



An
Bord
Pleanála

Inspector's Report ABP-308526-20

Development	Construction of 26 two storey houses and a four storey nursing home.
Location	Lands located between Church Road, and the Broadmeadow River opposite, Rowlestown Drive, Rowlestown, Co Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F19A/0490
Applicant(s)	Axis Construction Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	First Party against conditions (s.48 appeal)
Observer(s)	None.
Date of Site Inspection	2 nd March 2021.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is situated in the village of Rowlestown, approximately 9km north west of Swords and 9km east of Ashbourne. Rowlestown is a spread-out village, with a limited range of services and facilities, including a petrol filling station, primary school, church and commercial units.
- 1.2. The site is located on Church Road, south of Rowlestown Drive and it extends southwards to the Broadmeadow River. It has a stated area of 2.5ha and is currently greenfield in nature.
- 1.3. The area surrounding the site has seen an amount of recent development, including a local authority housing development to the north and a new national school.

2.0 Proposed Development

- 2.1. The proposed development as described in the public notices entailed: -
 - Construction of 26 houses consisting of 2 No. 3-bed houses and 22 No. 4-bed houses and 2 No. 5-bed houses;
 - Construction of a 2-storey building facing church road containing 2 No. 1-bed apartments at first floor level and a retail unit at ground floor level with a gross floor area of 129.7sqm;
 - Construction of a Part-3/Part-4-storey nursing home building comprising of 90 bedrooms with staff facilities and 7 No. assisted living apartments (6 No. 1-bed and 1 No. 2-bed).
 - Construction of a single storey building containing 4 No. 1-bed assisted living apartments.
 - The development included car parking, public open space, a riverside walkway, landscaping, boundary treatments, street lighting, ESB substation, foul drainage pumping station, SuDS drainage and associated site works.
- 2.1.1. The development was amended following requests for further information and clarification of further information. Revised public notices were submitted on 20th May 2020 and 7th September 2020, following requests for same.

- 2.1.2. At the further information stage the proposal was amended, including a reduction in size of the proposed nursing home, reduced from 4 storeys to 3 storeys in height and its gross floor area was reduced to 5,790sqm.
- 2.1.3. The proposal was further amended at the Clarification of Further Information stage, including revisions to the proposed site layout and the proposed 5-bed houses were reduced in size.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 1st October 2020 Fingal County Council issued a Notification of Decision to Grant Permission subject to 33 no. conditions. The conditions attached to the decision issued are generally standard in nature and, in the context of the subject appeal, the conditions of note are:

Condition 18 stated:

'There is a shortfall in the quantum of public open space generated through the development works of 1,200m². The applicant is required to make up this shortfall by way of a financial contribution in accordance with Section 48 of the Planning & Development Act 2000 sought in lieu of the public open space provision. The contribution will be applied towards the continued upgrade of local Class 1 open space facilities in the area for the amount of €70,432.

Reason: In the interests of the proper planning & sustainable development of the area.'

Condition 33 stated:

Prior to commencement of development the developer shall pay the sum of €952,913 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefitting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal

County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefitting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.'

3.2. Planning Authority Reports

3.2.1. Planning Reports dated 10th December 2019, 14th July 2020 and 28th September 2020. The first report noted that the proposed development was in accordance with the 'RV' zoning objective which applies to the lands and outlined the detailed requirements of the time-expired Rowlestown Local Area Plan for the development of the site (the site is identified by the LAP as area 3), thereafter assessing the development in the context of these requirements. The report made reference to concerns expressed by technical departments and particular concerns were expressed in relation to the height and scale of the proposed 4-storey nursing home, the external finish and design of proposed housing, the design and layout of the proposed road network, the level of detailed provided by the proposed landscaping drawings, the incorporation of SuDS infrastructure under public open spaces, the location and extent of a proposed 30m wide riparian corridor adjacent to the Broadmeadow River, surface water drainage proposals and the adequacy of the site-specific flood risk assessment submitted with the application. The Report also expressed concerns regarding potential impacts on nearby Natura 2000 and considered the information submitted as part of the application was inadequate to allow a screening assessment to be undertaken. 12 points of further information were recommended, relating to the following aspects of the development:

- (1) The height and scale of the proposed 4-storey nursing home;
- (2) The external treatment of House Type C;
- (3) The design and relationship of the proposed development to Church Road;
- (4) Impacts on trees;
- (5) Proposed landscaping;

- (6) The layout of the internal road network;
- (7) The relationship of the proposed development to Rowlestown Road;
- (8) Ecological impacts;
- (9) The proposed riparian corridor and proposed surface water drainage system;
- (10) Flood risk;
- (11) Schedule of floor areas and private amenity space for each unit; and
- (12) Appropriate assessment screening

3.2.2. The second report followed receipt of the additional information response and followed a period of additional public consultation, following the submission of significant additional information on 27th March 2020. The report summarised the responses to the further information items and noted that proposed amendments included the following:

- Nursing home building reduced in height, ranging from 2 to 3 storeys and with a maximum height of 15m;
- House Type C was amended, as requested, and the 1-bed assisted living units were redesigned; and
- The street frontage of the development onto Church Road was redesigned.
- An ecological assessment, revised flood risk assessment and Natura Impact Statement were also submitted with the application.

The report outlined ongoing concerns in a number of areas, including concerns expressed by technical departments, and recommended that clarification of further information should be sought in relation to:

- (1) Ecological impacts;
- (2) The proposed site layout, including the street frontage along the northern boundary, the design of individual houses, the proximity of Block A to the western site boundary, car parking for an individual house and the layout of the internal road network;
- (3) The design of house unit No. 15;

- (4) The external treatment of individual buildings, including balconies for the nursing home, the treatment of elevations facing onto the courtyard space and the level of sunlight received by the courtyard space.
- (5) Trees and hedgerows to be retained on the site, the proposed concrete post and timber panel fence along the east and west site boundaries, proposed open space to the east of the nursing home and the overall quantum of public open space proposed.
- (6) The proposed concrete footpath within the riparian corridor and the proposed underground attenuation tank within the public open space.

The third report followed receipt of the clarification of further information response and followed a period of additional public consultation, following the submission of significant additional information on 24th August 2020. The report summarised the responses to the clarification of further information items and concluded that the applicant had satisfactorily addressed the outstanding issues. The report recommended that permission should be granted, subject to 34 recommended planning conditions. Recommended condition No. 33 requested an unstated financial contribution, in lieu of the provision of public open space. This condition was identified as to be omitted in the final decision-making stage.

3.2.3. Other Technical Reports

Water Services Section reports dated 31st October 2019, 21st April 2020 and 23rd September 2020. The first report recommended that additional information should be sought in relation to proposed surface water drainage, including the proposed riparian corridor. It was also recommended that the applicant should be requested to maximise soft/green structures, as opposed to pipes and attenuation tanks. The flood risk assessment was also considered inadequate. The second report recommended that clarification should be sought, again requesting that consideration should be given to green infrastructure rather than pipes and attenuation tanks. The report also highlighted that proposals to provide development within the 30m riparian strip were unacceptable. The third report expressed further concerns that all other possibilities have not been explored, with reference to the use of green infrastructure, and recommended that should permission be granted, the applicant should be required to engage with the Water Services Section to agree the

system. Regarding flood risk, the report advised that the Section had no objection to the development.

Parks Division reports dated 12th November 2019, 17th June 2020 and 23rd September 2020. The first report recommended that the proposed SuDS feature within the public open space should be relocated and also recommended that additional information should be sought in relation to the impact of the development on trees and landscaping proposals. The second report again recommended that the proposed SuDS feature within the public open space should be relocated and also recommended that clarification should be sought in relation to the impact of the development on trees and landscaping proposals. The third report recommended a number of conditions as part of any grant of permission, including that a financial contribution was required for the shortfall in public open space provision.

Transportation Planning Section 3 reports were provided, the first was dated 5th December 2019 and the subsequent reports were undated. The first report outlined the Section had no objection to the development, subject to a number of recommended conditions. In particular the recommended conditions included a requirement that internal roads should be 5.5m wide and northern boundary of the site should be set back a minimum of 4.75m from the centre of Rowlestown Road. The second, undated report, advised that proposals regarding the upgrade of Rowlestown Road were acceptable and advised that the failure to provide internal road widths of 5.5m could have knock-on implications on footpath widths, building lines, etc. It was recommended this should be addressed by way of clarification and should be required as part of planning conditions, should permission be granted. The third report expressed concerns that the applicant had revised the internal road layout, to provide a uniform width of 5.5m for all roads within the development and also that parking for some of the housing units cannot be provided as dedicated parking for the units concerned. The report recommended conditions as part of a grant of permission, including a condition requiring the access road to be a minimum width of 6m.

Environmental Health Officer report dated 29th October 2019, outlining that the section had no comment on the application.

Conservation Officer report dated 2nd June 2020 advising that the section had no comments on the application.

Architects Department reports dated 20th November 2019, 26th June 2020 and 23rd September 2020. The first report identified concerns with a number of aspects of the development, including the relationship of the development to Church Road and the internal layout and design of the scheme, the impact of the proposed nursing home on the Broadmeadow River and its overall massing and design and the design and location of the proposed assisted living units. The second report again identified concerns with the relationship of the development to Church Road and the internal layout and design of the scheme. Regarding the proposed nursing home, clarification was recommended in relation to the proposed materials and elevation treatments and also the level of daylight received by the courtyard area. The third report advised that the Department had no further comments.

Community, Culture & Sports Department report dated 8th November 2019, expressing no objection to the development.

The Planning Report outlined that the Public Lighting Section and Housing Department were also consulted on the application. No submissions were provided as part of the appeal documentation.

3.3. **Prescribed Bodies**

- 3.3.1. Irish Water submission dated 28th April 2020, which did not express any concerns. The submission advised that a confirmation of feasibility was issued in respect of the development. Irish Water also advised that current infrastructure does not extend to fire flow requirements, so the applicant may be required to provide fire storage capacity, and a pumping station may be required, as a gravity connection has not been confirmed. The submission requested 2 standard conditions, should permission be granted.
- 3.3.2. Inland Fisheries Ireland submission dated 22nd November 2019, which requested that comprehensive surface water management measures are required, to prevent any pollution of the Broadmeadow River and also requested that a Construction Environmental Management Plan is required, to control the construction phase. The

submission recommended the retention of a 30m riparian corridor free from development.

3.3.3. Department of Culture, Heritage and the Gaeltacht submission dated 14th September 2020, which advised that the site is in the vicinity of a number of recorded monuments, close to Rowlestown Bridge, and recommended that archaeological assessment should be undertaken. Regarding Appropriate Assessment, the submission advised that there is a hydrological connection between the site and the Malahide Estuary SAC and SPA and there is the potential for significant impacts on these Natura 2000 sites. The submission recommends that the mitigation measures outlined within the NIS should be implemented in full. Regarding ecology, the submission recommends that measures proposed in the Bat Report submitted should be implemented in full and that the lighting design should be signed off by a bat specialist.

3.3.4. The Planning Report outlines that the ESB was also consulted on the application, but no submission was received.

3.4. Third Party Observations

3.4.1. A number of observation letters were received, the issues raised within which can be summarised as follows:

- Concerns that the development is justified on the basis of the site being in an urban location, when it is not.
- The proposed development does not comply with the development plan or local area plan.
- The proposed nursing home constitutes a material contravention of the development plan. It also does not comply with development plan Objectives PM48, PM49 and DMS47.
- The development is out of keeping with the character and pattern of development in the area.
- The quantum of development on the site is excessive and results in overdevelopment.

- The proposed nursing home is excessive in scale and will impact on the amenity value of the park and walkway alongside the Broadmeadow River.
- The provision of a nursing home on the site must not jeopardise the plan to create a riverside park and walkway.
- The ability of the local school to accommodate the development was questioned, with reference also to other proposed residential developments in the area.
- The provision of retail units on the site would result in a dispersed and disjointed commercial community in the area.
- The development will be totally dependent on the car and must be seen as contrary to the proper planning and sustainable development of the area.
- Traffic and road safety concerns
- Concerns regarding the capacity of the foul water system to accommodate the development.
- Concerns regarding the adequacy of the ecological assessment undertaken as part of the application.

4.0 Planning History

4.1.1. My review of planning records for the site included the following:

F09A/0631 - Permission granted on 23rd March 2010 for revisions to 60-bed nursing home granted under Reg. Ref. F05A/1878 as part of a mixed-use development.

F09A/0045 - Permission granted on 15th July 2009 for revisions to approved mixed-use residential development approved under Reg. Ref. F05A/1878, to provide 6 additional houses.

F05A/1878 - (ABP Ref. PL 06F.222753) Permission granted on 25th October 2007 for a mixed-use development of 43 houses, 60-bed nursing home, 3 retail units, medical centre and 2 office units. Condition 2 of the Board's Order required that dwelling units 10 and 11 should be omitted and the nursing home building was required to be relocated within the site.

Permission was subsequently refused for an extension of duration of the permission, under Reg. Ref. F05A/1878/E1.

F04A/0662 - (ABP Ref. PL06F.209606) Permission refused on 29th April 2005 for a mixed use development.

5.0 Policy Context

5.1. Ministerial Guidelines

Development Contributions Guidelines for Planning Authorities (2013)

- 5.1.1. The Guidelines provide non-statutory guidance on the drawing up of development contributions. Under section 48 of the Act, planning authorities must draw up a development contribution scheme (a general development contribution scheme) in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme.

Development Management Guidelines (2007)

- 5.1.2. Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act), advising that Development contribution conditions may only be attached if they accord with the provisions of either section 48 or section 49 of the Planning Act and these are based on the application of the terms of one or more development contribution schemes which have been formulated and adopted in accordance with those sections of the Act, or on the need for a special financial contribution.

There are three categories of conditions under which the payment of financial contributions may be required:

Section 48 (general) schemes relate to the existing or proposed provision of public infrastructure and facilities benefiting development within the area of the planning authority and are applied as a general levy on development.

Section 49 (supplementary) schemes relate to separately specified infrastructural services or projects – such as roads, rail or other public transport infrastructure – which benefit the proposed development.

Although there is no entitlement to appeal against the principle of attaching a condition formulated in accordance with a general or supplementary scheme, the contribution requirements of any such scheme may be the subject of a valid appeal where the applicant considers that the terms of the scheme in question were not properly applied. The planning decision should clearly set out how the relevant terms were interpreted and applied to the proposed development; as well as being best practice this will help to minimise unnecessary appeals.

Regarding special contributions under Section 48(2)(c) of the Act, the Guidelines outline that such a condition may be imposed where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. It is essential that the basis for the calculation of the contribution should be explained in the planning decision, meaning that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.

5.2. Fingal County Council Development Contribution Scheme 2021-2025

5.2.1. Section 9 'Level of Contribution' identifies the following contribution rates, per square metre of development: -

- Residential development - €98.21.
- Industrial/Commercial Development - €76.69.

5.3. Development Plan

5.4. The site and other lands in Rowlestown village are zoned 'RV', with an objective to 'Protect and promote the character of the Rural Village and promote a vibrant community in accordance with an approved Local Area Plan, and the availability of physical and community infrastructure.'

5.5. Rowlestown Local Area Plan

5.5.1. The Rowlestown Local Area Plan was adopted on 13th May 2013 and is now expired. It provided a framework for the development of the village, including a map which identified development lands. The subject site formed part of the lands designated 'Area 3'.

5.5.2. Section 5.3 covers Area 3, identifying that the lands should provide 22 houses, housing for the elderly and a nursing home.

5.6. Natural Heritage Designations

5.6.1. The site is not within or adjacent to any Natura 2000 sites. The closest Natura 2000 sites are:

- Malahide Estuary Special Protection Area (Site Code 004025) and Special Area of Conservation (Site Code 000205), approx. 6.3km east
- Rogerstown Estuary Special Protection Area (Site Code 004015) and Special Area of Conservation (Site Code 000208), approx. 7km north-east.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal are set out against the relevant condition and can be summarised as follows:

- Condition 18
 - The Planning Authority's assertion that there is a shortfall in the quantum of public open space is refuted. The approved development includes a total of 5,033sqm, in the form of a landscaped area toward the south of the site and a centrally located park, and there is an additional 205sqm not included in the calculation, due to the presence of an attenuation tank underneath it. There is a requirement for 2,560sqm of public open space, which is 10% of the site area.
 - The central area of public open space (608sqm) is of appropriate orientation to accommodate a variety of uses and is overlooked by houses, to ensure user safety. A pocket park comprises Class 2 open space and, in the context of the Development Contribution Scheme, an open space levy should not any calculation which utilises the Class 2 rate. The Development Contributions Guidelines for Planning Authorities (2013) is referenced, in particular the statement that development contributions are not cash-cows.

- The landscaped area to the south (4,425sqm) provides for a high-quality and landscaped area of open space along the river. This aspect of the development will be a significant benefit to the community and will be provided at a significant cost to the applicant. The area is indicated by the local area plan as required to provide a riverside amenity area and it not reasonable to levy the applicant for open space, when this space is being provided as part of the development.
- The development provides in excess of the requirements for Class 1 and Class 2 open space. It is accepted that a portion of the lands is within a green corridor belt, but it is at the discretion of the Planning Authority to apply a levy in relation to green corridors. Reference is made to Section 12.7 of the development plan, in this regard.
- Had the green corridor been omitted from the red line application site boundary, the requirement for public open space would have been significantly less.
- A levy in relation to this corridor could be used to provide necessary construction and facilities but, in this instance, the developer will provide such facilities and is spending a considerable amount of money to enhance and upgrade the area and to provide walkways and a landscaped park and this area will be offered to be taken in charge, together with all other public open space areas. The Planning Authority will not incur any costs in the provision of this green corridor.
- The Planning Authority excluded 1,200sqm at the southern-most part of the site, due to the location of the space within a green corridor. This resulted in the stated shortfall and the request for the financial contribution. The entirety of the southern area should be included in the calculation, noting that high quality open space with requisite facilities for a green corridor is being provided at a cost to the applicant and the resultant space will be used and enjoyed by the community and it will be offered to the Authority to be taken in charge.
- Reference is made to Table 12.5 of the development plan, which outlines the types of public open space. The Planning Authority has omitted the southern

public open space on the basis of the caveat at the bottom of the Table, which states that green corridors do not count as public open space. In this instance it is not a green corridor that is being provided, it is a riverside park which includes pathways and landscaped areas. Reference is also made to the local area plan requirement that this land be provided as open space.

- The Planning Authority has previously accepted proposals for amenity park/green corridor proposals on adjoining lands and did not impose a levy towards open space. Permission Reg. Ref. F14A/0274 is referenced, which included a proposed walkway set back from the river and which included amenities such as benches. The Planning Authority did not omit any of this area from its public open space calculation and did not apply a levy. Whilst this development was permitted under the previous development plan, there was a similar exclusion for green corridors from public open space calculations and this was not applied.
- Reference is made to the Fingal County Development Contribution Scheme 2016-2020, under which Class 3 developments are community & parks facilities & amenities. An additional levy is not required in this instance, given the wider community benefit accruing from provision of the development.
- It was unreasonable for the applicant to provide this open space and also be required by the Planning Authority to pay an additional levy of €70,432. The Board is requested to omit condition 18 of the Planning Authority’s decision.
- Condition 33
 - The total amount of the contribution levied under the condition (€952,913) was calculated by the Planning Authority on the basis of works comprising an area of 11,241.2sqm. This is incorrect; the originally proposed development comprised works of 11,223.6sqm and this was subsequently reduced as part of the further information and clarification of further information responses, to 10,141.2sqm. The grounds of appeal include Figures 7 and 8, which provides the quantum of the individual elements of the development.

Planning Authority Calculation			
Standard Levy	€ per square metre	Leviable Floor Area (sqm)	Total
Residential	€98.21	4220.5	€414,495.30

Commercial	€76.69	7020.69	€538,416.70
			€952,913

Figure 7

Applicant Calculation			
Standard Levy	€ per square metre	Leviable Floor Area (sqm)	Total
Residential	€98.21	4220.5	€414,495
Commercial	€76.69	5919.7	€453,981
			€868,476

Figure 8

- The Planning Authority's incorrect gross floor area calculation has resulted in an overcharge of €84,437.
- The Board is requested to amend Condition 33, to require payment of a contribution totalling €868,476, based on the permitted floor area.

6.2. Planning Authority Response

6.2.1. Submission dated 30th November 2020, the content of which can be summarised as follows:

- Regarding condition 18, the Parks and Green Infrastructure Division has responded to the appeal:
 - The inclusion of a green corridor is not in accordance with development plan standards.
 - The green corridor allows for the protection of the riparian corridor and natural flood plain.
 - In terms of usable parkland open space, this area would not meet the Council's standards due to topography, accessibility to the public and inaccessibility to maintenance machinery for general maintenance.
- Regarding condition 33, following submission of the appeal the calculation was reviewed and it transpired that a clerical error occurred in the decision-making process. This resulted in the measurement taken at the time of lodgement being used instead of the measurement taken following receipt of the clarification of further information response. A revised calculation table has been provided and it is requested that a reduced levy of €878,072 should be applied.

Planning Authority Revised Calculation			
Standard Levy	€ per square metre	Leviable Floor Area (sqm)	Total
Residential	€98.21	4138.6	€406,452.00
Commercial	€76.69	6149.7	€471,620.00
			€878,072

- The Board is requested to apply a bond of €4,000 per residential unit (€128,000 total) and cash security of €2,500 per unit (€80,000 total).
- A tree bond of €70,000 is also requested.

6.3. Observations

6.3.1. None.

6.4. Further Responses

6.4.1. The applicant made a further submission, dated 24th December 2020, the content of which can be summarised as follows:

- Regarding condition 33, the Planning Authority's acknowledgement of a clerical error is accepted. This error resulted in an overcharge of €84,437. The Board is requested to amend the condition accordingly.
- Regarding condition 18, the applicant disagrees with the Planning Authority. The development provides a significant area of public open space, 5,033sqm, including a green corridor. There will be no requirement for the Planning Authority to carry out any works to facilitate such a corridor and no levy required, given the works will be completed by the applicant. The proposed €70,432 levy is considered excessive and not required.
- The Planning Authority has previously accepted proposals for amenity park/green corridor proposals on adjoining lands and did not impose a levy towards open space, with reference to Reg. Ref. F14A/0274. This approach should also be applied in the current circumstances.

7.0 Assessment

- 7.1. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.
- 7.2. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it were made to it in the first instance and will only determine the matters under appeal. The conditions the subject of this appeal are Nos. 18 and 33.

Condition 18

- 7.3. Condition 18 was applied by the Planning Authority on the basis of a shortfall of 1,200sqm in public open space provision as part of the development. The condition states that the contribution was sought in accordance with Section 48 of the Act and that the contribution will be applied towards the continued upgrade of local Class 1 open space facilities in the area for the amount of €70,432.
- 7.4. Under Section 48 of the Act, planning authorities have 2 mechanisms by which to require the payment of a contribution in respect of existing and/or proposed public infrastructure and facilities benefiting development:
- (1) In accordance with a development contribution scheme made under Section 48, and/or,
 - (2) Where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development
- 7.5. Regarding the facility to require payment under a development contribution scheme, the Fingal County Council Development Contribution Scheme 2021-2025 is the operative development contribution scheme for the Planning Authority, and it makes provision for the payment of a contribution, per square metre of development, towards individual classes of development, including community & parks facilities & amenities.

- 7.6. Condition 33 of the Planning Authority's decision (which is also the subject of this appeal) required a financial contribution in accordance with the development contribution scheme and this included a proportion of the overall total towards community & parks facilities & amenities. The requested contribution of €70,432 under condition 18 is therefore an additional contribution, outside of that required by the development contribution scheme, and it falls to be considered as a specific exceptional cost not covered by the scheme as provided by Section 48(2)(c) of the Act.
- 7.7. Section 48(2)(c) is clear that specific exceptional costs should arise in order to justify any request for a special contribution. The *Development Management Guidelines* outlines that for such a condition to be attached by a planning authority, it is essential that the basis for the calculation of a contribution should be explained in the planning decision, including identifying the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.
- 7.8. In this instance, the Planning Authority determined that there is a shortfall in the level of public open space proposed, a point which is disputed by the applicant, and that an additional contribution is required towards continued upgrade of local Class 1 open space facilities in the area. However, the nature and scope of the specific works are not specified in the condition and the basis of the calculation has not been clarified.
- 7.9. The condition, as worded, does not meet the requirements of the *Development Management Guideline*. More importantly, it does not satisfy the requirements of Section 48(2)(c) and, as such, I would recommend to the Board that condition 18 should be omitted.

Condition 33

- 7.9.1. Condition 33 sought a contribution of €952,913, in accordance with the provisions of the Fingal County Council Development Contribution Scheme 2021-2025.
- 7.9.2. The grounds of appeal accept that a financial contribution is justified but the Planning Authority's calculation of this contribution is disputed. The Planning Authority's submission on the appeal outlines that a clerical error was made in transcribing the measurements to be used for the development contribution and that the areas

schedule at the time of lodgement was used, instead of the areas schedule at the time of the decision.

- 7.9.3. Both the grounds of appeal and the Planning Authority’s appeal submission include separate calculations of the contribution and there remains a difference in the amount calculated. From a review of both, there are two areas of difference; the gross floor area of the residential component and whether the 4 No. assisted living units comprise a commercial or residential use.
- 7.9.4. Regarding the gross floor area of the residential component, having reviewed the application documentation, I note that there are discrepancies between the areas schedule and the elevation drawings. At the clarification stage the areas schedule outlined a gross floor area of 4107.7sqm, whereas the elevations outlined a gross floor area of 4137.8sqm. The Planning Authority’s decision is based on the application drawings and, on this basis, I am satisfied that the gross floor area of the residential component is 4137.8sqm.
- 7.9.5. Regarding the assisted living units, I note that the Planning Authority’s decision includes condition 9, which requires that the units shall only be occupied as assisted living units associated with the nursing home. They are therefore not market housing and I am satisfied that they should be calculated as a commercial use, for the purposes of the development contribution.
- 7.9.6. Regarding the gross floor area of the nursing home and retail units, both parties agree that the total permitted quantum of these elements is 5919.7sqm and I have no reason to disagree with this.
- 7.9.7. On the basis of the foregoing, my calculation of the residential and commercial floor areas is set out below:

Class	€ per square metre	Leviable Floor Area (sqm)	Total
Residential (26 houses+ 2 apartments)	€98.21	4137.8	€406,373.34
Commercial (nursing home + retail units + assisted living units)	€76.69	6149.7	€471,620.50
			€877,993.84

8.0 Recommendation

Condition 18

- 8.1. Having regard to the above assessment, I would recommend the following Draft Decision Order:

The Board considers, based on reasons and considerations set out below, that condition No. 18 does not accord with the provisions of Section 48(2)(c) of the Planning and Development 2000, as amended and direct the Planning Authority to OMIT condition 18 from the final grant.

Condition 33

- 8.2. Having regard to the above assessment, I would recommend the following Draft Decision Order:

The Board considers, based on reasons and considerations set out below, that the terms of Fingal County Council General Contribution Scheme 2021-2025 have not been properly applied in respect of condition No. 33. The Board has decided that the condition should be amended as follows:

The developer shall pay to the planning authority a financial contribution of €877,993.84 in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine. Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

9.0 Reasons and Considerations

9.1. Having regard to:

- a. Section 48(2)(c) of the Planning and Development Act, 2000 as amended;
- b. The Development Contributions Guidelines for Planning Authorities (2013);
- c. The Fingal County Council Development Contribution Scheme 2021-2025;
- d. The size and nature of the proposed development; and
- e. and the pattern of development in the area.

In respect of condition No. 18, the Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered that the condition failed to meet the requirements of Section 48(2)(c) of the Act and should thus be omitted.

In respect of condition No. 33, the Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered that the terms of the Development Contribution Scheme for the area was not properly applied and the condition should thus be amended.

Barry O'Donnell
Planning Inspector

24th March 2021.