



An
Bord
Pleanála

Inspector's Report PL06F.248736

Development	Amended housing scheme (additional 10 units) on previously granted reference 15A/0009.
Location	Hollywoodrath, Hollystown, County Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F16A/0191
Applicant(s)	Kavcre Tyrrellstown Limited
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Applicant vs Contribution Condition
Appellant(s)	Kavcre Tyrrellstown Limited
Observer(s)	None
	None
Date of Site Inspection	
Inspector	Hugh Mannion

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1.0 Site Location and Description

1.1. The site comprises a site of 8.22ha of undeveloped lands at Tyrrelstown, County Dublin.

2.0 Proposed Development

2.1. The proposed development comprises amendments to a previously permitted development under reference number FW15A/0009. The alterations comprise an increase in the number of units from the previously permitted 175 units to 185 units at Hollywoodrath, Hollywoodstown, Dublin 15. The permitted number of units is 183.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted permission subject to condition 32 which stated that:

That a financial contribution in the sum of €503,081 be paid to Fingal County Council in lieu of open space provision towards the cost of amenity works in the area of the proposed development in accordance with the requirements of the Fingal Development Plan based on a shortfall in public open space of 8,572.5m² within the proposed development per FW15A/0009.

Reason: To achieve the public open space objectives of the Development Plan and in the interest of the proper planning and development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report recommend a grant of permission as set out in the manager's order.

3.2.2. Other Technical Reports

There are no other relevant technical reports.

3.3. Prescribed Bodies

There are no submissions from prescribed bodies.

3.4. Third Party Observations

There party no third party observations.

4.0 Planning History

Permission was granted under FW15A/0009 for the erection of 175 houses on the current site.

5.0 Policy Context

5.1. Development Plan

The site is zoned RA 1 “to provide for new residential communities in accordance with approved local area plans and subject to the provision of necessary social and physical infrastructure in the Fingal County Development Plan 2017 to 2023.”

5.2. Natural Heritage Designations.

This appeal is unaffected by natural heritage designations.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal may be summarised as;

- Condition 33 is the standard development contribution condition which requires the payment of €1,530,927 for the provision of open spaces, recreational and community facilities and amenities and landscaping works.

- The planning authority uses bed spaces to calculate the quantum of public open space required. Each bed space requires 25m² of public open space. There are 183 permitted houses comprising 2 and 3 bed units giving a total of 578.5 bed spaces and therefore a requirement for a total of 14,462.5m². The provision is 14,972m² and the deficit is therefore 387.5m². The amount payable therefore is €22,773¹.
- The planning authority has calculated the deficit in public open space, partly, by omitting 3,489m² of a wayleave underneath powerlines. The applicant calculates this area as 2,465m². It is not reasonable to exclude this area as public open space as it is wholly useable as recreational space.
- The planning authority has also omitted from the public open space the area given over to sustainable urban drainage systems (SUDS) areas. The Board in PL06F.245710 counted SUDS area as public open space.

6.2. Planning Authority Response

The planning authority responded to appeal as follows;

- Condition 33 is the planning authority's standard condition which applies to public infrastructure such as open spaces, recreational and community facilities and amenities and landscaping works.
- Condition 32 refers to the open space shortfall within the proposed development and the applicant accepts in principle that there is such a shortfall. The issue is the usability of the area for SUDS and that under the powerline wayleave. The Development Plan (section 12.7) makes clear that areas under high voltage electricity lines is not counted as public open space.
- The detention basins included as part of SUDS is also not properly public open space.
- The planning authority has been consistent in its application of the County Development and Local Area Plan standards in this and other cases which were not appealed.

¹ The basis of this figure is not clear.

6.3. Observations

There are no observations.

6.4. Further Responses

The applicant commented on the planning authority's submission as follows;

- In PL06F.245710 and PL06F.246755 the Board decided that areas under power lines and SUDS related areas may be counted as public open space.
- Development Plan objectives DMS57A and DMS57 set out the relevant open space standards. Applying these criteria, the open space requirement is 14,462m² where as a total of 14,075m², the short fall is therefore 387.5m².
- It is unreasonable to exclude areas under powerlines and areas given over to SUDS from open space calculations.

7.0 Assessment

7.1. Background.

7.2. Permission was granted previously on this site under reference number FW16A/0009 for 175 residential units and associated works. This application proposed to amend the previous application to provide 185 residential units. The manager's order permitted 183 units. The application was lodged in the lifetime of the Fingal County Development Plan 2011 to 2017 but was determined in the lifetime of the Fingal County Development Plan 2017 to 2023. The Development Contribution Scheme 2016 to 2020 is the applicable scheme.

7.3. The Development Plan objective DMS57 requires a minimum open space provision of 2.5ha per 1000 population. To calculate the open space requirement residential units with 3 or more bedrooms will be regarded as having 3.5 persons and 1.5 persons for one or two bed units. Objective DMS57A requires a minimum of 10% of the development to be assigned as public open space. Table 12.5 sets out the requirement for the distribution of public open space over pocket parks, small parks, local parks, neighbourhood parks and regional parks.

- 7.4. The applicant and the planning authority agree that the permitted development provides for 183 units (31 two bed units and 152 three bed units), that the total proposed bed spaces are 578.5 and that the gross public open space required is 14,462.5m² (578.5 spaces x 25m²). This compares to the 14,075m² of space provided in the additional information (see especially page 9 of response to additional information and the revised landscape drawings by PC Roche Associates). The applicant claims that the shortfall in public open space is therefore 387.5m². The planning authority makes the case that the shortfall in public open space is 8,572m² because it is not appropriate to include areas of SUDS or wayleaves under electricity powerlines in calculating public open space.
- 7.5. As the method of addressing this shortfall in public open space the planning authority has imposed condition 32 seeking a financial contribution.
- 7.6. Section 48 allows planning authorities to apply conditions to grants of planning permission requiring the payment of contributions in respect of public infrastructure and facilities benefitting development within the area of the planning authority. Section 48(2)(c) makes provision for the making of a contribution scheme which shall provide the basis for the determination of a development contribution. Fingal County Council has made such a scheme, the Fingal County Council Development Contribution Scheme 2016 - 2020, and has applied the provisions of that scheme in applying condition number 33 in the grant of permission.
- There is a further provision (section 48(2)(c)) which allows a planning authority in addition to the terms of the main development contribution scheme to require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by the main development contribution scheme are incurred by a planning authority in respect of public infrastructure and facilities which benefit the proposed development. The main development contribution (see section 9 and the table setting the 'level of contribution' in copy attached) provides that a per m² amount of €76.14 is payable for each square metre of residential development. This sum includes €17.51 specifically earmarked for 'community, parks facilities and amenities'.
- 7.7. Contribution conditions may only be imposed under section 48 (standard development contribution scheme) or section 49 (supplementary development

contribution scheme). The Development Management Guidelines for Planning Authorities (see section 7.12) make the point that a condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act and that 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 for the calculation, including how it is apportioned to the particular development.

- 7.8. The planning authority has not identified any specific public open space areas which it intends to provide in lieu of the shortfall which it states arises in the present application nor has it set out the costs of developing such an area or how it is apportioned to this specific development. Therefore, the basis for the calculation of the amount set out in condition 32 is unclear.

8.0 Recommendation

- 8.1. The planning authority has not demonstrated that the proposed development will give rise to specific exceptional costs in a manner to justify the imposition of a special contribution under section 48(2)(c) and I recommend that the Board remove condition number 32.

9.0 Reasons and Considerations

- 9.1. The Board is not satisfied on the basis of the material submitted with the application and appeal that that the planning authority has identified the nature/scope of works for the provision of public open space to mitigate any deficit in the proposed development, the expenditure involved and the basis for the calculation, and how it is apportioned to the proposed development.

Hugh Mannion
Inspectorate

13th October 2017