



An
Bord
Pleanála

Inspector's Report

ABP-314441-22

Development

Modification to existing planning permission for a permitted Strategic Housing Development granted under planning reference ABP-310077-21 and amended under planning reference ABP-312264-21, to include; the construction of roof plant infrastructure consisting of 2 no. Heat Pumps enclosed by Louvre Screening; a mechanical flue pipe encased in a rendered wall; and the relocation of the permitted Automatic Opening Vent (AOV) on the roof of the permitted four-story apartment block located at the north-western section of the site which fronts onto the Churchwell Road.

Location

Belmayne P4, adjacent Churchwell Road and Churchwell Crescent, Dublin 13.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.	LRD6011/22-S3.
Applicant(s)	Belmayne Development Company Limited.
Type of Application	Large-scale Residential Developments.
Planning Authority Decision	Grant Permission.
Type of Appeal	First Party versus condition.
Appellant(s)	Belmayne Development Company Limited.
Observer(s)	None.
Inspector	Stephen Rhys Thomas

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1.0 Site Location and Description

1.1. The Inspector's Report relating to previous applications on site (ABP-310077-21 and ABP-312264-21) describes the site as follows:

1.2. *The development site is an undeveloped flat, rectangular plot located at the south western corner of the Belmayne urban district, identified as 'P4'. It is accessed via Belmayne Avenue, off a roundabout on the R139. The R107/Malahide Road/R139 junction is nearby to the southwest. The Mayne River is located c. 400m to the north.*

The site is bound as follows:

- Belmayne Main Street along the southern site boundary. Undeveloped lands to the south and west. There is a proposed Bus Connects corridor linking Clongriffin and the city centre along Main Street.*
- Churchwell Avenue/Road to the north (Block P3). A 3 storey building with own door duplex units at ground floor level and apartments overhead with 4 storey bookend apartment elements.*
- Churchwell Crescent to the east (Block P5). A 5 storey over basement apartment block. Belmayne Main Street is further to the east of the site, with 6 storey frontages and some commercial units at ground floor level.*
- Existing pedestrian/cycle route along the western site boundary.*

1.3. *The site is relatively level with some overgrown earthen mounds, there are no significant stands of trees or hedgerows. The site is characteristic of a brownfield urban plot, with disturbed ground the result of recent construction active. For the most part development in the vicinity is complete, but there are other large construction sites at work in the area. The site is well connected with existing pedestrian and cycle networks radiating outwards and the large commercial centre of Clarehall and Northern Cross very close by.*

2.0 Proposed Development

2.1. A modification to the existing planning permission for a Strategic Housing Development granted under planning reference ABP-310077-21 and amended under planning reference ABP-312264-21. The development is for construction of roof top

plant infrastructure consisting of 2 Heat Pumps enclosed by Louvre Screening; a mechanical flue pipe encased in a rendered wall; and the relocation of the permitted Automatic Opening Vent (AOV) on the roof of the permitted four-storey apartment block located at the north-western section of the site which fronts onto the Churchwell Road.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 3rd of August 2022, the Planning Authority issued a notification of their intention to grant permission subject to 12 conditions. Relevant to the subject appeal are:

2. A development contribution in the sum of €2,262,224.64 shall be paid to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.

3. The developer shall pay the sum of €746,910.00 to the Planning Authority, under Section 48 (2)(c) of the Planning & Development Act 2000 (as amended). This contribution is in addition to the contribution required in accordance with the

Development Contribution Scheme made under Section 48 of the Planning & Development Act 2000 (as amended). The amount due is payable on commencement of development. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: Payment of a special contribution is required in respect of this development as specific exceptional costs not covered in the Development Contribution Scheme will be incurred by Dublin City Council in respect of public infrastructure and facilities which will benefit this development, which is located in the North Fringe Framework Plan Area.

5. The development shall comply with the terms and conditions of ABP-310077-21 as amended under reference planning ABP-312264-21, and as amended by conditions attached to the subject application.

Reason: In the interests of orderly development

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report assessed the addition of roof top plant as acceptable and recommended a grant of permission subject to conditions.

3.2.2. Other Technical Reports

Drainage – no objections.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

ABP-312264-21 – Permission for amendments to previously permitted ABP-310077-21 to reduce the number of apartments from 260 no. to 258 no. to facilitate increased provision of residential amenity facilities.

ABP-310077-21- Permission was granted by the Board for the construction of 260 apartments and associated site works.

5.0 Policy Context

5.1. Planning and Development Act 2000, as amended

Section 48 of the Planning and Development Act 2000, as amended provides 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.

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

Section 48(10) provides:

(10) (a) Subject to paragraph (b), no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

(b) An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

(c) Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal. provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

5.2. Planning and Development (Amendment) (Large-scale Residential Development) Act 2021

This planning application was lodged with the planning authority under the Planning and Development (Amendment) (Large-scale Residential Development) Act 2021, the main purpose of which is to restore the two-stage planning process, with decision making for Large-scale Residential Development (LRD) type applications returning to the local planning authority in the first instance, with the subsequent right of appeal to An Bord Pleanála (the Board), no provision under this amendment alters the existing requirements of section 34 with reference to section 48 of the parent act. No special arrangements are required, and this appeal can be decided as per any ordinary appeal with regard to a contribution condition.

5.3. **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.

5.4. **Development Plan**

The **Dublin City Development Plan 2016 - 2022** is the operative statutory plan. The site is located in an area with zoning objective Z14: 'To seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and "Z6" would be the predominant uses.'

The site is located within the Clongriffin-Belmayne (North Fringe) Local Area Plan 2012-2018 ('the LAP') (DCC extended the life of the LAP to 2022 in November 2017) and inside the North Fringe Strategic Development & Regeneration Area (SDRA 1), and is also mostly inside the North Fringe West Key District Centre (KDC) 1 (where Z4 uses are deemed appropriate)

The site is also contained within the boundaries of the draft 2020 Belmayne Town Centre and Belcamp Lane Masterplan – the production of which was an objective of the aforementioned LAP.

The **Dublin City Development Plan 2022-2028**, having considered the proposed material alterations to the Draft Plan and the Chief Executive's Report on

submissions received, the Elected Members will make the Dublin City Development Plan 2022-2028 with or without amendment, at the end of October (date to be confirmed).

5.5. **Dublin City Development Contribution Scheme**

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

5.5.2. 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, current rates are as follows:

Industrial/Commercial Development	€104.06 per square metre
Residential	€99.84 per square metre

Note 2: With the exception of ancillary non-residential surface car parking, the floor area of proposed development shall be calculated as the gross floor area. This means the area ascertained by the internal measurement of the floorspace on each floor of a building (including internal walls and partitions) and including mezzanine floors. In the case of multiunit residential buildings, only the gross floor area of each residential unit will be included.

5.6. **Natural Heritage Designations**

The site is not located within or in close proximity to any European site.

5.7. **EIA Screening**

Having regard to the nature and limited scale of the development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An agent for the applicant has submitted a first party appeal against the decision of the Planning Authority to apply condition numbers 2 and 3 to the grant of permission. The appeal refers to the legislative provisions of Section 48 of the Planning and Development Act 2000, as amended, National Policy and guidance, the Council Development Contribution Scheme and the Dublin City Development Plan 2016-2022. They refer to the decision of the Planning Authority and the planning history of the site. The grounds of the appeal can be summarised as follows:

- Development Contribution Scheme not properly applied – the proposed development is for 58 sqm of roof plant, condition 2 of the permission applies the residential rate to the entire development already permitted. No levy should be charged for roof plant because note 2 of section 9 of the Development Scheme states that only the gross floor area of each residential unit will be included for the purposes of the levy.
- The calculation of the contribution has been applied to 22,658 sqm and not the actual floor area of apartments at 17,914 sqm. In addition, section 11 of the Development Contribution Scheme should be applied to the 50 units to be transferred for social housing purposes, further reduction is therefore sought.
- Condition 21 of the parent permission already applied a development contribution requirement. Remove condition 2.
- Development Contribution Scheme not properly applied - Condition 21 of the parent permission already applied a development contribution requirement. Condition 5 of the current permission requires compliance with all conditions issued under the parent permission ABP-310077-21. Condition 2 on the current permission amounts to double charging and inconsistent with Development Contributions – Guidelines for Planning Authorities 2013. Remove condition 3.
- Special Development Contribution – no Special Development Contribution was levied on the parent permission ABP-310077-21. Remove condition 3.

- Special Development Contribution Application – Special contributions are required to be applied under section 48(2)(c) of the PDA as amended. The planning authority have not demonstrated a clear and transparent reason for the application of the levy. No total cost of public infrastructure and facilities have been outlined and no apportionment of costs have been stated. Such facilities have been planned for in the Clongriffin-Belmayne LAP 2012 and are not therefore exceptional costs. Remove condition 3.
- Summary – The proposed development does not amend or alter the parent permission, but only seeks rooftop plant, which was permitted by the planning authority. Condition 2 ignores the fact that a development contribution scheme condition was attached to the parent permission. Condition 3 applies a special condition that fails to detail why it was applied and in addition, no special contribution was attached to the parent permission. It is requested that conditions 2 and 3 are removed.

6.2. Planning Authority Response

The planning authority response is as follows:

- The section 48 Development contribution condition should not be removed but be amended to reflect the permitted development.
- The section 48(2)(c) special contribution should be removed.

7.0 Assessment

7.1. Introduction

- 7.1.1. This is a first party appeal against financial contribution conditions that were attached to the Planning Authority's notification of intention to grant permission for development at Belmayne. As this is an appeal in respect of conditions requiring a financial contribution, the provisions of section 48 of the Planning and Development Act 2000 as amended apply and the Board is restricted to considering this matter alone and cannot consider the matter de novo. I have therefore confined my assessment to the conditions in question. Having regard to the nature of the appeal

before the Board (i.e. first party against conditions) and the information available on file, a site inspection was not deemed necessary in this instance.

- 7.1.2. The grounds of appeal for both condition numbers 2 and 3 are similar: that in applying the scheme, the Planning Authority did not take account of the permitted development and conditions attached thereon or misapplied the development contribution scheme. The appellant seeks the removal of conditions 2 and 3. The planning authority agree up to a point but recommend that the permitted development (rooftop plant) be subjected to the Development Contribution Scheme under condition 2 and that condition 3 be omitted.

7.2. Condition 2

- 7.2.1. Condition number 2 provides as follows:

A development contribution in the sum of €2,262,224.64 shall be paid to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.

- 7.2.2. The appellant makes the point that the proposed development does not alter the number of units already permitted under the parent permission ABP-310077-21. In addition, condition 21 of the parent permission already requires a section 48 Development Contribution to be agreed with the planning authority. The appellant notes that condition 5 of the subject appeal permission requires development to

comply with the terms and conditions of the parent permission and so an additional development contribution condition is not necessary. The planning authority agree up to a point and suggest that a contribution should only be levied for that development permitted under the subject appeal, rooftop plant. I note that the planning authority have not provided a figure or amount of contribution that should be levied.

- 7.2.3. The grounds of appeal advanced by the appellant with regard to condition 2 are for the most part logical and grounded in common sense. The fact that the planning authority have conceded that condition 2 has been misapplied but should be retained and amended is of relevance. In my opinion it is not necessary to examine every detail that the appellant has put forward for the omission of condition 2. Instead, I shall assess the recommendation advanced by the planning authority in their submission of 4 October 2022: that the section 48 development contribution be applied to the permitted development. From this I suppose that means the section 48 development contribution scheme should be applied to the 58 sqm rooftop plant enclosure permitted under LRD6011/22-S3. The planning authority have not provided a contribution amount, instead they have simply stated that the section 48 development contribution be applied. This is not useful and requires an analysis to be made of where in the Scheme, the development of rooftop plant to an apartment block yet to be constructed would be applied. I have examined the Dublin City Council Development Contribution Scheme 2020-2023 and under section 9 *Level of Contribution* a table can be found. However, note 2 under the table states:

With the exception of ancillary non-residential surface car parking, the floor area of proposed development shall be calculated as the gross floor area. This means the area ascertained by the internal measurement of the floorspace on each floor of a building (including internal walls and partitions) and including mezzanine floors. In the case of multi-unit residential buildings, only the gross floor area of each residential unit will be included.

- 7.2.4. From my analysis of the table, it divides development into two columns: residential development and commercial development. As the permitted development will be an integral component of a residential scheme, it could be concluded that the contribution payable would fall under the residential development column. However, note 2 of the scheme states that only the gross floor area of each residential unit will

be included and so I am uncertain whether to propose a charge for the rooftop plant or not. In addition, note 2 states that the floor area of proposed development shall be calculated as the gross floor area, in this case the gross floor area of the rooftop plant alone. To add further complication, I note that according to the drawings submitted by the appellant, the rooftop enclosure is open to the elements on account of having no roof and so the floor area of the enclosure would be uncovered floor area, drawing number PL107 refers.

- 7.2.5. In the circumstances, I consider that it would be reasonable to amend condition 2, remove all reference to the amount incorrectly arrived at and place the task of assessing the amount of contribution payable at the hands of the planning authority. In my mind they are best placed to assess what amount of levy is applicable with reference to their own contribution scheme and in the event of a dispute the matter should be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

7.3. **Condition 3**

- 7.3.1. Condition 3 refers to a special contribution under section 48(2)(c) of the PDA as amended, the appellant has set forth detailed grounds of appeal why such a condition should be removed. Amongst other things, the appellant sets out that condition 3 fails to specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates, as required under section 48(12) of the PDA. The planning authority agree that condition 3 should be removed as they believe that section 48(2)(c) development contributions only apply to residential developments. Section 48(2)(c) development contributions can be applied to any form of development once the provisions under section 48(12) are met in full, in this instance they have not, condition 3 should be omitted for this reason alone. That argument aside, I am satisfied that the Board can accept the request of the planning authority to omit condition 3 and no further analysis is required in this regard.

7.4. **Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not

considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that condition 2 be attached and amended, and that condition 3 be omitted in its entirety.

9.0 Reasons and Considerations

Having regard to:

- The nature and scale of the proposed development,
- The planning history on the subject site, namely Planning Authority reg. ref. LRD6011/22-S3 and ABP-310077-21,
- The provisions of the Dublin City Council Development Contribution Scheme 2020-2023 made under Section 48 of the Planning and Development Act 2000, as amended,

It is considered that the levies imposed under condition numbers 2 and 3 failed to take account of the development already permitted and subject to the Dublin City Council Development Contribution Scheme under reference number ABP-310077-21, however, the permitted development (rooftop plant) is an integral element of the permitted residential development but is also an additional part of said development and therefore should be subject to the Dublin City Council Development Contribution Scheme. The removal of a section 48(2)(c) special contribution (condition 3) has been requested by the planning authority and the Board agree.

10.0 Conditions

2	<p>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.</p> <p>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.</p>
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Stephen Rhys Thomas
Senior Planning Inspector

15 November 2022