



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304910-19

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<b>Development</b>	Demolition of grain store and the construction of 20 houses.
<b>Location</b>	The East of the R130 &, to the North of Chapel Lane, Garristown, Co Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F18A/0606
<b>Applicant(s)</b>	Cabot Developments Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Permission
<b>Type of Appeal</b>	First Party against Contribution
<b>Appellant(s)</b>	Cabot Developments Ltd
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	Not visited
<b>Inspector</b>	Angela Brereton

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## 1.0 Site Location and Description

- 1.1. The application site is located in the rural village of Garristown, Co. Dublin. It is situated on the Eastern side of Main Street (The Mall) and is bounded to the South by Chapel Lane. The site is bounded to the north by a community centre and a shed structure.
- 1.2. The subject site is relatively flat and accommodates a large grain store, office building and a weigh bridge. These buildings including the grain store have been disused for many years.

## 2.0 Proposed Development

- 2.1. This proposal is for the demolition of the existing grain store and the construction of 20no. dwelling houses. This is to comprise the following:
  - 4 no. two storey 4 bedroom detached houses; 4 no. two storey 4 bedroom semi-detached houses and 12 no. two storey 3 bedroom houses;
  - 1no. pedestrian entrance onto Main Street, 3no. vehicular entrances onto Chapel Lane, widening of Chapel Lane (into the application site) along site frontage, new path, public open space, landscaping and all associated site works.
- 2.2. A schedule of drawings and documents has been submitted. Also, a Site Design Statement and Urban Design Manual Consistency Statement which when read in conjunction with the drawings describe the development context, design and conformity to required standards. An Engineering Assessment Report and Flood Risk Assessment have also been submitted.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 18<sup>th</sup> of June 2019 Fingal County Council granted permission for the proposed development subject to 28no. conditions. These generally concern design and

layout, landscaping, infrastructure (roads and drainage), demolition and construction works, Part V and Development Contributions.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

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

- They had regard to the Design Statement submitted and considered that the proposed development generally accords with the policies and objectives in the Fingal CDP and Garristown LAP and the Statutory Guidelines.
- They note concerns about distribution and shortfall of public open space and provide an analysis of this and note that in the event of a grant of permission a financial contribution in lieu of any shortfall in POS would be applicable.
- They consider the proposed density of 25dpha is acceptable in this instance having regard to the location and nature of the site and the pattern/density of development in the vicinity of the site.
- They note concerns about boundary treatments but do not anticipate any undue impacts on the visual amenities of the area arising from this proposal.
- They had regard to the infrastructural provision and to the need for F.I to be submitted relative to Transportation and Water & Drainage issues.
- They noted that an AA Screening Report has not been submitted for the proposed development but that the closest Natura 2000 site is c.15km to the north east of the subject site.

*Further Information request:*

- Revised proposals relative to the siting and design of the public open space to comply with the relevant Fingal CDP objectives. The revised layout should not include turning heads within the area of public open space. It should also allow for linkages to adjacent LAP lands.

- The applicant is requested to revise the proposal to address concerns in relation to the location of internal accesses within the proposal.
- They requested further drainage details as the applicant has not submitted sufficient information in respect of surface water drainage, including attenuation details and adherence to SUDs.
- A comprehensive Landscape Plan for the proposal to be submitted.
- To address and submit details relative to design and layout as raised by the Transportation Planning Section.

*Further Information response:*

O'Daly Architects have submitted a response on behalf of the Applicants which notes that as a result of responding to the issues raised in the Council's F.I request the proposal has been substantially revised to include the following:

- Revision to the red line site boundary (*see revised site location map and site layout plans*).
- Significant revisions to site layout plan and services design.
- The number of houses proposed has been revised from 20no. houses to 19no. houses.
- Proposed house types have been revised to suit revised site layout plan (*see revised house plans*).
- The revised proposal shows revisions to the siting and design of the overall layout and now proposes a centrally located public open space.
- They show linkages to the LAP lands to the north.
- A Response to Request for F.I – Engineering issues by Waterman Moylan Engineering Consultants.
- A comprehensive Landscape Plan has been submitted.
- They provide details in response to Transportation issues raised in the F.I request. Internal accesses/road layout have been redesigned.
- They provide that pedestrian/vehicular conflict has been eliminated in the revised design and layout.

- A taking in charge map for the proposal has been prepared.
- The proposed site layout plan has been revised and shared surfaces are no longer proposed.
- An Outdoor Lighting Report has been submitted.

### *Planner's Response*

The Planner has regard to the F.I submitted and their response includes the following:

- They note that the applicant has revised the layout of the proposal and the number of houses is reduced to 19. The red line boundary has been amended to omit the area of the site to the east.
- Revisions include relative to the location of the public open space which they consider acceptable and in accordance with the relevant planning objectives in the Fingal CDP.
- They are concerned about a shortfall of POS and they recommend that a condition requiring a financial contribution be attached.
- The revised layout addresses the Transportation concerns relative to internal access roads, cul de sacs etc and provides for onsite parking.
- In the event of a grant of permission a condition should be attached requiring a revised house type to be submitted in respect of Site nos. 5 and 19.
- They have regard to the revised surface water drainage proposals submitted including SuDS, attenuation, the provision of a detention basin etc.
- They note that the applicant has omitted the attenuation tanks from the public open space. They recommend a reconfiguration of the area of the detention basin and note that it is c. 80sq.m i.e not exceeding 10% of the area of public open space.
- They note that reports have been received from Irish Water and the Water Services Engineering Section stating no objection subject to conditions.
- They consider that the applicant's response relative to Landscaping issues including the submission of a Landscaping Plan to be acceptable.

- The revised layout addresses many of the points raised by the Transportation Planning Section. A taking in charge map has been provided. Also, the Transportation Planning Section have no objections to the revised proposal subject to conditions including relative to access and road widening issues.
- The red line boundary of the subject site has been amended to omit the area of the site to the east. They recommend a condition to ensure that Chapel Lane is widened for the full extent of the site with a footpath extending in a similar fashion.
- They conclude that the applicant has generally addressed the outstanding issues. They consider that the proposed development by virtue of its scale and design would not unduly impact on the amenity of neighbouring property and subject to conditions will not detract unduly from the amenity of the surrounding area. Also, that, the proposed development accords with the Fingal CDP 2017-2023 and the Garristown LAP and is in accordance with the proper planning and sustainable development of the area.

### 3.3. Other Technical Reports

#### The Transportation Planning Section

They noted that the proposed development is located in a 50km/hr speed limit. They had regard to sight lines, the Design Framework and future linkages as set out in the Garristown LAP, issues of design and layout, shared surfaces and parking. They recommended F.I. be submitted.

They had regard to the revisions made in the redesign and recommended that the westerly vehicular access would be pedestrian only and all vehicular traffic use the vehicular access to the east. They also note that the widening of Chapel Lane no longer extends to the eastern limit of the applicant's blue line boundary and provide some recommendations. They concluded that they have no objections to the proposal subject to recommended conditions.



### The Water Services Division

They requested F.I on a number of issues relative to surface water drainage, the use of SuDS and attenuation. In response to the F.I submission they provided they had no objections subject to recommended conditions.

### The Environmental Health Officer

They provided that the proposed development is acceptable to the EHO's Air Pollution & Noise Control Unit subject to recommended conditions including in relation to hours of operation, demolition and construction works, noise and vibration control and control of emissions.

### The Parks Division

They recommended that a landscape plan be submitted with the application. They noted a shortfall of Public Open Space. They recommended that house no. 20 be omitted to improve provision. Also, they had regard to boundary treatment and provided that the proposal to locate the attenuation tank within the POS is not acceptable. They provide that any shortfall after these revisions should be levied as a contribution.

## **3.4. Prescribed Bodies**

### Irish Water

They have no objections subject to conditions.

## **3.5. Third Party Observations**

A Submission from Garristown Community Council welcomes the proposal but in summary includes concerns relative to design and layout and notes the lack of 2 bedroom houses in the scheme.

## **4.0 Planning History**

The Planner's Report refers to the Planning History of the site, which includes the following:

- F07A/0878/E1 – Extension of duration Granted up to the 3<sup>rd</sup> of September 2018.
- F07A/0878 & ABP Ref. PL06F.226752 – Permission granted subject to conditions by the Board for a residential development on a site (approx. 0.796ha), to consist of 34no. 2 storey houses (2, 3 and 4 bedroom) and associated works and services including new pedestrian and vehicular entrance from Chapel Lane/Football Lane at Garristown, County Dublin, bounded by Main Street to the West. Condition no. 19 referred to Development Contributions. This is in a similar location to the subject site.

A copy of the Board's decision is included in the Appendix to this Report.

## 5.0 Policy Context

### 5.1. Fingal County Development Plan 2017-2023

#### Zoning

The site is shown within the Garristown Rural Village 'RV' zoning on Sheet 2 Fingal North. The objective is to: *Protect and promote the character of the Rural Village and promote a vibrant community in accordance with an approved LAP, and the availability of physical and community infrastructure.*

It is within the Rural Area and the area to the west outside the village boundary is shown as an area of High Amenity. The site is outside the ACA which is to the north of the town.

The site is indicated on Sheet No. 14 'Green Infrastructure 1' as being within a *Highly Sensitive Landscape*.

#### 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.*

Objectives DMS66-DMS70 seek to provide Quality in the provision of 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. Garristown Local Area Plan**

This is the relevant LAP which was adopted on the 13<sup>th</sup> of September 2010 and subsequently extended until the 12<sup>th</sup> of July 2020 in accordance with Section 19 of the *Planning and Development Act 2000, as amended.*

The subject site is located within 'Residential Development Area 1' which as per Section 3.4 of the LAP: *Is a largely undeveloped area, located in the heart of the village, its development would consolidate the village the centre area. The new residential development will incorporate additional community and commercial uses and a Village Park together with a new 'civic space' for various outdoor events. It is an objective to provide a stand-alone creche overlooking the proposed Village Park, which would serve the existing and expanding population.*

### 5.3. 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 of the Development Contribution Scheme 2016-2020 includes the following: *It should be noted that from 1<sup>st</sup> January 2019, the Development Contribution Rates will increase by 7.2% in accordance with the Tender Price Index. The rates of contributions effective from 1<sup>st</sup> 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 in

accordance with the details given (Classes 1 and 2 refer) and these are noted in the context of the Assessment below.

The Scheme provides that 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.

#### **5.4. 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.*

## **5.5. 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.*

## **5.6. Natural Heritage Designations**

There are no Natura 2000 sites within proximity to the site. The Planner’s Report notes the closest Natura 2000 site (i.e River Nanny and Shore SPA) is c. 15km to the north east of the subject site.

## **6.0 The Appeal**

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

Hughes Planning & Development Consultants have submitted a First Party Appeal against Condition no.27 of the Council’s permission relative to development contributions on behalf of the Applicants Cabot Developments Ltd.

- It is their view that the Fingal Development Contributions Scheme 2016-2020 has not been properly applied in this instance.
- They request that this contribution be substantially reduced and they provide their detailed reasoning and calculations (referred to in the Assessment below) relative to this issue.
- Whilst they do not dispute the shortfall/deficiency in open space, they consider the levy applied by Condition no.27 to be excessive.
- Figure 1 provides an extract from Table 12.5 'Open Space Hierarchy and Accessibility' of the Fingal CDP 2017-2023.
- Figure 2 provides an Extract from site layout plan approved under Reg.Ref. F18A/0606. They note the centrally located public open space.
- Figure 3 provides an Extract from the landscape masterplan illustrating the design and layout of the public open space.
- They provide that the approved pocket park (Class 2 open space) is appropriately located and is sufficiently overlooked.
- In the context of the Development Contributions Scheme, the open space levy applied by the Council should not include any calculation which utilises the Class 2 rate.
- The proposed development has provided an overprovision of Class 2 Open Space, however, the levy attached by the PA has been partially calculated at the Class 2 rate.
- They note that the applicant is subject to compliance with the Council's Development Contributions Scheme 2016-2020.
- They consider that the levy applied would not be in accordance with the spirit of Development Contributions Guidelines for Planning Authorities 2013.
- With regards to the calculation of the contribution fee to be attached in lieu of public open space, they provide 2 Options (both of which result in a reduced rate) which they consider represent a more appropriate means of calculation of this fee.



- Their preference is to have the fee identified as per Option 2, with Option 1 providing an alternative means of calculating this fee.
- They ask the Board to consider their proposal favourably.

## 6.2. Planning Authority Response

Fingal County Council's response includes the following:

- They provide that the levy in Condition no.27 in lieu of the shortfall in public open space is calculated in accordance with the Development Contributions Scheme 2016-2020.
- They provide details of these levies referring to the scheme and to Table 12.5 and Objectives DMS57A and DMS57B of the Fingal CDP.
- They provide details of the open space shortfall and note the levy amounts relative to Class 1 (75%) and Class 2 (25%) and note that based on their calculations the total levy required is €50,623.
- The Planning Authority requests that Condition no. 27 be included in any grant of permission issued.

## 7.0 Assessment

### 7.1. Regard to Development Contributions

- 7.1.1. This First Party Appeal is solely against Condition no. 27 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.

## 7.2. **Regard to Condition no.27**

7.2.1. This appeal is made against Condition no. 27 of the decision of Fingal County Council to grant permission, under Reg.Ref. F18A/0606 for the above development.

- *Condition no. 27 – The Developer shall pay €50,623 in lieu of 0.08625ha of public open space.*

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

7.2.2. This condition arose relative to the Council's concerns about lack of provision of usable public open space within the scheme. The Council's Parks Division noted the open space provision requirements for the proposed development relative to the proposal as originally submitted and concerns about the shortfall in the provision of public open space. The Planning Authority requested that revised proposals should comply with planning objectives DMS66, DMS57A/DMS57B of the Fingal CDP 2017-2023 (i.e the minimum requirement for on-site public open space is 10% of the total site area). In response to the Council's F.I request a revised Site Layout Plan was submitted. This shows the public open space centrally located within the site. The area given is 0.08ha/10.96% of the net site area.

## 7.3. **Regard to Open Space**

7.3.1. As indicated on the Existing Site Layout Plan as per the F.I submitted drawing no.18034-FI-100 submitted 20<sup>th</sup> of May 2019 refers), the overall area of the site edged in red is 0.82ha (this includes half of the public road, public land and public footpaths). This provides that the net development site is 0.73ha (coloured pink) excludes half of the public road, public land and public footpaths. The area of public domain element of the site is 0.09ha (coloured light blue). This comprises half of the public road, public lane and public footpaths. The adjoining lands in the Applicant's ownership are shown to the east edged in blue.

7.3.2. Having regard to these areas it is noted that the Council's Development Contributions Scheme does not distinguish between net and gross areas of the

development site or the public open space. Therefore, for the purposes of calculations relative to the 10% for public open space, the area of the site would refer to that shown within the red line boundaries ie. as shown in the revised scheme 0.82ha.

#### 7.4. Regard to Public Open Space Shortfall

7.4.1. As noted in the Policy Section above, Section 9 of the Council's Section 48 Scheme provides the Level of Contribution. Section 9(b) provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirements for the development. Reference is made to the calculations for Class 1 and Class 2 Open Space and it is noted that as per the Scheme the financial contributions are based on acreage i.e:

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

7.4.2. In response to the F.I submission the Council had regard to the revised layout and the reduction in units from 20 to 19 no. dwellings. They provide that the total public open space requirement is now 1,662.5sq.m (i.e 19no. 3/4 bedroom units x 3.5 average bedspace occupancy x 25sqm). They note that the applicant is providing 0.08ha/800sqm of public open space on the site. In the event of a grant of permission a condition requiring a financial contribution in respect of the shortfall of public open space (i.e 862.5sqm) should be attached.

7.4.3. The Council's response to the Appeal notes the Open Space Shortfall was calculated in accordance with the Development Contributions Scheme 2016-2020 as follows:

Class	Area m2	Conv.Fac.	Acres	€ per acre	Levy Due
Class 1 (75%)	646.875	4046.47	0.1599	€200,000	€31,972.31
Class 2 (25%)	215.625	4046.47	0.0533	€350,000	€18,650.52
Total					€50,623

## 7.5. Regard to First Party Case

- 7.5.1. The First Party Appeal notes that an area of public open space amounting to 0.1976843 acres (800sq.m) has been provided in the revised layout. In this regard they note that an open space levy, attached in lieu of a shortfall of 862.5sq.m of open space was applied by the Council to provide the levy of €50, 623. Whilst they do not dispute the shortfall of public open space i.e 862.5sq.m, applied by the Council in its calculation of the attached levy they note that the applicant is being levied for a shortfall of Class 2 open space when they provide that no such shortfall exists in the submitted documents. They note that while the Fingal CDP accepts a financial contribution in lieu of open space, the Authority calculates the contribution on the basis of a 25% Class 2 and 75% Class 2 split. In contrast they note that the Council's Development Contributions Scheme does not make reference to the use of such a split but rather pertains that the contribution fee is calculated at a flat rate. They also refer to Table 12.5 of the Plan which relates to: *Open Space Hierarchy and Accessibility*, considering that the area would fall into 'Pocket Parks (Class 2 as per the Development Contributions Scheme). The note included with this Table seeks to: *Provide pocket parks in all cases. No contributions in lieu.*
- 7.5.2. They contend that as a pocket park represents a Class 2 open space, the open space levy applied by the Council should not include any calculation which utilises the Class 2 rate. In this regard they refer to Chapter 2 'Supporting Economic Development' of the Development Contributions Guidelines for Planning Authorities (2013) relative to development contributions not being 'cash cows' (quote noted in the Policy Section above). They consider that Fingal has inappropriately applied this levy. However, they note that the development is subject to compliance with the Council's Development Contribution Scheme and that the extent of public open space provided under the approved application Reg.Ref.F18A/0606 is deficient by 862.5sq.m.
- 7.5.3. With regards to the calculation of the contribution fee to be attached to this permission in lieu of public open space, they consider the following 2no. options to represent a more appropriate calculation of this fee:

**Option 1.** Total Shortfall of Public Open Space charged at Class 1 Rate.

This option would result in a reduced development contribution fee as follows:

- 862.5sq.m (total shortfall of public open space) equals (0.21312839 acres).
- 0.21312839 acres (862.5sq.m) @ €200,000 per acre (Class 1) - €42,625.67

**Option 2.** Surplus of Class 2 Open Space offset against Total Shortfall of Public Open Space with Remaining Shortfall Charged at Class 1 Rate.

- 862.5sq.m (total shortfall of public open space) less 384.375sq.m (total surplus of Class 2 Open Space) equals 478.1235sq.m or 0.1181469 Ac.
- 0.1181469 Ac (478.1235sq.m) @ €200,000 per acre (Class 1) - €23,629.

7.5.4. They consider that the Council's Development Contributions Scheme has not been correctly applied. The proposed development has provided an overprovision of Class 2 Open Space, however the levy attached by the Planning Authority has been partially calculated at the Class 2 rate. Their submission has identified two options for the re-calculation of the contribution fee, each of which they consider represents a more appropriate means of calculating this fee in accordance with the *Development Contributions Guidelines for Planning Authorities (2013)*. Their preference is to have the fee identified as per Option 2 attached to this planning permission in lieu of the levy in Condition no. 27, with Option 1 providing an alternative means of calculating this fee.

## 7.6. Conclusion

- 7.6.1. It is noted that Objectives DMS57A and DMS57B of the Fingal CDP both require a minimum 10% of a proposed development site area be designated for use as public open space. Then as per DMS57A: *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 as per DMS57B: *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....* Therefore, the minimum requirement is that 10% of the proposed development site area be designated as public open space.
- 7.6.2. While note has been made of the Options put forward by the First Party, regard is had to the wording of Section 9(b) of the Fingal County Council's Development Contributions Scheme and relative to the calculation of contributions in lieu of public

open space, and it is not considered that the Scheme would allow for such options. It is noted that any specific Development Plan Objectives or Table 12.5 is not referred to in the context of the Development Contributions Scheme. As noted above the issue in question in this case is solely whether the Council's Development Contribution Scheme has been properly applied.

- 7.6.3. Having regard to the issues raised, I would consider that the levy imposed under Condition no. 27 in lieu of the shortfall in open space provision, is in accordance with Section 9(b) of the Fingal County Council's Development Contribution Scheme and that the Scheme has been properly applied.

## **8.0 Recommendation**

- 8.1. I would recommend that Condition no. 27 of the Council's permission Reg.Ref. F18A/0606 be retained.

## **9.0 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.

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Angela Brereton  
Planning Inspector

8<sup>th</sup> of November 2019