



An
Bord
Pleanála

Inspector's Report

ABP-316217-23

Development	Point of detail regarding Condition No. 9 of ABP-307965-20: The construction of a residential development and all associated site works.
Location	Clonross, Navan Road, Blanchardstown, Dublin 15.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW20A/0078
An Bord Pleanála Reg Ref.	ABP-307965-20
Applicant(s)	Bartra Property (Clonross) Ltd
Referrer	Bartra Property (Clonross) Ltd
Date of Site Inspection	23 rd May 2024
Inspector	Enda Duignan

1.0 Introduction

- 1.1. It has been submitted that agreement cannot be reached between Fingal County Council and Bartra Property (Clonross) Ltd in relation to Condition No. 9 of a decision made by An Bord Pleanála. The decision was to grant permission subject to conditions under case reference ABP-307965-20 on the 2nd of February 2021. In default of agreement, the matter has been referred to the Board for determination by Jim Brogan Planning and Development Consultant on behalf of Bartra Property (Clonross) Ltd.

2.0 Site Location and Description

- 2.1. The address of the appeal site is Clonross, Navan Road, Blanchardstown, Dublin 15 and is located at the eastern edge of Blanchardstown Village. The site lies on the northern side of the Navan Road (R806), c. 100m south-east of the signalised junction of Navan Road and Castleknock Road. The site has a rectangular shape and comprises a completed residential development. The apartment scheme comprises 4 no. blocks across the site with a maximum height of 3 no. storeys. The linear block fronting the Navan Road has a 3 no. storey height with a flat roof form. The blocks within the rear portion of the site have heights that range up to 3 no. storeys with the upper floor contained with a pitched roof form.
- 2.2. In terms of the site surrounds, the surrounding area is characterised by a mix of commercial and residential uses, including detached, semi-detached and terraced housing, a 2-storey apartment development and a public house incorporating additional commercial uses is located to the south of the site on the opposite side of the Navan Road. There is also an existing stop located adjacent to the frontage of the subject site.

3.0 Proposed Development

- 3.1. In summary, permission was granted by An Bord Pleanála under ABP-307965-20 for a residential development on the subject site. Permission was originally applied for a total of 29 no. residential units. Condition No. 2 of the permission provided for the omission of Block 02 of scheme. This resulted in a permitted development comprising 26 no. units, open space and all associated site works.

4.0 Relevant Planning History

4.1. **ABP-307965-20 (FW20A/0078):** As previously outlined, the Board granted permission for the proposed development on 2nd of February 2021, subject to 9 no. conditions. The condition of relevance to this determination is Condition No. 9 as follows:

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

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

4.2. **FW18A/0051:** Permission granted on 30th January 2019 for development of 7 houses and associated site works.

4.3. **FW18A/0037:** Permission granted on 11th June 2018 for demolition of existing house and retention of hoarding to the southern boundary.

5.0 Referrer's Case

5.1. A referral made in accordance with Section 34(5) of the Planning and Development Act 2000, as amended (i.e. 'the Act'), was submitted by Jim Brogan Planning and Development Consultant on behalf of Bartra Property (Clonross) Ltd. Condition No. 9 requires the Applicant to make a payment of a financial contribution in respect of public

infrastructure and facilities benefiting development in the area of the planning authority. However, they have been unable to reach agreement with the Planning Authority to date on same as it is the Applicant's contention that they are exempt from development contributions given they are social housing units being provided an Approved Housing Body. Given the failure to reach agreement, a Referral to An Bord Pleanála is made under section 34(5) of the Planning and Development Act 2000, as amended, as provided for in the condition on the grounds that the Council have misapplied the terms of the Contribution Scheme in this case, in that they have not allowed an exemption, as provided for in section 11(i)(h) of the Development Contribution Scheme.

- 5.2.** Notwithstanding this failure to reach agreement on the application of the terms of the Scheme, it is confirmed that to enable the immediate purchase and provision on their completion of the dwellings permitted for use as social housing units, the Applicant decided to pay the contribution, without prejudice to their right to make the referral.
- 5.3.** The submission refers to the letter from Clúid Housing to the Applicant (24th March 2022) confirming that they are prepared to offer the sum of €11,150,000.00 (inclusive of VAT) for 26 units at Clonross, Blanchardstown, Dublin 15, subject to a condition, inter alia, that once the Part V is agreed between the developer and the Local Authority, the above prices would be deducted to reflect the Part V agreement (Refer: Appendix 6).
- 5.4.** The Applicant received a letter from the Local Authority requiring a payment to the sum of €206,928.00 under Condition No. 9. In response, the Applicant confirmed that they were building these units as social housing units on behalf of Clúid Housing. As such, these units are exempted from Development Contributions under the Fingal Development Contribution Scheme and the amount outstanding to be paid is therefore zero.
- 5.5.** A response from the Planning Authority indicated that financial contributions are waived for Part V units only. It goes on to note that there will be 2 x Part V units in this development and there is no signed Part V agreement in place for this development as of yet.

- 5.6.** A further response was then submitted to the Local Authority where they referenced previous engagement by them with the Board by way of a Referral on the subject of the payment of development contributions in relation to a residential development in Stoneybatter (ABP-300466-17). It was acknowledged that the scenario in that case was slightly different in that the units in the Stoneybatter development were for lease as social housing units under the Enhanced Lease Programme whereas the units in the case of Clonross are being provided by the Applicant on behalf of Clúid Housing. The submission contends that the Board's decision essentially "confirms that where housing is intended as social housing then contributions are not applicable".
- 5.7.** The Local Authority then confirm via email (Appendix 13) and by letter (Appendix 2) that the Approved Housing Body are contracted to purchase all dwellings within this scheme for social housing purposes. The dwellings are to be purchased at market value and funded via the Fingal County Council and Capital Advance Leasing Facility scheme. As the purchase price to be paid to Bartra is at Market Value, development contributions are therefore due to be paid by the Applicant to Fingal County Council similar to any other house purchase at market value. They go on to note that if the contributions are to be waived by the Council, the purchase price of the dwellings will have to be reduced accordingly. It is also stated that the development contributions are not due in respect of the two dwellings provided in accordance with the agreement made under Part V of the Act.
- 5.8.** The Applicant's submission notes it appears that the Council's position is that all housing purchased at market value is liable for development contributions under its Development Contribution Scheme and, if these contributions are to be waived, then the price of the dwellings would have to be reduced accordingly. It is the Applicant's view that the Council, in adopting this position, is misapplying the terms of the Development Contribution Scheme and that the proper application of the terms would result in the subject development being exempt from the requirement to pay a development contribution under the Scheme. It is the Applicant's submission that the subject units are exempted under Sub-Section 11(i)(h) of the Development Contribution Scheme and the terms of the Scheme are not being properly applied by the Council in this case.

5.9. The submission notes that for the exemption to be applicable under Sub-Section 11(i)(h), the first requirement is that the subject houses constitute social housing being provided by an Approved Housing Body. It is confirmed by the Council that Clúid Housing are an Approved Housing Body and it is also acknowledged that the dwellings in question are classifiable as social housing units. With regard to the question as to whether or not they are being provided i.e. being made available for use or supplied for this purpose, the submission notes that it is indisputable that the subject units are being made available and supplied for use by Clúid Housing for this purpose. The submission refers to the Legal opinion provided by the Applicant's solicitors (Appendix 3). It has been determined by the Local Authority that the subject exemption is not applicable because the "market price" is being paid for the dwellings to be provided as social housing units. However, there is no indication given in the exemption, that the price to be paid for social housing units constitutes a valid consideration in determining whether or not a development contribution is payable. It is contended that the only reasonable interpretation of the exemption is that the exemption provides that the Housing Department must confirm that the entity providing the social housing is an Approved Housing Body and, consequently, no contribution is payable.

5.10. In conclusion, it is submitted that Fingal County Council, in their application of Condition No.9, have misapplied the terms of the Fingal County Council Development Contribution Scheme 2021-2025, and the Board is requested to direct Fingal County Council to apply the condition on the basis that the amount of the contribution above is zero on foot of the exemption provided for in Sub-Section 11(i)(h) of the Fingal County Council Development Contribution Scheme 2021- 2025 (under Section 48, Planning and Development Act, as amended).

5.11. Included as appendices to the referral are:

- ABP Decision Order No. PL. 06F.307965 (Appendix 1).
- Letter (4th October 2022) - Bonds and Contributions Section (Fingal County Council Planning and Strategic Infrastructure Department) to Bartra Property (Clonross) Limited (Appendix 2).
- Opinion - McCann FitzGerald LLP Referral in relation to application of Fingal

- County Council Development Contribution Scheme 2021-2025 (Appendix 3).
- Letter (7th March 2023) - Bartra Property (Clonross) Limited to Planning Compliance Section, Planning and Strategic Infrastructure Department, Fingal County Council. (Appendix 4).
 - Section 11(i)(h) - Fingal County Council Development Contribution Scheme 2021-2025 (Under Section 48, Planning and Development Act 2000, as amended) (Appendix 5).
 - Letter (24th March 2022) from Clúid Housing to Bartra Capital Property. (Appendix 6).
 - Letter (5th July 2022) from Fingal County Council Planning and Strategic Infrastructure to Bartra Property (Clonross) Limited (Appendix 7).
 - Email (18th July 2022) from Bartra Capital Property to Bonds and Contributions Section, Fingal County Council Planning and Strategic Infrastructure Department (Appendix 8).
 - Email (20th July 2022) from Fingal County Council Housing Department to Bonds and Contributions Section, Fingal County Council Planning and Strategic Infrastructure Department (Appendix 9).
 - Email (26th July 2022) from Bonds and Contributions Section, Fingal County Council Planning and Strategic Infrastructure Department, to Bartra Capital Property. (Appendix 10).
 - Email (8th August 2022) from Bartra Capital Property to Bonds and Contributions Section, Fingal County Council Planning and Strategic Infrastructure Department. (Appendix 11).
 - Decision Order re: An Bord Pleanála Reference No: ABP. 300466-17. (Appendix 12).
 - Correspondence from Fingal County Council to the Applicant dated 29th September 2022 (Appendix 13).
 - Section 10(i)(f) - Fingal County Council Development Contribution Scheme 2016-2020 (Under Section 48, Planning and Development Act 2000, as amended) (Appendix 14).

6.0 Planning Authority's Response

6.1. The Planning Authority's response refers to Part 11(i)(h) of the Development

Contribution Scheme and the confirmation by the Housing Department of Fingal County Council that the purchase price to be paid to Bartra by Clúid Housing is at market value. Therefore, development contributions are due to be paid by Bartra to Fingal County Council similar to any other house purchase at market value. They go on to note that Part 11(i)(h) requires confirmation by the Housing Department of Fingal County Council that the development contributions are not due. A total of 26 no. social housing units were acquired by Clúid in this development and these units were in addition to the units provided to satisfy the Part V obligation in the scheme.

- 6.2.** The payment of all financial contributions by the developer to Fingal County Council was included in the purchase price paid by Clúid to the developer for the 26 social units. Payments in respect of the financial contributions were made by the developer to the Council. The payment of the financial contributions has already been funded by Fingal County Council/Department of Housing, Local Government and Heritage and paid to the developer via the purchase price. Therefore, a waiver of financial contributions in respect of these 26 social units does not apply.

7.0 Referrer's Response

- 7.1.** The response prepared on behalf of the Applicant contends that the Planning Authority's position is without merit and should be rejected, having regard to the reasons and considerations set out in the original Referral and in the response. It remains the Applicant's position that the Fingal County Council have misapplied the terms of its Development Contribution Scheme 2021-2025 and the Board is therefore requested to direct Fingal County Council to apply the condition on the basis that the amount of the contribution is zero on foot of the exemption provided for in sub-section 11(i)(h). For the exemption to be applicable, there are two requirements specified - the first is that the subject houses are being provided as social housing units by an Approved Housing Body (as confirmed by the Planning Authority), and the second is that the Council's Housing Department must confirm that a development contribution is not due.
- 7.2.** In terms of the second requirement, the submission notes that there is no reference in the exemption to the grounds or circumstances which may be considered by the

Housing Department in making its determination. Given the absence of any specific criteria in the exemption other than the subject social units be provided by the Approved Housing Body, means that one cannot know in advance whether one has a liability to pay the development contribution. It is submitted that the Council cannot apply criteria unidentified in the Development Contribution Scheme as the basis for determining whether or not the exemption applies. It is argued that the only legitimate interpretation of the exemption within the terms of the Scheme is that the Housing Department must verify whether the provider of the social housing constitutes an Affordable Housing Body and having found that to be the case, confirm that the exemption is satisfied.

- 7.3.** The submission goes on to note that there is nothing in the Development Contribution Scheme to suggest that the price paid for the subject social housing units by an Approved Housing Body is relevant to whether the exemption applies. Further, there is nothing in the Development Contribution Scheme to explain how it might be calculated or that the price paid by an Approved Housing Body might be said to include or exclude the amount of a development contribution. These considerations are irrelevant to the proper construction of the Contribution Scheme, and to how the Council's Housing Department might form its view as to whether a development contribution is due or not. It is stated that in this case, the Housing Department has formed a view on the only matter of relevance, namely, that the residential units are social housing units and are provided by an Approved Housing Body. It is stated that there is no residual discretion; there is only this confirmation that the requirements of the exemption are satisfied.

8.0 Policy Context

8.1. Development Contributions Guidelines for Planning Authorities (2013)

- 8.1.1.** 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. The Guidelines aim to assist planning authorities in achieving a balance between the costs of services provided and the need to support economic activity via Development Contribution Schemes.

8.2. Development Management – Guidelines for Planning Authorities (2007)

- 8.2.1. Section 7.12 of the Guidelines provides guidance on planning conditions relating to development contributions. Section 8.12 of these Guidelines refers to appeals regarding development contribution conditions.

8.3. Fingal County Development Plan, 2017-2023

- 8.3.1. At the time of the decision to grant permission and impose Condition No. 9, the operative plan for the area was the Fingal Development Plan 2017-2023. The appeal site was located on lands zoned 'RS' (Residential), with an objective to 'Provide for residential development and protect and improve residential amenity.'

8.4. Fingal County Development Plan, 2023-2029

- 8.4.1. Under the current Plan, the appeal site is also zoned 'RS' (Residential), with an objective to 'Provide for residential development and protect and improve residential amenity.'
- 8.4.2. Section 4.5.1 (Community/Social Infrastructure) of the Plan indicates that as part of the Development Management process, a developer may be required to provide space for a new community facility or contribute towards the provision or improvement of new or existing facilities and infrastructure by way of a development contribution under Section 48 of the Planning and Development Act 2000 (as amended). This legislation permits the Council to include conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority. The Development Contribution Scheme 2021–2025 includes a range of applicable community and open space infrastructure which may be provided in this manner. These include new and extended community centres and libraries, new children's play facilities, recreational facilities and open space provision and upgrade. A social infrastructure audit will be required for large scale residential developments in the planning application process.
- 8.4.3. Section 14.17.12 (Development Contributions and Transport Infrastructure) of the current Plan notes that financial contributions will be sought as part of the

Development Management process for certain development under the provisions of Section 48 and Section 49 of the Planning and Development Act, 2000 (as amended). Section 48 (general) schemes relate to proposed provision of public infrastructure and facilities which benefit development within the area of the Planning Authority and are applied as a general levy on development.

- **Objective DMSO123** – Section 48 and 49 Contributions Utilise, where appropriate, the provisions of Section 48 and 49 of the Planning and Development Act, 2000 (as amended) to generate financial contributions towards the capital costs of providing local and strategic transport infrastructure, services or projects in the County. This will be done in conjunction with adjoining Local Authorities where appropriate.

8.5. Fingal County Council Development Contribution Scheme 2021-2025 (the Scheme)

8.5.1. The above scheme was adopted on 14th December 2020 under section 48(2)(a) of the Act and became effective from 1st January 2021. It was operative at the time of the Board's decision to grant permission and continues to be operative now. In terms of exemptions and reductions, Section 11(i)(h) is relevant to the current referral and is details as follows:

- *Social housing units shall be exempt if;*
 - *They are provided in accordance with an agreement made under Part V of the Planning and Development Act, as amended*
 - *They are provided by an Approved Housing Body and it is confirmed by the Housing Department of Fingal County Council that the development contributions are not due,*
 - *They are built by, or on behalf of the Council*

This exemption does not include any Open Space Shortfall that may have been applied to the permission.

This exemption does not apply to housing units which are provided under a Leasing Arrangement.

Section 16 of the Scheme notes that an appeal may be brought to the Board where the applicant for planning permission under Section 34 of the Act considers that the terms of the Scheme have not been properly applied in respect of any conditions laid down by the Council.

9.0 Legislative Context

9.1. Section 34(5) of the Planning and Development Act, 2000 (as amended)

9.1.1. The relevant section of the Act states:

The conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person carrying out the development and, accordingly –

(a) where for that purpose that person has submitted to the planning authority concerned such points of detail, then that authority shall, within 8 weeks of those points being so submitted, or such longer period as may be agreed between them in writing, either—

(i) reach agreement with that person on those points, or

(ii) where that authority and that person cannot so agree on those points, that authority may—

(I) advise that person accordingly in writing, or

(II) refer the matter to the Board for its determination,

and, where clause (I) applies, that person may, within 4 weeks of being so advised, refer the matter to the Board for its determination,

or

(b) where none of the events referred to in subparagraph (i) or in clause (I) or (II) of subparagraph (ii) occur within those 8 weeks or such longer period as may have been so agreed, then that authority shall be deemed to have agreed to the points of detail as so submitted.

9.1.2. Section 48 Development Contributions

Section 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).

Section 48(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.

Section 48(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.

10.0 Assessment

10.1.1. Having regard to the foregoing and all the correspondence and submissions on file, I consider that the main issue to determine in this case, is whether the Applicant is exempt from paying development contributions when having regard to the various exemptions and reductions contained within the Fingal County Council Development

Contribution Scheme, 2021-2025 (referred to herein as the Scheme). As provided for in section 34(5) of the Planning and Development Act 2000, as amended, the Board has been requested to determine a point of detail, as agreement has not been reached between the Planning Authority and the Applicant. It is the Applicant's contention that the Planning Authority have misapplied the terms of the Scheme as they have not allowed an exemption from the requirement to pay a contribution by reason of the dwellings being social housing units being purchased for that purpose by an Approved Housing Body. Notwithstanding the failure to reach agreement on the application of the terms of the Scheme, it is confirmed in the submission that the Applicant decided to pay the contribution without prejudice to their right to make the referral. This was done in order to enable the immediate purchase and provision on their completion of the dwellings permitted under the subject planning permission for use as social housing units.

- 10.1.2. I note that the conditions attached by the Board were correct at the date of the decision as permission was sought and approved by the Board for a residential development on the subject site. A decision was made by the Board in February 2021, which granted permission for the residential development, subject to compliance with 9 no. conditions. As noted, Condition No. 9 required the Applicant to pay a financial contribution to the Planning Authority in accordance with the terms of the Scheme made under Section 48 of the Act. The condition goes on to note that 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.
- 10.1.3. There is correspondence on the file (Appendix 3) from March 2022 from Clúid Housing (Cluid) which confirms a price that they were prepared to offer to the Applicant for 26 units on the subject site. From the various correspondence between the Applicant and the Planning Authority, it was evident that the units in question were being built by the Applicant and being sold as social housing units to Clúid. This point has not been disputed by the Planning Authority. It was initially noted by the Planning Authority (Appendix 9) there will be 2 no. Part V units in the development, and it was their contention that the financial contributions are waived for the Part V units only. Further

correspondence on the file from the Planning Authority indicated that the dwellings were to be purchased by Clúid at market value and funded via Fingal County Council and the Capital Advance Leasing Scheme. As the purchase price is at market value, it is their view that development contributions are due to be paid by Bartra to Fingal County Council, similar to any other house purchase at market value. They go on to note that if the contributions are to be waived by the Council, the purchase price of the dwellings will have to be reduced accordingly. It was also noted that development contributions are not due in respect of the 2 no. dwellings provided in accordance with the agreement made under Part V of the Act. These points are largely reiterated by the Planning Authority in their response to this referral.

10.1.4. Section 11(i)(h) of the Scheme indicates that social housing units shall be exempt from the payment of development contributions if:

- They are provided in accordance with an agreement made under Part V of the Planning and Development Act, as amended,
- They are provided by an Approved Housing Body and it is confirmed by the Housing Department of Fingal County Council that the development contributions are not due,
- They are built by, or on behalf of the Council

I note that the Board is constrained in their interpretation of Development Contribution Schemes in law rather than planning judgement. It is reasonable to assume that a social housing unit would be exempt if it meets one of the above the criteria and I note that Planning Authority have not put forward an argument against this. Whilst it is accepted by the Planning Authority that the units are being provided by an Approved Housing Body (i.e. Cluid), it is the Housing Department's view that the development contribution is payable because Clúid is paying market value for the residential units. The Applicant's Legal Opinion contends that it is entirely baseless to suggest that the applicability of the AHB exemption can be determined by the purchase price agreed between Cluid and Bartra. It is stated that there is nothing in the terms of the Scheme which allows the Council to deny the applicability of the AHB exemption on this basis. There is no reference to market value in the Scheme, or suggestion that the reason for the exemption is a notional discounted purchase price. The Legal Opinion goes on to note that this is also at odds with Section 48(3)(c) of the Act which states that 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. Therefore, it is contended that the only reference point for the applicability of the exemption and the exercise of any discretion by the Council is the Scheme itself.

10.1.5. Having considered the documentation on file and the terms and conditions of the Scheme, it is evident that the Section 11(i)(h) is directly applicable in this instance given it is confirmed that the homes are social housing units, and they are being provided by an AHB. Under the heading of 'Approved Housing Bodies' in the Fingal County Council's Chief Executive's Management Report (13th March 2023 Item 28), it is indicated that 26 no. units in Clonross, Dublin 15 are being delivered in March 2023. It is stated that:

- *These properties are being managed by Cluid Housing Association. Cluid is an Approved Housing Body and service provider. Cluid Housing is a not-for profit charity providing over 10,000 affordable, high-quality homes to people in housing need.*

Therefore, there is a clear consensus that the homes within the scheme are social housing units, and they are being provided by an AHB. I note that Section 11(i)(h) identifies instances where the exemptions do not apply:

- *This exemption does not include any Open Space Shortfall that may have been applied to the permission.*
- *This exemption does not apply to housing units which are provided under a Leasing Arrangement.*

The Scheme does not specify that an exemption does not apply in instances where they are built on behalf of an AHB. I would therefore agree with the Applicant's contention that the Planning Authority has no residual discretion in this instance, other than providing confirmation whether or not the social housing units are being provided by an AHB. There is nothing in the Scheme which states that exemptions do not apply in scenarios where they are purchased by an AHB at market value. Therefore, it is my view that the Planning Authority have misapplied the terms of its Development Contribution Scheme, 2021-2025, and it is my recommendation to the Board that the amount of the contribution is zero on foot of the exemption provided for in sub-section 11(i)(h) of the Scheme.

11.0 Recommendation

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

WHEREAS by Order dated the 2nd of February 2021, An Bord Pleanála, under application reference number ABP-307965-20, granted subject to conditions a permission to Bartra Property (Clonross) Ltd, for development comprising the construction of 29 apartments and all associated site development works:

AND WHEREAS Condition No. 9 of An Bord Pleanála decision under ABP-307889-20 required the developer to 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.

AND WHEREAS the developer and the Planning Authority failed to agree on the amount of the contribution to be paid pursuant to Condition No. 9, and on the application of the terms of the relevant Development Contribution Scheme in compliance with the terms of this condition and the matter was referred by the developer to An Bord Pleanála on the 6th of April 2023 for determination:

AND WHEREAS the Board is satisfied that the matter at issue is to determine the amount of the contribution to be paid by the developer pursuant to Condition No. 9:

AND WHEREAS the Board had particular regard to the provisions of Section 34(5) of

the Planning and Development Act 2000, as amended; the Fingal County Development Plan 2017-2023; the Fingal County Development Plan 2023-2029; the Fingal Development Contribution Scheme, 2021-2025 and the documentation submitted by the referrer and the Planning Authority:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that the units in question are social housing units which are provided by an Approved Housing Body which are exempt from the requirement to pay development contributions, for the purposes of the applicable Development Contribution Scheme (Sub-Section 11(i)(h) of the Fingal Development Contribution Scheme, 2021-2025) made under section 48 of the Planning and Development Act, 2000, as amended.

Reasons and Considerations

Having regard to:

- a) Section 34(5) of the Planning and Development Act 2000, as amended,
- b) The provisions of the Fingal County Development Plan 2017-2023,
- c) The provisions of the Fingal County Development Plan 2023-2029,
- d) The provisions of the Fingal Development Contribution Scheme, 2021-2025,
- e) The submissions on file, and the planning history of the site, and,
- f) Having inspected the site and surrounding area.

The Board considered that the residential units are deemed to be social housing units which are being provided by an Approved Housing Body, for the purposes of the respective Development Contributions Schemes described above, and that development contributions under Condition No. 9 be determined on this basis. The amount of the contribution above is therefore zero on foot of the exemption provided for in Sub-Section 11(i)(h) of the Fingal County Council Development Contribution Scheme 2021- 2025 (under Section 48, Planning and Development Act, as amended).

MATTERS CONSIDERED

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

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.

Enda Duignan

Planning Inspector

31st May 2024