



An  
Bord  
Pleanála

## Inspector's Report PL29N.247441

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<b>Development</b>	106 Residential units
<b>Location</b>	North of Poppintree Industrial Estate, bounded by Margaret's Road, Jamestown Road and Balbutcher Lane, Poppintree, Dublin 11.
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	2414/16
<b>Applicant(s)</b>	Dwyer Nolan Developments Ltd.,
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party appeal against Condition
<b>Appellant(s)</b>	Dwyer Nolan Developments Ltd.,
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18/01/2017
<b>Inspector</b>	Gillian Kane



## 1.1. **Introduction**

- 1.2. This is a first party appeal against a financial contribution condition which was attached to the Planning Authority's notification of intention to grant permission for a development comprising of 106 no. houses on lands, the subject of previous planning permissions Planning Authority reg. ref. 4387/03 and 1742/07. As this is an appeal in respect of conditions requiring a financial contribution, the provisions of section 48 of the Planning and Development Act 2000 apply and the Bord is restricted to considering this matter alone and cannot consider the matter de nova. I have therefore confined my assessment to the condition in question.
- 1.3. Having regard to the nature of the appeal before the Board (i.e. first party against a condition) and the information available on file, a site inspection was not deemed necessary in this instance.

## 2.0 **Site Location and Description**

- 2.1. The subject site refers to the southern end of the residential development Hampton Wood, in north County Dublin. The development has largely been completed, with the exception of the final stage – to which the current application refers. The subject site is bound to the west by the development Hampton Wood, to the north by St Margaret's Road to the east and other development lands to the east.

## 3.0 **Proposed Development**

- 3.1. Permission was sought for 106 no. residential units comprising 60 no. duplex units and 46 no. houses

## 4.0 **Planning Authority Decision**

### 4.1. **Planning Authority Decision**

On the 27<sup>th</sup> Sept 2016 Dublin City Council issued a notification of their decision to grant permission subject to 21 no. conditions. Condition no. 5 states:

5. The developer shall pay the sum of €4000 per residential unit (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of public open space unless otherwise agreed by the Planning Authority. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine. Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

## 5.0 Relevant Planning History

- Planning Authority reg. ref. **4387/03**: Permission granted for development of approximately 16.52 hectares of land consisting of the construction of 1040 no. residential units.
- Planning Authority reg. ref. **1742/07**: Amendments to previously approved Planning Application Reg. Ref no 4387/03 to include the omission of Duplex no.s 9-14 inclusive and house no.s 15-39 inclusive at Hampton Wood Square, a total of 31 no. residential units.

## 5.1. Development Contribution Scheme

- 5.1.1. Dublin City Council Development Contribution Scheme 2016-2020, adopted Jan 1 2016 and effective until 31<sup>st</sup> December 2020. Of relevance to the subject appeal are:
- 5.1.2. Scheme notes that Section 48 of the Act includes the provision of open space as “public infrastructure and facilities”

- 5.1.3. Section 11 of the Dublin City Council 2016-2020 Development Contribution Scheme notes that the development plan “*provides the discretion to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. The Plan provides that in the event of the planning authority considering a site to be too small or inappropriate to fulfil Dublin City Development Plan requirements for open space provision a financial contribution towards provision of or improvements to a park and/or enhancement of amenities in the area in line with the City’s Park Strategy shall be required*”.
- 5.1.4. Section 23 of the scheme states that “*A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Dublin City Council Development Contribution Scheme 2016 - 2020 are incurred by the Council in the provision of a specific public infrastructure or facility. (The particular works will be specified in the planning conditions when special development contributions are levied). Only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to An Bord Pleanála*”.

## 6.0 The Appeal

- 6.1.1. The First party has submitted an appeal against condition no. 5 of the Council's decision to grant permission. The grounds of the appeal can be summarised as follows:
- The subject site is part of a larger development at Hampton Wood (Planning Authority reg. ref. 4387/03) granted on the 23<sup>rd</sup> of the February 2004. Further development was approved under Planning Authority reg. ref. 1742/07, granted on the 31<sup>st</sup> of May 2007. Construction commenced in 2004 with 750 no. completed. The current application is a modification of that development.
  - Condition no. 5 of the Council's decision does not provide details of the “special contribution” as required by the Act. The Act refers to specific exceptional costs, not covered by a scheme, that would be incurred by

the Planning Authority in respect of public infrastructure and facilities which benefit the proposed development.

- The total area of the original site is 16.52ha. Public space provision is 20,991sq.m. (12.7% of total site area). This complies with the requirements of the development plan, past and current. The public open space is spread throughout the development.
- 2.5acres of land has been provided to the Planning Authority, free of charge for use as part of the public transport route along St Margaret's Road and Hampton Wood Drive. This brings the total public open space provision is over 31,000sq.m. of 18.8% of the total site.
- All open space is maintained by Management companies.
- It is difficult to conceive how the Local Authority can justify an additional contribution, in excess of the standard contribution of €1,008,374.40 towards local authority spending (condition no. 2) when no details of specific exceptional costs have been provided.
- The Board is requested to remove this arbitrary and unreasonable burden.

## 6.2. **Planning Authority Response**

None on file.

## 7.0 **Assessment**

- 7.1.1. Having regard to the provisions of section 48(13)(a) of the Planning and Development Act 2000 as amended, this assessment and recommendation will only relate to the condition that is subject of the appeal.

## 7.2. **Application of Development Contribution Scheme**

- 7.2.1. The planners report of 27th April 2016 notes that no public space is proposed as part of the development and the applicant was advised that a contribution in lieu would be sought. In response to the request for further information, the applicant provided details of public open space provision across the entire development, stating it to be 20,991sq.m. of the total site area is 16.52ha. A site plan submitted with the response shows the location of the public open spaces throughout the entire development. The subject

application site does not have any public open space provision. In the second planning report (dated 26<sup>th</sup> Sept 2016), the planner once again notes that a contribution in lieu is required. As noted above, condition no. 5 of the Council's decision to grant requires the payment of €4000 per dwelling as a special contribution under section 48 (2) (c) of the Act 2000 in respect of public open space.

- 7.2.2. The applicant's submission to the Board is twofold: that the Council's condition does not refer to any specific exceptional costs not covered by the Scheme and that sufficient open space is provided throughout the entire development.
- 7.2.3. Section 48 of the Planning and Development Acts 2000-2016, states that a planning authority may include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities). Section 2(c) states 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.
- 7.2.4. Section 23 of the the Council's development contribution scheme states that *"A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Dublin City Council Development Contribution Scheme 2016 - 2020 are incurred by the Council in the provision of a specific public infrastructure or facility. (The particular works will be specified in the planning conditions when special development contributions are levied). Only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to An Bord Pleanála"*.

- 7.2.5. The Council have not responded to the appeal and so there is no elaboration of their application of the development contribution scheme. Section 48(2)(c) provides for the payment of a special contribution 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. The Planning Authority has indicated that condition no. 5 is a payment in respect of public open space. Whilst the condition refers to the application of s48(2)(c), it does not refer to any exceptional costs that will be incurred by the Local Authority. There is no reference to the public open space that the Local Authority will provide that will benefit the proposed development. Likewise, there is no reference to the provision of or improvements to a park / and or the enhancement of amenities in the area in line with the City's Park Strategy, as required by section 11 of the development contribution scheme. As noted above, section 23 of the development contribution scheme states that where a special development contribution scheme is imposed under s48 the particular works will be specified in the planning condition and only developments that will benefit from the public infrastructures in question will be liable to pay the special development contribution.
- 7.2.6. The application of financial contributions in lieu of the provision of facilities as envisaged in section 23 of the scheme requires the condition to explicitly make references to the exceptional cost the Local Authority will incur in providing a public infrastructure from which the development will benefit. Condition no. 5 of the development plan does not make any such reference and therefore is not a correct application of the development contribution scheme of the Council.

## 8.0 Recommendation

- 8.1.1. It is considered that in the imposition of Condition no. 5 of their decision to grant, Dublin City Council have incorrectly applied the provisions of the 2016-2020 Development Contribution Scheme, in that no specific exceptional costs not covered by a scheme which will be incurred by the Council in respect of public infrastructure and facilities which benefit the



proposed development have been identified by the Local Authority in the planning condition as required by section 23 of the scheme. It is recommended that the Board remove condition no 5.

*Gillian Kane*

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Gillian Kane  
Planning Inspector

17 January 2017