



An  
Bord  
Pleanála

## Inspector's Report ABP-313592-22

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<b>Details of Referral</b>	Point of detail in dispute regarding condition number 25 of previously permitted ABP-306721-20.
<b>Location</b>	Lands at Bonnington Hotel, Swords Road, Whitehall, Dublin 9.
<b>Planning Authority</b>	Dublin City Council.
<b>Referrer</b>	Linesight Limited.
<b>Type of Referral</b>	First Party regarding Condition No. 25 (Point of Detail).
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	None.
<b>Inspector</b>	Stephen Rhys Thomas.

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## 1.0 Introduction

- 1.1. **ABP-313592-22** is a referral which was received by the Board from Linesight Limited. It concerns a point of detail in dispute between the referrer / developer and the planning authority regarding Condition number 25 attached to a grant of permission under Board order ref. no: ABP-306721-20.
- 1.2. Condition number 25 of ABP-306721-20 requires the payment of a financial contribution under Section 48 of the Planning and Development Act 2000, as amended, and the referrer is seeking a determination from the Board on the monetary amount required, if any, to comply with the condition as no agreement was reached with the Planning Authority.

## 2.0 Site Location and Description

- 2.1. According to the site location and description of Inspector's Report dated June 2020 (ABP-306721-20), the subject site is in a suburban area c4km north of Dublin city centre. At the time the application was made, the site consisted of a surface car park behind and to the east of the Bonnington Hotel and Leisure Centre. The access to the site from the Swords Road c200m to the west runs along the southern side of the hotel. It also provides the access to an apartment scheme that occupies the land to the east of the site. The access to the apartment complex known as Gracepark Manor is gated just south of the site. The adjoining apartment scheme to the east includes a 5 storey block whose long axis is parallel to the site boundary behind a coniferous hedge boundary. The northern boundary of the site adjoins a former convent currently used for emergency accommodation, known as High Park.
- 2.2. The site slopes gently upwards from the southern boundary of the site, but on the whole the site is more or less level. There are no significant level changes between the site and adjacent lands. There is a notable coniferous hedge to most of the site boundaries apart from the undefined boundary of the site with the access road and surface car parking adjacent to the hotel. The hotel to the west is a combination of buildings up to six storeys in height. A private hospital is located to the north and west of the site and suburban style housing aligns the access street to the site. The site lies over the Dublin Port Tunnel.

### 3.0 Background to Referral

- 3.1. Under ABP-306721-20, An Bord Pleanála granted permission subject to 26 conditions for the construction of 124 build to rent apartments and all associated site works at land adjacent to the Bonnington Hotel, Swords Road, Whitehall, Dublin 9.
- 3.1.1. Condition No.25, which is the subject matter of this referral, required the developer to pay a financial contribution under section 48 of the Planning and Development Act 2000, as amended, 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, the detail of the condition is as follows:

*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.*

## 4.0 The Referral

### 4.1. Referrer's Case

- 4.1.1. The referrer is seeking a determination on the amount payable under Condition number 25, if any, as no agreement has been reached with Dublin City Council in relation to the condition.
- 4.1.2. The referrer sets out the background to the case and states that the development is to be leased to Dublin City Council for 25 years. The referrer contends that requirements under the development contribution scheme should be waived because the entire development comprises social and affordable housing exempted under paragraph 11 of the Council Scheme. Dublin City Council (DCC) have stated that there is no such reduction in the scheme for social housing on these terms.
- 4.1.3. The referrer has listed out the correspondence received to date and this includes:
- Email correspondence from DCC that states the levy reduced to zero dated 2 September 2021 and followed by confirmation email dated 28 October 2021.
  - DCC correspondence of the 22 November 2021 that states a previous communication was a clerical error and the amount of levy is €1,001,127.
  - On the 7 February 2022 DCC stated that the scheme does not provide any reduction in relation to leased property as social housing.
- 4.1.4. The referrer's submission also includes all correspondence to DCC and this is recorded in appendices. In addition, legal opinions have been prepared and submitted with the documentation and ABP-306254-19 is held up as the instructive example of such a similar case. The referrer wishes the matter to be determined by the Board with respect to the proper application of the terms of the Development Contribution Scheme.

### 4.2. Planning Authority's response

- 4.2.1. A response was sought by the Board from the planning authority on the 1 June 2022, a response was received on the 28 June 2022 and states as follows:

- The background to the Dublin City Council Section 48 Development Contribution Scheme 2020-2023 is provided and an explanation of how the scheme is applied with respect to social and affordable housing units is explained. In particular, differences in the scheme between the previous (2016-2020) and the current (2020-2023). It is accepted that a clerical error occurred, no exemption applies and the developer was invoiced.
- With regard to the previous decision of the Board in relation to ABP-306254-19, it is noted that the Board is not bound by previous decisions. For example, the decision to dismiss the appeal with reference to ABP-309708-21 should be noted.
- Notwithstanding the developer's proposal to enter a 25 year social housing lease, the development contribution should still be paid. If not, it would mean that the asset would return to the owner at the termination of the lease without any requirement to pay a contribution. An interpretation of the scheme in this way would require the input of the elected representatives, a period of public display, engagement with the public and the inclusion of a leased unit exemption clause.
- The lease agreement between the developer and the Council has not yet concluded and may never conclude, for example if planning conditions are not complied with. Neither the Standard Long Term Lease or the Enhanced Long Term Social Housing Lease provide for section 48 or Part V exemption.

4.2.2. The planning authority's submission includes a legal opinion to reinforce the matters above and concludes that the Inspector's report with reference to ABP-309708-21\* is the correct analysis to make of such a case.

\* I note that the quote referenced by the Council's legal opinion is actually taken from ABP-306254-19 and not ABP-309708-21.

## 5.0 Planning History

5.1. **Board Order (ABP-306721-20):** On 21 September 2020, permission was granted for 124 residential units and all associated site works. Relevant conditions include:

2. The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (March 2018) and be used for long term rentals only. No portion of this development shall be used for short term lettings.

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

22. Prior to the commencement of development, the developer shall submit, for the written consent of the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period.

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

23. Prior to expiration of the 15-year period referred to in the covenant, the owner shall submit for the written agreement of the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

24. 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.

Condition that the Point-of-Detail query refers:

25. 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.

## **6.0 Legislative Context**

### **6.1. Planning and Development Act 2000, as amended.**

Section 34(5) of the Planning and Development Act, 2000, as amended. The relevant section of the Act 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 carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination.*

### **6.2. Section 48 Development Contributions**



6.2.1. The Planning and Development Act 2000 (as amended) allows for the payment of a contribution or contributions as follows:

*48.—(1) A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).*

*(2) (a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.*

*(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.*

*(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development 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.*

6.2.2. Inserted (1.09.2015) by Urban Regeneration and Housing Act 2015 (33/2015), s. 29, S.I. No. 364 of 2015:

*(3A) Where a permission which includes conditions referred to in subsection (1) has been granted under section 34 in respect of a development and the basis for the determination of the contribution under subsection (1) has changed—*

*(a) where the development is one to which Part II of the Building Control Regulations 1997 (**S.I. No. 496 of 1997**) applies and a commencement notice within the meaning of that Part in respect of the development has not been lodged, or*

6.2.3. Substituted (22.10.2018) by Planning and Development (Amendment) Act 2018 (16/2018), s. 28(1), (2)(a), (b), S.I. No. 436 of 2018:

(b) where the development comprises houses and one or more of those houses has not been rented, leased, occupied or sold,]

the planning authority shall apply that change to the conditions of the permission where to do so would reduce the amount of the contribution payable.

F401[(3B) Where a development referred to in *subsection (3A)* comprises houses one or more of which has not been rented, leased, occupied or sold the planning authority shall apply the change in the basis for the determination of the contribution referred to in that subsection only in respect of any house or houses that have not been rented, leased, occupied or sold.]

(3C) Where the planning authority applies a change in the basis for the determination of a development contribution under *subsection (3A)* it may amend a condition referred to in *subsection (1)* in order to reflect the change.]

6.2.4. Likewise, section 9(7) of the Planning and Development (Housing) and Residential Tenancies Act 2016, allows the Board to attach conditions that concern a contribution or contributions as follows:

*Without prejudice to the generality of the Board's powers to attach conditions under subsection (4), the Board may attach either or both of the following to a permission for the development concerned:*

*(a) a condition with regard to any of the matters specified in section 34(4) of the Act of 2000;*

*(b) a condition requiring the payment of a contribution or contributions of the same kind as the planning authority or authorities in whose area or areas the proposed strategic housing development would be situated could, but for this Part, require to be paid under section 48 or 49 (or both) of the Act of 2000 were that authority to grant the permission (and the scheme or schemes referred to in the said section 48 or 49, as appropriate, made by that authority shall apply to the determination of such contribution or contributions).*

## 7.0 Policy Context

7.1.1. The **Dublin City Development Plan 2016-2022** was the applicable development plan at the time of the assessment of the planning application to the Board.

7.1.2. The site has the standard residential zoning objective 'Z1 – To protect, provide and improve residential amenities'.

### 7.2. Dublin City Development Contribution Scheme

7.2.1. The current scheme is the Dublin City Council - Development Contribution Scheme 2020-2023 (under Section 48, Planning & Development Act, 2000 as amended).

7.2.2. Note 1 states the following: This Scheme is effective in respect of Planning Applications lodged with Dublin City Council from the 1st of April 2020, where a development contribution is applicable under this Scheme. This Scheme is also effective in respect of existing permissions granted before this date which have not yet commenced.

7.2.3. Circumstances where no contribution or a reduced contribution apply:

11. The following development will not be required to pay development contributions under the Scheme:

- Social & Affordable housing units, including;

- those which are provided in accordance with an agreement made under Part V of the Planning and Development Act (as amended)
- those which are provided by a voluntary or co-operative housing body, which is recognised as such by the Council
- those made available under the Council's Scheme of Priority for Affordable Dwelling Purchase Arrangements under Section 85 of the Housing (Miscellaneous Provisions) Act 2009 as amended and Housing (Miscellaneous Provisions) Act 2009 (Part 5) Regulations 2019 (S.I. No.81 of 2019);

### 7.3. Rebuilding Ireland – Action Plan for Housing and Homelessness

Pillar 2 of 'Rebuilding Ireland: An Action Plan for Housing and Homelessness' aimed at private investment in order to deliver social housing at scale. 'Enhanced Long-

Term Social Housing Leasing Scheme' was introduced by the Department of Housing, Planning and Local Government under this pillar.

Key Action - NTMA/Private Sector Housing Fund to deliver increased housing supply. Aim to acquire properties for onward leasing to local authorities and approved housing bodies under long-term leasing arrangements.

#### **7.4. Development Contributions – Guidelines for Planning Authorities 2013**

The principal aim of the new guidelines is to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since guidance last issued in 2007. It is stated that the primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed.

### **8.0 Assessment**

#### **8.1. Scope of the Referral/Role of Board**

- 8.1.1. This referral on a 'point of detail' is made under Section 34(5) of the Planning and Development Act, 2000, as amended. It is noted that Section 34(5) states: 'The conditions under subsection (1) may provide that points of detail relating to any 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'.
- 8.1.2. The point of detail request in this case relates to Condition number 25 of ABP-303433-19. This permission was granted by the Board on 21 September 2020 following a strategic housing development application submitted to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

#### **8.2. Consideration of Condition number 25**

- 8.2.1. Condition number 25 provides as follows:

*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.*

- 8.2.2. The background to the attachment of the development scheme contribution condition is relevant in consideration of this referral. The planning application was made directly to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as a strategic housing development (SHD). The planning authority made a submission, as is required by the 2016 Act, and a Chief Executive's (CE) Report outlines the attachment of a development contribution under section 48 of the Planning and Development Act 2000 (as amended).
- 8.2.3. Permission was granted by the Board for the development and condition 25 was attached. The referrer makes no reference to the imposition of condition 25, but rather asserts that the development contribution amount advanced by the planning authority should be zero. This is because the developer has undertaken to provide all of the units as social housing and a lease has been drawn up to reflect the character of the development. According to the referrer, under the terms of the Council's Development Scheme, no contribution or a reduced contribution should apply with respect to social and affordable housing units and paragraph 11 of the scheme is highlighted.

8.2.4. No other aspect of the Board's decision is disputed and matters such as conditions 2, 21, 22 and 23 that constrain the development to a Build-to-Rent scheme and legal matters to be agreed with the planning authority prior to the commencement of development are not in play.

8.2.5. The referrer received initial written confirmation from the planning authority that the contribution payable would be zero and this was followed by correspondence to correct a clerical error and that €1,001,127 is now payable. Clerical error aside, the outstanding amount payable is €1,001,127 and the referrer disputes this total and argues that a zero amount should apply because all units will be offered under a long term social housing unit lease to the Council. The planning authority disagree, the charge should stand. In both lines of argument, previous appeals and caselaw is referred to.

The referrer's premise

8.2.6. The referrer's premise for an elimination of the contribution can be simplified and summarised as follows:

1. The development is to be leased for 25 years to the Council for social housing units, a lease agreement to this effect has been supplied, signed by stamp.
2. The entire development comprises social housing, so a contribution under the Development Contribution Scheme should be waived, paragraph 11 of the Council Contribution Scheme refers.

8.2.7. The referrer has made much about previous decisions of the Board and in order to maintain consistency in administrative decision making, decisions should align with previous ones if the circumstances are the same. In this regard, ABP-306254-19 is quoted as the relevant decision to consider, as according to the referrer, the facts are almost identical. The referrer reminds us that there should be consistency in decision making unless clear explanation is provided for any departures.

8.2.8. In the case on hand, matters are slightly different and so the state or degree of being identical cases are open to interpretation. The past decision of the Board advanced by the referrer was taken against the background of the previous Development Contribution Scheme in which the exemptions and reductions rules are slightly different with respect to social housing units. The current scheme provides a longer

list of social and affordable units where no contribution or a reduced contribution would apply. The qualifying criteria has changed, although I note that the main difference is the provision of units made for purchase under the Council's Scheme of Priority for Affordable Dwelling Purchase Arrangements. However, I think that the greatest difference between the decision of the Board in relation to ABP-306254-19 and the current reference query is that the Board took into account a signed agreement between the developer and Dublin City Council that highlighted the intention of the developer and certainty that the units would be delivered as social housing. The Board Order with respect to ABP-306254-19 is instructive in this instance, despite no mention of what would happen after the lease ended.

8.2.9. The clear explanation of the principal difference between this case and previous one is as follows. Under ABP-306254-19, Dublin City Council had gone as far as to sign a lease with the developer concerning an 'Enhanced Long Term Social Housing Scheme', a scheme derived from Government Policy under Rebuilding Ireland. In the current referral before the Board, I can find no similar documentary evidence other than an undated but signed by common seal Long Term Lease for the property concerned. In fact, the Council's submission to the Board of the 28 June 2022 states that the lease agreement has yet to conclude. In addition, the planning authority point out that the units may not be completed to their satisfaction and that an option to purchase is not included in the current format of lease agreements on offer. This is problematic and brings me to the argument presented to the Board by the reporting Inspector (ABP-306254-19) around the long-term use of units for social housing and what happens with the termination of any lease, and this is echoed by the planning authority.

8.2.10. In a similar fashion to the case cited by the referrer, the developer seeks to provide social housing on a long-term lease basis and escape the standard section 48 Development Contribution Scheme requirements. In this instance, the residential units are constrained to be 'Build-to-rent', specifically condition number 2 of ABP-306721-20 refers. After the termination of an agreed covenant or legal agreement, the build to rent nature of the scheme can only be unlocked by a separate planning application. Nevertheless, the development as a whole has no planning constraint to remain as social housing and could conceivably become a marketable commercial rental enterprise at the end of any long-term lease to the Council. This has been

highlighted by the planning authority in their documentation and I consider it to be an important issue. Especially, when there is currently no legal agreement in place and the future use of the development whether for social housing or not is uncertain. In my mind and as pondered in the case cited by the referrer, a legal agreement does not change the planning status of the units concerned and in this instance no such agreement is even in place. I am not satisfied that the Board can rely on the documentation advanced by the referrer in perhaps the same way as before and should err on the side of caution and confirm the development contribution demanded by the planning authority. Furthermore, I have no knowledge of what conditions and limitations might be attached to any lease agreement between parties, as agreement has not been reached.

8.2.11. It is the uncertainty of social and affordable housing requirements being met and the future commercial use free of the levy demanded that makes this case quite unlike the previous case decided by the Board (ABP-306254-19). Theoretically, matters might be altered if the developer and Council were more aligned in terms of legal agreements, they are not and so I find it difficult to fully recognise the permitted units as social housing despite the developer's good intentions. This is problematic for the referrer's case built on the premise that their units, intended as social housing units as a consequence of a legal agreement, qualify to be a circumstance where no contribution or a reduced contribution would result. The referrer's contention that the list under paragraph 11 of the Council's Development Contribution Scheme is not exhaustive lacks credibility when in my opinion the proposal falls short of a social and affordable housing development at all. As a matter of fact, the permitted units as they stand, must only comply with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, for which I assume the planning authority would apply a reduced contribution as is normal practice.

8.2.12. In summary, and noting the provisions of section 34(5) of the Planning and Development Act 2000, as amended, it is considered that the details of condition number 25 are correct, are reasonable and are an accurate application of the section 48 Dublin City Development Contribution Scheme. I am satisfied that the planning authority are at liberty to apply the requirements of the adopted Dublin City Council Development Contribution Scheme 2020-2023 with reference to residential units in a



correct and proper manner and in accordance with the scheme, taking into account any circumstances where no contribution or a reduced contribution would apply, such as Part V or a recognised voluntary or co-operative housing body.

#### Other Matters

- 8.2.13. The referrer has stated considerable annoyance and frustration that in the first instance they were informed that no section 48 levy would apply and then find that they had been invoiced for €1,001,127. For the referrer this is an unacceptable sequence of events and forms an element of their referral. The planning authority recognise the oversight and apologise, but state that they must administer the Development Contribution Scheme evenly and properly and this has now been corrected. There is little consolation to be found in this state of affairs and there is no comfort in this referral to remedy the case. It is unfortunate and hopefully future events of a similar nature will not occur, a matter over which the Board have no control. Administrative oversight is an expected and important element of the planning system and I appreciate that the funding model employed by the developer may have been impacted upon. However, the matter of past error and correction have no role to play in this referral and no further action by the Board is either required or warranted.

## 9.0 Draft Board Order

I recommend that the Board should decide this referral in accordance with the following draft order:

**WHEREAS** by Order dated the 21<sup>st</sup> day of September, 2020 An Bord Pleanála, under planning register reference number ABP-306721-20, granted subject to conditions a permission to Roseberry Investments Limited care of John Spain Associates, 39 Fitzwilliam Place, Dublin 2 for a development comprising the construction of a 'Build to Rent' residential development comprising 124 number apartments as follows: A) 124 number apartments (arranged as two chevron shaped blocks (five to six number storeys)) comprising 48 number one-bedroom units, and 76 number two-bedroom units, each with private amenity space (balcony or terrace). Communal residential facilities in the form of a management office, post room, children's room, games room, coffee dock, reading/media room, group/yoga room, DIY bicycle repair room ABP-306721-20 Board Order Page 2 of 15 and garden room are located on the lower ground floor, of the southern block, extending to circa 268 square metres, B) Additional external communal amenity space is located adjacent to the building's perimeter, providing a range of seating, a play area at the eastern elevation, bicycle parking, hard and soft landscaping and informal recreation, extending to circa 2,628 square metres along with a single storey refuse store (circa 38 square metres), C) The northern block includes an under-croft car park accessed via a ramp adjacent to the site entrance and provides 54 number car-parking spaces including four number car club spaces and three number disabled spaces. 150 number bicycle spaces are provided at ground level, (with 80 number spaces within a single storey bicycle store (circa 55 square metres)), at the site's western perimeter, D) Vehicular access is via the existing access road and car park located east of Swords Road (at the western perimeter) with an additional shared pedestrian and bicycle entrance (and fire tender access) provided at the south west corner, with access improvements including a pedestrian crossing, E) Reconfiguration of the junction at Seven Oaks is included in the application., F) Plant room, Electricity Supply Board sub-station are included at lower ground floor level at the western elevation where the two buildings adjoin, with two areas of

enclosed plant included at roof level with a sedum roof provided and G) All associated site development and landscape works.

**AND WHEREAS** condition number 25 attached to this permission required the developer to pay to the planning authority a financial contribution, being the appropriate contribution to be applied to this development in accordance with the Dublin City Council Development Contribution Scheme 2020-2023 as adopted by Dublin City Council on the 2<sup>nd</sup> day of March, 2020 in accordance with section 48 of the Planning and Development Act, 2000, as amended

**AND WHEREAS** the developer and the planning authority failed to agree on the amount of the contribution to be paid pursuant to condition number 25, and on the application of the terms of the relevant Development Contribution Scheme in compliance with the terms of the condition and the matter was referred by the developer to An Bord Pleanála on the 10<sup>th</sup> day of May 2022 for determination:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that the residential units under construction at lands adjacent to the Bonnington Hotel, Swords Road, Whitehall, Dublin 9, on foot of planning permission reference ABP-306721-20 do not constitute units for social housing use, by reason of the lack of a Lease Agreement between the developer and Dublin City Council, and that these units therefore cannot fall to be considered as social housing units which are exempt from the requirement to pay development contributions, for the purposes of the applicable Development Contribution Scheme 2020-2023 made under section 48 of the Planning and Development Act, 2000, as amended. Consequently, the amount payable under condition number 25 of planning register reference number ABP-306721-20 is as determined by Dublin City Council in respect of public infrastructure benefiting the development 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.

## 10.0 REASONS AND CONSIDERATIONS

Having regard to:

- (a) sections 34(5) and 48 of the Planning and Development Act, 2000, as amended,
- (b) the Dublin City Council Development Contribution Scheme 2020-2023,
- (c) the lack of an agreed lease between the developer and the planning authority to fulfil the specific provisions of the 'Enhanced Long-Term Social Housing Leasing Scheme' introduced by the Department of Housing, Planning and Local Government, under Pillar 2 of 'Rebuilding Ireland: An Action Plan for Housing and Homelessness' aimed at private investment in order to deliver social housing at scale,
- (d) the submissions on file and relevant precedent cases, the Board considered it appropriate that the residential units cannot be deemed social housing units, for the purposes of the respective Development Contributions Schemes described above, and that development contributions under Condition number 25 be determined on this basis.

## 11.0 MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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Stephen Rhys Thomas  
Senior Planning Inspector

27 October 2022