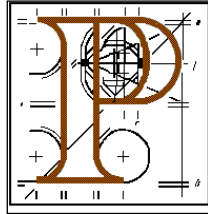


An Bord Pleanála Ref.: ABP-309808-21

An Bord Pleanála



Inspector's Report

Development: Point of detail in dispute regarding condition number 27 of previously permitted ABP-306074-19. Lands at Windmill, Porterstown, Dublin 15.

Planning Application

Planning Authority: Fingal County Council

Planning Authority Reg. Ref.: SHDW/011/19

Applicant: Kimpton Vale Limited & The Kimpton Vale Partnership

Type of Application: Point of detail on previously permitted SHD Application ABP-306074-19

Observers: None

Date of Site Inspection: N/A

Inspector: Fiona Fair

Appendices: Fingal County Council, Development Contribution Scheme 2016 - 2020

1.0 SITE DESCRIPTION

- 1.1. The application site extends to approximately 3.73 hectares and is located in a suburban part of Dublin c.11km north-west of the city centre, in the predominantly residential area of Porterstown, Clonsilla approximately 1.4km to the south of Blanchardstown town centre.
- 1.2. The application site is located to the immediate south and west of the Windmill Terrace, Court and Square residential development of 3 to 5 storeys in height, to the east of Diswellstown Road, west of Station Court and north of the Royal Canal.
- 1.3. The Diswellstown Road / Porterstown Road, including the bridge over the canal and rail line is located to the west at a considerable height above the site providing the principle views of the proposal. The vehicular access to the proposed SHD is from the Clonsilla Road to the north via St. Mochta's estate. The proposed Metro West rail line reservation lies to the west of the site.
- 1.4. The application site forms a prominent part of a large, partially built out development. Completed elements of the Windmill development include a mix of duplex units (76 no. on the eastern part of the site) and 3/4/5 storey apartment blocks in five no. blocks (Blocks A (24 no. units), B (21 no. units), C (18 no. units), E (24 no. units) and G (31 no. units), on the western part of the site) to the north and east of the proposed development. The existing development site includes a substantial unutilised underground car park permitted under the parent permission. The site has been subject to groundworks but there are no buildings upon it. The railway station at Coolmine is c550m to the east of the site.

2.0 Proposed Strategic Housing Development

- 2.1. The proposed development, as per the submitted public notices, relates to the provision of 211 no. apartments in four no. blocks (Block J, K, L and M), comprising of:
 - 10 no. studio units,
 - 68 no. 1 bed units and
 - 133 no. 2 bed unitsabove an existing basement.

- Block J is a six storey block, including a penthouse level, containing 46 no. apartments.
- Block K is a six storey block, including a penthouse level, containing 46 no. apartments.
- Block L and M is an interlinked L-Shaped part six and part eight storey block, including a penthouse level, containing 119 no. apartments. A communal residents amenity space is proposed at ground floor level of Block L-M.
- The development proposes the phased completion of the public open space area to the south and south east of the proposed apartments, which will serve both the proposed and existing residential units at Windmill.
- The development includes landscaped communal courtyards, ancillary car and cycle parking and lift access to the basement below.
- Vehicular access will be via the existing access roads serving the Windmill development, an emergency access is proposed to St. Mochta's estate to the north and pedestrian / cycle connections are proposed to Diswellstown Road to the north west and Sheepmoor Lane to south east.
- The internal layout of the existing basement, which is located below the proposed and existing apartments at Windmill, is to be designed to accommodate the car, cycle parking and bin storage areas for the development.
- The development includes all associated site and infrastructural works, including foul and surface water drainage, landscaping, boundary walls and fences, roads, cyclepaths and footpaths **(including a section of the Royal Canal Greenway on the southern part of the site and tie-in with adjacent footpaths / roads) all on a site area of approximately 3.73 hectares.**
- The proposed development will supersede the development permitted under Reg. Ref.: FW15A/0145.

2.2. The following tables set out some of the key elements of the proposed scheme:

Table 1: Development Standards

Site Area *	3.73 ha gross / 3.23 ha net
No. of units	211
Total Gross Floor Area (incl. 211 sq. m ancillary residents community facility)	24,575 sq. m (as per Application Form submitted)

Gross Density (based upon site area of 3.73 ha)	57 units/ha
Gross density (based upon overall Windmill site area, lands within blue and red line 6.38 ha)	63.5 ha
Net Density (based on the residential zoned portion of lands)	125.5 units/ha
Plot Ratio stated as	1: 1.42
Site Coverage stated as	26%
Public Open Space Required	15% for Greenfield sites N/A
Existing	20,908 sq. m
Proposed Communal Open Space	
Existing	1, 750 sq. m
Proposed	3,525 sq. m
	Total 26,183 sq. m

* The application site has an area of c. 3.73 ha, this includes existing apartment blocks A, B, C, E and G and an area of land providing a connection to St. Mochta's to the north (due to Part V requirements and emergency access to St. Mochta's). The total landholding within the applicant's control, red and blue line on the site location map, has an area of 6.38 ha. The residential zoned land, excluding the metro reservation, has an area of c. 3.23 ha. The residential zoned land within the red line boundary, excluding the metro reservation, has an area of c. 1.58 ha. Furthermore, the residential zoned land within the red line boundary, excluding metro reservation and existing building footprints, has an area of c. 1.29 ha.

The following Table 2 sets out the Part V as proposed.

Proposed	21 no. units, which includes 13 no. proposed units and 8 no. existing units
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3.0 Planning History

There are a number of granted planning permissions on the site.

- 3.1. **F02A/0358:** On 13 Aug 2002, the decision GRANT PERMISSION was made by Fingal County Council for 76 no. two and three bed duplex units and 217 no. one, two and three bed apartments in a 3/4/5 storey development on a 6.96 Ha (17.2 ac) site, with vehicular access from Clonsilla Road via adjoining lands. Site bounded to the north by St. Mochta's Estate and to the south by the Royal Canal, Porterstown, Clonsilla, Dublin 15.

From an online search of the FCC planning web portal Condition 2 of this permission states:

C2. “That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

REASON: To protect the amenities of the area”.

C14. “That the terms of the agreement entered into with the Council's Housing Department regarding the provision of social/affordable housing on this site be fully complied with”.

REASON: In the interest of the proper planning and development of the area and to secure compliance with the County Development Plan objectives relating to housing.

C16: “The following requirements of the Fingal Parks Department shall be strictly adhered to: Prior to the commencement of development, the applicant shall submit the following, for written agreement from the Council: Detailed, measured drawings clearly setting out Class 1 and Class 2 public open space, in strict accordance with the County Development Plan standards. A detailed landscape plan, for both Class 1 and Class 2 open space, including full details of grading, contouring, drainage systems, cultivation and seeding, provision of boundary treatment to access road, the development of the rail reservation/lands to the south, seating arrangements, tree and shrub planting and children's playground (constructed to current Irish and European standards with not less than 8 items of equipment). The said plan shall include details of a footpath system, with a direct pedestrian connection from the primary access road (running east-west) to the Coolmine train station, in accordance with the Porterstown Action Plan. All proposal shall be accompanied by full specifications, bill of quantities and a programme of works. A tree and vegetation survey for the entire site, including detailed proposals for the protection and retention of existing trees on site, in accordance with B.S. 5837:1991. A detailed scheme of street planting, including full specification, bill of quantities and programme of works.

REASON: In the interest of the proper planning and development of the area”.

C24 to C28 relates to financial contributions for costs of providing public services and upgrading surface water schemes and monitoring of the trunk sewer.

C29 relates to Insurance bond and or cash sum for satisfactory completion of the development.

It was contended under ABP-306074-19 that this scheme not fully implemented; It is also stated in the planning history that the site commences with a comprehensive development of 293 units, max 5 storey with significant amenity provided by way of open space on a site of 6.96 Ha. and culminates in the granting of FW15A/0145 for 143 units on a site of 6.37Ha with equivalent open space provision.

- 3.2. **F05A/0583**: Permission granted for variation to previously permitted development Reg. Ref. F02A/0358, consisting of moving Block B, A, G 3 metres south and west of Blocks A, G, H, F, D and E with an additional 165 car parking spaces and landscaped area and the omission of the southern part of the previously permitted basement car park with 99 car park spaces at this 6.96 ha site.
- 3.3. **F07A/1055/E1**: Extension of duration of permission granted for variation to previously permitted development (Reg. Ref. F02A/0358 and F05A/0583) consisting of new 5 storey extension, containing 10 no 2 bed apartments and 5 no 1 bed apartments, to the east of the previously permitted 5 storey Block H and re-arrange previously permitted 10 no 2 bed apartments in Block H to provide 6 no 2 bed and 4 no 3 bed apartments with minor elevational changes with an additional 23 car park spaces and re-arranging 21 permitted car park spaces with new access road and ancillary siteworks at this 6.3 ha
- 3.4. In 2015 an application **reg. ref. FW15A/0145** for a revised scheme to build out the blocks to the south and west of the site was lodged and received permission on 11th October 2016. The proposal was for a residential development consisting of 143 no. apartments in four no. apartment blocks, 5 and 6 storeys high. Vehicular access via the existing access roads serving the Windmill development. 247 no. car parking spaces are proposed, including 92 no. at surface level and 155 no. at basement level. The development provides for the completion of the existing basement car park and courtyards above. The development proposes the phased completion of c. 2.88 ha of Class 1 Open Space and 0.45 ha of Class 2 Open Space to serve both

the proposed and exiting residential units at Windmill. The development includes all associated site and infrastructural works, including foul and surface water drainage, landscaping (see phasing plan), boundary walls and fences, roads, cycle-paths and footpaths all on a site area of approximately 6.37 hectares. The proposed development amends the scheme permitted under Reg. Ref. F05A/0583.

- 3.5. That proposal under reg. ref. FW15A/0145 was developed after the removal of a portion of the rail reservation on the site which allowed the utilisation of the residential zoned land to the south west of the site to provide for further accommodation. It is the stated intention of the applicant (development description) that the current proposal will supersede extant permission FW15A/0145.

4.0 **PLANNING AUTHORITY'S DECISION**

- 4.1. ABP 306074-20: Permission was granted on the 30th March 2020, for a Strategic Housing Development, at Windmill, Porterstown, Clonsilla D15 for the construction of 211 no. apartments and all associated site works.
- 4.2. ABP granted permission subject to 27 Conditions.
- 4.3. Conditions of relevance to this point of detail include:

C1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

C2. The proposed development shall comply with the terms and conditions governing the overall site under register reference F02A/0358 and register reference F05A/0583, unless modified or otherwise required by this grant of planning permission or any conditions contained in this schedule.

Reason: In the interests of orderly development and clarity.

C13. The following requirements in terms of traffic, transportation and mobility shall be incorporated and where required, revised drawings / reports showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development:

(a) A capacity analysis of the signalised junction on Coolmine Industrial Estate Road /Clonsilla Road / Station Court Road shall be carried out and any works or improvement required to the junction on foot of the analysis shall be carried out at the expense of the developer.

(b) The detailed design and construction details of the proposed shared footpath and cycle path 'Greenway' along the southern boundary.

Reason: In the interest of traffic and public safety.

C15. The final landscape plan and specification shall be agreed with the planning authority prior to the commencement of works on site.

(a) The landscaping and earth-works scheme shown on drawing number 01 Landscape Masterplan, as submitted to An Bord Pleanála as part of the application shall be carried out within the first planting season following substantial completion of external construction works. In addition to the proposals in the submitted scheme, the following shall be carried out: (i) The site shall be landscaped, using only indigenous deciduous trees and hedging species. (ii) The playground, Multi-Use Games Area (MUGA) and adult exercise trail along footpaths within the public open space shall be delivered and made available to the public as part of Phase 1 of the proposed development. (iii) Taking in charge drawing to be agreed – in this regard, a clear definition between the proposed communal /private open space and the public open space to the south is required. (iv) Details of landscape and services co-ordination.

(b) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority. Reason: In the interests of residential and visual amenity.

C25. Prior to commencement of development, the developer or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

C27. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme. Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

5.0 POINT OF DETAIL GROUNDS

5.1. The point of detail in dispute regarding condition number 27 of previously permitted ABP-306074-19 was submitted by John Spain Associates on behalf of Kimpton Vale Limited & The Kimpton Vale Partnership. It is stated that this is a first party referral against financial contribution Condition No. 27, only, attached to the decision to grant permission (ABP-306074-19), under section 34(5) of the Planning and Development Act 2000 to 2020. The grounds are summarised as follows:

- Request that the costs associated with the provision of the greenway as per Condition 13(a) of the Permission be offset against the contributions sum to be paid by the developer under Condition 27 of the permission.
- The greenway was incorporated into the design at the behest of Fingal County Council (FCC) in advance of the clients pre application SHD meeting with ABP on the 31st July 2019.
- The provision for a greenway was not a historical requirement in the planning permissions, as a result of the incorporation of this substantial piece of infrastructure into the permitted development, that the associated costs of delivery would be offset against development levies or, alternatively, that the scheme would be developed by FCC once the affected lands were taken in charge.
- The clients have no control over the build specification of the greenway and therefore have no control over the cost of delivery of same which burdens their development with ongoing economic uncertainty from a financial planning perspective.
- ABP have power to impose conditions on a developer to provide infrastructure that is in excess of the needs of the development under Section 34(4)(m) of the Planning and development Act 2000. This power is subject to the requirement on the local authority to compensate for the cost of same.
- Furthermore, FCC Development Contribution Scheme 2016 – 2020 at Appendix II Project List No. 28, the developer is already being levied for the development of the greenway under this Scheme as per Condition 27 of the Permission.

- It is submitted that levying a development contribution on the basis of a section 48 scheme whilst simultaneously imposing the cost of development of part of a project already referenced in that same Scheme amounts to double charging.
- Formerly request the FCC provide an offset of the costs (or a fair portion thereof) of the construction of the relevant part of the greenway against the general financial contribution payment required under Condition No. 27 of the permission.
- It is submitted that the estimated cost of the design and construction of the greenway to be circa €385,250.00
- Secondly, without prejudice to that allowance called for with respect to works to be carried out pursuant to Condition 13 (a) of the permission, the developer received a calculations sheet from FCC which fails to make any allowance for the monies resting on account with FCC on foot of F02A/0358 (see also condition 2 of the permission)
- The contribution calculations should include a credit sum of €447,602.19 which is calculated as follows:

Refund prepaid contributions – (F02A/0358 planning area 24,965 sq. m – developed area 14,761.94 sq. m)	10,203.06 sq. m
Refund 15 no. units already acquired as part of Part V	1,001.00 sq. m
Total refundable floor area	11,204.06 sq. m
Levies rate 2002	€39.95
Total refund	€447,602.19

- Request that ABP make a determination that the amount called for on the attached calculation sheet be reduced by the sum of €447,602.19
- The point of detail is accompanied with the following documents:
 - Letter to FCC dated 15th February 2021
 - Parent Planning permission F02A/0358
 - Letter from FCC confirming F02A/0358 contribution payment.
 - Schedule of Part V units already transferred
 - Part V cost Plan 2006 from Callan & Maguire QS showing LA Contributions were excluded in costs.
 - Letter from FC to KV in relation to greenway Feb 2019.

- Greenway costs from OBJ.
- Windmill development planning history (Bonds and Contributions)
- Contributions Calculation Sheet, dated 11th September 2020

Note: A copy of the parent Planning permission F02A/0358, the decision or the conditions is not included with the documents appended to the submission.

6.0 RESPONSES

6.1 Planning Authority response summarised as follows:

- It is submitted that whilst this matter was discussed as part of pre-planning with the applicant, no request for an offset was made by the applicant at that time and there was no discussion on potential offset costs, consequently no offset agreement is in place.
- In line with Fingal County Council (FCC) offset policy, any offset / financial agreement would have to have been agreed by FCC in advance, independently assessed and quantified and ultimately sanctioned by way of a CE Order prior to works being undertaken, and this is not the case, it is not possible for FCC to agree to any offset at this stage.

7.0 NATIONAL POLICY:

PLANNING AND DEVELOPMENT ACT 2000, as amended.

Section 34 (4) states: Conditions under subsection (1) may, without prejudice to the generality of that subsection, include all or any of the following:

(m) conditions for requiring the provision of roads, including traffic calming measures, open spaces, car parks, sewers, watermains or drains, facilities for the collection or storage of recyclable materials and other public facilities in excess of the immediate needs of the proposed development, subject to the local authority paying for the cost of the additional works and taking them in charge or otherwise entering into an agreement with the applicant with respect to the provision of those public facilities;

Section 34 (5) states: The conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination.

Section 48 Development Contributions.

8.0 LOCAL POLICY

The Fingal County Development Plan 2017-2023

The Fingal County Council Development Contribution Scheme (FCCDDCS) 2016 - 2020, (under Section 48, Planning and Development Act, 2000, as amended).

Appendix II - Projects Lists

Transportation lists under item “28. Royal Canal Cycleway (Phase 2)”

9.0 ASSESSMENT

- 9.1. I highlight that this point of detail relates to SHD ABP-306074-19 in particular Condition 2, Condition 13 (a) and Condition 27 of said permission. The point of detail is made under Section 34 (5) of the Planning and Development Act, 2000 – 2020.
- 9.2. Details of Condition 2, 13(b) and 27 are set out above in section 3 ‘Planning Authority’s Decision’ of this report. Condition 2 requires that the proposed development shall comply with the terms and conditions governing the overall site under register reference F02A/0358 and register reference F05A/0583, unless modified or otherwise required by this grant of planning permission. Condition 13 (a) requires that a capacity analysis of the signalised junction on Coolmine Industrial Estate Road /Clonsilla Road / Station Court Road shall be carried out and any works or improvement required to the junction on foot of the analysis shall be carried out at the expense of the developer and Condition 27 requires that the developer shall pay to the PA an unspecified financial contribution in respect of public infrastructure and facilities benefiting development in the area, to be paid prior to commencement of development and the amount to be agreed between the PA and the developer.

- 9.3. I note also condition 13(b) which requires that the detailed design and construction details of the proposed shared footpath and cycle path 'Greenway' along the southern boundary.
- 9.4. The developer request in the first instance that the costs associated with the provision of the greenway, it is asserted, as per Condition 13(a) of the Permission be offset against the contributions sum to be paid by the developer under Condition 27 of the permission.
- 9.5. I note that Condition 13 (b) references the greenway and Condition 13(a) requires a junction upgrade at the expense of the developer, see wording of C13 (a) & (b) in section 3.8 above.
- 9.6. In the second instance the developer submits that FCC Section 48 Agreement of Financial Contributions and Bonds fails to make any allowance for the monies resting on account with FCC on foot of F02A/0358 (condition 2 of the permission 306074-19)
- 9.7. It is contended that the contribution calculations should include a credit sum of €447,602.19 which is calculated as follows:

Refund prepaid contributions – (F02A/0358 planning area 24,965 sq. m – developed area 14,761.94 sq. m)	10,203.06 sq. m
Refund 15 no. units already acquired as part of Part V	1,001.00 sq. m
Total refundable floor area	11,204.06 sq. m
Levies rate 2002	€39.95
Total refund	€447,602.19

9.8. **The Greenway**

- 9.9. In the first instance I note the Greenway costs, entitled Greenway Path Budget, by OBJ chartered quantity surveyors and project managers, totalling some €385,250. The breakdown of the costs and description of the works is clearly set out and costed in line with Condition 13. Which requires that the following requirements in terms of traffic, transportation and mobility shall be incorporated and where required, revised drawings / reports showing compliance with these requirements shall be

submitted to, and agreed in writing with, the planning authority prior to commencement of development:

(b) The detailed design and construction details of the proposed shared footpath and cycle path 'Greenway' along the southern boundary.

- 9.10. I note there is no mention of costs or shall be carried out at the expense of the developer, unlike Condition 13 (a) which I consider relates to a junction upgrade and not the greenway.
- 9.11. Condition 13 (a) relates specifically to "A capacity analysis of the signalised junction on Coolmine Industrial Estate Road /Clonsilla Road / Station Court Road shall be carried out and any works or improvement required to the junction on foot of the analysis shall be carried out at the expense of the developer". I do not see how this relates to the greenway.
- 9.12. I highlight that the statement of consistence submitted with 306074-19 states: 'The scheme incorporates a section of the Royal Canal Greenway along the southern portion of the site, which reflects the current route alignment / design under preparation by FCC and the NTA. The details of this greenway will be subject to agreement prior to commencement of development.' It goes to state: 'In light of Item 1 and 2 of the Board's Opinion, the changes proposed to the development in the context of the extant permission granted under Reg. Ref.: FW15A/0145, can be summarised as follows:
- Landscaping and open space design changes, including incorporation of the proposed Greenway on the southern part of the site and reservation of an excess area of OS zoned lands as a potential future development site.
- 9.13. I note that the site layout plan and the landscape plan clearly incorporate a section of the proposed Royal Canal Greenway to the south of the site.
- 9.14. I consider that the section 48 Assessment of Financial Contributions and Bonds relates solely to residential levy of 1,517,001. No levy was charged for open space shortfall, trees bond, public art or special contribution. The canal greenway / cycle way is not mentioned. The greenway was included as part of the layout of the scheme and the decision to grant planning permission would have had cognisance to its inclusion and delivery. In fact I note that it is referred to in the first item under

Article 285(5)(b) of the Planning and Development (SHD) Regulations 2017 – opinion which issued to the applicant;

- “Plans showing connections from and through the proposed development for pedestrians, cyclists and vehicles. The submitted information should demonstrate that the proposed development would facilitate the development plan objective to provide a greenway along the Royal Canal, as well as providing details of a pedestrian link from the public road to the northwest and of emergency access from St. Mochta's

- 9.15. I note the response by FCC that whilst this matter was discussed as part of pre-planning with the applicant, no request for an offset was made by the applicant at that time and there was no discussion on potential offset costs, consequently no offset agreement is in place.
- 9.16. I also note their response that in line with Fingal County Council (FCC) offset policy, any offset / financial agreement would have to have been agreed by FCC in advance, independently assessed and quantified and ultimately sanctioned by way of a CE Order prior to works being undertaken, and this is not the case, it is not possible for FCC to agree to any offset at this stage.
- 9.17. It is submitted that levying a development contribution on the basis of a section 48 scheme whilst simultaneously imposing the cost of development of part of a project already referenced in that same Scheme amounts to double charging. Appendix II of the FCCDCS 2016 – 2020 (the scheme in place at the time the decision was made) lists projects and states under transportation lists, item “28. Royal Canal Cycleway (Phase 2)” However, I am of the opinion it is unclear whether double charging is occurring. Clearly the applicant included the greenway for the purpose of securing planning permission, and it forms part of the overall development. There is no specific requirement from my reading of the conditions for the applicant to incur the expense of delivery of the greenway, as it forms part of the overall permission. They did not seek any agreement with FCC to offset costs, in advance of including it within their red line boundary and acquiring permission based upon its delivery.
- 9.18. I recommend that the Board does not amend the contribution applied in this instance.

- 9.19. **FCC Section 48 Agreement of Financial Contributions and Bonds fails to make any allowance for the monies resting on account with FCC on foot of F02A/0358 (condition 2 of the permission 306074-19)**
- 9.20. As set out above in section 9.7 of this report the developer, in the second instance, is requesting that the total standard levy of €1,517,001 be further reduced by €447,602.19, it is submitted, owing to refund prepaid contributions and refund for 15 no. units already acquired as part of Part V.
- 9.21. The PA response does not comment or respond to this element of the point of detail.
- 9.22. Condition 2 states: “The proposed development shall comply with the terms and conditions governing the overall site under register reference F02A/0358 and register reference F05A/0583, unless modified or otherwise required by this grant of planning permission or any conditions contained in this schedule”.
- 9.23. It is noted that from information attached to the file namely Letter from FCC confirming F02A/0358 contribution payment and schedule of Part V units already transferred that the pertinent conditions of F02A/0358 are not disputed by the planning authority. Planning permission granted under F05A/0583 was never commenced.
- 9.24. The Part V letter submitted by the applicant’s agent on the parent permission 306074-19 indicates that 21 Part V units proposed (Note: This is broken down into 13 no. proposed and 8 no. existing units) i.e. 10% to be agreed with FCC Housing department subject to permission being granted. The letter makes reference to the complex and protracted planning history on the site, but it is unclear if the 8 no. existing units give rise to the offset relating to F02A/0358.
- 9.25. In the original application (ABP-306074-19) the following note was attached to the development description. “The application site has an area of c. 3.73 ha, this

includes existing apartment blocks A, B, C, E and G and an area of land providing a connection to St. Mochta's to the north (due to Part V requirements and emergency access to St. Mochta's). The total landholding within the applicant's control, red and blue line on the site location map, has an area of 6.38 ha. The residential zoned land, excluding the metro reservation, has an area of c. 3.23 ha. The residential zoned land within the red line boundary, excluding the metro reservation, has an area of c. 1.58 ha. Furthermore, the residential zoned land within the red line boundary, excluding metro reservation and existing building footprints, has an area of c. 1.29 ha."

- 9.26. Table 1 above which sets out the development standards indicates that 211 number units are proposed with a total Gross Floor Area of 24,575 sq. m (as per Application Form submitted).
- 9.27. The Section 48 Assessment of Financial Contributions and Bonds is based on 211 number units and a proposed works area of 15445.50 sq. m with no area proposed for retention, demolition or exempt.
- 9.28. Under Level of Contribution in the FCC Development Contribution Scheme 2016, I note that Note 2: states: "The floor area of proposed development where buildings are involved shall be calculated as the gross floor area. This means the gross floor area determined from the internal dimensions of the proposed buildings, including the gross floor area of each floor including mezzanine floors".
- 9.29. The proposed works area of 15446.50 sq. m is not elaborated upon, but it is clearly less than the total Gross Floor Area of 24,575 sq. m (as per Application Form submitted with ABP-306074-19).
- 9.30. Overall, I can see no reason to justify the reductions sought by the applicant / developer in this case and I recommend that the Board does NOT amend the contribution applied in this instance.

11.0 RECOMMENDATION

Having read the submissions on file, had due regard to the conditions attached to ABP-306074-19 (namely Condition 2, Condition 13 (a) & (b) and Condition 27, the FCC Development Contribution Scheme and all other matters arising. I recommend that the said condition number 27 Not be amended.

12.0 REASONS AND CONSIDERATIONS

Having regard to-

(a) The Fingal County Council Development Contribution Scheme 2016- 2020 made under Section 48 of the Planning & Development Act, 2000.

(b) Conditions attached to ABP-306074-19, under which planning permission was granted for the provision of 211 number apartments in four number blocks (Block J, K, L and M), comprising of 10 number studio units, 68 number one-bed units and 133 number two-bed units, above an existing basement.

(c) Section 34 (4) of the Planning and Development Act 2000 – 2020 which states: Conditions under subsection (1) may, without prejudice to the generality of that subsection, include all or any of the following:

(m) conditions for requiring the provision of roads, including traffic calming measures, open spaces, car parks, sewers, watermains or drains, facilities for the collection or storage of recyclable materials and other public facilities in excess of the immediate needs of the proposed development, subject to the local authority paying for the cost of the additional works and taking them in charge or otherwise entering into an agreement with the applicant with respect to the provision of those public facilities;

(d) Section 34 (5) of the Planning and Development Act 2000 – 2020 which states:
The conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination.

the Board considered that the point of detail in dispute regarding condition number 27 of previously permitted ABP-306074-19 in terms of Section 34 (5) and 34 (4) (m) and have decided that Condition 27 was correctly applied by the planning authority in respect of a contribution towards public infrastructure and facilities benefiting development in the area of the planning authority.

The Board concluded that the application of a financial contribution is applicable in this instance, and can see no evidence of overcharging by reason of class of contribution sought. This application is for the provision of 211 number apartments in four number blocks (Block J, K, L and M), comprising of 10 number studio units, 68 number one-bed units and 133 number two-bed units, above an existing basement.

Fiona Fair
Senior Planning Inspector
28.02.2022