



An
Bord
Pleanála

Inspector's Report PL06F.249179

Development	Demolition of existing partially built structures, construction of 57 houses, two-storey commercial block and all associated site works
Location	Main Street, Ballyboughal, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0184
Applicants	Feathermist Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Feathermist Limited
Observer(s)	None
Date of Site Inspection	29 th November 2017
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 4.19 ha, is located at the northern end of Ballyboughal village in North County Dublin. The site is irregularly shaped and is bounded by Ballough Road to the south and east, by agricultural lands to the north and by the R108 Regional Road and existing terraced houses to the west.
- 1.2. The eleven existing terraced houses along the R108 are known as Cnoc Dubh, and were formerly associated with the appeal site, although they do not now form part of the appeal site. A number of partially completed structures are located on the appeal site, including what was intended to be a mixed use commercial/residential building in the south western corner of the site, as well as floor slabs for a number of dwellings. With the exception of the partially completed structures and a powerline which crosses the site from north to south, the remainder of the site is undeveloped and topographical levels vary from c. 41 metres in the centre of the site to c. 34 metres in the south western corner of the site.

2.0 Proposed Development

- 2.1. The proposed development consists of the following:
 - Demolition of existing 1,023 sq m partially built structures in the south western corner of the site.
 - 57 No. dwellings to include: 5 No. 5-bed detached, 20 No. 4-bed detached, 2 No. 4-bed semi-detached, 5 No. 3-bed semi-detached, 8 No. 3-bed semi-detached/end of terrace, 4 No. 2-bed terraced, 5 No. 4-bed bungalows, 5 No. 3-bed bungalows, and 3 No. 2-bed bungalows.
 - Two storey commercial block (322 sq m) with two ground floor retail units and two first floor office units with associated signage and 13 car parking spaces, one loading bay and four cycle spaces.
 - Internal roads, footpaths, associated landscaping, boundary treatments and all associated ancillary works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Fingal County Council decided to grant planning permission subject to 38 conditions. Condition 36, which forms the basis of this appeal, states:

“The developer shall pay €202,491.00 in lieu of 0.345 ha of public open space.

Reason: In the interest of the proper planning and sustainable development of the area.”

- 3.1.2. Conditions 11(ii) and 11(iii) are also referenced in the appeal. They state:

“(ii) Prior to commencement of development, the Developer shall submit to the Planning Authority for its written agreement details confirming the exact shape and size of the detention basins, and submit amended drawings including accurate sections through the basins. The depth of the detention basins shall be designed to take account of access and health and safety considerations.

(iii) Prior to commencement of development, the Developer shall [submit] to the Planning Authority for its written agreement, details demonstrating that the detention basins shall be free draining and such that no water is stored above ground level for events up to the 30 year event.”

3.2. Planning Authority Reports

- 3.2.1. The Planning Officer’s final report can be summarised as follows:

- Proposed development accords with the ‘RV’ zoning objective.
- Proposed dwellings accord with Development Plan requirements for minimum floor areas, room widths and separation distances.
- Total public open space requirement is 4,600 sq m, divided on a 75% Class 1/ 25% Class 2 basis. In accordance with Objective DMS57B, 4,190 sq m must be provided on-site. Applicant is proposing 8,783 sq m of public open space (increased to 9,164 sq m following RFI) which is 21% of site area and in accordance with Objective DMS57B.

- All public open space comprises Class 2 open space, and no Class 1 open space is proposed. Levy should be applied in lieu of shortfall of Class 1 public open space.
- Proposal accords with housing related Guidelines.
- Childcare facility is not required.
- Proposed layout and design is generally in accordance with the Village Design Framework Plan and LAP.
- Proposal to remove and replant hedgerows to accommodate sight lines is acceptable.
- Urban Design Statement demonstrates compliance with Objective DMS03.
- No undue impacts on residential amenity anticipated.
- Proposed development would not unduly impact on the visual amenity of the surrounding area.
- Applicant proposes transferring five houses in respect of Part V obligations. Condition to be included.
- No archaeological material found, but condition regarding monitoring to be included.
- Revised proposal to provide 11 car parking spaces for the 11 existing houses at Cnoc Dubh is acceptable.
- Revised road and footpath is generally acceptable.
- Repositioning of entrance on Ballough Road is acceptable and addresses the potential impact on adjacent property.
- SuDS accounts for 9.5% of total area of public open space. Area of detention basins appears smaller than stated and Water Services Engineer recommends that the applicant confirm the area of the basins and recalculate the proportion of public open space prior to commencement.
- On balance, the SuDS proposal as it relates to public open space is considered acceptable.
- Revised site layout featuring a play area is acceptable.

- Management proposals for commercial units and car parking is acceptable.
- Provision of private amenity space is generally complaint, albeit with a marginal shortfall for four houses.
- Revised floor plans for houses include adequate storage space.
- Applicant's proposal to retain existing gas tank and maintain access is acceptable.
- Condition should be included to require undergrounding of power lines.
- Submitted Construction and Environmental Management Plan, which includes ecological mitigation measures, is acceptable.
- Location of construction management compound is acceptable.

3.3. **Other Technical Reports**

- 3.3.1. **Transportation Planning Section:** No objection, subject to conditions.
- 3.3.2. **Environment Department:** No objection, subject to conditions.
- 3.3.3. **Parks and Green Infrastructure Division:** No objection, subject to conditions.
- 3.3.4. **Water Services Section:** No objection, subject to conditions.
- 3.3.5. **Heritage Officer:** No objection, subject to conditions.

3.4. **Prescribed Bodies**

- 3.4.1. **Irish Water:** No objection.

3.5. **Third Party Observations**

- 3.5.1. Four observations were made at application stage and following receipt of further information. The issues raised in the observations include the following:
 - Lack of car parking.
 - Query regarding existing flogas cylinder on the application site which provides gas to 11 existing houses in Cnoc Dubh.

- Concern regarding possible recurrence of flooding of rear gardens, which was previously resolved by the builder putting clay hills on application site.
- Loss of privacy.
- Traffic issues due to location of proposed entrance and road width.
- Visual impact of proposed entrance.
- Construction noise, lighting and traffic impacts.
- Lack of school spaces and public transport.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. **Reg. Ref. F06A/1108/E1:** Extension of duration granted for Reg. Ref. F06A/1108 until 31st December 2014.
- 4.1.2. **Reg. Ref. F07A/0724:** Permission granted for revision to Reg. Ref. F06A/1108 to include proposed LPG compound on site.
- 4.1.3. **Reg. Ref. F06A/1108:** Permission granted consequent to PL06F.213142 (Reg. Ref. F04A/1411) for residential and commercial development consisting of 81 two-storey houses, 7 apartments, 623 sq m retail use, 445 sq m commercial use, single storey crèche, associated roads, car parking, pedestrian links, services, connections to main drainage services, boundary treatments and hard and soft landscaping.
- 4.1.4. **ABP Ref. PL06F.213142 (Reg. Ref. F04A/1411):** Outline planning permission granted for 88 two-storey houses, a village centre comprising 700 sq m retail and 480 sq m commercial uses, 7 apartments, single storey crèche, associated roads, car parks, pedestrian linkages, services and boundary treatments, and construction of a new foul sewage treatment plant and compound on lands c. 850m further east along the Ballyboghil Road.

4.2. Surrounding Area

- 4.2.1. I am not aware of any recent relevant planning history in the surrounding area.

5.0 Policy Context

5.1. Ballyboghil Local Area Plan 2012

- 5.1.1. The appeal site is located within the area to which the Ballyboghil Local Area Plan 2012 applies. I note that the duration of the LAP has been extended to 2022. A Village Development Framework Plan (VDFP) accompanies the LAP.
- 5.1.2. The LAP identifies 12 Development Areas within the village. The appeal site comprises the majority of Development Area 2 and Section 5 of the LAP sets out the following development parameters for Development Area 2:

“This large development site is located in a key location in the centre of the village with substantial road frontages both onto the Main Street and the Ballough Road. The unfinished unsightly development at Cnoc Dubh is located on this site. Planning permission exists for a mixed use development comprising 88 residential units and retail and commercial space and crèche on these lands. Only 11 residential units have been built to date out of 88 permitted units. In addition partially built structures and floor slabs have been constructed. Development has now ceased on this site leaving a very unsightly development. A site resolution plan has been prepared by Fingal County Council in order to secure and clean up this site.

The LAP proposes a less intensive development on this site, which it is considered is a more appropriate scale for this key site in the village core and which responds to the changed market conditions. Circa 57 residential units [including 10 serviced sites] are proposed within this area together with small retail and commercial services around a new civic square. It is an objective of this LAP to seek the satisfactory phased completion of appropriate scaled development. In the meantime, Fingal will seek to have the site cleaned up secured and screened and the footpath along Main Street extended along the site boundary to the junction with Ballough Road.

The following requirements shall be complied with in the future development of this area:

- Private serviced sites shall be provided for in the north- western and south -eastern parts of the site.
- Vehicular access shall be provided off Main Street and the Ballough Road. Only one vehicular access road may be provided off Main Street.
- Building heights shall be restricted to 2 storeys.
- A landscaped village square incorporating soft and hard landscaping and providing for car parking shall be provided at the junction of Main Street and Ballough Road. The design of this area shall be prepared in conjunction with the treatment of the public realm at the junction.
- Retail and commercial services shall be provided around the village square as indicated in the VDFP.
- In addition to the village square three further areas of public open space shall be provided as follows: a linear public open space inside the northern site boundary; a central public open space area and a smaller area adjoining Ballough road and houses shall be located to overlook these spaces.
- Appropriate screen planting shall be provided along the northern boundary of this Development Area.
- The existing hedgerow along the Ballough Road shall be retained and reinforced in so far as is practicable.
- Pedestrian and cycle links connecting Main Street and the Ballough Road shall be provided within the linear public open space located inside the northern site boundary.”

5.2. Fingal Development Plan 2017-2023

- 5.2.1. The site is governed by the policies and provisions contained in the Fingal Development Plan 2017-2023. The site is zoned ‘Rural Village’ (RV) and this zoning objective seeks to protect and promote the character of the Rural Village and

promote a vibrant community in accordance with an approved Local Area Plan, and the availability of physical and community infrastructure.

5.2.2. Chapter 3 of the Development Plan relates to 'Placemaking' and Section 3.5, which relates to 'Open Space', states, *inter alia*:

"For all developments with a residential component, the overall standard for public open space provision is a minimum 2.5 hectares per 1000 population. In general this shall be provided at a ratio of 75% Class 1 and 25% Class 2. In order to provide existing and future communities with adequate recreational and leisure opportunities, the Council will employ a flexible approach to the delivery of public open space and more intensive recreational/amenity facilities. It is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 10% of a development site area. The development site area cannot include lands zoned RU, GB, OS or HA."

5.2.3. This is supported by the following Objectives:

- PM52: Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.
- PM53: Require an equivalent financial contribution in lieu of open space provision in smaller developments where the open space generated by the development would be so small as not to be viable.

5.2.4. Section 12.7 sets out the development management standards for 'Open Space'. It states that Table 12.5, which is included in that section, outlines the public open space hierarchy and accessibility standards and it also states that for all developments with a residential component a mix of public open space types should be provided where achievable. A footnote to Table 12.5 states that areas not counted in the Open Space calculation include:

- Environmental Open Space, i.e. incidental or narrow pieces of open space used for the preservation of trees and or as a visual relief and screen planting e.g. along roads.
- Green corridors
- Areas of open space under high voltage electricity lines.

5.2.5. In respect of 'Quantity', Section 12.7 includes the same statement as set out in Section 3.5 (which I have noted above), with the exception that the sentence "*in general this shall be provided at a ratio of 75% Class 1 and 25% Class 2*" is omitted from Section 12.7.

5.2.6. The following Objectives are noted:

- **DMS57:** Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.
- **DMS57A:** Require a minimum 10% of a proposed development site area be designated for use as public open space.

The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities outside the development site area, subject to the open space or facilities meeting the open space 'accessibility from homes' standards for each public open space type specified in Table 12.5.

The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/ amenity facilities is not achievable. This is subject to the Regional Park meeting the open space 'accessibility from homes' standard specified in Table 12.5.

- **DMS57B:** Require a minimum 10% of a proposed development site area be designated for use as public open space.

The Council has the discretion to accept a financial contribution in lieu of remaining open space requirement required under Table 12.5, such contribution being held solely for the purpose of the acquisition or upgrading of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities subject to the open space or facilities meeting the open space 'accessibility from homes' standards for each public open space type specified in Table 12.5.

The Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities is not achievable, subject to the Regional Park meeting the open space 'accessibility from homes' standard specified in Table 12.5.

Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space.

- **DMS60:** Require the monetary value in lieu of open spaces to be in line with the Fingal County Council Development Contribution Scheme.

5.2.7. In respect of Sustainable urban Drainage Systems, the following Objectives are noted:

- **DMS73:** Ensure as far as practical that the design of SuDS enhances the quality of open spaces. SuDS do not form part of the public open space provision, except where it contributes in a significant and positive way to the design and quality of open space. In instances where the Council determines that SuDS make a significant and positive contribution to open space, a maximum 10% of open space provision shall be taken up by SuDS. The Council will give consideration to the provision of SuDS on existing open space, where appropriate.
- **DMS74:** Underground tanks and storage systems will not be accepted under public open space, as part of a SuDS solution.

5.3. Fingal County Council Development Contribution Scheme 2016-2020

5.3.1. Section 9(b) of the Development Contribution Scheme states that:

“The Fingal Development Plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. This contribution in lieu of open space will be levied at the following rates;

1. Class I Open Space - €100,000 per acre to purchase land based on the value of amenity land, plus €100,000 per acre for development costs.
2. Class II Open Space - €250,000 per acre to purchase land in residential areas, plus €100,000 per acre for development costs.

These rates may be reviewed by the Council from time to time having regard to market conditions. The contributions collected will be used for the provision of open spaces, recreational and community facilities and amenities and landscaping works – see Appendix 2.”

5.3.2. Appendix 2 includes lists of projects under the headings of ‘transportation’, ‘community & parks’ and ‘surface water (incl. flood relief)’.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal is a first party appeal, seeking the removal of condition 36 of the planning authority’s decision which requires the payment of a development contribution in lieu of 0.345 ha of public open space The issues raised in the appeal can be summarised as follows:

- Applicant accepts the calculation in the Planner’s report that the development will generate a requirement for 4,637.5 sq m of public open space, based on a potential 185.5 bedspaces, in accordance with Objective PM52.

- Drawings submitted in response to the request for further information increased the open space provision from 8,785 sq m to 9,164 sq m which is in accordance with Objective PM52.
- Objective PM52 does not distinguish between a requirement for Class 1 and Class 2 public open space. The split between Class 1 and Class 2 only arises under Objective DMS57B, when there is a shortfall in provision and the calculation of a contribution in lieu is based on a 75%:25% split.
- This issue was raised in a previous Board case PL06F.247032, where a first party appeal was submitted regarding a financial contribution in lieu of public open space in Rush.
- The Inspector's Report in case PL06F.247032 state that there is no specific requirement in the Development Plan to provide Class 1 open space as part of a development proposal, but there is a specific requirement for a financial contribution in lieu of any shortfall in open space provision to be calculated on the basis of 75% Class 1 / 25% Class 2.
- While the appeal PL06F.247032 was submitted under the previous Development Plan, the wording of Objective PM52 is the exact same as Objective OS02 under the previous Plan.
- Objective DMS57B requires min. 10% of a site to be designated for use as public open space. This results in a requirement to provide 0.419 ha. 0.9 ha of open space has been provided on site which accounts for 21.4% of the site area and the proposal accords with Objective DMS57B.
- Planning Authority has incorrectly applied section 9(b) of the Contribution Scheme in this instance.
- Although Condition 11 is not the subject of the appeal, it is relevant. Surface water drainage design has been revised in response to Condition 11 and a drawing has been submitted with the appeal. The drawing indicates a shallow 1:4 slope on the detention basins, with water from a 30 year storm event placed underground and the balance to 100 year located above ground. FCC Engineer has verbally agreed that this is an acceptable solution.

- Revised surface water design reduces the area of SuDS from 9.5% of open space to 6.7% of open space, which is in accordance with Objective DMS73, which allows a maximum of 10% of open space provision to be taken up by SuDS.
- Planner's Report noted that 9.5% of the area of public open space is represented by SuDS and noted that this SuDS proposal was acceptable.
- SuDS Manual Ciria Report C753 notes in Chapter 22 that where detention basins are designed appropriately, all of the basin area can be used as a recreational or other amenity facility.
- The shallow slope coupled with the approved landscaping design will contribute in a positive manner to the delivery of open space in both the central pocket park and the village square, where they can be used as a recreational facility.
- The total provision of public open space is 21% of site area. Should the Board determine that the detention basins are not usable as open space there is still 14.3% of the site area dedicated to open space.
- Proposed development meets the design and open space requirements of the Ballyboughal LAP.
- Levy poses a significant financial burden on the developer who is seeking to provide housing and complete an unfinished housing estate. Costs could render the project unviable or reduce affordability.

6.2. Observations

6.2.1. None.

6.3. Planning Authority Response

6.3.1. The Planning Authority's response can be summarised as follows:

- The residential element will have a calculated occupancy of 185.5 bedspaces, and a total public open space requirement of 4,600 sq m (0.46 ha).

- The stated site area is 4.19 ha and 10% of this area (4,190 sq m/0.419 ha) must be provided for on the site in accordance with Objective DMS57B.
- Following submission of further information, the applicant is providing 9,164 sq m (0.9164 ha) of public open space over four areas, and this is in accordance with Objective DMS57B.
- With reference to page 76, chapter 3 of the Development Plan, the differentiation between Class 1 and Class 2 public open space arises in terms of both calculating the requirement for public open space and where there is a shortfall in public open space.
- The proposed development has a total public open space requirement of 4,600 sq m (0.46 ha), which is derived on a 75% Class 1 and 25% Class 2 basis.
- All open space within the proposed development is comprised of Class 2 open space (comprising areas less than 0.2 ha). No Class 1 open space is provided.
- Proposed development has a Class 1 open space requirement of 3,450 sq m (i.e. 75% of 4,600 sq m).
- In order to ensure the equitable provision of open space in a hierarchical manner across the County, a financial contribution in lieu of the shortfall of Class 1 open space is required.

6.4. Applicants' Response to Planning Authority Response

6.4.1. The applicant's response to the Planning Authority's response can be summarised as follows:

- Planning Authority have accepted that applicant has accorded with Objective DMS57B.
- Planning Authority quoted page 76 of the Development Plan regarding open space but failed to mention that it also states "*In order to provide existing and future communities with adequate recreational and leisure opportunities, **the Council will employ a flexible approach to the delivery of public open***

space and more intensive recreational/amenity facilities. It is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 10% of a development site area.”

[Applicant’s emphasis.]

- That extract highlights that the main objective is to ensure that public open space exceeds 10% of the development site area, which has been proven to be the case.
- The Planning Authority response suggests that the open space requirement is 75% for Class 1 and 25% for Class 2, however Objective DMS57B states that where financial contributions are accepted **in lieu of open space**, the contribution shall be calculated on the basis of 25% Class 1 and 75% Class 2.
- Therefore, according to Objective DMS57B, financial contributions can only be accepted if there is a shortfall of the 10% required total open space, which is not the case on this site.
- The Planning Authority calculations are labelled as “*payment in lieu of 3,450 sq m shortfall in public open space provision*”. As previously mentioned, a similar point was raised in case PL06F.247032, where the Inspector’s Report noted that there is no specific requirement to provide Class 1 open space, but there is a specific requirement for a financial contribution in lieu of any shortfall. There is no shortfall in public open space on this site.

7.0 Assessment

7.1. Nature of Appeal

7.1.1. Section 48(10)(b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.

7.1.2. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it was made to it in the first instance

and will only determine the matters under appeal, which is whether the terms of the Scheme have been properly applied.

7.2. Application of Development Contribution Scheme

- 7.2.1. Condition 36 states that “the developer shall pay €202,491.00 in lieu of 0.345 ha of public open space.
- 7.2.2. The first party appeal argues that the Planning Authority has incorrectly applied section 9(b) of the Contribution Scheme in this instance, as they contend that there is no requirement to provide Class 1 open space, that there is no shortfall of public open space and that the distinction between Class 1 and Class 2 only arises in circumstances where there is a shortfall in open space provision and a payment is to be made in lieu. The applicant also makes reference to the Inspector’s Report in case PL06F.247032 in support of their position. I was the Inspector in that case and am familiar with the particular circumstances of the case.
- 7.2.3. The Planning Authority’s position is that the differentiation between Class 1 and Class 2 public open space arises in terms of both calculating the requirement for public open space and where there is a shortfall in public open space.
- 7.2.4. With regard to the terms of the Fingal County Council Development Contribution Scheme 2016-2020, I note that it states that “*the Fingal Development Plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. This contribution in lieu of open space will be levied at the following rates*”. It is clear from the foregoing that, under the terms of the Scheme, a financial contribution will only arise in circumstances where the open space requirement is not being met, either in whole or in part. The fundamental issue in assessing this appeal is therefore whether or not there is a shortfall in public open space provision.
- 7.2.5. **Objective DMS57** requires a minimum public open space provision of 2.5 hectares per 1000 population, based on an occupancy rate of 3.5 persons for dwellings with three or more bedrooms and 1.5 persons in the case of dwelling with two or fewer bedrooms. Both the first party and the Planning Authority agree that this gives rise to a total public open space requirement for the proposed development of **4,637.5 sq**

m. I note that Objective PM52, including in the 'Placemaking' chapter of the Development Plan is identical to Objective DMS57.

- 7.2.6. **Objective DMS57B** also requires a minimum 10% of a proposed development site area be designated for use as public open space. It states that the Council has the discretion to accept a financial contribution in lieu of any remaining open space requirement required under Table 12.5, for the purpose of the acquisition or upgrading of small parks, local parks, urban neighbourhood parks and/or recreational/amenity facilities, subject to the open space or facilities meeting the 'accessibility from homes' standards specified in Table 12.5. It also allows for a financial contribution for the provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities is not achievable. Again, this is subject to the Regional Park meeting the 'accessibility from homes' standard specified in Table 12.5. The Objective states that where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1.
- 7.2.7. Both the first party and the Planning Authority concur that Objective DMS57B requires the provision of **4,190 sq m** of public open space (i.e. 10% of the site area of 4.19 ha).
- 7.2.8. I note that Objective DMS57B in the current Development Plan is the equivalent of Objective OS02B under the previous Development Plan, with the principal difference being that Objective OS02B referred to a financial contribution in lieu of the remaining open space requirement under Objective OS02, rather than Table 12.5 (or Table OS1 as it was under the previous Development Plan). Objective OS02 was identical to the new Objective DMS57, and the formulation of Objective OS02B would appear to make more sense than the current Objective DMS57B, as Table 12.5 sets out the open space hierarchy and accessibility standards, not the public open space requirement for development proposals.
- 7.2.9. The applicant has made reference to a previous Board decision and associated Inspector's Report under the previous Fingal Development Plan 2011-2017 (Ref. PL06F.247032), and as noted above, I was the Inspector in that case. In that case I considered that there was no specific requirement in the Development Plan to

provide Class 1 open space as part of a development proposal, but that there was a specific requirement for a financial contribution in lieu of any shortfall in open space provision to be calculated on the basis of 75% Class 1/ 25% Class 2. My assessment, and the Board's decision, ultimately related to the issue of whether there was a shortfall in total public open space provision or not.

7.2.10. In this case, the Planning Authority is relying on the following statement on page 76 of the current Development Plan, within the 'Placemaking' chapter, which was not in the previous Development Plan:

"For all developments with a residential component, the overall standard for public open space provision is a minimum 2.5 hectares per 1000 population. **In general this shall be provided at a ratio of 75% Class 1 and 25% Class 2.** In order to provide existing and future communities with adequate recreational and leisure opportunities, the Council will employ a flexible approach to the delivery of public open space and more intensive recreational/amenity facilities. It is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 10% of a development site area. The development site area cannot include lands zoned RU, GB, OS or HA." [Emphasis added.]

7.2.11. I note that the same statement is included within Section 12.7, which sets out the development management standards for the quantity of public open space to be provided, with the exception that the sentence "*in general this shall be provided at a ratio of 75% Class 1 and 25% Class 2*" is omitted.

7.2.12. Notwithstanding what is stated in the body of the 'Placemaking' section of the Development Plan, the principal Development Plan Objectives relating to the quantity of public open space required are DMS57, DMS57A and DMS57B, as outlined above. It is clear to me, from my reading of the Objectives, that the issue of Class 1 and Class 2 public open space only arises when the Planning Authority is accepting a financial contribution in lieu of open space.

7.2.13. As with my previous assessment of case PL06F.247032 under the previous Fingal Development Plan 2011-2017, I consider that there is no specific requirement in the Fingal Development Plan 2017-2023 to provide Class 1 open space as part of a development proposal, but that there is a specific requirement for a financial

contribution in lieu of any shortfall in open space provision to be calculated on the basis of 75% Class 1/ 25% Class 2.

- 7.2.14. The Planning Authority has accepted that the applicant is providing 9,164 sq m (0.9164 ha) of public open space over four areas, and has accepted that this is in accordance with Objective DMS57B. The Planning Authority has also accepted that the public open space requirement under Objective DMS57 is 4,637.5 sq m. Having regard to my conclusion that there is no specific requirement to provide Class 1 public open space, it is clear to me that the applicant has complied with Objective DMS57 and that there is no shortfall in public open space provision.
- 7.2.15. With regard to the issue of Sustainable urban Drainage Systems, and whether they can be included within the public open space provision, I note that the applicant has submitted revised proposals for the detention basins in response to Condition 11 of the Planning Authority's decision. The drawing indicates a shallow 1:4 slope on the detention basins, with water from a 1:30 year storm event stored underground and the balance to 1:100 year stored above ground. The applicant states that a named Fingal County Council Engineer has verbally agreed that the proposal is acceptable, but no documentary evidence of this agreement has been provided.
- 7.2.16. Regardless of whether or not the revised detention basin design is acceptable to the Planning Authority in compliance with Condition 11, I note that the area of public open space occupied by the SuDS measures is less than the 10% permitted under Objective DMS73. I also note that the applicant is providing 21% of the site area as public open space and that, even if the SuDS areas were discounted from the public open space provision, the applicant would still be providing 14.3% of the site as public open space, and would therefore still be compliant with Objectives DMS57 and DMS57B.
- 7.2.17. In conclusion, I consider that there is no shortfall in public open space provision. The proposal complies with both the 10% public open space requirement under Objective DMS57B and the 2.5 ha per 1,000 population requirement under Objective DMS57. Since there is no shortfall in public open space provision, I consider that the terms of the Development Contribution Scheme have not been properly applied, as the issue of a financial contribution in lieu of all or part of the open space requirement for the proposed development does not arise.

8.0 Recommendation

- 8.1. I recommend that Fingal County Council be directed to REMOVE Condition 36 on the grounds that the terms of the Fingal County Council Development Contribution Scheme 2016-2020 have not been properly applied.

9.0 REASONS AND CONSIDERATIONS

- 9.1. Having regard to:

- (a) the provisions of the Fingal County Council Development Contribution Scheme 2016-2020;
- (b) the provisions of the Fingal Development Plan 2017-2023;
- (c) the provisions of the Ballyboghil Local Area Plan 2012-2022; and
- (d) the submissions made in this appeal;

the Board considered that the proposed provision of public open space complies with the requirements under Objectives DMS57 and DMS57B, and that since there is no shortfall in the provision of public open space, the payment of a financial contribution of lieu of all or part of the open space requirement, as required under the terms of the Development Contribution Scheme, does not apply in this case. It is considered therefore that the terms of the Development Contribution Scheme have not been properly applied by the Planning Authority and Condition 36 should therefore be removed.

Niall Haverty
Planning Inspector

4th December 2017