



An
Bord
Pleanála

Inspector's Report ABP-302223-18

Development	Proposed amendments to the Cherrywood SDZ Planning Scheme relating to the sequencing and phasing of development as set out in Chapter 7 of the approved Scheme.
Location	Cherrywood, Co. Dublin
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	n/a
Applicant(s)	Dun Laoghaire-Rathdown County Council
Type of Application	Amendment of SDZ Planning Scheme
Planning Authority Decision	n/a
Type of Appeal	n/a
Appellant(s)	n/a
Observer(s)	n/a

Date of Site Inspection

3rd October 2018

Inspector

Hugh D. Morrison

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1.0 Introduction

- 1.1. Following a request from Dun Laoghaire-Rathdown County Council, the Government designated lands at Cherrywood as a Strategic Development Zone (SDZ) in 2010. These lands lie largely between the N11, to the north east, and the M50, to the south west. They are located some 8 km to the south of Dun Laoghaire town centre and they extend over an area of c. 360 hectares.
- 1.2. Subsequently, Dun Laoghaire-Rathdown County Council, as the designated development agency for the SDZ, prepared a Planning Scheme for the majority of the lands comprised in the SDZ¹. This Scheme was the subject of an appeal to the Board (ZD06D.ZD2010) and, following an oral hearing, it was modified by means of a Board Order that was issued on 25th April 2014.
- 1.3. Early last year, Dun Laoghaire-Rathdown County Council (hereafter referred to as the Planning Authority) submitted to the Board an application (ZE06D.ZE0002), under Section 170A(1) of the Planning and Development Act, 2000 – 2018 (hereafter referred to as the Act), to amend the approved Planning Scheme. This application sought to update this Planning Scheme by incorporating within it changes prompted by the Sustainable Urban Housing: Design Standards for New Apartment Guidelines. It also sought to revise the sequencing of retail development within the town centre. The Board determined that the former changes were, under Section 170A(4)(a) of the Act, minor in nature. The Board also determined that the latter revision was material, under Section 170A(2). However, as this revision would satisfy the criteria under Section 170A(3)(b), there was no need, under Section 170A(3)(a) to activate the procedures set out in Section 169 for the re-making of the Planning Scheme. Instead, the Planning Authority was advised to initiate the public consultation procedures outlined under Section 170A(7). In subsequent correspondence with the

¹ Map 1.4 of the Planning Scheme depicts the two sets of boundaries in this respect. Essentially, the existing residential development within the SDZ is excluded from the Planning Scheme.

Board, the Planning Authority advised it of the withdrawal of the amendment in question.

1.4. The Planning Authority has now submitted a further application, under Section 170A(1) to amend the approved Planning Scheme. This application comprises the following documents:

- A cover letter dated 18th July 2018,
- Proposed Amendment to Chapter 7: Sequencing and Phasing of Development Cherrywood Planning Scheme 2014,
- Report to inform SEA Screening,
- Statement in support of the AA Screening,
- Copies of letters of support for the Proposed Amendment of Chapter 7 from the TII and NTA,
- Cherrywood Aerial Photos June 2018, and
- Tracked Changes Version of Proposed Amendment -v- Approved/Existing Text of Chapter 7.

1.5. The Planning Authority has also submitted requested further information in the form of a Background Technical Note to the Cherrywood SDZ Development Sequencing and Phasing Amendment prepared in January 2018 and an update on the recent planning history of the SDZ.

1.6. Additionally, one of the developer's has submitted, on an unsolicited basis, a legal opinion of senior counsel that differs from the Planning Authority's interpretation of the relevant legislation and hence its suggested approach as to how the currently proposed amendment should be handled.

2.0 The Process

2.1. The process whereby amendments to a planning scheme for an SDZ can be made is set out in Section 170A of the Planning and Development Act, 2000 – 2018. I set out below my understanding of this process.

- 2.2. Under sub-section (1) of this Section, a planning authority may make an application to the Board to amend a planning scheme. Under sub-section (2), the Board shall make a decision as to whether or not the proposed amendment constitutes a material change to the planning scheme. If such an amendment would fail to satisfy the criteria set out in sub-section 3(b), then it would be a material change of the planning scheme of such an order as to require the planning authority, under sub-section 3(a)², to amend the planning scheme in accordance with the procedures set out in Section 169 for the making of a planning scheme.
- 2.3. If the proposed amendment would lead to changes that would only be minor in nature, then, provided there is no need for SEA or AA, the Board may, under sub-section (4)(a), approve this amendment to the planning scheme.
- 2.4. If the proposed amendment would satisfy the criteria set out in sub-section 3(b) it may still, under sub-section (4)(b), be deemed by the Board to be material, only in a different sense from that described above. In these circumstances, the Board can approve such an amendment, or an alternative amendment of no greater significance, but not before the following requirements have been complied with:
- Under sub-section (5), the Board shall screen the proposed amendment, or its alternative, for SEA and AA. If SEA and/or AA are required, then under sub-section (6)(b) the planning authority shall be required to undertake preparation of the same.
 - Under sub-section (7), the planning authority shall be required to undertake a notification and consultation exercise as set out in this sub-section. Thereafter, under sub-section (8), the planning authority shall prepare a report on the submissions and observations received as a consequence of this exercise. The said report shall be prepared in accordance with the provisions set out in sub-section (9) and the Board shall subsequently, under sub-section 10, have regard to this report.
- 2.5. Under sub-section (11), subject to any SEA and/or AA obligations, if the Board has determined to make the proposed amendment or its alternative under sub-section

² This sub-section was the subject of an amendment under Section 5 of The Courts Act 2016.

(4)(b), then the planning scheme shall be so amended and the planning authority notified accordingly. If sub-section (7) was activated, then all those who made submissions or observations shall likewise be notified.

3.0 The Proposal

The Planning Authority's cover letter

- 3.1. The cover letter from the Planning Authority sets out the background to the currently proposed amendment, which would in effect entail the replacement of the existing Chapter 7 in the Cherrywood Planning Scheme with a new one, updated to reflect the front loading of infrastructure that has happened “on the ground” and the implications of the same for the timing of envisaged development. Thus, the Planning Authority advises that “planning permission has been granted and construction has commenced on a significant level of infrastructure which was required to facilitate development of the Planning Scheme area, namely, phase 1 of the roads network and bus infrastructure, as well as the 3 main public parks Ticknick, Beckett and Tully Park.” This infrastructure serves not only the First Growth Area but the Second and Third Growth Areas, too, and it has been implemented in advance of the development that it would facilitate.
- 3.2. The Planning Authority states that, as a consequence of the provision of the said infrastructure and anticipated upgrades of the Luas Green Line, 2300 dwellings³ in the Second and Third Growth Areas can, subject to planning permission, proceed, in addition to 3500 dwellings in the First Growth Area. Likewise, 241,000 sqm of high intensity employment floorspace can proceed, subject to planning permission, across all three growth areas.
- 3.3. The Planning Authority also states that planning permission has been granted for the first phase of the town centre. In the Planning Scheme, this town centre is depicted as comprising four quadrants, which are denoted as TC1 – 4. The planning permission granted pertains to the provision of, amongst other things, 1249 dwellings in TC1 and significant high intensity employment floorspace in TC1, 2 and 4.

³ 2300 dwellings is roughly half the total maximum number of dwellings of 4692 for Growth Areas 2 and 3. This figure is supported by the “Cherrywood SDZ Sequencing and Amendment Background Technical Note” prepared by AECOM for Dun Laoghaire-Rathdown County Council in January 2018.

Furthermore, current planning applications seek or have been granted permission for a total of 754 dwellings on three sites outside the town centre. In these circumstances, the Planning Authority considers that the Planning Scheme should be amended to allow the second phase of the town centre to proceed forthwith.

- 3.4. The Planning Authority emphasises that the final outcome of the Planning Scheme would remain the same, i.e. dwelling numbers and floorspace provision would be unaffected by the proposed amendment. Dwelling thresholds for schools would be retained but they would no longer be linked to specific growth areas, as, under the said amendment, dwellings could be built within these areas concurrently.
- 3.5. The Planning Authority submits its opinion on how the proposed amendment should be advanced procedurally under Section 170A. Attention is drawn to sub-section 3(b) and the view is expressed that item (ii) of the criteria set out therein is relevant, i.e. already developed land in the planning scheme. Examples of such land are cited, i.e. the three parks and “in the interim” the implementation of the town centre planning permission may commence and the aforementioned three planning applications for new dwellings maybe granted and development commence on site. In these circumstances, the conclusion is reached that the proposed amendment would require to be the subject of the procedures set out under Section 169.

The Planning Authority’s proposed amendment

- 3.6. The proposed amendment itself entails the extensive re-writing of Chapter 7 of the Cherrywood Planning Scheme, which is entitled “Sequencing and Phasing of Development”. The Planning Authority has submitted a copy of this re-written Chapter and a copy of a comparative document which highlights the changes between the original/extant Chapter 7 and the re-written one. Rather than reproduce verbatim these changes I will seek to provide a guide to them and a summary of them below.
- 3.7. Under the first heading of “**Concept**”, the initial paragraphs are re-worded in places and augmented to draw attention explicitly to the need for applicants to demonstrate that their proposals would incorporate infrastructure that accords with the Planning Scheme and the sequencing and phasing requirements set out elsewhere in the revised Chapter 7.

- 3.8. Under the sub-heading of “**Funding**”, the paragraphs are re-worded in places and reference is made to the Cherrywood Section 48 Development Contribution Scheme (2017 – 2020), which shall be used solely to fund infrastructure in the SDZ. An additional paragraph cites statutory agencies relevant to bringing forward and funding key projects with respect to the Planning Scheme.
- 3.9. Under the second heading of “**Sequence of Development**”, the majority of these paragraphs have been replaced to reflect the reality “on the ground”. The following three paragraphs capture the essence of the approach now envisaged:

The Planning Scheme has successfully promoted and facilitated the significant front-loading of key infrastructure elements, most notably, the internal road network and sustainable transport infrastructure, along with the construction of the three significant public parks (Tully, Ticknick and Beckett). Accordingly, it is appropriate at this juncture to allow for the potential to bring forward housing delivery across the Scheme.

Notwithstanding, an element of sequential development is necessary to ensure the proper planning and sustainable development of the Planning Scheme Area. The sequencing requirements in relation to the Growth Area, Town Centre and Village Centres, as well as Supporting Infrastructure Delivery with reference to schools, open space, green infrastructure and transportation infrastructure are set out below in section 7.2.1.

There will be an emphasis on promoting and facilitating the delivery of the Town Centre and Village Centres as the mixed-use component of each Growth Area, in order to support the emerging residential communities with a range of facilities in close proximity and to underpin the vision of a sustainable place for Cherrywood.

- 3.10. These paragraphs replace ones that refer to the following:
- The sequential development of each of the growth areas in conjunction with the provision of infrastructure and the minimum level of development for each Development Area set out in the Development Type and Quantum of Tables in Chapter 6 of the Planning Scheme.
 - The provision of the town centre on a phased basis whereby the minimum number of dwellings in the First Growth Area need to be permitted before the second 50% of retail floorspace is permitted.

- Extant permission for 30,000 sqm of employment floorspace can be provided as part of the employment floorspace identified for Development Area 6 ahead of its sequencing within the Third Growth Area.

3.11. Existing Tables 7.1 – 7.9 are replaced by new tables 7.1 – 7.3, which, variously, pertain to provision of schools, open space/green infrastructure and transport infrastructure, i.e. pedestrian and cycle, bus and public transport and road infrastructure, and a new commentary is set out under the sub-heading of “Sequencing and Implementation”.

3.12. A comparison of existing Table 7.1 and its replacement by that portion of Table 7.3 under the heading “**Roads Infrastructure Requirements for Development in Growth Area 1**” indicates the following:

- As the items relating to the reconstruction of Roundabout A to a 4-arm signalised junction and the completion of Tully Road between this junction and Junction B⁴ have been completed, they have been omitted.
- A new item has been added, which acknowledges that the “loop road” around the central body of the SDZ (with Junctions A1, C, D and F1 at its four corners) is the subject of a planning permission that is being implemented. This item requires that the said road be completed to a standard to be taken in charge prior to the occupation of any new development in Development Areas 2 or 4.
- Two other items are carried over unaltered.

3.13. A comparison of existing Tables 7.4 and 7.7 and their replacement by that portion of Table 7.3 under the heading “**Roads Infrastructure Requirements for Development in Growth Area 2 and/or Growth Area 3**” indicates the following:

- The “loop road” item referred to above is re-presented and the requirement cited is that it be completed to a standard to be taken in charge prior to permission for any new development in Growth Areas 2 and 3.
- The two items in Table 7.4 are amalgamated into one item and altered to take account of the aforementioned “loop road”. Thus, work on the stretch of road

⁴ This Junction and all subsequent junctions and road references can be seen on Map 7.1 of the Cherrywood Planning Scheme.

between points P3-P-C would be required to commence prior to granting permission for residential development in Growth Areas 2 and 3 that exceeds 2300 dwellings and such work would be required to be completed to a standard to be taken in charge prior to the occupation of such development. Currently, relevant thresholds pertain to the timing of development in Development Areas 1 and 3, i.e. Growth Area 2 only.

- A new item is added with respect to the stretch of road denoted as D-M-TI (Transport Interchange). Thus, work on this stretch of road would be required to commence prior to granting permission for any new development in Development Area 3 and such work would be required to be completed to a standard to be taken in charge prior to the occupation of such development.
- The item in Table 7.7 described as (Underpass) H-G-F-F1 is carried forward in conjunction with different requirements, i.e. permission must be in place for this underpass prior to any permission being granted in either Development Area 6B or 7 or prior to any permission being granted for residential development in Growth Areas 2 and 3 that exceeds 2300 dwellings, whichever is the sooner, and it must be completed to a standard to be taken in charge prior to first occupation of development under either of these scenarios. Currently the trigger threshold pertains to the granting of permission for development in Growth Area 3.
- The other two items in Table 7.7 are amalgamated into one item. Thus, work on the stretch of road between points D-E-F would be required to be completed to a standard to be taken in charge prior to permission of high intensity employment development within the SDZ exceeding 241,000 sqm⁵, instead of 150,000 sqm.

3.14. New Table 7.3 also addresses **pedestrian and cycle infrastructure** and **bus and public infrastructure**, subjects which are not currently addressed in existing Tables 7.1 – 7.9 of the Planning Scheme. With respect to the former infrastructure, appropriate facilities are to be provided as determined by the Planning Authority. With respect to the latter infrastructure, the commencement of development of such

⁵ 241,000 sqm approximates to 70% of the total of 340,000 sqm of HIE floorspace envisaged for Cherrywood.

infrastructure for buses is acknowledged and it is to be completed to a standard to be taken in charge prior to the occupation of any new residential development in Development Areas 2 or 4 and the future provision of a bus turnback facility is to be completed to a standard to be taken in charge prior to the occupation of any new development in either Growth Area 2 or 3.

- 3.15. Existing tables 7.2, 7.5 and 7.8 address the **provision of schools** for each of the three Growth Areas. These Tables are replaced by Table 7.1, which presents the same information, only without reference to the Growth Areas.
- 3.16. Existing tables 7.3, 7.6 and 7.9 address the **provision of open space** for each of the three Growth Areas. These Tables are replaced by Table 7.2, the first portion of which addresses open space/green infrastructure provision in Growth Area 1 and the second portion of which addresses such provision in Growth Areas 2 and 3.
- The former portion acknowledges that Tully and Ticknick Parks have been granted permission and are presently under construction. Their completion to taking in charge standard is required prior to occupation of any of the dwellings in Development Areas 2 and 4. Green infrastructure is to be included in planning applications.
 - The latter portion acknowledges that Ticknick and Beckett Parks have been granted permission and are presently under construction. Ticknick is required to be constructed to taking in charge standard prior to the occupation of any of the dwellings in Growth Areas 2 and 3, while Beckett is required to be, likewise, constructed prior to the occupation of any of the dwellings in Development Areas 7 and 8. Lehaunstown Park is to be constructed to taking in charge standard prior to the occupation of Lehaunstown Park House and green infrastructure is to be included in planning applications.
- 3.17. Under the heading of “**7.2.1 Sequencing and Implementation**”, a commentary is provided on the subjects addressed in the aforementioned Tables 7.1 – 7.3, amongst other ones. Key points from this commentary are delineated below.
- Residential: Growth Area 1 can proceed forthwith and Growth Areas 2 and 3 can proceed up to a maximum of 2300 dwellings, too.

- Village Centres: Each village centre must be permitted prior to the grant of permission of any development exceeding the minimum quantum of dwellings in each of the relevant Development Areas, i.e. 1, 3 and 8.
- Town Centre: Land uses, including the total retail quantum, may be permitted at any stage.
- High Intensity Employment (HIE): Land uses may be permitted at any stage, subject to Tables 7.1 – 7.5.
- Commercial: Land uses may be permitted at any stage, subject to Tables 7.1 – 7.5.
- Infrastructure: Development shall only proceed in accordance with the provision of infrastructure as set out in Tables 7.1 – 7.3, unless the circumstances described under heading “7.2.2 Infrastructure Delivery” pertain.
- Schools: A preference is expressed for the provision of the closest school site to an applicant’s proposed residential development within the relevant Growth Area.
- Open Space: The early provision of such space is welcomed.
- Transport Infrastructure: The availability of sufficient modal choice in tandem with growth in the population of Cherrywood is emphasised.

3.18. Under the heading “**7.2.2 Infrastructure Delivery**”, the possibility of exceptional/unforeseen circumstances is acknowledged wherein infrastructure necessary to progress the residential development of a Growth Area cannot be provided over a period of 0 – 3 years hence. The utilisation of alternative infrastructure as an interim measure may thus be appropriate. Ultimately the Development Agency would make a recommendation to the Planning Authority in this respect, with an onus lying upon applicants to demonstrate that their alternative would not undermine the long-term objectives of the Planning Scheme.

3.19. Alternative construction access points/routes may likewise be the subject of a departure from those denoted in the Planning Scheme, where applicants can demonstrate that traffic would be capable of being handled satisfactorily.

- 3.20. Under the heading “**7.3 Strategic Infrastructure and Phasing**”, the current section 7.3, entitled “Phasing of Development” is largely re-worked to encompass three phases rather than the existing seven phases for the purpose of linking the provision of strategic infrastructure to thresholds of new development.
- 3.21. Under the sub-heading of “**Prematurity**”, a new Table 7.4 addresses “Critical Steps”, which, while cited in the existing Planning Scheme, are now set out in conjunction with their current status.

Critical Steps	Status
Area Wide Travel Plan for the Planning Scheme Area to be prepared by DLRCC/NTA.	Completed.
DLRCC to replace a short portion of critical trunk main from Bride’s Glen Road.	To be completed. (Design Stage)
Agreement by the landowners and Local Authority with Bord Gais on the phasing and provision of the gas network and supply from the southern side of the M50.	Completed. (Permission granted for the GAS Above Ground Installation (AGI)).
DLRCC will reach agreement with DCC on measurements to re-prioritise water allocation to Rathmichael Reservoir. This may also involve installation of a new strategic water main to Shankill to reduce over-reliance on Roundwood WTW.	To be completed. (DLRCC is actively engaging with IW as relevant statutory agency. Applicants to engage with IW to confirm that sufficient water supply is available to serve the proposed development).
The establishment of a contribution scheme(s) or alternative measures by which to fund the provision of infrastructure and services – this to be done by DLRCC and landowners/	On-going. (Cherrywood Planning Scheme Development Contribution Scheme 2017 – 2020 has been approved up to 2020, thereafter a new contribution

developers.	scheme must be prepared. A Common Infrastructure Agreement by DLRCC/Landowners is in progress).
Development of a protocol for the assessment and monitoring of strategic road network performance has been devised and is operational between DLRCC/NRA/NTA.	On-going and in progress.

- 3.22. The accompanying commentary on Table 7.4 recognises that, while the availability of an adequate water supply may be a constraining factor upon future growth, Irish Water’s Water Services Strategic Plan is, amongst other things, aligned with SDZs. Likewise, the monitoring of the performance of the strategic road network (namely, the M50, N11 and Wyattville Link Road) may have implications for phasing requirements beyond the thresholds established for Phase 2, implications which when they arise would require assessment prior to the submission of further planning applications.
- 3.23. Existing Table 7.10, which sets out the aforementioned seven phases, is omitted in favour of a new Table 7.5, which sets out the aforementioned three phases. A comparison of the original and revised phases indicates that, for employment purposes, existing phases 1 – 5 correspond to phase 1 and existing phases 6 and 7 approximate to phases 2 and 3, i.e. the thresholds are as follows:

Existing phases 1 – 5: Over 140,000 sqm (in effect up to 165,000 sqm) HIE 7000 employees	Phase 1: Up to 165,000 sqm HIE 8250 employees
Existing phase 6: Over 165,000 sqm (in effect up to 265,000 sqm)	Phase 2: Up to 241,000 sqm

HIE 8200 employees	HIE 12,050 employees
Existing phase 7: Over 265,000 sqm HIE 13,250 employees	Phase 3: Over 241,000 sqm HIE 12,050 employees

3.24. Likewise, a comparison of the original and revised phases indicates that, for housing purposes, existing phases 1 – 3 approximate to phase 1 and existing phases 4 – 7 approximate to phase 2, i.e. the thresholds would be as follows:

Existing phases 1 – 3: Over 4400 dwellings (in effect up to 6700 dwellings)	Phase 1: Up to 6414 dwellings
Existing phases 4 – 7: Over 6700 dwellings	Phase 2: Over 6414 dwellings

3.25. The works to be pursued under the above cited clusters of existing phases and the agencies responsible for these works have been updated. There is a broad correspondence between the timing of these works under the existing Planning Scheme and under that which is envisaged under the proposed amendment.

3.26. Existing Table 7.11 sets out details of HIE permissions granted to date, i.e. February 2012. This Table is omitted in favour of a Note to Table 7.5, which states that c. 600 dwellings and c. 65,000 sqm of HIE floorspace have been constructed to date, i.e. June 2018, and a further c. 39,500 sqm of HIE floorspace has been permitted.

3.27. Under the heading “**7.4 Operation of Planning Scheme**”, the requirement to submit a schedule and report concerning compliance with requirements under previous phases and an assessment of cumulative impact, prior to each new phase of development, is omitted. The requirement that the Local Authority undertakes a review of the Planning Scheme has been retained. This requirement would be

triggered by the prospect of Phase 3, instead of the prospect of the Third Growth Area, and it would ensure that the necessary “infrastructure and facilities detailed in the Planning Scheme have been provided, are operational, and that the overall Scheme is progressing and continues to progress in a satisfactory manner.”

3.28. Some refining of reporting arrangements by the Development Agency Project Team are also brought forward, under the aforementioned heading.

4.0 Section 170A(2): Would the proposed amendments make a material change to the Cherrywood Planning Scheme?

4.1. Procedurally, under Section 170A of the Act sub-section 2, the Board is required to address the question as to whether any proposed amendment to a planning scheme would constitute a material change. Under sub-section 3(a), if such an amendment fails to satisfy the criteria set out in sub-section 3(b), then it is by definition a material change that triggers the procedures set out under Section 169. Nevertheless, this does not exhaust the possibility that an amendment may be material, as signalled by sub-section 4(b). Thus, if the Board considers that, under sub-section 4(a), an amendment is not “minor in nature” and yet sub-section 3(b) is satisfied, then its materiality triggers procedures set out in the remainder of Section 170A, presumably with the intention of informing the view that the Board takes on such an amendment, i.e. whether to approve it or an alternative amendment of no greater significance.

The Planning Authority’s opinion on materiality

4.2. The Planning Authority has expressed an opinion on the materiality of the proposed amendment. Thus, it considers that this amendment would fail to satisfy the criteria set out under sub-section 3(b) of Section 170A of the Act, and so not only would it constitute a material change in the Cherrywood Planning Scheme, but it would trigger the requirement to re-make this Scheme under the provisions of Section 169. The Planning Authority bases this opinion on item (ii) of sub-section 3(b), which states that “the amendment to the planning scheme concerned – would not relate to already developed land in the planning scheme.” It considers that the proposed amendment would relate to such land, insofar as Ticknick, Beckett and Tully Parks have been largely constructed. It also considers that “in the interim” the

implementation of the town centre planning permission may commence and three planning applications for housing may be granted and implemented, too.

- 4.3. Item (ii) of sub-section 3(b) is not the subject of any commentary that I am aware of. Thus, its interpretation must be approached “unaided”. I consider that the type of scenario that may have prompted this item is one wherein a proposed change of a planning scheme would impact upon lands that have already been developed in a manner that would not previously have been expected.
- 4.4. In the present case, the Parks, which are nearing completion, are in the Cherrywood Planning Scheme and so all that is happening “on the ground” is that they are being provided sooner than was envisaged by this Scheme. Furthermore, their inclusion in the Planning Scheme is by way of development that facilitates other development, which is substantive, i.e. dwellings and HIE workplaces, and so they would provide public amenities for local residents of and workers in Cherrywood. In these circumstances, I do not consider that the Parks constitute “already developed land”.
- 4.5. The Planning Authority also refers to other developments that may occur “in the interim”. The period of time thus eluded to has not been made explicit. However, it may be a reference to the interval between the making of the current application and the Board’s decision. During my recent site visit, I did not observe that development had recognisably commenced on the town centre or nearby housing sites. Furthermore, I note that item (ii) refers to “already developed lands” and so completion, rather than commencement, of development would appear to be the relevant test.
- 4.6. In the light of the above discussion, I am unable to concur with the Planning Authority that item (ii) of sub-section 3(b) is of relevance.
- 4.7. Turning to the other three items in this sub-section, these relate to the following subjects:
- (i) A change in the overall objectives of the planning scheme.
 - (iii) A significant increase or decrease in the overall floor area or density of development.
 - (iv) An adverse affect upon or the diminishment of the amenity of the area that is the subject of the proposed amendment.

In relation to item (i), the Planning Authority expresses the view that the proposed amendment would not change the overall objectives, which are set out under the headings of “Vision”, “Principles”, “Themes”, and “Purpose”. In relation to item (iii), it advises that no change in either the overall floorspace or the density of development would ensue. In relation to item (iv), it advises that amenity would not be negatively impacted upon.

- 4.8. I note the Planning Authority’s view with respect to item (i). Insofar as the proposed amendment would entail the effective de-coupling of the town centre from the provision of housing elsewhere, it re-introduces the fifth amendment, which was the subject, amongst other things, of the preceding application ZE06D.ZE0002. This amendment was deemed to be material by the Board, under sub-section 2, and so the Planning Authority was advised to conduct a public consultation into the same under sub-section 7. However, it was subsequently withdrawn. Thus, the Board did not make a determination on this amendment under sub-section 4(b).
- 4.9. I note, too, that since the remainder of ZE06D.ZE0002 was decided upon by the Board, the situation with respect to planning applications has changed appreciably. I will discuss this situation below. Suffice it to say at this point that any risk to item (i) of sub-section 3(b) has now been allayed.
- 4.10. I concur with the Planning Authority’s advice with respect to items (i), (iii) and (iv) of sub-section 3(b).

The test for materiality

- 4.11. The proposed amendment entails the extensive re-writing of Chapter 7 of the Cherrywood Planning Scheme. As such, this amendment comprises multiple individual amendments to the sequencing and phasing of development. Under paragraph 4.8 above, I have delineated one of these amendments and recalled that, under the circumstances then pertaining, it was previously deemed to be material in its own right.
- 4.12. As indicated above, the test for materiality is not restricted to the criteria set out in sub-section 3(b) and so it remains to be established whether the proposed amendment, either in terms of its individual amendments or “in the round”, would be a material change to the Cherrywood Planning Scheme. While no definition of

materiality is provided by current planning legislation, some assistance towards a working definition is provided from the following two planning sources:

- Under development management, a material change of use is typically defined as being one that is of a substantial nature, which would have an impact upon neighbours or the local community.
- For the purpose of declarations upon referrals, the legal case of *Monaghan -v- Brogan* established that the test for materiality pertains to whether the change of use in question would raise material planning considerations if the change of use were to be the subject of a planning application.

I, therefore, consider that, with respect to the proposed amendment, an assessment for materiality should concern itself with whether this amendment would raise material planning considerations that are significantly different from those that were raised by the original Cherrywood Planning Scheme.

The proposed amendment

- 4.13. Essentially, the proposed amendment has been prompted by the on-going construction of what I refer to as the “loop road”, i.e. the road with junctions denoted as A1, C, D and F1 at its four corners. This road provides access to each of the three growth areas. Under Chapter 7 of the existing Cherrywood Planning Scheme, the provision of key roads is linked to each of the growth areas on a phased and sequential basis. By contrast, the “loop road” enables these areas to be accessed concurrently.
- 4.14. The proposed amendment seeks to capitalise upon the greater accessibility that the “loop road” affords all-at-once. Thus, whereas the existing approach to the phasing of dwellings and HIE floorspace was based on the growth areas being developed sequentially, the need for this approach is now being superseded and so, subject to certain safeguards⁶, the Planning Authority has identified the opportunity for dwellings and HIE floorspace to be developed concurrently within each of the three growth areas. Schools and open space would, likewise, no longer need to be tied to the sequential development of the growth areas.

⁶ Under Growth Area 1, the “loop road” would need to be completed prior to the occupation of any new development in Development Areas 2 or 4, and, under Growth Areas 2 and/or 3, this road would need to be completed prior to any permission for development in these Areas.

- 4.15. The proposed amendment also seeks to bring forward the opportunity for the town centre to be developed in its totality rather than on an incremental 50: 50 basis. Thus, the existing requirement that “The minimum number of residential units in the First Growth Area shall be permitted prior to the second 50% of retail floorspace being permitted” would be omitted. The Planning Authority refers in this respect to extant permission for 1269 dwellings in the town centre, 3 recent applications for a total of 754 dwellings outside the town centre, and 600 existing dwellings, the residents of which have yet to be provided with the shops and services that the town centre would afford. At the time of writing, one of these three applications has been granted and the other two are the subject of further information requests. If it is assumed that they will all eventually be granted, then 2023 dwellings would be permitted, a figure close to the minimum number of residential units of 2525⁷ for the First Growth Area.
- 4.16. Given the pattern of applications described above, my previous concern in assessing application ZE06D.ZE0002 that the town centre might be developed independently of housing in Cherrywood has been eased. Accordingly, I do not consider that, in the light of the emerging trend of applications for residential development and the current obvious buoyancy of the housing market, the need persists to insist on the retention of the restriction upon the development of the town centre set out in the original/current Cherrywood Planning Scheme.
- 4.17. (The Planning Authority has not addressed the question as to whether the “loop road” has any bearing on the timing of the provision of the town centre. In this respect, I recognise that the three growth areas would be linked to this centre “ahead of time” and so its accessibility would be greater from an earlier stage).
- 4.18. In the light of the above understanding of the proposed amendment, I do not consider that it is either necessary or appropriate to disaggregate it into its constituent elements. I am confident that, with the exception of the aforementioned timing of development of the town centre, these elements flow from the prospect of the “loop road” being in-situ.
- 4.19. As indicated above, the proposed amendment would facilitate development within each of the three growth areas concurrently, as distinct from sequentially. This

⁷ Cherrywood town centre (TC1 – 4) 1276 units & Res 2 + Res 4 240 units, Domville Res 2 + Res 3 652 and Druid’s Glen Res 1 + Res 2 357 units.

amendment would thus introduce the possibility that Cherrywood would be developed at a faster pace than has hitherto been envisaged. Accordingly, a more protracted overall construction period may be substituted for by a shorter more intensive one.

4.20. The implications of this possibility, in terms of cumulative environmental impacts upon amenities and additional construction traffic movements on the road network, should be weighed in the light of the following considerations:

- Whereas the existing 600 dwellings at Cherrywood lie towards the centre of the First Growth Area, the Second and Third Growth Areas lie beyond this Area and so they are further away from these dwellings. Consequently, the impact upon amenities of a more intensive construction phase would be mitigated by the greater separation distances that would pertain to the Second and Third Growth Areas. (Construction Management Plans, which are typically made the subject of conditions attached to planning permissions for residential development, would address the further mitigation measures in this respect arising with the development of individual sites).
- The provision of the loop road, which is being built to a generous specification, would, in principle, be capable of accommodating the said construction traffic. (Construction Traffic Management Plans, which are typically made the subject of conditions attached to planning permissions for residential development, would address the specific requirements arising with the development of individual sites).

4.21. Additionally, the Planning Authority has addressed the question as to whether or not the predicted increase in the rate of residential development within the SDZ would be capable of being served satisfactorily by public transport and the road, cycle, and footpath networks. This question is addressed by the “Background Technical Note” prepared by consultants in January 2018 and its findings are reflected in the corresponding detailed provisions of the proposed amendment.

4.22. I, therefore, take the view that the above cited implications of a shorter more intensive construction period would not, in practise, prompt materially different planning considerations than those which arose when the Cherrywood Planning Scheme was originally adopted.

4.23. I conclude that, insofar as the proposed amendment would relate to the timing of the development of the town centre, it would now be a minor change to the Cherrywood Planning Scheme, and, insofar as this amendment would relate to the timing of development throughout the SDZ, it would be a minor change to this Planning Scheme, too.

5.0 Section 170A(4)(a): Do the proposed amendments need to be the subject of SEA and/or AA?

5.1. Under Section 170A(4)(a) of the Act, the proposed amendments to the Cherrywood Planning Scheme must be screened with respect to their need for Strategic Environmental Assessment (SEA) and Appropriate Assessment (AA). The Planning Authority has submitted reports intended to inform the screening processes in these respects. I will draw upon these reports, amongst other things, in the screening that is set out below.

5.2. The Cherrywood Planning Scheme was the subject of SEA and screening for AA. The original SEA and screening for AA were undertaken on the draft Planning Scheme, which envisaged a residential population of 25,000 in Cherrywood. Following modifications specified by the Board, the adopted Planning Scheme reduced this figure to 20,800. However, under permitted amendments to this Scheme brought forward under application ZE06D.ZE0002, it would rise to 23,722. Under the currently proposed amendment, there would be no change in the projected residential population. In fact, under this amendment, the same overall development outcome is anticipated, only the timing of developments would differ in accordance with revisions to Chapter 7 of the Cherrywood Planning Scheme, entitled “Sequencing and Phasing of Development”.

5.3. I have reviewed the proposed amendment under the “Criteria for determining whether a plan or programme is likely to have significant effects on the environment”, which is set out in Schedule 2A of the Planning and Development Regulations, 2001 – 2018. Part of the last criterion refers to “Characteristics of the effects and of the area likely to be affected, having regard, in particular, to: - the effects on areas or landscapes which have a recognised national, European Union or international protection status.” Given the citation here of areas or landscapes which have

European Union protected status, I will screen the proposed amendments for AA first and then return to the screening of them for SEA.

- 5.4. The site, which is the subject of the Cherrywood Planning Scheme, extends over the greater part of the Cherrywood SDZ. It is not in a Natura 2000 site or near to such a site. The Shanganagh River runs through the northern and easternmost portions of this site and it flows into Killiney Bay further to the east. Killiney Bay lies within the Rockabill to Dalkey Island SAC (site code 003000) and so there is a source/pathway/receptor route between the site and this Natura 2000 site.
- 5.5. The qualifying interest of the aforementioned SAC are reefs and harbour porpoise and the conservation objectives for these interests are to maintain the favourable conservation condition of these interests in accordance with identified attributes and targets set out by the NPWS.
- 5.6. Under the proposed amendment, the same overall development outcome is anticipated as that envisaged under the original Cherrywood Planning Scheme, as amended in 2017. As this Scheme was previously screened for AA, both originally and as revised, and the conclusion was reached that it would have not be likely to have any significant effect upon the conservation objectives of any Natura 2000 sites, so now under the currently proposed amendment the same conclusion follows.
- 5.7. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed amendment, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 003000, or any other European site, in view of the site's conservation objectives, and a Stage 2 AA is not therefore required.
- 5.8. In the light of the foregoing conclusion and in the absence of any other national or international areas or landscapes with protected status that would be effected by the proposed amendment, I consider that the ecological criterion of Schedule 2A to the aforementioned Regulations would be satisfied. I have reviewed the other criterion under this Schedule and I consider that they, too, would be satisfied. Accordingly, I conclude that the proposed amendment would not be likely to have significant effects on the environment and so a SEA of this amendment is not necessary.

5.9. Thus, under Section 170A sub-section (5), neither SEA nor AA is necessary for the proposed amendment to the Cherrywood Planning Scheme.

6.0 Conclusion

6.1. In my report I have firstly addressed the question raised by Section 170A sub-section (2) of the Planning and Development Act, 2000 – 2018, as to whether or not the proposed amendment would lead to a material change to the Cherrywood Planning Scheme. I have concluded that it would not do so.

6.2. I have secondly addressed the question raised by sub-section (5) as to whether or not the proposed amendment to the Cherrywood Planning Scheme would need to be the subject of SEA and/or AA. I have concluded that it would not.

6.3. In the light of my answers to these two questions, the Board should approve the making of the proposed amendment to the Cherrywood Planning Scheme and advise the Planning Authority accordingly.

7.0 Recommendation

That, under Section 170A sub-section (2) of the Planning and Development Act, 2000 – 2018, the Planning Authority be notified of the Board's decision that the proposed amendment would not constitute the making of a material change to the Cherrywood Planning Scheme and so, as this amendment would be minor in character, the Board, under sub-section (4)(a) approves the making of it to this Planning Scheme.

Hugh D. Morrison
Planning Inspector

23rd November 2018