



An
Bord
Pleanála

Inspector's Report

ABP-303851-19

Development	Construction of 19 dwellings and all associated site works
Location	Dunsoghly, Ratoath Road, The site is located South of Dunsoghly Green & Dunsoghly Grove, Finglas, Dublin 11
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW18A/0093
Applicant(s)	Greenwich Project Holdings Limited
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	First Party against Development Contribution
Appellant(s)	Greenwich Project Holdings Limited
Observer(s)	None
Date of Site Inspection	7 th of June 2019
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The site is located to the south of Dunsoghly housing estate, Ratoath Road, Finglas, Dublin 11. The site is a stated area of 0.58ha (1.46 acres) and is relatively level and overgrown in parts. It is separated from the existing housing estate including the proximate cul-de-sacs at Dunsoghly Grove and Green by a rendered capped block wall. There is a gated locked entrance to the south of the estate off the Ratoath Road that has access to the lands to the west including the site.
- 1.2. The Dunsoghly area is generally characterised by primarily 2 storey terraced and semi-detached housing. There is a usable open space green area for the existing housing to the north west of the site facing the housing in Dunsoghly Green and Dunsoghly Drive. There is also a green strip along the eastern boundary of the estate with the Ratoath Road. The entrance to the estate is from the Ratoath Road.

2.0 Proposed Development

- 2.1. This proposal comprises the following:
 - 19no. dwellings comprising 13no. 2 storey 3 bed dwellings, 3no. 2 bed ground floor apartments and 3no. 3 bed duplex apartments over first and second floor with first floor terrace 21sq.m;
 - New roads to connect to Dunsoghly Green and Dunsoghly Grove;
 - Landscaping includes a linear park/walkway
 - Sustainable drainage systems including swales, filter drains;
 - Public footpaths & Street lighting, boundary walls and associated site works.
- 2.2. Documents submitted with the application include the following:
 - Planning Report for Infill Scheme for 19 Dwellings- AKM Design
 - Engineering Services Report – AKM Design
 - Landfill Gas Risk Assessment - Marron Environmental

- Construction & Environmental Management Plan – AKM Design
- Detailed drawings including Site Layout Plan, Floor Plans and Elevations and Engineering details.

3.0 Planning Authority Decision

3.1. Decision

On the 5th of February 2019 Fingal County Council granted permission for the proposed development subject to 22no. conditions. These had regard to design and layout, infrastructure, construction management and development contributions.

These included the following of note:

- Condition no.2 restricted the permission to 18 units.
- Condition no.3 omitted unit A4, also labelled as unit 56, on drawing no. PL700 submitted on the 9th of January 2019.
- Condition no. 4 requested that a revised landscape plan be submitted.
- Condition no.8 provided for the reservation of the areas of open space shown on the plans submitted.
- Condition no.20 provided for the submission of a Cash Bond.
- Condition no.21 provided for development contribution in lieu of open space provision.
- Condition no. 22 provided for a development contribution in respect of public infrastructure and facilities benefitting development in the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner has regard to the locational context of the site, planning history and policy and to the inter-departmental reports. Their Assessment included the following:

- The principle of development is in accordance with the residential land use zoning.
- The density of the development is 33 units per ha which is lower than the density of 35-50 dwellings per ha in outer suburban sites in the Guidelines.
- The proposed development is generally consistent in its density, form and layout with the immediately adjoining Dunsoghly development.
- It is considered that the proposed development accords with Objective DMS24, and the requirements set out in Table 12.1 and Table 12.3.
- They seek revisions relative to some aspects of the design and layout.
- They note the Council's Parks and Green Infrastructure Section's concerns about public open space provision and landscaping.
- The proposed open space provision does not comply with the Fingal DP 2017-2023 standards. In particular, the proposed use of the wayleave as contributing to the open space requirements for the proposed development is not acceptable.
- They had regard to the internal layout and noted that the proposed development would provide access to 15 residential units via Dunsoghly Grove and access to 4 residential units via Dunsoghly Drive.
- They also had regard to Traffic, Access and Parking issues and noted that road design and construction engineering details should be provided.
- They noted that further details were required relative to Water and Drainage arrangements.
- They had regard to the 'Landfill Gas Risk Assessment' and recommended that mitigation measures be secured by condition.
- They noted arrangements relative to compliance with Part V.
- Also, that an Appropriate Assessment is not required.

They requested *Additional Information* to include the following:

- A revised layout to include details relative to the location of all units, associated private and public open space (to comply with standards in the Fingal DP), roads, parking areas, the Wayleave Area, and SuDS features.
- To submit revised drawings, elevations and specifications whereby the design of apartment/duplex buildings C1, C2 and C3 would be better integrated with the overall development and the wider area.
- A revised Site Layout Plan to show design details of the transition areas between the existing and proposed development in Dunsoghly development, including the design and construction details of the proposed roads, road drainage and footpaths/verges.
- Traffic calming, a Taking in Charge drawing, designated parking layout, a Construction Management Plan and vehicular turning area at the proposed southern end of Dunsoghly Green.
- Details on Surface Water Drainage including regard to attenuation, SUDS and swales.

Additional Information Response

The response from AKM Design includes the following:

- Revised plans show public open spaces, roads, parking areas, way leave and SUDS items.
- A revised Landscape Plan has been submitted and details are provided of the areas of open space. They note that they have engaged a landscape architect to prepare a landscape masterplan for the estate.
- The wayleave to the existing foul sewer is clearly shown on the drawing submitted. They confirm that the proposed swale is not located within the wayleave area and provide details of planting.
- They provide details of SUDS items proposed for this housing development.
- They provide details of surface water drainage and refer to the revised layout.
- All new infrastructure will comply with best practice standards.

- The proposed open space and layout of housing provides a logical connection to the adjoining residentially zoned land to the east of the site.
- They provide a table relative to open space provision and it is their submission that they comply with open space standards – Objectives DMS57A/B in the Fingal DP 2017-2023.
- Details of the proposed relocation of public lighting relative to the open space.
- They provide details of private open space for the units, including the proposed housing.
- They note the redesign of the duplex apartment buildings. The design of the apartments has been amended to include a private garden area for the ground floor apartments.
- The amended layout improves the relationship of the apartments to the public open space providing a better connection.
- The location of all tree pits has been reviewed and they do not extend onto any public road spaces.
- They have regard to traffic calming and note that the layout of new streets within the development is designed for permeability and to be fully connected to the existing development. Vehicular turning has been provided at the southern end of Dunsoghley Green.
- They provide a designated car parking layout for the proposed duplex units.
- An amended design and drawing for surface water drainage for the development has been included. They also refer to the provision for a swale and a petrol interceptor.
- They include a Construction Management Plan and note Section 10 on Traffic Management. They include a taking in charge map.

Planner's Response

The Planner had regard to the A.I submitted and considered that a number of significant issues still remained, including relative to design and layout, infrastructural issues and the public open space provision needed to be addressed and clarified.

They requested a Clarification of Additional Information to include the following:

- The provision of contiguous elevations of the proposed development within the context of the site.
- The provision of northern facades to dwellings C1, C, C2.
- The provision of open spaces in compliance with Development Plan standards. The wayleave is a sterilised piece of ground and should not be included in the calculation for open space provision.
- The provision of pedestrian linkages and traffic calming.
- Drainage issues including relative to attenuation and discharge.
- Details relevant to the internal roads layout including cross section and swept path analysis.

Response to the C.A.I request

AKM Design has submitted a response to the Clarification of Additional Information request to include the following:

- They have regard to Contiguous Elevations and Context and have submitted revised plans and photomontages to show the northern facades to dwellings C1,C and C2.
- The apartment buildings are dual frontage and they describe how they are laid out and address the public open space. The apartment dwellings especially contribute to the safety of the public domain.
- This proposal is acceptable from an urban design perspective as it respects existing scale and character and residential amenity and also contributes to the regeneration of an under-used residentially zoned site.
- The linear open space provides passive surveillance and makes the residential development more secure and integrates well with the existing development.
- It is their view that the total public open space provided is in accordance with Development Plan open space policy/objectives DMS57A and DMS57B.

- The open space areas are not intended to be public areas and are not located within the revised 'Taking in charge map'.
- The site layout and configuration prioritises pedestrian access and maximising permeability.
- The linear open space will be used by existing residents and new local residents to access the central large area of public open space in Dunsoghly and will be well lit by LED public street lighting throughout.
- The road was designed by NRB Traffic consultants and they include a swept path analysis on their amended plans. Also, the road cross section and ties in details of speed ramps and parking for C & C2.
- They provide further details of surface water drainage including calculations and attenuation. Regard is had to treatment, interception and storage and flow control.
- The proposed revised surface water proposals provide acceptable SUDS methods by way of swales, filter drains and permeable paving.
- They consider that the proposed development complies with the development plan and provides the most sustainable layout for the site in a high quality infill development of 19 dwellings. It will provide a vibrant, consolidated and attractive new residential area that contributes to the character of Dunsoghly.

Planner's Response

The Planner's Assessment had regard to all the further information including the C.F.I submitted. They concluded that the proposed development is acceptable and subject to planning conditions, complies with the proper planning and sustainable development of the area. They provided that, in particular the following issues will be addressed by condition in any recommendation of planning permission:

1. *The omission of dwelling no. 56 also shown as A4 shall not be included in the proposed development.*
2. *The deficit of provision of public open space on the subject site is to be addressed by financial contribution.*
3. *Requirements relating to road and footpath layout and drawings.*

3.3. Other Technical Reports

Planning & Strategic Infrastructure Department – Transportation Planning Section

makes a number of recommendations concerning the internal roads layout including relative to connection/permeability to the existing estate, traffic calming and parking. They note differences between the site layout plan and the landscape plan. Also, that road design and construction engineering details, a Construction Management Plan and a Taking in Charge drawing should be provided.

In response to the F.I submission they recommended that a Clarification of Further Information be submitted relative to issues including road cross sections, drainage, circulation and swept path analysis.

In response to the C.F.I they noted some concerns and recommended that dwelling A4 be omitted as the road layout is not adequate to provide access. They also considered that the details of the road and footpath cross sections at the tie in-ins to the existing road has not been properly addressed. Should permission be granted they recommended conditions.

The Parks Division have regard to the open space provision requirements and include a table. They are concerned that the public open space area comprises a wayleave area and swale. They also note concerns about the Landscape Plan and pedestrian linkages and public lighting.

In response to the A.I and C.A.I submitted they again noted their concerns about the use of a sterilised piece of land as public open space and recommended a financial contribution in lieu of Class 1 and Class 2 open space provision be required. They also recommended that a revised landscape plan be submitted.

The Environment and Water Services Department have no objection subject to conditions including regard to Construction Management.

The Water Services Department recommended that a Clarification of F.I be submitted relative to surface water drainage issues including attenuation. In response to the C.F.I submitted they had no objections subject to recommended conditions.

The Environmental Health Officer has no objections subject to recommended conditions relative to construction related issues.

3.4. Prescribed Bodies

Irish Water has no objections subject to recommended conditions.

3.5. Third Party Observations

The Planner's Report states that there are none on record relative to this application.

4.0 Planning History

The planning reports on file list a significant number of applications in the vicinity of the site. Many were refused when the land was previously zoned 'H' - Green Belt.

The following are relevant to recent applications in proximity to the site:

- Reg. Ref. FW17A/0066 – Permission subject to conditions granted by the Council – the original proposal was for 52 houses, ESB substation, site works on a site to the north west of Dunsoghly Close. A number of conditions were the subject of a First Party appeal to the Board. The Board (Ref. PL06F.249191 refers) granted permission for the proposed development subject to 16no. conditions.
- Reg. Ref. FW17A/0067 – Permission refused by the Council for 21 houses (revised to 22 - on the subject site), new roads to connect to Dunsoghly Grove and Green; site works. This was on the subject site and was subject to a First Party Appeal and subsequently refused by the Board (Ref. PL06F.249346 refers) for the following reasons:
 1. *Notwithstanding the zoning of the subject site, and the general desirability of promoting increased residential densities, as provided for in the current Development Plan for the area, and having regard to the nature and layout of the proposed development in both qualitative and quantitative terms, the open space requirements and the wayleave requirements of a public sewer, it is considered that the proposed development, by reason of its layout, scale and design, would generally fail to comply with the overall design approach and*

requirements set out in both the Design Manual for Urban Roads and Streets (DMURS), issued in 2013 and the Urban Design Manual – A Best Practice Guide issued in 2009.

The proposed development would, therefore, constitute a substandard form of residential development that would seriously injure the residential amenities of the area, would be contrary to Ministerial Guidelines and would be contrary to the proper planning and sustainable development of the area.

2. *The Board is not satisfied, based on the information provided, that the surface water management proposal takes adequate account of Sustainable Drainage Systems (SuDS) requirements. The development would be contrary to the proper planning and sustainable development of the area.*

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

Open Space

Regard is had to the Development Management Standards and Table 12.5 provides the Open Space Hierarchy and Accessibility. A note under this table includes reference to areas not counted as public open space.

Objective DMS57 seeks to: *Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.*

Objective DMS57A seeks to: *Require a minimum 10% of a proposed development site area be designated for use as public open space.*

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

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

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

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

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

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

Contributions

Chapter 7 refers to Movement and Infrastructure. This includes regard to Section 48 and 49 Levies: *Financial contributions will be sought as part of the development management process for certain development under the provisions of Section 48 and Section 49 of the Planning and Development Act, 2000 (as amended). Section 48 (general) schemes relate to proposed provision of public infrastructure and facilities which benefit development within the area of the Planning Authority and are applied as a general levy on development. A 'special' contribution under Section*

48(2) (c) may be required where specific exceptional costs not covered by the general scheme are incurred by a Local Authority due to a specific development. Objective MT44 seeks to: *Utilise, where appropriate, the provisions of Section 48 and 49 of the Planning and Development Act, 2000 (as amended) to generate financial contributions towards the capital costs of providing local and strategic transport infrastructure, services or projects in the County. This will be done in conjunction with adjoining Local Authorities where appropriate.*

5.2. Fingal County Council Development Contributions Scheme 2016-2020

This is the pertinent scheme. Section 5(i) notes that Section 48 of the Planning and Development Act 2000, as amended gives the following meaning to “public infrastructure and facilities”- (a) – (h) and of note is: -

(b) the provision of open spaces, recreational and community facilities and amenities and landscaping works.

(ii) “scheme” means a development contribution scheme made under Section 48 of the Act.

Section 6 provides the Basis for Determination of Contribution.

Section 9 provides the Level of Contribution. In 9(a) the Table relative to Residential Development includes the following:

Class of Public Infrastructural Development	€ per square metre of Residential Development
Class 1 Roads infrastructure & facilities	€53.30
Class 2: Surface Water (incl. Flood Relief infrastructure)	€5.33
Class 3: Community & Parks facilities & amenities	€17.51
Total Contributions Payable	€76.14

It is of note that an update the Development Contribution Scheme 2016-2020 includes the following: *It should be noted that from 1st January 2019, the*

Development Contribution Rates will increase by 7.2% in accordance with the Tender Price Index. The rates of contributions effective from 1st January 2019 shall be as follows: Residential €92.13.

Notes 1 – 3 are included with this Table

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

Class I Open Space - €100,000 per acre to purchase land based on the value of amenity land, plus €100,000 per acre for development costs.

2. Class II Open Space - €250,000 per acre to purchase land in residential areas, plus €100,000 per acre for development costs.

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

Section 10 provides for Exemptions and Reductions and this would not include the subject development proposal.

Section 17 provides for Special Development Contributions, which may be imposed under Section 48 of the Act where exceptional costs not covered by the Fingal County Council Development Contributions Scheme 2013-2015 are incurred by the Council in the provision of a specific public infrastructure or facility.

5.3. Development Contributions - Guidelines for Planning Authorities 2013

The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in performance of their functions under the Planning Acts.

The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not

proceed. Development contributions have enabled much essential public infrastructure to be funded since 2000 in combination with other sources of, mainly exchequer, funding. Discussion is had of the concept of the General Development Scheme, Special Contributions and Supplementary Contributions Schemes.

Chapter 2 provides Key Messages for Supporting Economic Development. These include: *Development contributions are not cash-cows: there is an important balance to be struck between the funding of public infrastructure and the need to encourage economic activity and promote sustainable development patterns. It is essential that development contribution schemes do not impede job creation or facilitate unsustainable development patterns.*

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. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

5.4. Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities 2009

Section 4.15(a) refers to Public Open Space and includes that well designed open space is even more important in higher density residential developments. Details are provided of different types of open space and Section 4.19 refers to Recommended Quantitative standards –minimum rate of 15% of the total site area for greenfield sites and 10% for infill or brown field sites.

It includes in Section 4.17: *Development contribution schemes provide a mechanism for funding the provision of larger open spaces within residential areas, whereas smaller public open space should normally be provided as part of housing developments. Such smaller open spaces should be designed and completed to a standard suitable for taking in charge, where the development will be taken in charge by the planning authority.*

6.0 The Appeal

6.1. Grounds of Appeal

AKM Design have submitted a First Party Appeal on behalf of the Applicant. This is a Section 48 appeal in respect of Condition (no.21) of the Council's permission relative to the subject application. They request the Board to omit this condition from the decision to grant planning permission. They provide that their grounds of appeal, should be read in addition to their planning report. In summary their grounds of appeal include the following:

Low Density & Low Plot Ratio

- The planning authority reduced the residential density and plot ratio of the scheme to below the recommended standards. Accordingly, they consider the quantum of the open space provided is in excess of the Fingal DP policy standards.

Existing Public Open Space in Dunsoghly

- The PA discounted the existing open space in Dunsoghly in their assessment of public open space. The PA did not make any allowance for the existing public open space in Dunsoghly.

Excessive Public Open Space

- The PA has requested excessive public open space to be provided on this infill site. The proposed open space requested amounts to 25% of the site and is not in accordance with similar housing sites in Fingal.

Proposed Open Space

- They provide details of the amount of open space proposed which they consider in excess of Fingal DP requirements. They ask the Board to agree that condition no. 21 is therefore not relevant given their proposal provides extensive areas of public open space.

Public Open Space incorrectly 'Discounted' for Wayleave

- The PA have incorrectly 'discounted' the entire area of the proposed public open space due to the location of the proposed Wayleave and have

incorrectly determined there to be no public open space and therefore a 'shortfall'. The appellant is being unfairly penalised for providing the wayleave (planning gain) to the PA.

Condition no.21

- They consider that the S48 Contribution calculation has been misconstrued by the PA. They request the Board to omit condition no.21 from the decision to grant planning permission.

Planning Precedent

- The existing public open space in Dunsoghly estate is a relevant planning consideration. This proposal provides a logical extension of the existing estate and the Board accepted that the existing public open space as a relevant planning consideration in a similar planning appeal ref. PL06F.249191.
- They provide conclusions and consider that their proposed development is in accordance with the proper planning and sustainable development of the area.

6.2. Planning Authority Response

Fingal County Council's response to the First Party grounds of appeal include the following:

- The Planning Authority considers that the issues raised were fully assessed during the planning application process and as detailed in the Planner's Report. Their comments focus on the rationale for Condition No. 21; provide clarification of how the public open space shortfall and contribution was calculated to assist in the determination of the proposal.

Level of Public Open Space Contribution

- Open Space contributions are based on Fingal County Council Development Contributions Scheme 2016-2020 (Section 48, Planning and Development Act, 2000 as amended). Section 9(b) applies.

Open Space Calculation based on 18 dwellings

- They provide a breakdown showing how the figure of €83,638 is calculated and based on 18no. units as per condition no.21.
- This open space shortfall is entirely appropriate and is based on the Fingal DP 2017-2023 with the contribution based on the Council's Development Contribution Scheme 2016-2020 (under Section 48, Planning and Development Act, 2000 as amended).

Layout and Shortfall

- The density of the proposal and plot ratio was reduced by amending the scheme from 19 to 18 dwellings with the Open Space calculations reduced accordingly.
- They provide details as to why the wayleave area, being a sterilised piece of land should not be used as an area of public open space.

Other Public Open Space

- The PA maintains their contention that there is no provision of usable public open space onsite and this is unacceptable.
- Existing open space in the wider Dunsoghly area is considered to be somewhat remote from the subject site where this open space is required.
- There are longer term plans to develop a Regional Park on the Dunsink lands (subject to remediation).
- They consider that in accordance with the DP standards, sufficient level of open space should be provided within the development and where this is not provided for it is entirely appropriate to seek a contribution.
- Precedent referred to by the First Party is not considered to be comparable and in any case each application is considered on its own merits.
- They consider they have applied the development contribution correctly in accordance with the standards and objectives in the Fingal DP 2017-2023 and in accordance with the Council's Development Contributions Scheme 2016-2020 (under Section 48 of the Planning and Development Act 2000).

They ask the Board to grant permission for the proposed development and to include condition no.21.

7.0 Assessment

8.0 Regard to Development Contributions

8.1.1. This First Party Appeal is solely against Condition no. 21 of the Council's permission relative to development contributions. Section 48 of the Planning and Development Act 2000, (as amended) details the methodology and guiding principles by which Development Contributions Schemes should be arrived at. The wording of S.48(10)(b) of the 2000 Act states that *'an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the Planning authority'*. The wording of this section is restrictive in so far as it limits consideration of such appeals to the application of the terms of the adopted development contribution scheme and the powers of the Board to consider other matters. Therefore, the application is not considered 'de novo' and issue in question in this case is solely whether the Council's Development Contribution Scheme has been properly applied.

8.2. Regard to Condition no.21

This Condition is the subject of this appeal and is as follows:

That a financial contribution in the sum €83,638 be paid by the applicant to Fingal County Council in lieu of open space provision towards the cost of amenity works in the area of the proposed development in accordance with the requirements of the Fingal Development Plan based on a shortfall of 1,425sq.m of open space.

Reason: The provisions of such services in the area by the Council will facilitate the proposed development. It is considered reasonable the developer should contribute towards the cost of providing the services.

8.2.1. This condition arose relative to the Council's concerns about lack of provision of usable public open space. The Council's Parks Division notes the open space provision requirements for the proposed development relative to the proposal and

provide that the area proposed as Public Open Space is not acceptable as it comprises of a Wayleave area and also a Swale. This Wayleave area is a sterilised piece of land which should not have trees or play equipment located on it. They provide that this sterilised area of land should not be included in the calculation for Class 2 open space provision due to (i) its narrow, linear nature and presence of the wayleave. They recommended that a financial contribution in lieu of Class 1 and 2 open space provision is therefore required. Article 9(b) *Level of Contribution* of the Fingal Development Contribution Scheme 2016-2020 refers and is quoted in the relevant section above.

8.3. Regard to Calculation of Open Space

8.3.1. It is of note that the Council's permission includes two separate conditions relative to development contributions under the Section 48 Development Contributions Scheme. Condition no. 21 provides for a development contribution of €83,638 (in lieu of open space provision) and no. 22 provides for a development levy of €177,995 (in respect of public infrastructure and facilities benefiting development in the area).

8.3.2. The Council have included a sheet relative to calculations of both development contributions. They provide the Standard levy – Residential Levy Due is based on €92.13 per Square metre (area to be levied 1932sq.m) - €177,995

It is provided that Open Space Shortfall – 1425sq.m i.e:

$(25 \times 15 \text{ houses} \times 3.5\text{sq.m}) = 1312.5\text{sq.m.}$

$(25 \times 3 \text{ apartments} \times 1.5\text{sq.m}) = 112.5\text{sq.m.}$ (with a minimum requirement of 10% of the total site area provided on site i.e. 580sq.m)

Class 1 (75%) - €200,000 per acre - €52,824

Class 2 (25%) - €350,000 per acre - €30,814 i.e €83,638

Having regard to the above it is noted that as provided by the Council the levy of €83,638 is based on 18no. units. The Council's response to the grounds of appeal provides a further explanation that reiterates the above:

On the basis of 18 dwellings being granted the calculation is $3(2\text{bed}) \times 1.5 \text{ persons} + 15(3+ \text{beds}) \times 3.5 = 57/1000 = 0.057 \times 2.5 \text{ hectares} = 1425.$

75% Class 1@ €200,000 per acre/1500sq.m = €52,824

25% Class 2@ €350,000 per acre/1500sq.m = €30,814 i.e €83,638

It is also of note that Table 12.5 of the Fingal DP 2017-2023 provides the Open Space Hierarchy and Accessibility and includes regard to (Classes 1 and 2 as per the Development Contributions Scheme, Objectives DMS57A/B also refer.

8.4. Regard to First Party Case

The First Party appeal makes a case for the omission of this condition, which they consider has been misconstrued and is unwarranted. A summary of their grounds of appeal has been noted above. Their case includes the following:

- The existing quantum of public open space in Dunsoghly is a relevant consideration (Ref. PL06F.249191 refers) and it is their view that the Planning Authority did not make any allowance for this. They consider that there is already adequate provision of public open space in Dunsoghly estate.
- The PA have incorrectly discounted the proposed public open space due to the wayleave and have incorrectly determined there to be a public open space 'shortfall'. They provide that the location of this open space is accessible to all residents i.e to existing and future occupants. The proposed new open space provides for a wayleave and allows for future potential linkages and connection to the remainder of the zoned lands to the east of the site.
- They consider the quantum of open space provided is in excess of the Council's DP policy standards. They provide details relative to the area public open space shown on the plans submitted and note that a Landscape Plan has been submitted.
- They ask that condition no. 21 should be omitted from the decision. They ask the Board to agree that development contribution condition no. 21 is not relevant given their proposal provides an extensive area of public open space.

8.5. Regard to Public Open Space Shortfall

- 8.5.1. As per the application form the total site area is 0.58ha i.e 5800sq.m. Objectives DMS57A and DMS57B of the Fingal DP require a minimum of 10% of a proposed

development site area to be designated for use as public open space. The First Party provide that as the Council's calculation is based on a requirement of 1425sq.m for public open space the contribution the proposed open space requirement is excessive and amounts to 24.5% of the site and is not in accordance with similar housing sites in Fingal.

- 8.5.2. The proposed 2no. areas of public open space area are 813sq.m and 318sq.m (total 1,131sqm). This amounts to 19.5% of the total site area (0.58ha). They disagree with Fingal relative to their restriction on the use of the wayleave area as open space and note that sewers and manholes are frequently located in open space. They ask the Board to consider that condition no.21 is not relevant given their proposal provides extensive area of public open space.
- 8.5.3. They consider that the permitted low density and plot ratio means more of the site is left as public open space. 18no. dwellings over 0.58ha equate to 31 dwellings and a plot ratio of 0.33. It is noted that this plot ratio is lower than the target area set out for outer suburban 'greenfield' sites in close proximity to public transport as given in the *Guidelines for Planning Authorities Sustainable Residential Development in Urban Areas 2009*. They consider that the assessment of the planning authority relative to the shortfall in open space is incorrect and ask the Board to review the assessment.
- 8.5.4. The Council's response to the grounds of appeal notes that the density of the proposal and plot ratio was reduced by amending the scheme from 19 to 18 dwellings (condition no.2 refers). They note that the revised layout does not mean that the area of public open space is increased. They provide that in this instance the area of the wayleave cannot be considered as usable open space, being a sterilised piece of land that should not have trees or for example play equipment placed on it. As such they consider that this land should not be included in the calculation for public open space provision and would not meet the specified requirements for Class 1 or Class 2 Public Open Space. They provide that in accordance with Development Plan standards, sufficient levels of public open space should be provided within the development, and where this is not provided for it is entirely appropriate to seek a contribution in lieu.
- 8.5.5. The First Party provides details of public open space within the Dunsoghly estate. They note that the existing public open space in Dunsoghly (1.16ha) will serve a

maximum of c. 212 dwellings (including the proposed development and already permitted development). They also note other open space such as parks and sports grounds in relative proximity to the site. The Council notes that these parks and sports facilities are not proximate and somewhat remote from the site. Regard is also had to the future provision of Dunsink Regional Park (subject to remediation). It is noted that this is referred to in Appendix II – Project Lists – Community & Parks.

8.6. Regard to Precedent

8.6.1. The First Party refers to precedent for similar housing developments relative to open space. Of specific note is Reg.Ref. FW17A/0066 – Ref.PL06F.249191 refers (as noted in the Planning History Section above). Section 8.17 of the Inspector's Report had regard to Condition 23 of the Council's permission relative to this application site (contribution in lieu of deficit of public open space). The Inspector noted in that case condition no.23 was in addition to condition no.25 which is imposed under the adopted general development contributions scheme.

8.6.2. *The adopted Fingal Development Contribution Scheme (copy attached) already includes as part of its overall calculation of the projected costs of the provision of public infrastructure a figure of €17.51 per m² of residential development for "Community Parks and Facilities" and this figure is included in condition 25 of the decision to grant permission and has not been appealed by the applicant.*

8.6.3. They noted that both these conditions were imposed under (Article 9(a) -Level of Contribution) the Fingal Development Contribution Scheme 2016-2020. *There is, therefore, an element of double accounting in the planning authority's decision even if there is a deficiency in public open space.* Having regard to the foregoing the Inspector recommended removing condition 23. It is of note that the Board decision in PL06F.249191 only included a general development contribution in condition no.16. However, it must be noted that each case is considered on its merits.

8.7. Conclusion

8.7.1. As noted above this appeal concerns whether the Condition no. 21 relative to a contribution in lieu of public open space provision has been properly applied in accordance with the Fingal County Development Contribution Scheme 2016-2020.

As discussed, an issue has arisen as to what constitutes public open space, and as to whether it can be deemed a usable open space. The Council has deemed that the area provided is a sterilised wayleave area and is not suitable as public open space and that therefore there is a shortfall of 1425sq.m of public open space. As the appeal is not being considered de novo it is not about the design and layout, quality or distribution of the open space on site, or whether the proposed open space should be located in a wayleave area. It is purely about whether the scheme has been properly applied.

- 8.7.2. It is of note that Class 3 of Section 9(a) of the Council's Contribution Scheme provides for: *Community & Parks facilities & amenities*. It is more general and does not however refer specifically to what happens when there is a shortfall in open space provision on an application site. This is provided for in Section 9(b) of the scheme i.e: *The Fingal Development Plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development*. In this case the Council has determined that this condition is applicable in lieu of the lack of provision of public open space on the site. I do not consider that this can be discounted in favour of the application of Section 9(a) only, as it is referred to and provided for in Section 9(b) of the Scheme. Having regard to the issues raised and the documentation submitted I would agree that this condition is in accordance with the Development Contributions Scheme and is applicable in this case.

8.8. **Appropriate Assessment**

- 8.8.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment and the separation distance from of the appeal site from any European sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 **Recommendation**

- 9.1. I would recommend that condition no. 21 be retained.

10.0 Reasons and Considerations

The Board considered the Fingal County Council Development Contribution Scheme 2016-2020 is the applicable contribution scheme in this case and that it had been properly applied by the planning authority.

Angela Brereton
Planning Inspector

14th of June 2019