



An  
Bord  
Pleanála

## Inspector's Report PL04.249195

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<b>Development</b>	224 no. housing units, crèche and all associated site works.
<b>Location</b>	Castle Heights, Kilmoney, Carrigaline, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	17/4176
<b>Applicants</b>	Jim Luby & Tom Rogers
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	1 <sup>st</sup> Party v. Condition
<b>Appellants</b>	Jim Luby & Tom Rogers
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22/11/17
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

- 1.1. The site, which has a stated area of 10.9 hectares, is on the southern periphery of Carrigaline approx. 1.5km from the town centre. The site forms part of a larger residential development known as Castle Heights which measures approximately 25 hectares on which 245 units of varying designs have been constructed to date with permission for a further 52 units permitted under ref. 16/5202. Access to the residential development is from the R611 to the west. The site to which the appeal refers is located to the north and east of the existing and permitted development.
- 1.2. The site is irregular in shape with falls from north to south. It is bounded by mature residential developments to the north including Ard na Ri, Hillcrest and Ros na Greine with a number of dwellings backing onto the site. Local Road L-2945 also known as Rose Hill bounds the site to the east. The lands to the east on the opposite side of Rose Hill are currently being developed for residential purposes with a roundabout recently constructed which will facilitate access both to the said lands and the appeal site.
- 1.3. There is an existing watercourse running from the north-western corner of the site which flows south eastwards into the larger stream along the southern boundary.

## 2.0 Proposed Development

The application was lodged with the planning authority on the 31/01/17 with further plans and details submitted 17/07/17 following a further information request dated 24/03/17.

As amended, a 7year permission is sought for the construction of:

- 222 no. residential units (reduced from 224 units as originally proposed) providing for 19 house types comprising 2, 3, 4 and 5 bedroom units.
- Creche
- Completion of the inner relief road which is the through road within the Castle Heights estate which will link the R611 (Carrigaline to Minane Bridge Road) to L2945 (Rose Hill) to the east at a roundabout.

Access is to be from the Kilmoney Road to the west and Rose Hill to the east.

The proposal will constitute phases 4 and 5 of the Castle Heights residential development.

The application is accompanied by:

- Planning and Design Statement
- EIS Screening letter
- Construction and Environmental Management Plan
- Engineering Report
- Road Safety Audit
- Public Lighting Design Report
- Landscape Masterplan
- Archaeological Impact Assessment
- Appropriate Assessment Screening
- Letter of Consent
- Part V Proposals

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Grant subject to 40 conditions.

Condition 2: 214 units permitted.

Condition 3: House nos. 1-8 to be omitted and the area developed as open space.

Condition 38: €284,000 special contribution towards the provision of footpath infrastructure in the area and recreation and amenity facilities.

Condition 39: €445,683.15 contribution in respect of public infrastructure and facilities benefitting development in the area in accordance with the Council's Development Contribution Scheme.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The 1<sup>st</sup> Executive Planner's report dated 23/03/17 notes that the public open space equates to 16% of the site area. 7 no. public open space areas are proposed throughout the development, all of which incorporate footpath links and local play areas. As per the Recreation and Amenity Policy the 224 units gives a points requirement of 37. The 7 no. local play areas equate to 21 points with the applicant contending that the proposed kickabout areas equate to 7 points given that grass playing pitches have an allocation of 42 point. This equates to 28 of the 37 points requirement. It is considered that the provision of local play areas as proposed actually hinder the functioning of public open space as, from experience, they are not maintained or actively used relative to conventional open space areas. They should be omitted. Conventional green areas serve a much more useful purpose to residents. A request for further information is recommended.

The 1<sup>st</sup> Senior Executive Planner's report dated 24/03/17 notes that according to the Recreation and Amenity Policy 27 points are required. A minimum of 30% of the required points are to be satisfied by the provision of onsite local facilities. This has led to a development that is characterised by local play areas located on all the significant open space areas. There still remains a deficit in the number of points identified. Furthermore, it is considered that the submission in relation to the compliance with the said policy is misleading in its calculation of the points provided on site (attributing points to grassed kick about areas). It is considered that the proposal falls significantly short of the requirements for the provision, quality and range of facilities. The layout should be revised.

The 2<sup>nd</sup> Executive Planner's report dated 10/08/17 following further information notes that 222 units gives a recreation requirement of 37 points. From a review of the revised layout relative to the original it appears that the overall proportion of green areas on site has actually decreased. It remains deficient in terms of usable public open space. It is also deficient by 16 points. The overall scheme would benefit from provision of a larger, usable open space area and in this regard unit nos.1-8 should be omitted. Whilst the 7 local plan areas equate to 21 points there is no provision in the recreation and amenity policy document for a pro-rata allocation for the kick

about areas. A credit of 6 points towards the recreation walkway is accepted leaving a shortfall of 10 points towards provision of facilities off-site. The Area Engineer has recommended a special contribution of €100,000 towards provision of a footpath link. A grant of permission subject to 38 conditions is recommended.

The 2<sup>nd</sup> Senior Executive Planner's report dated 11/08/17 following further information notes the comments of the Planner's report above. A grant of permission subject to 40 conditions is recommended.

Senior Planner and A/Senior Executive Officer reports dated 14/08/17 endorse the above recommendations.

### 3.2.2. Other Technical Reports

Public Lighting reports dated 03/03/17 & 21/07/17 refer. No objection subject to conditions.

Housing Officer in a report dated 13/03/17 has no objection.

Estates in a report dated 14/03/17 recommends further information including alterations to the open space arrangement. A 2<sup>nd</sup> report dated 24/07/17 following further information has no objection subject to conditions.

Area Engineer in a report dated 16/03/17 recommends further information. A 2<sup>nd</sup> report dated 09/08/17 recommends a special contribution of €100,000 towards the cost of a footpath (100m length x 2 metres wide x €50/m<sup>2</sup>) to allow a vital link and connectivity from the eastern side of the proposed development to Carrigaline town. It would require significant works including 3<sup>rd</sup> party lands to be set back and reinstated to allow construction.

Archaeologist's report dated 11/08/17 recommends assessment by way of condition.

### 3.3. Prescribed Bodies

Inland Fisheries Ireland in a report dated 01/03/17 recommends a schedule of conditions should permission be granted.

Irish Water has no objection subject to conditions.

### 3.4. **Third Party Observations**

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to impact on amenities of adjoining property, connectivity between existing residential and proposed development and adequacy of infrastructure and road safety.

## 4.0 **Planning History**

The planning history on the overall lands is detailed in the Council's Planning reports on file.

## 5.0 **Policy Context**

### 5.1. **Development Plans**

#### 5.1.1. Ballincollig Carrigaline Municipal District Local Area Plan, 2017

CL-R-08 – the site is with an area designated for Medium A density to include a mix of house types accompanied with appropriate landscaping. Specific arrangements shall be made for the provision and construction of an inner relief road (CL-U-10) and amenity walk (CL-U-08).

#### 5.1.2. Cork County Development Plan, 2014

Objective SC 5-2 - a) Public Open Space within Residential development shall be provided in accordance with the standards contained in 'Cork County Council Recreation & Amenity Policy', the 'Guidelines on Sustainable Residential Development in Urban Area' and 'Making Places: a design guide for residential estate development. Cork County Council Planning Guidance and Standards Series Number 2'.

b) promote the provision of high quality, accessible and suitably proportioned areas of public open space and promote linking of new open spaces with existing spaces to form a green infrastructure network.

Objective SC 5-4 - seek opportunities to improve the quality and capacity of existing recreation and amenity facilities, through initiatives with both public and private

sector (sports governing bodies, local community partnerships and private development proposals) and where appropriate the Council will use its powers under Section 48 of the Planning and development Act 2000 to require development levies to achieve the enhancement of these facilities.

Objective SC 5-5 – ensure the protection, and seek the enhancement and management of existing recreational facilities and public open space, and ensure that all new developments make adequate provision for recreational and amenity facilities in accordance with the requirements of the Council’s Recreation and Amenity Policy and having regard to the Council’s policy regarding the management of Green Infrastructure assets. It is also intended that any enhancement and management of existing public open spaces and new developments will be in accordance with the Council’s policy on Biodiversity outside Protected Areas (HE 2-3), the Council’s Green Infrastructure Strategy for County Cork (GI 2-1) and Green Infrastructure – New Developments (GI 3-1)

## **5.2. Natural Heritage Designations**

None in the vicinity of the site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The 1<sup>st</sup> Party appeal concerns condition 38, only, which stipulates the payment of a special contribution towards recreation and amenity facilities and footpath infrastructure. The submission by McCutcheon Halley on behalf of the appellant can be summarised as follows:

- The basis for the contribution is €100,000 towards the provision of a footpath and €184,000 towards a perceived shortfall in provision of on site facilities in accordance with the recreational and amenity policy requirements. The applicant has no issue with the contribution required towards the provision of the footpath link.

- The permitted development consists of 214 no. units which equates to a requirement of 35 no. recreation points.
- There is no shortfall in recreational and amenity points with reference to the Council's Recreation and Amenity Policy 2006 as:
  - The scheme, as amended following a further information request, providing for 222 no. units equates to 37 recreation points to be provided. A minimum of the 30% of points are required to be provided for on site which equates to 12 points.
  - The development, as amended, includes the provision of 7 no. local play areas, 6 no. kick about areas and an amenity walk.
  - It is submitted that the proposed kick about areas equate to 7 points with regard had to the policy allocation for grass playing pitches. The local play areas equate to 21 points. This totals 28 points which is 75% of the total requirement and considerably over the minimum requirement.
  - The amenity walk and open space based on the pro rata allocation of amenity points of 1 point per 100m<sup>2</sup> open space (the requirements for a neighbourhood play area) would provide the equivalent of 12 points. This would bring the total to 40 points which is over the total requirement, regardless of whether the development comprises 222 or 214 residential units.
- The special contribution, in addition to a general contribution towards amenity provision, constitutes a double charge and is inconsistent with the Development Contributions Guidelines for Planning Authorities, 2013. As per Table G4 of the general contribution scheme a charge is levied per m<sup>2</sup> of gross floor area for Roads and Amenity with the scheme stating that it takes account of the objectives set out by the Council for a particular area including recreational and amenity objectives. The applicant would be contributing over €147,000 towards recreation and amenity under the general contribution scheme.



- The Council has not specified any recreation or amenity facilities to justify the special development contribution. The condition does not specify the particular works as required by section 48(2)(c). The Guidelines on development contributions require a clear and explicit alignment between development contribution schemes and plan led objectives.
- Precedent is set in a number of cases where the Board has supported the omission of a special contribution comparable to the subject case. File refs. PL04.234024, PL04.238720, PL04.232465 and PL04.246853 refer.

## 6.2. Planning Authority Response

No response received.

## 7.0 Assessment

- 7.1. As the appeal is solely against condition 38 pertaining to the application of a special financial contribution, Section 48 (13)(a) the Planning and Development Act 2000, as amended, applies which requires that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal.
- 7.2. I note that Condition 39 requires a contribution of €445,683.15 in respect of public infrastructure and facilities benefitting development in the area in accordance with the Council's Development Contribution Scheme made under Section 48 (2)(a) of the Act. This condition is not subject to appeal.
- 7.3. Condition 38 requires the payment of a special contributions of €284,000 towards the provision of footpath infrastructure in the area and recreation and amenity facilities. The applicant has no objection to the contribution towards the footpath infrastructure and is specifically appealing the contribution sought towards recreational amenities. However, as the condition in its totality is subject of review, I consider it appropriate to comment on all matters arising.
- 7.4. As to when a planning authority may require the payment of a Special Contribution is covered in Section 48(2)(c) of the Planning and Development Act 2000, as amended, with Section 7.12 of the Development Management Guidelines, 2007

providing guidance with respect to same. It is clear that such a request should only be made in respect of a particular development whereby demands likely to be placed on public services and facilities are deemed to be exceptional thereby incurring costs not covered by the General Development Contribution Scheme of the Council.

Any condition imposed under this section must '*specify the particular works carried out or proposed to be carried out by the local authority to which the condition relates*'. This requirement to identify the nature / scope of the works, the expenditure involved and the basis for its calculation, including how it is apportioned to the particular development, is of relevance and includes a mechanism whereby special contributions can be refunded to the applicant in the event that the works in question are not commenced or are not completed within the required timescales.

- 7.5. The question in this appeal is whether the stipulated works can be taken to fall within the category for which a special contribution might be sought.

#### **Recreation and Amenity**

- 7.6. In terms of the contribution towards recreational amenities it appears that this condition has been imposed on the basis that the Planning Authority has determined that the proposed development fails to meet the minimum requirements of the Council's Recreation and Amenity Policy, 2006, as regards the provision of recreational and amenity facilities and, therefore, it is proposed to address this shortfall by way of a special development contribution in lieu of the provision of such facilities.
- 7.7. To put the matter in a policy context I note that objective SC 5-2 of the current County Development Plan requires public open space within residential development to be provided in accordance with the standards contained in 'Cork County Council Recreation & Amenity Policy', the 'Guidelines on Sustainable Residential Development in Urban Area' and 'Making Places: a design guide for residential estate development. Cork County Council Planning Guidance and Standards Series Number 2'. It is also an objective (SC5-4) to seek opportunities to improve the quality and capacity of existing recreation and amenity facilities, through initiatives with both public and private sector (sports governing bodies, local community partnerships and private development proposals) and, where appropriate, the

Council will use its powers under Section 48 of the Planning and development Act 2000 to require development levies to achieve the enhancement of these facilities.

- 7.8. Accordingly, I would refer the Board to the Cork County Council Recreation and Amenity Policy, 2006 and, in particular, to Appendix A of same which sets out the minimum criteria with regard to the provision of recreational facilities as part of new housing developments. This states that recreational facilities are to be provided at a rate of '1 point per 6 no. housing units' with facilities such as neighbourhood play areas, tennis courts and playing pitches being awarded a points value. A minimum of 30% of the points value is required to be satisfied by the provision of local facilities on site with the remainder of the points requirement to be addressed by way of the provision of facilities either on site or off-site at an agreed location. Where deemed appropriate, a cash equivalent may be accepted to enable the Local Authority to provide some of the recreational facilities and, in these instances, the monies raised are only to be spent on the provision of recreational facilities to serve the development from which the cash equivalent has been raised.
- 7.9. The development as permitted allows for 214 units, only, with house unit numbers 1-8 to be omitted and the area to be used solely for public open space. Conditions 2 and 3 of the planning authority's decision to grant permission refer in this regard. The said 214 units equate to a 'points' requirement of 35.6.
- 7.10. As per the details provided on the Site Plan (drawing no. 16052/P/003) and the Landscape Masterplan (drawing no.16454-2-100 REV A) submitted by way of further information 7 open space areas are to be provided in which local play areas are delineated. Kickabout areas are delineated in 6 of the 7. A further open space is required to be provided with the omission of 8 units as a consequence of condition 2 providing for the expansion of the amenity provision in this area.
- 7.11. With regard to the points value table in Appendix 1 of the Council policy I submit that the 7 local play areas to be provided would total 21 points. An allowance is considered appropriate for the area to be developed as open space on foot of the requirements of condition 2 and I recommend that the points value for a further local play area to be reasonable based on the nature of the proposed provision elsewhere. This would bring the points value to 24.

- 7.12. An amenity walk in the south-eastern/eastern section of the site, tying into the provision on the adjoining lands to the west, is also proposed. Such provision would advance Local Area Plan objective CL-U-08. The planning authority assigns a points value of 6 to same although the basis for same is unclear. The applicant considers that the points for the open space through which the walk will be developed should be based on a pro rate allocation of 1 point per 100 sq.m. equivalent to a neighbourhood play area which would result in 12 points. There is little, if any guidance in the relevant recreation policy as to account for such type provision but it is reasonable that there is some flexibility in the scheme's application. As the said space is delineated as a kickabout area on the relevant plans I recommend that it should be assessed in the context of its delineated purpose, (which I will deal with below) and that the planning authority's allocation of 6 points be applied for the amenity walk element. This brings the points value to 30.
- 7.13. There is also a lack of agreement between the applicant and the planning authority as to the status of the proposed kickabout areas. The applicant suggests a points allocation based on that assigned to a playing pitch 0.8 hectares in size, which would result in a proportionate allowance of 7 points (c.1330 sq.m.). The basis for the area of a pitch at 0.8 hectares is that as accepted under planning reference 15/6813. I would note that a pitch is an area which would be marked, provided with goal posts, and perhaps drainage, and managed so as to be in a usable condition for as many months of the year as possible. A kick-about area is different, and would likely require no more than grass being cut on a reasonably regular basis. As such an allowance analogous to a pitch is not considered reasonable. However, I accept that the said areas would provide a recreational amenity for residents and should be awarded some points. I suggest that 1 point equivalent to that for a neighbourhood play area to be reasonable. This would give a points value of 6. This would give an overall points value of 36 thereby meeting the requirement. Were the allowance for the kickabout areas be omitted the scheme would have a points value of 30 which exceeds the minimum 30% on site provision (30 points equivalent 83%).
- 7.14. Appendix 'A' of the Recreation and Amenity Policy is clear that a minimum of 30% of the points requirement is to be satisfied through the provision of on-site facilities whereas the remainder could be met by the provision of facilities either on-site or off-site at an agreed location. It would appear that the option of a 'cash equivalent'

towards any shortfall in the points allocation is intended to be the exception rather than the rule and in this respect I note that Section 5.5.9 of the Development Plan specifically states that a financial contribution to the Council, in order to enable it to make appropriate alternative arrangements in lieu of the provision of the required facilities by the developer, is only to be accepted in exceptional circumstances.

- 7.15. The special contribution applied in this instance is for the shortfall of 10 points at a rate of €18,400 per point with no detail provided as to the source of this financial requirement. Such an omission is contrary to the recommendations of the Development Management Guidelines (DOEHLG 2007) as set out in Section 7.12.
- 7.16. The applicant has submitted that the inclusion of the special development contribution essentially amounts to double-charging on the basis that the contribution sought by Condition No. 39 pursuant to the General Development Contribution Scheme also includes for the collection of monies towards the provision of recreation and amenity facilities. It is claimed that the combination of the special and general development contributions towards recreation and amenity facilities is disproportionately high.
- 7.17. Although requested the planning authority has not provided any details of recreation and amenity projects which are specific to the proposed development towards which the contribution is to be assigned, the projected costs for same and the basis of the calculation including how it is apportioned to the proposed development and whether due cognisance has been given to the application of costs to other future development.
- 7.18. Having reviewed the submitted information, I would tend to concur with the applicant that the special development contribution could at least be perceived as 'double-charging' for the provision of recreational and amenity facilities. There is no evidence to suggest that the contribution would be towards specific exceptional costs in providing recreational amenities not covered by the general contribution scheme. I note that the latter scheme, whilst stating that it reflects the recreational amenity objectives of the County Development Plan and provides for a levy for amenity, does not provide any detailed analysis of what facilities are included within the calculations or the amounts required to provide such facilities in the future. It is reasonable to surmise that projects that may be pursued would be for the wider community benefit. I

also note that Appendix 1 of said scheme details the type of development where special contributions would be levied and the basis for their calculation. Residential developments are not listed.

- 7.19. The Development Contribution Guidelines for Planning Authorities, 2013 state that the practice of double charging is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing planning gain in an equitable manner. In the absence of any detailed justification and costings for additional recreational and amenity facilities necessary to accommodate the needs of future residents of this development, I would consider that the application of a special development contribution would constitute double charging for such facilities where the Development Contribution Scheme in place already contains an element for the provision of amenity facilities. I therefore recommend its omission.

### **Footpath**

- 7.20. Much the same difficulty arises with the special contribution towards a footpath along the road forming the eastern boundary of the site providing connectivity towards Carrigaline town. The road is known as Rose Hill (L2945). As per the Engineering Report dated 09/08/17 following the further information it is stated that the contribution is required towards the cost of same which would require significant works including 3<sup>rd</sup> party lands to be setback and reinstated to allow construction. A distance of 100 metres calculated at €50/m<sup>2</sup> is detailed. It is not entirely clear as to the 100 metre stretch of road to which the contribution refers and may possibly pertain to the stretch of local road to the north of the roundabout tying in with the footpath to be developed into the estate at this point.
- 7.21. As noted on inspection the lands to the east of the local road are undergoing development for residential purposes with a new roundabout constructed onto which the proposed development will access. The lands subject of the appeal have been zoned for residential purposes for a period of time dating back to at least the previous development plan for the area and prior to the drawing up of the current Development Contribution Scheme. I note that the proposed footpath would not be specific to the current scheme nor exceptional and will benefit both other recent residential development in the immediate vicinity and the wider community. I consider that such financial requirements would be better incorporated into the

general contribution scheme and adopted in accordance with the procedures set out in Section 48 of the Act. In this regard I also note that there is provision for the adoption of further schemes in respect of different parts of the functional area of the Planning Authority under Section 48(2) a of the Act.

7.22. In conclusion I consider that the contribution does not meet the parameters in terms of specific exceptional costs and I recommend its omission.

## 8.0 Recommendation

Having regard to the information on the file, the grounds of appeal, the responses thereto and the assessment above I recommend that the Board directs the PA to **REMOVE** condition 38 and the reason therefor.

### REASONS AND CONSIDERATIONS

It is considered that the planning authority has not demonstrated that there are specific exceptional costs in terms of the provision of recreation and amenity facilities and footpaths arising from the proposed development that would benefit the proposed development in this instance. Therefore, it is considered that the special financial contribution as proposed by the planning authority for such facilities does not come within the scope of section 48(2)(c) of the Planning and Development Act, 2000, as amended, and accordingly, would be unwarranted.

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**Pauline Fitzpatrick**

**Inspectorate**

**May, 2018**

