



An  
Bord  
Pleanála

## Inspector's Report ABP-314985-22

### Development

Construction of mixed-use development including 352 apartments, 5 no. commercial units (for Class 1 or Class 2 use) and 1 community facility in 6 blocks ranging in height from 5 to 13 storeys.

### Location

Site B (Library Car Park) and Site C (Blue Car Park) at Road C and Road D, Blanchardstown Town Centre, Coolmine, Dublin 15

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

FW22A/0047

### Applicant(s)

Blanch Retail Nominee Ltd.

### Type of Application

Planning Permission.

### Planning Authority Decision

Grant Permission.

### Type of Appeal

First Party

### Appellant(s)

Blanch Retail Nominee Ltd.

### Observer(s)

No Observers.

**Inspector**

Elaine Sullivan

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## **1.0 Site Location and Description**

- 1.1. The subject site has a stated area of 2.55 hectares and is located within Blanchardstown Town Centre, approximately 10km north-west of Dublin city centre and c. 1km northwest of the village of Blanchardstown. The N3 National Primary Road runs approximately 450 metres to the east of the site, while the M50 Motorway is approximately 2.5km to the southeast.
- 1.2. The site is at the southern end of the Town Centre, close to the Snugborough Road entrance. It comprises two sites, Site B which is known as the Library Car Park and Site C, which is known as the Blue Car Park. The Library Car Park comprises surface car parking and is located to the immediate south-east of Blanchardstown Library, the Draiocht Arts Centre and Fingal County Council offices. To the south is the Verona FC Sports and Leisure Club and associated pitches, with Coolmine Sports and Leisure Centre beyond this and Millennium Park beyond this again. To the south-east is the Westend Village development and retail park.
- 1.3. Site C, the Blue Car Park, is located to the north of Site B and on the opposite side of the internal access road, identified as Road D in the application. It comprises a multi-storey car park which is set back from the public road with surface parking along the boundary. This site also includes sections of Road D and Road C which serve the Blanchardstown Shopping Centre.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for the construction of a mixed-use development including 352 apartments, 5 no. commercial units for (class 1 – shop, or class 2 – office/professional services or class 1, gym or restaurant /café use including ancillary take-away use), and 1 no. community facility, in six buildings ranging from 5 to 13 no. storeys in height. The development includes for an extension of the existing multi storey car park from 4 no. levels to 6 no levels and associated alterations to the existing multi storey carpark to facilitate the development. Blocks J and K are proposed on the Library Car Park (site B) and Blocks A, B, C and D are located on the Blue Car Park site (Site C).

### 3.0 Planning Authority Decision

#### 3.1. Decision

Planning permission was granted by the PA subject to 36 planning conditions which were mainly standard in nature. Condition No's. 33 and 34 are relevant to the appeal and state the following,

**Condition No. 33 -**

*There is a shortfall in the quantum of public open space generated through the development works of 1.41 hectares. The applicant is required to make up this shortfall by way of a financial contribution of €827,573 in accordance with Section 48 of the Planning & Development Act 2000 (as amended). This contribution will be applied towards the continued upgrade of recreational facilities in the area of the proposed development.*

*REASON: In the interest of proper planning and sustainable development.*

**Condition No. 34 -**

*The developer shall pay a special contribution of €618,048 under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the shortfall in playground facilities provided on the site in accordance with the requirements of the Fingal County Development Plan 2017-2023, to go towards the improvement of playground facilities in Millennium Park.*

*REASON: To ensure the delivery of infrastructure necessary to serve the proposed development and in the interests of orderly development.*

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

The development was assessed under the provisions of the Fingal Development Plan 2017-2023, which was the operative Development Plan at the time. The decision of the Planning Authority, (PA), was informed by two reports from the Planning Officer, (PO). The first report dated the 5<sup>th</sup> of May 2022 requested further

information (FI) on 12 points. The second report dated the 3<sup>rd</sup> of October 2022 assessed the FI submitted and recommended a grant of planning permission.

The report of the PO dated the 5<sup>th</sup> of May 2022 included the following,

- In the 2017-2023 Development Plan the site is zoned 'MC - Major Town Centre'. The proposal relates to the development of existing brownfield land in Blanchardstown town centre, which is currently in use for car parking to incorporate commercial, residential and car parking and is in accordance with the MC zoning objective for the site as well as national planning policy.
- The PO recommended that FI be requested on 12 points which related to –
- The architectural and urban design qualities of the scheme,
- The proposed residential amenities,
- Compliance with the Urban Development and Building Height Guidelines
- Social infrastructure and,
- Transportation matters.

The second report of the PO dated the 3<sup>rd</sup> of October 2022 assessed the FI submitted by the applicant. The response of the applicant was broadly accepted by the PO. Conditions were recommended with regard to additional design details for external finishes, the omission of 4 apartments.

The PO noted the public space provided did not meet the Development Plan standards as set out in Table 12.5 of the 2107-2013 Plan. As such a shortfall exists and a financial contribution will be required and will be applied towards the continued upgrade of local class 1 space at Millenium Park. The PO was not satisfied with the applicant's response regarding the playground facilities and identified a shortfall in the provision of playground facilities as required by objectives DMS75 and DMS76. To address this shortfall the PO considered it appropriate that the applicant provide a financial contribution to be used towards the improvement of playground facilities in Millenium Park.

### 3.2.2. Other Technical Reports

- Transportation Planning – The report dated the 28<sup>th</sup> of April 2022 recommended that FI be requested. The second report dated the 29<sup>th</sup> of

September 2022 had no objections and recommended planning conditions to be attached.

- Water Services Section – No objection.
- Environmental Health Officer – No objection subject to conditions.
- Parks and Green Infrastructure Division – The report dated the 14<sup>th</sup> of April 2022 recommended that Fi be requested regarding the provision of public open space, play provision and trees and hedgerows. The second report dated the 30<sup>th</sup> of September 2022 noted a shortfall in public open space and playground provision and recommended that the shortfall be addressed through financial contribution.
- Environment Department – No objection.
- Architects Department – Recommendations made regarding design details.
- Housing Department – No objection.

### **3.3. Prescribed Bodies**

- Uisce Éireann – No objection.
- TII – No observation to make.
- IAA – No objection subject to condition.
- Daa - No observation to make.

### **3.4. Third Party Observations**

Nine third-party submissions were received by the PA and raised the following issues,

- Traffic congestion
- Lack of cycling and pedestrian infrastructure
- Disturbance during construction phase
- Access to existing businesses

- Water and wastewater infrastructure issues
- Access to disabled parking spaces
- Impact on privacy
- Overlooking and overshadowing
- Height and density of the proposal
- Noise

One additional submission was received on foot of the submission of FI and related to the provision of cycle and active travel facilities.

## 4.0 Planning History

There is an extensive planning history for Blanchardstown Town Centre. There is no recent planning history for the subject site. Recent planning history for the wider town centre includes the following,

**ABP-315709-23 (PA Ref. LRD0001/S3)** – Planning permission granted in May 2023 for a 10-year permission for a Large-Scale Residential Development at lands known as Site A - White Car Park, comprising 971 apartments in 7 buildings ranging in height from 1 – 16 storeys with associated mixed-use development. This decision is of relevance to the subject appeal as a first party appeal was lodged against Conditions which related to financial contributions for public open space and play facilities.

**ABP-313892-22** – Planning permission sought for the Blanchardstown to City Centre Core Bus Corridor as part of Bus Connects. A decision is pending on this application.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The planning application was assessed under the Fingal County Development Plan 2017-2023, which was the operative Development Plan at the time. The current Development Plan is the Fingal County Development Plan 2023-2029 which came into effect on the 5<sup>th</sup> of April 2023. On review of the contents of both plans I note



that there are no material changes between the 2017 County Development Plan and the 2023 County Development Plan as they relate to the appeal site and the current proposal.

- 5.1.2. Zoning Objective - In both Development Plans the zoning objective for the site is 'MC – Major Town Centre'.

5.2. **Fingal Development Plan 2017-2023**

The following objectives are referenced in the decision of the PA and relate to the appeal.

**Chapter 12 – Development Management Standards**

**Public Open Space -**

**Objective DMS57** - Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.

**Objective DMS57A** - Require a minimum 10% of a proposed development site area be designated for use as public open space. The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities outside the development site area, subject to the open space or facilities meeting the open space 'accessibility from homes' standards for each public open space type specified in Table 12.5. The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/ amenity facilities is not achievable. This is subject to the Regional Park meeting the open space 'accessibility from homes' standard specified in Table 12.5.

**Objective DMS57B** - Require a minimum 10% of a proposed development site area be designated for use as public open space. The Council has the discretion to accept a financial contribution in lieu of remaining open space requirement required under Table 12.5, such contribution being held solely for the purpose of the

acquisition or upgrading of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities subject to the open space or facilities meeting the open space 'accessibility from homes' standards for each public open space type specified in Table 12.5. The Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities is not achievable, subject to the Regional Park meeting the open space 'accessibility from homes' standard specified in Table 12.5. Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space.

#### **Playground Facilities –**

**Objective DMS050** – Monetary Value in Lieu of Play Facilities - Require the monetary value in lieu of play facilities to be in line with the Fingal County Council Development Contribution Scheme.

**Objective DMS75** - Provide appropriately scaled children's playground facilities within residential development. Playground facilities shall be provided at a rate of 4 sq m per residential unit. All residential schemes in excess of 50 units shall incorporate playground facilities clearly delineated on the planning application drawings and demarcated and built, where feasible and appropriate, in advance of the sale of any units.

**Objective DMS76** - Ensure that in the instance of an equipped playground being included as part of a specific facility, it shall occupy an area of no less than 0.02 hectares. A minimum of one piece of play equipment shall be provided for every 50 sq m of playground.

### **5.3. Fingal Development Plan 2023-2029**

#### **Chapter 14 – Development Management Standards**

##### **Open Space**

**Table 14.6 Open Space Categories Open Space - Public Open Space** - Public open space is accessible to the public at large and in general is intended to be ‘taken-in charge’ by the Local Authority, but in certain circumstances may be privately managed. Appropriate provision must be made for public open space within all new developments. In all instances where public open space is not provided a contribution under Section 48 will be required for the short fall. (Target minimum amount of 15% except in cases where the developer can demonstrate that this is not possible, in which case the 12% to 15% range will apply.)

#### **14.7 – Apartment Development /Standards**

**Objective DMSO24 – Apartment Development** - All applications for apartment development are required to comply with the Specific Planning Policy Requirements (SPPRs), the standards set out under Appendix 1 and general contents of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2020 (or updated guidance as may be in place at the time of lodgement of the planning application).

**Table 14.11: Public Open Space and Play Space Hierarchy and Accessibility Standards** - Areas not counted in the Open Space calculation include:

- Environmental Open Space, i.e. incidental or narrow pieces of open space used for the preservation of trees/ hedgerows and or as a visual relief and screen planting e.g. along roads.
- Green corridors
- Areas of open space under high voltage electricity lines and wayleave areas.
- Areas of open space where the presence of archaeology prohibits the development of the required play provision for a development in accordance with Development Plan standards.

**Table 14.12 - Recommended Quantitative Standards** (Sustainable Residential Developments in Urban Areas, Guidelines for Planning Authorities (2009)

Land use	Minimum public open space standards
Overall standard	2.5 hectares per 1000 population

New residential development on greenfield sites/LAP lands	12% - 15% of site area
New residential development on infill/brownfield sites	12% of site area

(Target minimum amount of 15% except in cases where the developer can demonstrate that this is not possible, in which case the 12% to 15% range will apply.)

### **14.13- Open Space**

**Objective DMSO51** – Minimum Public Open Space Provision - Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.

**Objective DMSO52** – Public Open Space Provision Public open space shall be provided in accordance with Table 14.12.

**Objective DMSO53** – Financial Contribution in Lieu of Public Open Space Require minimum open space, as outlined in Table 14.12 for a proposed development site area (Target minimum amount of 15% except in cases where the developer can demonstrate that this is not possible, in which case the 12% to 15% range will apply) to be designated for use as public open space. The Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision for the acquisition of additional open space or the upgrade of existing parks and open spaces subject to these additional facilities meeting the standards specified in Table 14.11. Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space.

### **Playground Facilities -**

#### **14.13.3.2 – Playground Facilities**

**Objective DMSO68** – Playground Facilities within Residential Development - Provide appropriately scaled children's playground facilities within residential development. Playground facilities shall be provided at a rate of 4 sq m per residential unit. All residential schemes in excess of 50 units shall incorporate playground facilities clearly delineated on the planning application drawings and demarcated, built and completed, where feasible and appropriate, in advance of the sale of any units.

**Objective DMSO69** – Requirements for Equipped Playgrounds - Ensure that in the instance of an equipped playground being included as part of a specific facility, it shall occupy an area of no less than 0.02 hectares. A minimum of one piece of play equipment shall be provided for every 50 sq. m of playground.

#### 5.4. **Fingal Development Contribution Scheme 2021-2025**

**Paragraph 9 (a)** sets out the classes of infrastructure and facilities to be included in the contribution scheme. Class 3 relates to Community & Parks facilities & Amenities.

**Note 5** relates to Open Space Shortfall and states that.

(a) The Fingal Development Plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. This contribution in lieu of open space will be levied at the following rates;

1. Class 1 Open Space - €100,000 per acre to purchase land based on the value of amenity land, Plus €100,000 per acre for development costs.
2. Class II Open Space - €250,000 per acre to purchase land in residential areas, Plus €100,000 per acre for development costs.

**Special Development Contributions** - Paragraph 18 states that,

A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Fingal County Council Development Contribution Scheme 2021 – 2025 are incurred by the Council in the provision of a specific public infrastructure or facility. (The particular works will be specified in the planning conditions when special contributions are levied). Only developments that

will benefit from the public infrastructure of facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to An Bord Pleanála.

## **5.5. Section 28 Guidelines**

### **5.5.1. Sustainable Urban Housing: Design Standards for New Apartments**

Section 4.13 – Children’s Play, states that,

Children’s play needs around the apartment building should be catered for:

- within the private open space associated with individual apartments (see chapter 3);
- within small play spaces (about 85 – 100 sq. metres) for the specific needs of toddlers and children up to the age of six, with suitable play equipment, seating for parents/guardians, and within sight of the apartment building, in a scheme that includes 25 or more units with two or more bedrooms; and
- within play areas (200–400 sq. metres) for older children and young teenagers, in a scheme that includes 100 or more apartments with two or more bedrooms.

### **5.5.2. Sustainable Residential Development and Compact Settlements – Guidelines for Planning Authorities**

These Section 28 Guidelines came into effect after the appeal was lodged and have superseded the Sustainable Residential Developments in Urban Areas, Guidelines for Planning Authorities 2009, which are referenced in the Fingal Development Plan.

**Section 5.5.5** of the Guidelines deals with public open space. This section defines public open space as ‘open spaces that form part of the public realm within a residential development’. All residential developments are required to make a provision for a reasonable quantum of public open space. The public open spaces should also form an integral part of the design and layout of a development and provide a connected hierarchy of spaces, with suitable landscape features, including seating and provision for children’s play.

**Policy and Objective 5.1 – Public Open Space** – includes the following,

*The requirement in the development plan shall be for public open space provision of not less than a minimum of 10% of net site area and not more than a minimum of 15% of net site area save in exceptional circumstances.... In some circumstances a planning authority might decide to set aside (in part or whole) the public open space requirement arising under the development plan. This can occur in cases where the planning authority considers it unfeasible, due to site constraints or other factors, to locate all of the open space on site. In other cases, the planning authority might consider that the needs of the population would be better served by the provision of a new park in the area or the upgrade or enhancement of an existing public open space or amenity. It is recommended that a provision to this effect is included within the development plan to allow for flexibility. In such circumstances, the planning authority may seek a financial contribution within the terms of Section 48 of the Planning and Development Act 2000 (as amended) in lieu of provision within an application site.*

**Appendix A** of the Guidelines includes a definition of Public Open Space and states that, ‘*Incidental areas of open space that do not form part of an interconnected network of hard and soft landscaped areas should not be included in the calculation of public open space provision*’.

Public Realm is defined as – ‘*all the areas to which the public has access such as roads, streets, footpaths, lanes, parks, squares, open spaces and building façades*’.

#### **5.6. Development Management Guidelines for Planning Authorities (2007)**

- A ‘special’ contribution may be imposed on a development under Section 48(2)(c) of the Planning and Development Act where exceptional costs are incurred by the local authority and are not covered by a Development Contribution Scheme.
- A condition requiring a special contribution must be amenable to implementation under the terms of Section 48(12) of the Planning Act; therefore, it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be

necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.

- Circumstances that may warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it.
- Where the benefit deriving from the particular infrastructure or facility is more widespread, (e.g. extends to other lands in the vicinity), consideration should be given to adopting a revised Development Contribution Scheme or adopting a separate development contribution scheme for the relevant geographical area.

#### **5.7. Development Contributions – Guidelines for Planning Authorities, 2013**

Planning Authorities and An Bord Pleanála are required to have regard to these Section 28 guidelines in the performance of their functions under the Planning Acts. The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed.

#### **5.8. OPR Practice Note PN03 – Planning Conditions**

##### **3.16 – Conditions Requiring Financial Contributions or Ceding of Lands**

Special development contributions are provided for in Section 48 (2)(c) of the 2000 Act for specific works which benefit the individual development. These relate to costs associated with works that are not covered by the planning authority's Development Contribution Scheme. Any works in respect of which the special contribution is being levied must be specified in the condition.

#### **5.9. Planning and Development Act 2000 (as amended)**



**Section 48(2)(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.

**Section 48(12)** - Where payment of a special contribution is required in accordance with subsection (2) (c), the following provisions shall apply -

(a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,

(b) where the works in question—

(i) are not commenced within 5 years of the date of payment to the authority of the contribution,

(ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution, or

(iii) where the local authority decides not to proceed with the proposed works or part thereof.

the contribution shall, subject to paragraph (c), be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority,

(c) where under subparagraph (ii) or (iii) of paragraph (b), any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

(13) (a) Notwithstanding sections 37 and 139 , where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.

## 5.34. Natural Heritage Designations

5.34.1. No designations apply to the subject site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal relate to Conditions No. 33 and No. 34 of the notification of decision of the PA.

**Condition No. 33 states the following,**

*There is a shortfall in the quantum of public open space generated through the development works of 1.41 hectares. The applicant is required to make up this shortfall by way of a financial contribution of €827,573 in accordance with Section 48 of the Planning & Development Act 2000 (as amended). This contribution will be applied towards the continued upgrade of recreational facilities in the area of the proposed development.*

*REASON: In the interest of proper planning and sustainable development.*

**Condition No. 34 states the following,**

*The developer shall pay a special contribution of €618,048 under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the shortfall in playground facilities provided on the site in accordance with the requirements of the Fingal County Development Plan 2017-2023, to go towards the improvement of playground facilities in Millennium Park.*

*REASON: To ensure the delivery of infrastructure necessary to serve the proposed development and in the interests of orderly development.*

The grounds of appeal include the following,

- Condition No. 33 requires the payment of a financial contribution in respect of a shortfall in public open space in accordance with Objectives DMS57, DMS57A and DMS57B of the Fingal Development Plan 2017-2023. The appellant submits that the PA have not properly applied the terms of the Fingal County Development Contributions Scheme 2021-2025 (hereinafter

referred to as ‘the Contribution Scheme’) under Section 48 of the Planning and Development Act (hereinafter referred to as ‘the Act’) and the criteria of the Development Management Guidelines.

- The PA calculated the shortfall in public open space based on the provisions of Objective DMS57 which requires a minimum public open space provision of 2.5 hectares per 1000 population. This calculation is based on an occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms. On this basis the PA calculated the requirement to be 1.41 hectares.
- The grounds of appeal argue that given the nature of the brownfield site, which is currently in use as a car park, and the location of the site in a Major Town Centre, that the application of Objectives DMS57A and DMS57B would be more appropriate. Objectives DMS57A and DMS57B require that a minimum of 10% of a proposed development site area to be designated as public open space. If this is not possible the PA have the discretion to accept a financial contribution in lieu of the 10% provision.
- It is the appellants view that the development can meet the 10% requirement for private open space as the permitted development (as amended though FI) includes the provision of 0.0876ha of public open space, comprising a pocket park of c. 198 sq. m and a public plaza of c. 678 sq. m. The application also includes for public realm improvements of which 0.2699 ha which include planting areas and improvements to pedestrian and cycle facilities. When the public realm improvements are included as part of the public space, the overall amount increases to 0.3571 ha, which equates to c. 27% of the net residential area in total, (net residential area is c. 1.32ha). Therefore, the public open space combined with the public realm improvements exceeds the minimum 10% public open space required by the Development Plan Objective DMS57A, which is considered the most relevant provision for the site.
- The appeal also notes that the financial contribution in Condition No. 33 is sought in addition to the standard contributions for infrastructure as set out in the Contribution Scheme.

- The report of the PO did not accept the public realm improvements as part of the public open space as it was not in accordance with the standards set out in Table 12.5 of the Development Plan for public open space. The appeal argues that the public plaza (located to the south of Road D) meets the area in Table 12.5 which is equivalent to a pocket park. The proposed pocket park (located to the north of Road D) will provide usable open space with planting and seating. On this basis the public open spaces combined meet the requirements of Objective DMS59 of the Development Plan which requires each new residential unit to be located within 150m walking distance of a pocket park.
- The appeal submits that national policy supports a flexible approach to the provision of open space and in particular the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009). (Note to the Board – these Section 28 Guidelines have been replaced with the Compact Settlements Guidelines).
- Including the public realm improvements the development would provide in excess of 10% public open space which is sufficient for the nature and location of the site and the provision of a high density development. This is in accordance with the Development Plan requirement and national policy. Therefore, there should be no need for a financial contribution in lieu.
- The appeal notes planning precedents, ABP-308526-20 (PA Ref. F19A/0490) and ABP-310359-21 (PA Ref. F20A/0523) which they submit have relevance to the subject appeal.
- Should the Board be of the view that a contribution in lieu of open space is required due to a shortfall when considering objectives PM52 and DMS57 (which relate to public open space at 2.5 ha per 1000 population) the appellant requests that the as a minimum, the financial contribution should be offset against the public open space proposed as part of the development and the contribution reduced accordingly –
  - A total public space requirement of 1.41ha, minus the proposed 0.0876ha of public open space (pocket park and plaza) and 0.2699 ha public realm improvements.

- This would reduce the shortfall from 1.41 ha to 0.78ha.
- The Fingal Contribution Scheme calculates the contribution per acre and it is divided into 75% Class 1 public open space and 25% Class 2 public open space.
- The appellant submits that the revised calculation would be in the order of €458, 000 and requests that, should the Board determine that it is appropriate to attach the condition, that the amount set out in Condition 33 be amended from €827,573 to €458,000.

Condition No. 34 –

- Condition 34 requires the payment of €618,048 in respect of a shortfall in playground facilities as per objective DMS75 and DMS76 provided on the site. The condition states that the amount will go towards the improvement of play facilities in Millennium Park.
- The development contribution sheet does not contain a breakdown of how the figure was derived or how the contribution is required to fund improvements to the existing facilities in Millennium Park.
- The appeal submits that the financial contribution is not justified as it does not comply with the requirements of the Planning and Development Act as set out in Section 48(2)(C).
- Play provision – The appeal states that 219m<sup>2</sup> of play provision is included in the proposed open space areas, and 400m<sup>2</sup> of play provision is included in the proposed communal open space areas. DMS75 requires playground facilities to be provided at a rate of 4m<sup>2</sup> per residential unit. This would equate to a requirement of 1,392m<sup>2</sup> for the proposed development. The Apartment Guidelines require 85 to 100m<sup>2</sup> of play space for the specific needs of children up to the age of 6 for a scheme of 25 or more units with two or more bedrooms, and 200 – 400m<sup>2</sup> of play space for older children and young teenagers in a scheme which includes 100 or more apartments with two or more bedrooms.

(Note to the Board - The Development Plan was varied to amend objective PM42 to implement the policies and objectives of the Apartment

Guidelines. Objective DMSO24 also requires that developments comply with the standards set out in the Apartment Guidelines).

- The appeal questions the logic of DMS75 which requires 4m<sup>2</sup> of playspace regardless of the unit type and argues that the studio and 1-bedroom units should not be included in the calculation as they are unlikely to include households with children.
- The appeal states that the most relevant standards for the provision of play spaces are contained in the Development Apartment Guidelines which are Section 28 Guidelines and were published after the 2017 Development Plan was adopted.
- The appellant submits that the condition does not meet the requirements of Section 48 (2)(c) of the Act and the Development Management criteria as the PA have not provided the basis for the calculation of the contribution. It fails to identify the full nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.
- The appellant requests that the Board omit Condition No. 34 in its entirety. However, should the Board consider that it is appropriate to apply the condition / that a special contribution is warranted, the appellant requests that the calculation be revised to allow for the play space proposed for the development to be offset from the amount, as follows,
- DMS75 requires a total of 1,392m<sup>2</sup> play space based on 348 units. This figure should subtract the 219m<sup>2</sup> of play provision within the proposed public open space, which reduces the shortfall from 1,392m<sup>2</sup> to 773m<sup>2</sup>.
- The basis of the PA's calculation is not provided. However, the appellant assumes a figure of €444 per metre squared, (based on the division of €619,048 by 1392). Based on a shortfall of 773m<sup>2</sup> this would result in a contribution of €343, 212.
- Should the Board consider that a special contribution is warranted, the applicant requests that a figure of €343, 212 be applied instead of €619,048.

## 6.2. Planning Authority Response

A response from the PA was received on the 28<sup>th</sup> of November 2022 and includes the following,

- Regarding Condition No. 33, although the area proposed as public open space is accessible to the public it does not meet the requirements of the 2017 Fingal Development Plan as set out in Table 12.5 and as such was not included in the overall calculation for public open space.
- The constraints of the urban regeneration scheme are acknowledged but the proposed 0.2699 ha of public realm improvements cannot be counted for the shortfall of public open space. The Development Plan also recognises that the delivery of this quantum of open space may not be possible in all developments. However, it is still specified that a minimum of 10% of the site area should be designated for use as public open space and options for the remainder of public space are set out including financial contributions.
- The total public open space provision for the development is based on 348 units, which equates to 1.41 ha. This amount is taken as the shortfall and the developer is requested to address the shortfall through a financial contribution in accordance with Section 48 of the Planning and Development Act.
- The principle of a shortfall in public open space on such an urban site is reasonable and the contribution will be applied to the continued upgrade of Class 1 open space facilities in Millennium Park. A development contribution in lieu of public open space should be provided for facilities in the vicinity to cater for the additional population using them as a result of the development.
- Regarding Condition No. 34 – Under Objectives DMS75 and DMS76, playground facilities should be provided at a rate of 4m<sup>2</sup> per residential unit and a minimum of 1 piece of play equipment shall be provided for every 50m<sup>2</sup> of playground.
- The applicant suggests that the pocket park and public plaza provide 222m<sup>2</sup> of play space. However, amenity grass, incidental play and chess boards are not considered to be playground facilities. Therefore, a financial contribution in

lieu of the shortfall is appropriate. This contribution will be used to upgrade the facilities in Millennium Park.

- The contribution was calculated at €444 per square metre to deliver a playground, which is based on the PA's experience of projects of this nature.

### 6.3. Further Responses

A further response from the appellant / applicant was received on the 8<sup>th</sup> of February 2023 and includes the following,

- The PA's response to the appeal offers no new information or rationale in respect of the contribution and does not respond to the appellants argument that the provision of 10% of the site area is a more appropriate response to the nature and location of the site.
- The appellant reiterates their grounds of appeal and requests that, if the Board is of the view that a contribution is required regarding a shortfall in the minimum of 10% public open space, and that the public realm improvements cannot be included, the contribution should be calculated as follows,
- The requirement of public open space of 0.132ha, (based on the minimum 10% public open space of the net residential area of 1.32ha),
- Minus the proposed 0.0876ha of public open space provided (pocket park and public plaza),
- Equals a shortfall of 0.0444ha of public open space.
- The Development Contribution Scheme 2021-2025 calculates the contribution per acre and split as 75% Class 1 public open space and 25% Class 2 public open space. When applied to the figure of 0.0444ha it results in,
- Class 1 (75%) - €200,000 per acre = €16,000 (0.08 acres x €200,000)
- Class 2 (25%) - €350,000 per acre = €10,500 (0.03 acres x €350,000)
- Total = €26,500
- The response notes the Draft Fingal Development Plan 2023-2029 and states that that Section 4.5.2.3 of the Draft Plan retains the overall standard for the



provision of public open space as a minimum of 2.5ha per 1,000 of population with a ratio of 75% Class 1 and 25% Class 2. It also retains the statement that it is the intention of the Council to ensure public open space exceeds 10% 'except under exceptional circumstances'.

- The Draft Development Plan introduces that the PA may accept a civic space within the overall quantum of public open space on a case-by-case basis. The response also references Table 4.3 and 14.12 and objective DMSO53 of the Draft Plan, which relate to the provision of public open space.
- Regarding Condition No. 34, the appellant contends that 219m<sup>2</sup> of play provision is included in the public open space areas and 400m<sup>2</sup> of play provision is included in the proposed communal open space areas.
- When considering standards for play areas, the Apartment Guidelines take precedence.
- A review of the Draft Fingal Development Plan and how it relates to play spaces is provided and notes that there is no material change between both plans regarding requirements for playground facilities.
- The grounds of appeal regarding Condition No. 34 are reiterated and it is argued that the condition does not accord with the requirements of Section 48 (2)(c) and Section 48(12) of the Planning and Development Act and is contrary to the advice contained in the Development Management Guidelines.

The appellant contests the PA's figure of €440 per square metre for the provision of playground equipment and instead puts forward a figure of €350-390 per square metre which was sufficient for a past project in their knowledge. Should the Board be minded to retain Condition 34, the appellant requests that the calculation is based on the lower figure of €350 per square metre as follows –

- A total requirement of 1,392m<sup>2</sup> as per Objective DMS75,
- Minus the 218m<sup>2</sup> of play provision within the public open space and 400m<sup>2</sup> of play provision in the communal open space, which reduces the shortfall to 773 sq.m
- 773 sq. m x €350 per sq. m = €270,550.

- Condition No. 26 requires the developer to pay a sum of €2,734,009 for standard Section 48 contributions in respect of public infrastructure, which includes 'Community and Parks Facilities and Amenities'. Millennium Park is listed as a project for Community and Parks in Appendix 2 of the Contribution Scheme. Therefore, the developer is already contributing to the improvement /upgrading of Millennium Park and as such the special contribution results in double charging.

A further response was received from the PA on the 2<sup>nd</sup> of February 2023 and included the following –

- The PA resubmits the methodology for the calculation of €618,048 stated in Condition No. 34 (for playground facilities) and refers to Section 18 of the Development Contribution Scheme 2021-2025 which relates to the application of Section 48(2)(c) of the Planning Act.
- With regard Condition No. 33 and the public open space, the PA notes that the requirement for public open space is calculated on the basis that no suitable open space has been provided.

A further response was received from the appellant on the 24<sup>th</sup> of February 2023. No new information is contained in this submission and the appellant reiterates points previously made in the grounds of appeal and in their submission received on the 8<sup>th</sup> of February 2023.

## **7.0 Assessment**

7.1. This is a first-party appeal against Condition No. 33 and No. 34 attached to the Planning Authority's notification of decision to grant permission under PA Ref. FW22A/0047. Condition No's. 33 and 34 relate to financial contributions only, one of which is applied under Section 48(2)(c) of the Planning and Development Act 2000 (as amended), hereinafter referred to as the Act. Under the provision of Section 48(13)(a) of the Act, the Board should consider only the matters under appeal and should not determine the relevant application as it had been made to it in the first instance.

7.2. **Condition No. 33 states the following –**

*There is a shortfall in the quantum of public open space generated through the development works of 1.41 hectares. The applicant is required to make up this shortfall by way of a financial contribution of €827,573 in accordance with Section 48 of the Planning & Development Act 2000 (as amended). This contribution will be applied towards the continued upgrade of recreational facilities in the area of the proposed development.*

*REASON: In the interest of proper planning and sustainable development.*

7.2.1. The planning application was assessed under the Fingal County Development Plan 2017-2023, which was the operative Development Plan at the time. The current Development Plan is the Fingal County Development Plan 2023-2029 which came into effect on the 5<sup>th</sup> of April 2023. In the grounds of appeal, the applicant references Objectives DMS57, DMS57A and DMS57B of the 2017 plan, which relate to the provision of public open space.

7.2.2. The objectives in the 2023 Development Plan which relate to the provision of public open space include –

**DMSO51** - requires a minimum public open space provision of 2.5 hectares per 1000 population, (based on 3.5 persons per 3 bedroom+ units and 1.5 persons per 2 bedroom and less).

**DMSO52** – states that public open space shall be provided in accordance with Table 14.12\*.

**DMSO53** - Require minimum open space, as outlined in Table 14.12 for a proposed development site area (Target minimum amount of 15% except in cases where the developer can demonstrate that this is not possible, in which case the 12% to 15% range will apply) to be designated for use as public open space. The Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision for the acquisition of additional open space or the upgrade of existing parks and open spaces subject to these additional facilities meeting the standards specified in Table 14.11. Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space\*

**Table 14.12** - requires that new residential development on infill/brownfield sites require a minimum of 12% of the site area, with a target of 15%.

- 7.2.3. Notwithstanding the provisions of Objective DMSO51, the text contained in Section 14.13.2 of the Development Plan also states that the Council will employ a flexible approach to the delivery of public open space, and that it is the intention of the Council to ensure, except under exceptional circumstances, public open space provision exceeds 12% of a development site area.
- 7.2.4. In their assessment of the proposed development, the PA did not accept that the areas shown as public open space complied with the requirements of the Development Plan. Therefore, the PA took the view that no areas of public open space had been provided within the site and applied a financial contribution in lieu of the full quantum of public open space as required by Objective DMSO51, which equates to 1.41ha, (2.5ha per 1000 of population). In response to the argument put forward by the applicant that a quantum of 10% of the site area is appropriate for the site, the PA state that the Development Plan acknowledges that this quantum set out in DMSO51 is not always achievable and in such cases a minimum of 10% should be provided on the development site with a financial contribution to be applied in lieu of any shortfall.
- 7.2.5. The appeal argues that the development provides 0.0876ha of public open space through a pocket park of 198m<sup>2</sup> located on Site C to the north of Road D, and a public plaza of 678m<sup>2</sup> on Site B to the south of Road D. The pocket park would be located between blocks A and B and would be set back from the public footpath. The public plaza comprises a linear, landscaped area of approximately 7.3m in width between the footpath and the public road. Both areas would comprise landscaping, seating and incidental features and equipment for play. Neither area would meet the size requirements for a Pocket Park or Small Park as set out in Table 14.11 of the Development Plan.
- 7.2.6. In terms of adjudicating whether the open space for the development can be considered as public open space, I would agree with the PA in their view that that the areas shown as the pocket park and the public plaza do not act as functional public open space given their size and positioning. I have reviewed the drawings submitted with the application and the public plaza and the pocket park do not meet the

requirements of Table 14.11 of the Development Plan. The public plaza would provide a welcome buffer between the footpath and the public road and would add to the overall public realm. However, by virtue of its physical characteristics, size and location, it functions more as an incidental landscaped area rather than a public open space. Likewise, the pocket park would provide some welcome visual relief and circulation space between the entrances to the commercial units in Block A and B, but the size of the area restricts its function as meaningful public open space. Whilst both areas would contribute to the public realm, their primary function is incidental landscaping and circulation.

- 7.2.7. Furthermore, I note that since the decision was made the Compact Settlement Guidelines have come into effect and have replaced the Sustainable Residential Developments in Urban Areas-Guidelines for Planning Authorities 2009. Regarding public open space the Compact Settlements Guidelines state that, *'Incidental areas of open space that do not form part of an interconnected network of hard and soft landscaped areas should not be included in the calculation of public open space provision'*. Notwithstanding the urban infill nature of the development and its location within a town centre, the open space provision would not be in accordance with the Development Plan requirements for public open space, or the definition of public open space included in the Compact Settlement Guidelines. Therefore, the development does not provide any public open space.
- 7.2.8. Objective DMSO51 of the Development Plan requires a minimum public open space provision of 2.5 hectares per 1000 population, based on an occupancy rate of 3.5 persons for dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms. This would result in a requirement of 1.41 hectares of public open space. The applicant argues that the quantum of public open space required under Objective DMSO51 is excessive within the context of the site which is an underutilised brownfield site in an urban setting that is designated as a Major Town Centre. Furthermore, a conflict exists between objectives DMSO51, DMSO52 and DMSO53 which results in a disparity in the level of public open space required.
- 7.2.9. DMSO51 requires 2.5ha of public open space per 1000 of population. DMSO52 states that public open space should be provided in accordance with Table 14.12, which states that new residential development on brownfield / infill sites require

public open space to a minimum of 12% of the site area with a target area of 15%. DMSO53 requires a minimum open space as outlined in Table 14.12 for a proposed development site area but notes that a financial contribution can be applied in lieu of the remaining open space. An assumption is made that any shortfall referred to in DMSO53 would relate to the quantum of open space required under DMSO51. However, this is not explicitly stated and Objective DMSO52 clearly states that public open space should be provided in accordance with Table 14.12. It is also noted that Section 5.3.3 of the Compact Settlements Guidelines relates to public open space. Policy and Objective 5.1 states that, *'The requirement in the development plan shall be for public open space provision of not less than a minimum of 10% of net site area and not more than a minimum of 15% of net site area save in exceptional circumstances'*. Although this objective is not a Special Planning Policy Requirement, it reflects national planning policy with regard to public open space.

7.2.10. Should the Board believe the open space provided in the development does not constitute public open space, I am satisfied that the provisions of Objective DMSO52 can be applied which would require 12% of the site area to be public open space. This equates to 0.3ha, (3060m<sup>2</sup>). In this instance, I do not consider that this would result in a material contravention of Objective DMSO51 under Section 37(2)(b) of the Planning and Development Act as a conflict exists between Objectives DMSO51 and DMSO52 of the Development Plan.

7.2.11. The Development Contribution Scheme includes a provision whereby a financial contribution can be applied in lieu of a shortfall in open space for a development. Note 5 of the Contribution Scheme states that,

*(a) The Fingal Development Plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. This contribution in lieu of open space will be levied at the following rates;*

- 1. Class 1 Open Space - €100,000 per acre to purchase land based on the value of amenity land, Plus €100,000 per acre for development costs.*
- 2. Class II Open Space - €250,000 per acre to purchase land in residential areas, Plus €100,000 per acre for development costs.*

*The contributions collected will be used for the provision of open space, recreational and community facilities and amenities and landscaping works – see Appendix 2.*

Millennium Park is listed as a Community Park Project under Appendix 2.

7.2.12. Objective DMSO53 states that, *‘Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space’.*

7.2.13. Based on the provisions of Objective DMSO53, the proposed development would require 0.3 ha (3060 m<sup>2</sup>) of public open space. The requirements of Note 5 of the Development Contribution Scheme are set out in acres. When a conversion from imperial measurements to metric is carried out the following levies would be required;

- Class I Open Space - €24.71 per m<sup>2</sup>
- Class II Open Space - €61.78 per m<sup>2</sup>

7.2.14. Based on a quantum of 3060m<sup>2</sup> (i.e. 12% of the site area) Class I contributions would be applicable for 2,295m<sup>2</sup> and Class II contributions would be applicable for 765m<sup>2</sup>. Therefore, the appropriate levy to apply under Note 5 of the Contribution Scheme would be,

- Class I – 2,295m<sup>2</sup> x €24.71 = €56,709
- Class II – 765m<sup>2</sup> x €61.78 = €18,903
- Total amount to be applied = €75,612

### Conclusion

7.2.15. The proposed development relates to an urban regeneration development within a major town centre area where high density development is supported and where land is at a premium. Notwithstanding the landscaping and public realm improvements that would be provided by the development, the proposal would not provide any public open space which is in accordance with the Development Plan requirements which are set out in Table 14.11.

7.2.16. The Development Plan contains conflicting objectives which relate to the quantum of public open space to be provided. Objective DMSO51 requires 2.5 ha of public open space per 1000 of population, which would equate to 1.41 ha of open space.

Objective DMSO52 requires public open space to be in accordance with the provisions of Table 14.12 which requires 12% of the site area to be public open space in new residential developments on infill/brownfield sites. This would yield 3,060 m<sup>2</sup> (0.3 ha) of public open space. Given the nature and location of the development, I consider the provisions of Table 14.12 and DMSO52 to be appropriate for the proposed development.

- 7.2.17. As the public open space cannot be provided on the development site, Objective DMSO53 allows for a financial contribution to be applied in lieu of a shortfall. Note 5 of the Development Contribution Scheme sets out the levies required under this objective. Based on the provisions of the Development Contribution Scheme and the quantum of public open space to be provided in accordance with Objective DMSO52, I recommend that the financial contribution to be applied under Condition No. 33 be amended to include the amount of €75,612.

**7.3. Condition No. 34 states the following -**

*The developer shall pay a special contribution of €618,048 under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the shortfall in playground facilities provided on the site in accordance with the requirements of the Fingal County Development Plan 2017-2023, to go towards the improvement of playground facilities in Millennium Park.*

*REASON: To ensure the delivery of infrastructure necessary to serve the proposed development and in the interests of orderly development.*

- 7.3.1. Objective DMSO68 of the Development Plan aims to ensure the provision of playground facilities at a rate of 4m<sup>2</sup> per residential unit, while Objective DMSO50 requires the monetary value in lieu of play facilities to be in line with the Fingal County Council Development Contribution Scheme. The Apartment Guidelines also acknowledge the need for developments such as this to cater for communal children's play as follows:

- within small play spaces (about 85 – 100 sq. metres) for the specific needs of toddlers and children up to the age of six, with suitable play equipment,



seating for parents/guardians, and within sight of the apartment building, in a scheme that includes 25 or more units with two or more bedrooms; and

- within play areas (200–400 sq. metres) for older children and young teenagers, in a scheme that includes 100 or more apartments with two or more bedrooms.

7.3.2. Based on the provisions of Objective DMSO68, the development would require 1,392 m<sup>2</sup> of play space, (4m<sup>2</sup> per residential unit). The Apartment Guidelines would require approximately 500m<sup>2</sup> of dedicated play space, (100m<sup>2</sup> small play space for toddlers up to 6 years old and 400m<sup>2</sup> for older children).

7.3.3. The appellant submits that 219m<sup>2</sup> of play space would be provided in the proposed pocket park and public plaza. This argument is not accepted by the PA, and it is their view that amenity grass, incidental play and chess boards cannot be considered to be playground facilities. Therefore, no play facilities have been provided. On this basis they have applied a special contribution of €618,048, under Section 48(2)(c) of the Planning and Development Act which would go towards the improvement of playground facilities in Millennium Park. The amount of the levy was calculated based on 4m<sup>2</sup> x 348 units @ €444 per m<sup>2</sup>. This figure was submitted by the PA in their response to the appeal and is based on their previous experience delivering playgrounds. The appellant contests this figure and puts forward a figure of €350 – 390 per square metre based on their experience.

7.3.4. I note the disparity between the quantum of play space required by the Development Plan and that required by the Apartment Guidelines. This presents an inconsistency in planning policy between the local objectives of the Development Plan and national objectives in the Apartment Guidelines. It also raised an inconsistency in the Development Plan itself as the requirements of play space under Objective DMSO68 would be in excess of the standards of the Apartment Guidelines, which Objective DMSO24 requires compliance with.

7.3.5. Notwithstanding the conflicting objectives in the Development Plan, I do not consider that the development proposed would provide the type of play space required by the Development Plan or the Apartment Guidelines. Whilst the landscaped areas to the north and south of Road D contain incidental areas where children might play, they are not dedicated spaces which are in accordance with the provisions of Table 14.11

of the Development Plan or Section 4.13 of the Apartment Guidelines. Therefore, the Board may consider that the development provides a shortfall in play provision. In consideration of the nature of the development on a brownfield site within a major town centre, the level of play space required by the Apartment Guidelines would be a more appropriate quantum given the policy objectives to achieve high density development in the town centre on a restricted site. In this instance, I do not consider that the application of the standards set out in the Apartment Guidelines would result in a material contravention of Objective DMSO68 under Section 37(2)B) of the Planning and Development Act as a conflict exists between Objectives DMSO68 and DMSO24 of the Development Plan which require different development standards.

- 7.3.6. Should the Board agree with the application of the Apartment Guidelines standards, the provision of 500m<sup>2</sup> of play space would be required and is not provided in the development. However, the question arises as to whether the provision of a special contribution under Section 48(2)(c) of the Planning and Development Act is appropriate. This provision of the Act allows for special contributions where specific exceptional costs not covered by a development contribution scheme are incurred by a local authority in respect of public infrastructure and facilities which benefit the proposed development. Section 48(12) also outlines that any such condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates.
- 7.3.7. Section 18 of the Development Contribution Scheme relates to Special Development Contributions and states that, *‘A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Fingal County Council Development Contribution Scheme 2021 – 2025 are incurred by the Council in the provision of a specific public infrastructure or facility... Only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution’.*
- 7.3.8. Further guidance is contained in the Development Management Guidelines for Planning Authorities (DoEHLG, 2007), which states that a condition requiring a special contribution under the terms of Section 48(12) of the Planning Act should explain the basis for the calculation of the contribution in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure

involved and the basis for the calculation, including how it is apportioned to the particular development.

7.3.9. Having regard to the legislation and guidance on special contributions, I do not consider that the basis for Condition No. 34 is either 'specific' or 'exceptional'. The wording of the condition refers to the *'improvement of playground facilities in Millennium Park'* and does not specify the nature or scope of the works to be carried out. The amount set out in the conditions was estimated by the PA based on their previous experience and is not based on specific costings. It is of note that the figure put forward by the PA is also contested by the appellant based on their own estimates. Furthermore, while I acknowledge that the suggested improvement works would benefit the residents of the proposed development, I do not consider that the costs would be incurred directly because of, or in order to facilitate, the proposed development. Accordingly, even should the Board consider that there is a shortfall in play space, I do not consider that a special development contribution under Section 48(2)(c) would be warranted.

7.3.10. I note that Condition No. 37 requires the developer to pay a financial contribution under the provisions of the Fingal Development Contribution Scheme 2021-2025, which was prepared under Section 48 of the Planning and Development Act. The Development Contribution Scheme does not include any specific costs for play facilities, however, I am satisfied that these would be covered under 'Class 3: Community & Parks facilities & amenities', which requires a specified amount per square metre of development. On this basis, I am satisfied that the cost of improvements to play facilities in Millennium Park have been factored into the Development Contribution Scheme and an amount has been applied under Condition No. 37 of the PA's decision. Therefore, in the event that the Board considers that there is a shortfall in play space, I consider that it would be adequately covered by the Development Contribution Scheme as per Condition No. 37 of the PA's decision.

## 8.0 Recommendation

I recommend that Condition No. 33 is amended.

I recommend that Condition No. 34 is removed.

## 9.0 Reasons and Considerations

Having regard to the nature of the condition which is the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended:

### **Condition No. 33 -**

To **AMEND** Condition No. 33 as follows for the reasons and considerations hereunder:

*There is a shortfall of 3060m<sup>2</sup> (0.3ha) in the quantum of public open space which would be generated by the proposed development. The applicant is required to make up this shortfall by way of a financial contribution of €75,612, in accordance with Section 48 of the Planning and Development Act 2000 (as amended). The contribution will be applied to the continuing upgrade of recreational facilities in Millennium Park.*

*Reason To ensure the delivery of infrastructure necessary to serve the proposed development and in the interests of orderly development.*

### **Reason and Considerations (1)**

The proposed development contains a shortfall in public open space which is required at a rate of 12% of the site area under Objective DMSO52. Note 5 of the Fingal Development Contribution Scheme 2021 – 2025 allows for a financial contribution to be applied to any development that has a shortfall in public open space. The financial levy to be applied is based on the provisions of Note 5 which requires 75% of the shortfall to be calculated at a rate of Class I open space, based on €100,000 per acre, and 25% of the shortfall to be calculated at a rate of Class II open space based on €250,000 per acre. The amended amount to be applied under Condition No. 33 has been calculated in accordance with Objective O52 of the Fingal County Development Plan 2022-2028 and in accordance with Note 5 of the Fingal Development Contribution Scheme 2021 – 2025.

### **Condition No. 34 -**

To **REMOVE** Condition No. 34 for the reasons and considerations hereunder:

#### **Reasons and Considerations (2)**

It is considered that Condition No. 34 is not in accordance with the requirements of Section 48(2)(c) of the Planning and Development Act as the development referenced in the condition is not exceptional or specific to the proposed development, the scope of the works listed in the condition are not identified and the works listed in Condition No. 34 are covered by the Fingal County Development Contribution Scheme 2021-2025, which was prepared in accordance with Section 48 of the Planning and Development Act 2000, (as amended).

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Elaine Sullivan  
Planning Inspector

30<sup>th</sup> of April 2024

