carrigmore estate. An examination of ordnance survey maps would indicate that these lands naturally provide a flow path for all surface water from lands further upstream, mainly due to the topography of the area. Indeed, Appendix 6 of the Local Area Plan identifies a significant portion of the appeal lands as being within the 1:100 year flood zone. The LAP sets out that the flood risk mapping information should be used to identify sites for detailed site-specific Flood Risk Assessment and appropriate responses at planning application stage in accordance with 'The Planning System and Flood Risk Management Guidelines for Planning Authorities', (2009). The Strategic Flood Risk Assessment for South Dublin County Council Development Plan 2016, prepared by RPS in Table 6.1 identifies "*Undeveloped Existing Zoned Lands at Risk of Flooding – Highly Vulnerable*" in Fortunestown. It is set out that development in Flood Zone A should be water compatible and that highly vulnerable development shall not be permitted in Flood Zone A or B. A small portion of the appeal lands to the northern boundary where ponding was noted during site inspection is located within Flood Zone A. There is also a section of lands that fall within this zone along the eastern boundary of the site. The Planning Authority through the LAP and preparation of current development plan would appear to have undertaken a justification test for zoning said lands. Hence, I do not propose to re-examine such, but rather focus on the Flood Risk Assessment. Whilst the applicant has indicated that any works necessary to reduce the impact of potential run-off from the site will be undertaken, the proposal in this instance particularly given that concerns were raised about flooding by third parties should have been addressed in more detail given that the greatest risk of flooding is to properties located downstream of the proposed development. This is borne out by the number of flood events recorded on OPW maps on lands further north of the appeal lands in Saggart and Rathcoole area. No detailed modelling has been undertaken to demonstrate that the proposal would not result in additional flooding downstream of the subject lands, i.e. lands most at risk. The proposal should therefore be refused.

## 7.6. **Environmental Impact Assessment**

The Planning and Development Act, as amended, sets out that EIA shall be carried out for applications for a class specified in Schedule 5 to the Planning and

Development Regulations 2001 as amended which exceeds a quantity, area or other limit specified in that Schedule and also for development of a class specified in Schedule 5 which does not exceed a quantity, area or other limit specified in that Schedule but which the Planning Authority or the Board determines would be likely to have significant effects on the environment. The proposal in this instance is for a class (Infrastructure Projects – construction of more than 500 dwelling units) which does not exceed a quantity, area or other limit specified in Schedule 5. Further having regard to the characteristics of the proposed development, location and characteristics of potential impacts, the proposal is not likely to have significant effects on the environment and as such EIA is not required for the proposal before the Board.

#### **7.7. Appropriate Assessment**

- 7.7.1. With regard to the provisions of Article 6 of the Habitats Directive it is first necessary to consider is the project likely to have a significant effect, either individually or in combination with other plans and projects, on the European site(s) in view of the site's conservation objectives.
- 7.7.2. Screening for appropriate assessment was carried out by the applicant. The screening report notes in Table 1 four Natura 2000 sites within a 15km range of the site. This screening report appears to have been carried out in 2011 for a development consisting of 214 units and a crèche similar to that now proposed. The report concludes that the proposed development will not have a significant effect on the Natura sites.
- 7.7.3. There are a number of European Sites located within a 15 kilometre range of the proposed project contained in Table 1 below. Site synopsis and conservation objectives for each of these European Sites are available on the NPWS website. The Board should note that the screening report submitted by the applicant does not make reference to Glenasmole Valley SAC, Red Bog SAC or Poulaphouca Reservoir SPA. Further, whilst South Dublin Bay and River Tolka estuary SAC and SPA were included in the applicant's screening report, these sites are considered to



be in excess of 15km from the site with no direct source-pathway-receptor and as such were not included within the table below.

**Table 1**

<b>Site Name</b>	<b>Approx. Location from site</b>
Glenasmole Valley (Site Code 001209)	4.3km south east of the appeal site.
Wicklow Mountains SAC (Site Code 002122)	5.3km south east of the appeal site
Wicklow Mountains SPA (Site Code 004040)	10km south east of appeal site.
Red Bog, Kildare SAC (Site Code 000397)	11km south-south-west of the appeal site.
Poulaphouca Reservoir SPA (Site Code 004063)	11.5km of the appeal site.

- 7.7.4. The appeal lands are not directly connected to any of the listed Natura sites above. The conservation objectives for the sites are generic i.e. to maintain or restore the favourable conservation status of habitats and species of special interest. Having regard to the serviced nature of the lands, distance from the listed Natura 2000 sites and nature of the proposed development it is considered that the potential for likely and significant effects of the project alone on the European sites within the context of the sites' conservation objectives are negligible.
- 7.7.5. It is reasonable to conclude that on the basis of the information on the file, which I consider 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 any of the European sites as identified in Table 1 or the South Dublin Bay and River Tolka estuary SAC and SPA which is located just beyond the 15km range from the site, in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment is not required.

## 7.8. First Party Appeal against conditions

### 7.8.1. Condition 6

This condition is cited as follows:

*“The applicant/developer shall pay a sum of €100,000 as a special contribution under Section 48, 2 (c) of the Planning Acts for the provision of a footpath with public lighting from the development for 400m approximately along the Boherboy Road towards Saggart village to achieve a satisfactory level of permeability from the proposed development to neighbourhood facilities for pedestrians and other vulnerable road users in accordance with County Development Plan policy.*

*Reason: In the interests of residential amenity and the proper planning and sustainable development of the area.”*

Section 48, 2 (c) of the Planning and Development Acts provide that a planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. Paragraph 7.12 of the Development Management Guidelines for Planning Authorities, 2007 also states that *“...A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore, it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis of the calculation, including how it is apportioned to the particular development”*. The grounds of appeal set out that the works specified in the condition are on the public road and have to be carried out in any case regardless of whether or not the development is constructed. It is set out that the works should be carried out by the Council and paid for out of the

development contribution required under condition 23. The specific works are not specified as an objective either in the development plan or in the LAP.

7.8.2. The development contribution scheme 2016 identifies particular works. No specific mention is given to the Boherboy Road and as such it is considered that the provision of a footpath and lighting along this road linking the site to the village of Saggart is not covered under the Section 48 contribution scheme. The Council has set out that the footpath is required so as to link the development with the village so that future occupants can access facilities which is considered to be a reasonable objective. The linkages to the Citywest district centre and the Luas are considered to be more appropriate in this instance in achieving connectivity of the new residential area with existing services and facilities. Concerns regarding the delivery of these connections have been outlined in this report heretofore. In the absence of these connections, it is reasonable to require a footpath to link the development to Saggart village. I note that such works would be significant in that there are substantial tracts of land between the appeal site and the village that would have to be obtained so as to deliver the lighting and footpath and as such would be a specific exceptional cost. I note the apportionment of costs as detailed by the Council which would appear reasonable

### 7.8.3. **Condition 2**

The applicant has appealed the wording of condition 2 cited as follows:

*“As the statutory Fortunestown Local Area Plan provides for under Phase One and Two – not more than 139 of the 215 dwellings permitted by this permission shall be occupied prior to:*

- (i) The completion of the centrally located public open space, and*
- (ii) The provision of a vehicular /pedestrian/cycle linage to Corbally Heath to the east of the subject site, and*
- (iii) The provision of a pedestrian/cycle linkages satisfactorily lit by public lighting standards, to connect with Carrigmore District park to the north and east of the site,*

*Unless otherwise agreed in writing with the Planning authority.”*

The applicant sets out that they own up to the centre of the stream along the eastern boundary of the site and is willing to provide a connection up to that boundary on lands under their control. However, the lands to the east of stream and adjoining Corbally estate are outside the ownership and control of the applicants who are willing to offset the costs of providing the link if lands are acquired by the local authority against the contributions to be paid as required under condition no. 23. The applicant is seeking that the wording of the condition is amended to reflect the actual responsibility of the applicants in so far as he can carry out the works. This is considered reasonable.

- 7.8.4. As set out already in this report, the provision of public open space in a central location to serve the proposed units is critical and should be provided prior to the occupation of any unit. Equally having regard to the provisions of the LAP, the linkages to the district park and the Corbally and Carrigmore estates are requisites of Phase 1. It is therefore reasonable that such would be provided prior to occupation of any units. Should the Board be minded to granting permission, it is considered that careful consideration needs to be given to the extent to which the developer can provide these linkages. The lands are outside his control and also appear to be outside the control of the local authority.

**7.8.5. Condition 4**

With regard to this condition specific details are required of the developer and it is specifically sub-section (iv) that is subject to the appeal

*“Details of the road link to Corbally estate (as shown on the current development plan) and a pedestrian link to Carrigmore estate for the purposes of construction shown. Works to be done at the expense of the applicant/developer.”*

7.8.6. It is set out that the wording of this condition requires the developer to design and pay for the construction of works outside of the boundary of the appeal site and which did not form part of the application for permission as applied for. It is set out that the developer will endeavour to provide the links in accordance with the objectives of the LAP but only in so far as legally possible which is considered reasonable.

7.8.7. With regard to the First Party appeal, should the Board be mindful to granting permission, careful consideration should be given as to whether the developer has sufficient legal interests to carry out such works. Where works maybe required to be carried out on behalf of the Planning Authority so as to achieve objectives set out in the local framework plan, a special contribution may be considered appropriate and reasonable in such instances.

## 7.9. **Other Issues**

### 7.9.1. Services

There is no foul water sewer located on the subject lands. It is proposed to service the subject lands using a foul pumping station. The pumped rising main is to discharge to a new outfall manhole in the Boherboy Road (200m east of the site). Downstream of this outfall a manhole a new 225mm gravity foul sewer is to be constructed along the Boherboy Road/Blessington Road before discharging into the existing public foul sewer in the DeSelby housing estate which is approx. 1km east of the site. Concerns were raised about the visual impact of the pumping station which is located along the northern boundary with Carrigmore. Whilst there will be a visual impact, such can be mitigated with landscaping. Further, the issue of potential for anti-social behaviour can be addressed by way of passive surveillance in any subsequent phase of development

### 7.9.2. Childcare Provision

It is proposed to provide a purpose built crèche as part of the development to cater for approx. 53 children and the location of this structure is considered acceptable.

The rear amenity space serving this unit is considered sub-standard given the topography of the land.

### 7.9.3. Protected species

Bats and otters are protected species under the Habitats Directive and have been recorded as using the site. It is noted that there are derelict structures along Boherboy Road on the appeal lands. The screening report for AA indicates that bat surveys were carried out in 2011. The winter bat survey confirmed that important winter roosts are not associated with the old buildings on site. However, there are potential roosting sites in some cervices of walls of these buildings. Commuting and foraging bats were recorded. Badger, a protected species under the Wildlife Acts, is also present on the site but not in the area proposed for development. A section 25 derogation licence for the removal of these species may need to be sought by the applicant.

## 8.0 Recommendation

8.1. I recommend that permission be **refused** for the proposed development for the following reasons and considerations.

## 9.0 Reasons and Considerations

1. In the absence of a detailed site-specific flood risk assessment that would clearly demonstrate that the proposed development would not itself be at risk of flooding, or that it would not give rise to an increased risk of flooding downstream, the proposal would be prejudicial to public health. It is considered that the proposed development would, therefore, be contrary to the provisions of the “Planning System and Flood Risk Management - Guidelines for Planning Authorities” (2009) and therefore contrary to the proper planning and sustainable development of the area.

2. The peripheral location of the main active public open space area in this proposed development and the quantum of rear private amenity space is unsatisfactory resulting in substandard residential amenity for future occupants. The proposed layout is considered contrary to the provisions of the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages)*, 2009, and also the South Dublin County Development Plan 2016-2022 which promote the high quality design and location of public and private open space. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Joanna Kelly  
Planning Inspector

29 November 2016