



An
Bord
Pleanála

Inspector's Report

ABP-300194-17

Development	Permission for development of a residential scheme consisting of the demolition of 11 no. residential units and the construction of 164 no. residential units. The development will also consist of the construction of part of the Planning Scheme's Druid's Glen Road.
Location	Site of 5.295 ha approximately at Beech Park, Cabinteely, Dublin 18, Loughlinstown, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D15A/0385
Applicant(s)	O' Flynn Capital Partners
Type of Application	Permission
Planning Authority Decision	To Grant Permission subject to conditions
Type of Appeal	First Party v. Conditions
Appellant(s)	O' Flynn Capital Partners
Observer(s)	Transport Infrastructure Ireland
Inspector	Erika Casey

1.0 Site Location and Description

- 1.1. The subject site is located off the N11 and currently accommodates a number of vacant detached dwellings. The site has an area of 5.295 ha and is located within the Cherrywood Strategic Development Zone. Part of the lands (0.75ha) are located within Development Area 5 of the Cherrywood Strategic Development Zone (SDZ) Planning Scheme area. The balance of the site (4.48ha) is located within Strategic Development Zone, but outside the Planning Scheme boundary.
- 1.2. The site is bound by a petrol station to the north, the N11 to the east, Sunnyhill Park to the south and the Cabinteely Stream and open space to the west.

2.0 Proposed Development

- 2.1. The development as applied for comprised:
- The demolition of 11 residential units and ancillary structures;
 - The construction of a residential scheme comprising 164 units including 88 houses and 76 apartments;
 - The construction of part of the Cherrywood Planning Scheme's Druid's Glen Road (also known as P to Q) to its connection with the western boundary of the subject site for a distance of approximately 158 metres from its connection to the N11. This includes the provision of up to 30m of the Druid's Glen Road bridge comprising one complete and 2 no. partial bridge abutments to the western boundary of the site and the diversion of approximately 40 metres of the Cabinteely Stream;
 - Works to the N11 to facilitate the construction of the junction with the Druid's Glen Road.
- 2.2. On foot of a further information request issued on the 16th of December 2016, and revised proposals submitted by the applicant on the 14th of June 2017, a number of amendments were made to the scheme. The revised layout provided for:
- The construction of a residential scheme comprising 230 units including 83 houses and 147 apartments;
 - The construction of the Cherrywood SDZ Planning Scheme's Druid's Glen Road (P to Q) from its connection to the N11 and all associated development and infrastructure works including part provision of the Druid's Glen Road bridge.

- 2.3 At Clarification of Further Information Stage requested on the 10th July 2017, and responded to on the 22nd September 2017, a further modification to the scheme was made to provide for a crèche facility within the development. The proposed crèche has an area of 212 sq. metres. In order to facilitate the development of the crèche, there were some amendments to the apartment layout, resulting in a reduction of the total number of residential units proposed to 226 units.
- 2.4 The development proposed and permitted is, therefore, **226 residential units** including 83 houses and 143 apartments and a commercial crèche with an area of 212 sq. metres.

3.0 Planning Authority Decision

3.1. Decision

- 3.3.1 To Grant Permission subject to 73 no. conditions. Conditions of note pertinent to this appeal are:

Condition 33:

“With respect to the area outside the Cherrywood Planning Scheme the applicant has included poorly accessible public space dominated by SuDs, grass verges and open space in a flood zone which is likely to be unusable for much of the time in their calculation of Public Open Space. The applicant has not provided adequate provision for public open space as per section 8.2.8.2 – Communal Open Space of the CDP 2016-2022. Therefore, the applicant shall make a payment of €1,000 per dwelling unit as a special contribution, in addition to the Development Levy Contribution as a special contribution, as per Section 48.2 (c) of the Planning and Development Act, 2000, in lieu of the provision of public open space. This contribution is to cover specific exceptional costs in respect of the provision of open space and landscaping works which benefit the proposed development and shall be provided on the completion of phase 1 of the permitted development or as otherwise agreed in writing with the Planning Authority. The contribution will be used to fund improvements to Kilbogget Park which is within walking distance of this communal development. This is in accordance with Section 8.2.8.2 Public/Communal Open Space – Quantity’ of the DLR County Development Plan 2016-2022. The levy is applied on all of these units which amounts to a special contribution amount of €230,000.”

Condition 68:

“Payment of €50,276.87 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of surface water public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14th December, 2015.”

Condition 69:

“Payment of €1,151,373.72 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and facilities benefitting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14th December, 2015.”

Condition 70:

“Payment of €747,382.22 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of Community and Parks Public Infrastructure, Facilities and Amenities benefitting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14th December, 2015.”

Condition 72:

“With respect to the area outside the Cherrywood Planning Scheme that a financial contribution shall be paid by the proposer to the Council towards the cost of the extension of Luas Line B from the Sandyford Depot to Cherrywood, namely Luas Line B1. The rate of contribution payable in respect of this development at current contribution rates is €1,581,927.68.”

Condition 73:

“No development on foot of this permission shall commence until security for the provision and satisfactory completion of services (including roads, footpaths, open spaces, public lighting, sewers, watermains and drains) in accordance with the plans and particulars lodged with the application, has been given by:

- (a) Lodgement with the Council of an approved Insurance Company Bond the sum of €808,500, which shall be kept in force by the developer until such time as Roads,*

Open Spaces, Car Parks, Sewers, Watermains and Drains are completed to the satisfaction of the Council or/...

(b) Lodgement with the Council of a cash sum of €493,700 to be applied by the Council at its absolute discretion if such services are not provided to its satisfaction on the provision and completion of such services to standard specifications.”

3.2. Planning Authority Reports

3.2.1. Planning Reports (16.12.2016, 10.07.2017 and 18.10.17)

The planner's reports are extensive. Issues raised that are relevant to the subject appeal relate primarily to the proposed landscape design and public open space provision. The report dated the 18.10.2017 notes:

- The amenity value of the open space is restricted due to a number of factors including, contours, flooding etc. For this reason, it is considered appropriate to require a contribution to upgrade Kilbogget Park.

3.2.2. Other Technical Reports

There are a number of other technical reports relating to the development throughout all stages of the application including Further Information and Clarification of Further Information Stage from the Cherrywood Development Agency, Drainage Planning, Housing Department, Environmental Health Officer, Parks and Landscape Services Section and Transportation Planning Section, Road Design and Building Control. The majority of these reports raise no issues of relevance to the subject appeal. The following reports however, are of note:

Housing Department (23.06.2017): Notes that the proposed transfer of 23 units on site is acceptable, subject to condition in relation to details to be agreed.

Parks and Landscape Services (17.10.2017): This report prepared in response to the submission by the applicant in relation to the Clarification of Further Information request notes the following key points in relation to the landscape proposals:

- The proposed layout and in particular the re-terracing of the site will lead to poor quality and poorly overlooked public open space. In particular, there is likely to be significant negative impacts on the Lehaunstown Valley with steep slopes and retaining walls to be formed throughout. Access and usability of the public open space is likely to be very limited with the largest of these public open spaces located within a flood zone.

- The layout does not respond well to its surroundings and makes poor use of the existing sloped nature of the site. The public open space is not easily accessible or useable, therefore, leading to exclusive spaces with little passive supervision.
- The layout is unlikely to add a distinctive public realm and variation of activities for future residents.
- SuDS proposals as shown in the open space to the northwest of the site will dominate this area.
- The applicant has calculated incidental and unusable open space as part of the provision of public open space. We calculate the current public open space provision as nil. However, the larger area of public open space to the south ties in with the proposed greenway and provides some amenity to the residents. We calculate the public open space requirements under the CDP 2016-2022 at 7,665 sq. metres.

3.3. Prescribed Bodies

- Reports received from Inland Fisheries, Irish Water, Transport Infrastructure Ireland, An Taisce, Department of Arts and Heritage and the Gaeltacht. No issues raised pertinent to the subject appeal with the exception of TII.

Transportation Infrastructure Ireland (18.11.2016):

- Notes that the site is located within the Section 49 levy scheme for the Luas Line B1 and that the development should be assessed in accordance with the scheme.

3.4. Third Party Observations

- 3.4.1 A number third party observations were received. No issues pertinent to the subject first party appeal in relation to development contributions.

4.0 Planning History

Planning Authority Reference DZ16A/0587/Appeal Reference PL06D.247915

- 4.1 This application related to part of the current application site. The development comprised the demolition of 6 no. units and the construction of 34 no. residential units; the construction of part of the Cherrywood Planning Scheme Druid's Glen Road from its connection with the western boundary of the subject site to its connection to the N11.
- 4.2 A split decision was issued by An Bord Pleanála in July 2017 to grant permission for the construction of part of the Cherrywood Strategic Development Zone Planning Scheme's

Druid's Glen Road, together with works to provide for Option 1 of the Druid's Glen Bridge. Refuse permission for demolition of six dwelling houses and construction of a residential development of 34 residential units, together with associated site works, including the construction of a road from the proposed Druid's Glen Road to serve the residential development.

5.0 Policy Context

5.1. Development Plan

5.1.1 The subject site is located partially within the administrative area covered by the Dun Laoghaire Rathdown County Development Plan 2016-2022 and partially within the boundary of the Cherrywood SDZ Planning Scheme.

5.1.2 The majority of the site (4.48 ha) is outside the Planning Scheme area and is primarily zoned *Objective A: To protect and or improve residential amenity*. There are two areas to the west of the site that are zoned *Objective F: To preserve and provide for open space with ancillary active recreational amenities*.

5.1.3 **Section 8.2.8.2** of the plan sets out guidance regarding **Public/Communal Open Space Quantity**. This states that for all developments with a residential component - 5+ units - the requirement of 15 sq. m. - 20 sq. m. of open space per person shall apply based on the number of residential/housing units. For calculation purposes, open space requirements shall be based on a presumed 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. A lower quantity of open space (below 20 sq. m. per person) will only be considered acceptable in instances. Further guidance is set out with respect to the design, accessibility, permeability etc. of such open space.

5.1.4 With regard to financial contributions in lieu of open space, the plan states:

“Where a new development is located in close proximity to (within 1 km and/or 10 minute walking distance) an established high specification public park, the Planning Authority may, in certain cases, relax standards and seek a financial contribution in lieu of providing the full quantum of open space. Examples may include sites where stands of existing mature trees are required to be retained for amenity value that would otherwise compromise the usability of open space provision.

In exceptional circumstances where, in the view of the Planning Authority, proper planning and sustainable development would be facilitated without the delivery of the

‘normal’ open space requirement, a financial contribution in lieu of providing the full quantum of public open space may be made. This will take the form of a contribution on a per capita basis towards capital investment in creating and/or upgrading local parks and spaces and revenue costs for the maintenance of these spaces.”

5.2 Cherrywood Planning Scheme 2014

5.2.1 Approximately 0.75 ha of the site is located within the Cherrywood SDZ Planning Scheme boundary. It is located within Development Area 5 – Druid’s Glen which is identified as a first growth area under section 7.2 of the Scheme. The lands within the SDZ Planning Scheme are designated Green Infrastructure. This is defined as:

“A network and hierarchy of green infrastructure will be incorporated throughout the area to form a legible, accessible and pleasant outdoor environment. This is considered to be a crucial infrastructure requirement of the Planning Scheme along with the Physical Infrastructure.”

5.2.2 The Druid’s Glen Road (Q to P3) also runs through the subject lands and the application proposes the construction of part of this road infrastructure. Table 7.1: Roads Infrastructure for First Growth Area states that permission for the Druid’s Glen Road must be in place prior to any development being granted in Development Area 5.

5.3 Development Contributions Guidelines for Planning Authorities 2013

5.3.1 The guidelines state:

“Planning authorities are also required to ensure that their development contribution schemes appropriately promote the development of areas prioritised in their core strategies required under the Planning and Development (Amendment) Act 2010.

Examples of the approach above would include:

Incentivising activity through lower development contributions in the areas prioritised for development in the core strategy (with a complementary increase in the rate outside of these areas to ensure no shortfall in the council’s budget). In this regard authorities should be guided by the settlement hierarchies set out in their Development Plans, with preference given to National Spatial Strategy Gateways and Hub towns, Strategic Development Zones (SDZ’s), Docklands as well as other towns designated for significant future growth in the relevant Regional Planning Guidelines.”

5.4 **Section 48 Development Contribution Scheme 2016-2020**

5.4.1 This document was adopted in December 2016 and all decisions to grant planning permission on or after the 1st of January 2016 will be subject to the conditions of the Scheme. The stated levies are:

- Non residential development and domestic extensions **€74.10** per sq. metre.
- Residential developments countywide **€8,580** per unit.

5.4.2 Section 10 of the scheme set out exemptions and reductions including:

(f) Social housing units, including those which are provided in accordance with an agreement made under Part V of the Planning & Development Act, 2000, as amended, or which are provided by a voluntary or co-operative housing body, which is recognised as such by the Council.

g) Replacement dwellings or replacement commercial developments will be charged 50% on a like for like basis. In the case of demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy.

5.4.3 It is stated under section 17 of the Scheme that a special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020 are incurred by the Council in the provision of a special 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.

5.4.4 Appendix II sets out the projects that the Section 48 Scheme will fund. Class 1 relates to community and parks and provides for the development of a sports hub at Kilbogget Park.

5.5 **Section 48 – Cherrywood Planning Development Contribution Scheme 2017-2020**

5.5.1 This Scheme was adopted on the 12th June 2017. The applicable rates are **€12,588** per residential unit and **€115.58** per sq. metre of commercial development.

5.5.2 Whilst part of the site is located within the SDZ Planning Scheme area, it is noted that no development in this area is proposed other than the Druid's Glen Road.

5.6 Section 49 Supplementary Development Contribution Scheme – Extension of LUAS Line B1 – Sandyford to Cherrywood.

5.6.1 This Scheme as adopted on the 13th of May 2013.

- The residential contribution rate is **€351,774** per gross site hectare.
- The commercial contribution rate is **€802,047** per gross site hectare.

6.0 The Appeal

6.1. Grounds of Appeal

- States that the terms of the Section 48 and Section 49 Development Contribution Schemes have not been properly applied by the Planning Authority. Appeal is, therefore, made under section 48(10) (b) of the Planning and Development Act.
- Notes guidance set out in the Development Contribution Guidelines for Planning Authorities 2013. This states that activity should be incentivised through lower development contributions in areas prioritised for development including Strategic Development Zones. It is considered in the context of this guidance, that DLRCC has overestimated the quantum of development contributions payable.
- Notes that the Section 48 and Section 49 levies have been based on 230 residential units. However, only 226 units are proposed and, therefore, any financial contributions must be based on the lower number.
- States that section 10 of the Development Contribution Scheme provides for a number of exemptions including social housing units, and that the levy rate imposed should be further reduced to reflect the fact that 23 units will be allocated under Part V.
- The subject scheme involves the demolition of 11 houses. DLRCC makes no allowance for replacement dwellings or demolition. Having regard to Section 10 (g) of the DLRCC Section 48 Development Contribution Scheme, it appears that replacement dwellings are subject to development contributions at a rate of 50% under this scheme.
- Allowing for the correct number of units, minus an offset for demolition and reduction for social housing units, the base rate for calculations is, therefore, 197.5 units. The following levies should, therefore, apply:

- Condition 68: €441,118.
 - Condition 69: €1,010,319.90
 - Condition 70: €655,821.62
- States that the area of the proposed crèche is 212 sq. metres and not 308 sq. metres as calculated by Dun Laoghaire Rathdown County Council.
 - Condition no. 33 was imposed as Dun Laoghaire Rathdown County Council were of the view that public open space provided is likely to be unusable. The applicants aim has been to produce an exemplary urban environment with high quality open space. The development provides for public open space totalling 1.1 ha which is well above the requirements of 0.07665 ha. The condition should be deleted in its entirety as the proposed open space is appropriate and in compliance with the Objective F zoning – *to preserve and provide for open space with ancillary active recreational amenities.*
 - Consider that condition 33 is double counted with condition no. 70 which is for the stated purpose of “*the provision of the Community and Parks Infrastructure, Facilities and Amenities benefiting development in the area of the Authority*”.
 - State that it is unclear as to how the Section 49 levy has been calculated rendering the levy unsound. The total application site comprises 5.23 ha. Excluding the land within the SDZ (0.75 ha), the application site is 4.48 ha. Excluding the land in the ownership of Dun Laoghaire Rathdown County Council forming part of the N11, the total area subject to Section 49 Development contributions is 4.33 ha.

6.2. Planning Authority Response

- Government guidelines issued in 2013 resulted in a reduction in Section 48 contributions of over 26% and since then, there have been no increases applied.
- **Section 49 Luas Condition 72:**
 - The Scheme applies the contribution on a per gross site area basis. The site area as measured by the drawing office came to 4.497 hectares. This area does not take account of DLRCC lands forming part of the N11. An adjustment of 0.134 hectares would reduce the area to 4.367 ha.
 - The multiple for residential development is €351,774. This has been the rate since 2010 when the Council decided to freeze contribution rates at that time.

The rates as quoted in the document in appendix C of the appeal relate to the 2003 original scheme which quotes the original rate of €250,000 per hectare which is incorrect in this case. This was revised on an annual basis in accordance with paragraph 21 of the Scheme by 5% interest rate for each year. The 2010 figure is €351,774.

- **Section 48 (2) (c) Condition 33:**

- The Parks Department raised the issue of the usability and general quantum of the public open space. It is policy for such a contribution to be applied particularly when it is adjudged that there is no beneficial use arising from the open space. It is noted that Kilbogget Park is within close proximity to the proposed development. It should also be noted that condition 33 addresses the “on site” deficit of open space and that condition 70 addresses the countywide contribution, two separate matters not involving any duplicity.

- **Section 48: Condition 68, 69 and 70:**

- The applicant has indicated that the quantum of residential units in this case is 226 (and not 230 as was earlier indicated). Therefore, the council will apply the contributions on that basis allowing for a deduction of 5.5 units (11 replacement units). Net number of units where contributions will apply is 220.5. In assessing units in the first instance, no account is taken for social units at the time of assessment, but an exemption for such units will be applied in accordance with the Scheme where this arises. The Planning Authority cannot anticipate the detail of Part V agreements and, therefore, cannot apply exemptions in such cases. The re-measured area of 212 sq. m. in respect of the crèche facility will be applied.

6.3. Observations

Transportation Infrastructure Ireland (27.11.2017)

- The points raised in the observation relate to the national road network and are not relevant to the subject appeal in relation to development contributions.
- States that the proposed development falls within the area covered by the Luas Line B1 Section 49 Scheme. TII expects the planning authority to assess this proposal in accordance with this scheme.

7.0 Assessment

7.1 Introduction

7.1.1 The issues in this appeal relate to whether the terms of the current Section 48 Development Contribution Scheme 2016-2020 and Section 49 Supplementary Development Contribution Scheme – Extension of LUAS Line B1 – Sandyford to Cherrywood have been properly applied. In this regard, the following conditions have been appealed:

- Condition 33
- Condition 68
- Condition 69
- Condition 70
- Condition 72

7.1.2 As the appeal against these conditions is under Section 48(10)(b) of the Planning and Development Act 2000, as amended, where the applicant considers that the terms of the relevant development contribution scheme have not been properly applied, 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.

7.1.3 It is noted that the applicant has also appealed condition no. 73 which relates to the quantum for an approved Insurance Company Bond and or cash sum as security for the provision and satisfactory completion of services. This bond is not covered by current Section 48 Development Contribution Scheme 2016-2020 nor the Section 49 Supplementary Development Contribution Scheme – Extension of LUAS Line B1 – Sandyford to Cherrywood. In this regard, the provisions of section 48(10)(b) of the Planning and Development Act 2000 do not apply to the appeal against this condition.

7.1.4 If the Board is minded to consider the appeal against this condition, it could be determined as a normal planning appeal against a condition under section 37 of the Planning and Development Act. If the Board do consider the appeal against this condition, having regard to section 139 (c) of the Act, due to the nature of the appeal, I am satisfied that the consideration of the proposed development 'de novo' by An Bord Pleanála would not be warranted in this case.

7.2 Condition 33

- 7.2.1 This condition requires the payment of €1,000 per dwelling unit as a special contribution as per section 48.2 (c) of the Planning and Development Act, 2000, in lieu of the provision of public open space. It is stated that the contribution will be used to fund improvements to Kilbogget Park.
- 7.2.2 It is understood from the Planner's Report that this condition was imposed due to concerns from the Park's Department regarding the quality and usability of the public open space within the development. The Park's Department stated that the Public Open space is dominated by SuDS, grass verges and is in a flood zone and thus, is likely to be unusable for much of the time. They acknowledge that amenity is provided in the larger public open space to the south and in this regard, the levy should be reduced by 50% to €1,000 per dwelling.
- 7.2.3 The current County Development Plan sets out quantitative standards for public open space provision. The Park's Department in their report dated 17.10.2017 stated that, based on these standards, the public open space requirement is 7,665 sq. metres. They state however, that they calculate the current public open space provision in the development as nil. The Planner's report at Further Information Stage (10.07.2017) noted that it was not considered reasonable to conclude that the public open space provision is nil. However, in the final report dated 18.10.17, they stated that, as the amenity value of the open space is restricted, the additional levy should be imposed. It is submitted by the applicant that this condition should be omitted and that the development provides for high quality public open space.
- 7.2.4 A detailed landscape masterplan for the site has been submitted with the application. It details that the scheme draws on and reflects the envisaged amenity of the linear parks of the Lehaunstown Valley and Druid's Glen Buffer. A linear strip of open space is provided along the western boundary of the site adjacent to the Cabinteely Stream. The layout will provide for direct connection to proposed open space on the adjoining lands within the Cherrywood SDZ Planning Scheme lands. The most significant area of public open space is to the south west of the site with an area of 7,665 sq. metres. The location of this open space corresponds in part with the F zoning – *'To preserve and provide for open space with ancillary active recreational amenities' pertaining to the lands*.
- 7.2.5 Further ancillary areas of public open space are also provided including one to the south west of the site with an area of 1,344 sq. metres. The Dun Laoghaire Rathdown County Development Plan includes an Amenity Objective to protect and preserve trees and

woodland at this location and the landscape plan proposes the retention of the majority of trees. There are some further pockets of open space to the north of the site adjacent to the access road to the N11. There is a further small pocket park located to the north west of the site with an area of 2,175 sq. metres. This area of the site is also zoned F. These secondary spaces are somewhat ancillary, although they do provide some limited amenity.

- 7.2.6 The Landscape Design Strategy notes that a flood compensation area is to be provided within the main open space in the southwest of corner of the site. It is stated that whilst having a flood management function, the feature will function as an open informal green space with opportunity for kick-about walks etc.
- 7.2.7 Having reviewed the landscape masterplan, I note that the open space provision aligns with the parts of the lands that are zoned Objective F. Open space is concentrated along the western boundary adjacent to the stream and provides for future connections to the wider Cherrywood Green infrastructure proposals which is logical. Concerns have been raised by the Parks Department regarding the provision of a flood compensation area as part of the open space. I consider however, that this is an appropriate flood mitigation measure and that this area can be used outside of an extreme flood event as an informal amenity area.
- 7.2.8 The area of the largest and most functional of the open spaces to the south west of the site is 7,665 sq. metres. Based on the Development Plan minimum standard of 15 sq. metres of public open space per person, there is a requirement for 7,575 sq. metres of public open space ((8.3 x 3.5 x 15 = 4,357.5) + (143 x 1.5 x 15 = 3,217)). The level of public open space provision provided in this principal public open space area exceeds the standard and represents c. 14.5% of the overall site area. In addition, if the other ancillary amenity areas are taken into account, the total open space provision is c. 1.1 ha.
- 7.2.9 Whilst the constraints of the site and open space layout are noted, I generally consider the landscape plan and layout to be an appropriate response to the sites context and that it will provide a sufficient level of amenity to the future residents of the development. It is also noted that the subject site is located in very close proximity to other significant open space and amenity areas including Cabinteely Park located c. 500 metres to the north of the site and Kilbogget Park which is located to the immediate east of the site. The subject site is also located within the Cherrywood SDZ and the Planning Scheme for

the adjacent lands proposes significant green infrastructure including the Druid's Glen Valley and Ticknock Park.

7.2.10 The applicant is required to pay a significant contribution under the Section 48 levy. A portion of this is allocated to Community and Parks Public infrastructure. As noted above, the Development Contribution Scheme allocates some of this money to further upgrade works in Kilbogget Park including the provision of a new sports hub. The Contribution Guidelines for Planning Authorities 2013 specifically state that development contributions are not 'cash cows' and that there is an important balance to be struck between the funding of public infrastructure and the need to encourage economic activity. The guidelines also note that activity should be incentivised through lower development contributions in areas prioritised for development such as SDZ's.

7.2.11 In this context, having regard to the quality and extent of public open space to be provided in the development, the proximity of the site to other extensive public open space amenities and the guidance set out in the Development Contributions Guidelines, I consider the imposition of a condition requiring an additional levy in lieu of public open space under section 48.2 (c) of the Planning and Development Act 2000 to be excessive and onerous and I recommend that it is deleted in its entirety.

7.3 **Condition 68, 69 and 70**

7.3.1 These three conditions relate to the Section 48 Development Contribution Scheme 2016-2020 with respect to water infrastructure, roads infrastructure and community and parks infrastructure.

7.3.2 It is contended by the applicant that the Scheme has been improperly applied as it is based on a calculation of 224.5 residential units (230 units minus 5.5 units (applying a 50% credit or the demolition of 11 units). It is stated that the development as permitted comprises 226 units. The Scheme also provides an exemption for social housing units. Therefore, the levy should be calculated on the following basis:

- 226 units (as permitted following Clarification of Further information).
- Minus 5.5 units (exemption for demolition).
- Minus 23 units (Part V).
- Total: 197.5 units and not 230 as the generating factor.

7.3.3 The Council in their response acknowledge that the levy should be based on 226 units with an offset for demolition of 5.5 units. It is stated that no account is taken for social

units at the time of the assessment as there is no formal Part V agreement in place. As the Planning Authority cannot anticipate the detail of Part V agreement, the exemption cannot apply. It is further stated that an exemption for such units will be applied in accordance with the Scheme as this arises.

7.3.4 I would concur with the applicant that the Section 48 levy should be on the basis of 226 units as this was the total number of units permitted on foot of the submission of Clarification of Further Information. Furthermore, there should be an offset of 5.5 units in accordance with section 10 (g) of the Contribution Scheme.

7.3.5 I note, that the wording of item (f) of the Development Contribution Scheme implies that the Part V agreement has already been made. Whilst a proposal for the provision of 23 units for Part V has been made by the applicant, I understand there is no formal agreement yet in place. Condition 47 of the decision requires such an agreement to be reached with the County Council regarding Part V. I, therefore, consider that the Planning Authority's approach to this item represents a proper application of the Development Contribution Scheme.

7.3.6 Having regard to the foregoing, I recommend that conditions 68, 69 and 70 be deleted and replaced with a condition requiring the payment of a section 48 contribution calculated on the following basis:

- 226 units
- Minus 5.5 units (as per item 10 (g) of the Section 48 Development Contribution Scheme 2016-2020.

Total: 220.5 units

- Commercial Crèche: 212 sq. metres.

7.3.7 The levy rates are €74.10 per sq. metre for commercial development and €8,580 per residential unit.

220.5 * €8,580 = €1,891,890

212 * €74.10 = €15,709.20

Total = **€1,907,599.20**

7.4 Condition 72

7.4.1 This condition relates to the Section 49 Supplementary Development Contribution Scheme – Extension of LUAS Line B1 – Sandyford to Cherrywood. The rates under this scheme are:

- €351,774 per gross site hectare for residential development.
- €802,047 per gross site hectare for commercial development.

There is no reduction for demolition.

7.4.2 The applicant has stated that it is unclear how the levy rate has been calculated and that in their view the calculable area is 4.33 ha. Dun Laoghaire Rathdown have clarified that the site area as measured by their drawing office is 4.497 ha. An adjustment of 0.13 ha for the extent of the DLRCCC lands forming part of the N11 would reduce the area to 4.367 ha.

7.4.3 The resulting area is largely consistent with the applicant's calculation. It is noted that the appeal submission states that applicable levy rates are €250k per gross residential hectare and €570k per commercial sq. metre. These are incorrect, and the levies applicable are as set out above.

7.4.4 Having regard to the foregoing, I recommend that condition 72 is amended as follows:

Residential

4.367 ha minus commercial crèche 212 sq. metres = 4.3458 ha

4.3458 ha * €351,774 = €1,528,739.45

Commercial

0.0212 ha * €802,047 = €17,003.39

Total: **€1,545,742.84**

7.5 Condition 73

7.5.1 Condition 73 refers to the payment of a company bond or cash sum to ensure the satisfactory completion of roads, opens spaces etc. The amount sought under the condition are a company bond for the sum of €808,500 or cash sum of €493,700. It is understood from the calculation details that these sums are based on 230 units as opposed to 226 units.

7.5.2 Taking a pro rata reduction based on 226 units, I recommend that the bond/cash sum be reduced as follows:

$$€808,500 \div 230 * 226 = €749,439$$

$$€493,700 \div 230 * 226 = €485,114$$

8.0 Recommendation

8.1. I recommend that the Board directs the Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to:

- Delete condition no. 33 in its entirety.
- Delete conditions no. 68, 69 and 70 in their entirety and replace with a revised condition so that the amount payable under section 48 of the Planning and Development Act 2000, as amended is reduced to €1,907,599.20.
- Amend condition no. 72 so that the amount payable under section 49 of the Planning and Development Act 2000, as amended in respect of the Luas Line B1 – Sandyford to Cherrywood is reduced to €1,545,742.84.
- Amend condition no. 73 so that the amount payable is reduced to €749,439, in respect of an Insurance Company Bond or €485,114 in respect of a Cash Sum.

9.0 Reasons and Considerations

Having regard to the quality and extent of public open space to be provided in the development, the proximity of the site to significant public open space amenities and parks including Cabinteely Park and Kilbogget Park, and the guidance set out in the Development Contributions Guidelines that development should be incentivised through lower development contributions in SDZ's, the Board consider the imposition of condition no. 33 requiring an additional levy in lieu of public open space under section 48.2 (c) of the Planning and Development Act 2000 to be excessive and in this context should be deleted in its entirety.

Having regard to the nature and extent of development as proposed and as modified in the submission to the Planning Authority on the 22nd day of September 2017 and the provisions of section 10 (g) of the Section 48 Development Contribution Scheme 2016-2020 the Board considers that the terms of the Development Contribution Scheme have not been properly applied by the Planning Authority and in this regard, the amount

payable under section 48 and 49 of the Planning and Development Act 2000 as amended should be reduced accordingly.

Having regard to the nature and extent of development as proposed and as modified in the submission to the Planning Authority on the 22nd day of September 2017, the extent of Insurance Company Bond/Cash Sum should be reduced accordingly.

10.0 Conditions

Condition no. 33 to be deleted in its entirety

Conditions no.s 68, 69 and 70 to be deleted in their entirety and replaced with the following condition:

The developer shall pay to the planning authority a financial contribution of **€1,907,599.20** in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any 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 An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Condition 72 to be amended as follows:

The developer shall pay to the planning authority a financial contribution of **€1,545,742.84** in respect of the extension of Luas Line B1 – Sandyford to Cherrywood in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of

development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any 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 An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Condition 73 to be amended as follows:

No development on foot of this permission shall commence until security for the provision and satisfactory completion of services (including roads, footpaths, open space, public lighting, sewers, watermains and drains) in accordance with the plans and particulars lodged with the application has been given by: -

- (a) Lodgement with the Council of an approved Insurance Company Bond in the sum of **€749,439**, which shall be kept in force by the Developer until such time as Roads, Open Spaces, Car Parks, Sewers, Watermains and Drains are completed to the satisfaction of the Council or
- (b) Lodgement with the Council of a Cash Sum of **€485,114** to be applied by the Council at its absolute discretion if such services are not fully provided to its satisfaction on the provision and completion of such services to standard specifications.

Reason: To ensure that a ready sanction may be available to the Council to induce the provision of services and prevent disamenity in the development. Note: That water supply and foul drainage shall be in accordance with the requirements of Irish Water.

Erika Casey

Senior Planning Inspector

20th March 2018