



An
Bord
Pleanála

Inspector's Report

ABP-317218-23

Development	Point of detail regarding condition no. 34 of ABP-310350-21: grant of permission for 590 apartments.
Location	Charlestown Place, St. Margaret's Road, Charlestown, Dublin 11
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	SHDW/007/20
An Bord Pleanála Reg Ref.	ABP-310350-21
Applicant(s)	Puddenhill Property Ltd
Referrer	Puddenhill Property Ltd
Date of Site Inspection	None
Inspector	Stephen Ward

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Proposed Development	3
4.0 Planning History.....	4
5.0 Referrers Case	4
6.0 Planning Authority's Response	6
7.0 Policy Context.....	7
8.0 Legislative Context	9
9.0 Assessment.....	11
10.0 Recommendation	Error! Bookmark not defined.

1.0 Introduction

- 1.1. It has been submitted that agreement cannot be reached between Fingal County Council and Puddenhill Property Ltd in relation to Condition No. 34 of a decision made by An Bord Pleanála. The decision was to grant permission subject to conditions under case reference ABP-310350-21 on the 16th of September 2021. In default of agreement, the matter has been referred to the Board for determination by BMA Planning on behalf of Puddenhill Property Ltd.

2.0 Site Location and Description

- 2.1. The referral states that the site has an area of 3.9ha. However, the Planning Statement submitted with the original application referred to a gross area of 3.6ha and a 'net developable area' of 3.14ha. It is located on the corner of Charlestown Place and St. Margaret's Road and is distanced c. 6.5km northwest of Dublin City Centre. The M50/N2 junction is c. 400m northwest of the site. The site formerly comprised a surface car park (temporary permission) associated with the Charlestown Centre to the north and undeveloped greenfield areas.

3.0 Proposed Development

- 3.1. In summary, permission was granted by An Bord Pleanála for a residential development consisting of:
 - 590 no. apartment units in 4 no. 2 to 10 storey blocks (Blocks 1 to 4) comprising of 234 no. 1 bed apartments, 316 no. 2 bed apartments and 40 no. 3 bed apartments.
 - Non-residential uses at ground floor level within Blocks 1 and 2 comprising: 2 no. retail/ commercial units totalling 350sqm, 4 no. office units (224sqm), a health/medical centre (526sqm) and a creche (542sqm) with first floor outdoor play area.

4.0 Planning History

- 4.1. **ABP 310350-21:** As previously outlined, the Board granted permission for the proposed development on 16th of September 2021, subject to 35 no. conditions. The condition of relevance to this determination is condition no. 34 as follows:

Prior to the commencement of development, the developer shall enter into an agreement with the Planning Authority to provide for the payment of a financial contribution to the Planning Authority in lieu of open space as provided for under Objective DMS57B of the Fingal Development Plan 2017-2023 and in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended. The manner of payment and amount of payment shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

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

- 4.2. **Reg Ref F07A/-121 / F09A/0542 / F14A/0304** – Several permissions granted for temporary surface car park (567 spaces).

5.0 Referrers 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 BMA Planning on behalf of Puddenhill Property Ltd. The referral contends that the FCC calculation of Development Contributions for Condition no. 34 (i.e. €1,228,447 for a shortfall of 20,930m²) is incorrect. The grounds for the referral can be summarised under the headings below.

5.2. Open Space No. 2

The referral contends that this space functions as a viable open space providing active and passive spaces which meet Development Plan requirements in terms of hierarchy,

accessibility, quantity, and quality, and is therefore calculable as public open space. The following points are made in support of this view:

- The space extends to 1,848m² and includes 2 active walking routes. It is heavily planted and includes passive amenity (seating) as part of a pleasant green infrastructure and a key pedestrian/cycle route.
- It also includes a swale functioning as a SuDS feature. The FCC CE's Report excluded the space by reference to Objective DMS73 on the basis that the SuDS feature does not contribute to the space in a significant and positive way.
- Hierarchy: The space comprises a 'pocket park' being within the Development Plan range of 500m² to 0.2ha for such parks where play facilities are not specifically required but functions to provide an important visual and social function.
- Accessibility: The space is accessible to all 590 units and is overlooked and directly accessible to Block 1. It also provides pedestrian/cycle access between the site and the wider surrounding area.
- Quantity: The area of 1,848m² makes it a large pocket park in the context of Development Plan guidance.
- Quality: The area has been designed to include 2 walking routes, a connecting bridge over the swale, and bench seating. In time, a more open and attractive boundary with the adjoining playing field would create a larger, more open, and integrated open space along the western boundary of St. Margaret's Road.

5.3. Open Space No. 1

The referral contends that the full extent of this space (4,737m²) is accessible and usable as an amenity space and should be calculable as public open space. The following points are made in support of this view:

- The space is centrally located, is overlooked by Blocks 2 & 4, adjoins pedestrian/cycle routes, and is highly accessible to all residents.
- It has been designed to function as a 'small park' as defined in Table 12.5 of the Development Plan. In this context, it has an area of 0.47ha with playground

facilities, kickabout areas, passive recreation, and contouring and planting is used to create level changes and define the edges and park features.

- It includes an attenuation tank with a footprint of 1,567m², which functions as a SuDS element for previous phases of development to the north, as well as the permitted development. The usability and amenity value of the area above the tank was carefully considered and landscaping proposals provided sufficient depth for planting and amenity areas. This was also considered in the Inspector's Report, which concluded that the full extent of Open Space No. 1 was calculable as public open space.

5.4. Open Space shortfall and contribution payable

- The combined area of Open Space No. 1 and Open Space No. 2 (total of 6,585m²) represents a shortfall of 17,515m² compared to the total requirement of 24,100m² in accordance with Objective DMS57 of the Development Plan.
- The shortfall of 17,515m² equates to 4.3 acres, which would amount to a contribution of €967,500 in accordance with 'Note 5' of the Fingal County Council Development Contribution Scheme.

6.0 Planning Authority's Response

- 6.1. The planning authority submission of 12th June 2023 includes file correspondence between FCC and the referrer in respect of development, including evidence of failure to reach agreement in relation to condition no. 34.
- 6.2. The FCC submission of 20th June 2023 simply requests that the Board upholds the planning authority's calculation of the contribution in lieu of public open space dating from the 11th of October 2021. However, there would not appear to be any such calculations on file dating from the 11th of October 2021.

7.0 Policy Context

7.1. Development Contributions Guidelines for Planning Authorities (2013)

- 7.1.1. 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.

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

- 7.2.1. 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.

7.3. Development Plan

- 7.3.1. At the time of the decision to grant permission and impose condition no. 34, the operative plan for the area was the Fingal Development Plan 2017-2023. Relevant aspects, policies, and objectives of the Plan can be summarised as follows:

Objectives **PM52 & 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 **PM53** requires an equivalent financial contribution in lieu of open space provision in smaller developments where the open space generated by the development would be so small as not to be viable.

Objectives **DMS57A and DMS57B** require a minimum 10% of a proposed development site area be designated for use as public open space, while allowing for discretion for the remaining open space requirements to be provided through the provision, upgrade, or financial contribution towards public open space outside the site development area.

Objective **DMS60** requires the monetary value in lieu of open spaces to be in line with the Fingal County Council Development Contribution Scheme.

Objective **DMS73** is to ensure as far as practical that the design of SuDS enhances the quality of open spaces. SuDS do not form part of the public open space provision, except where it contributes in a significant and positive way to the design and quality of open space. In instances where the Council determines that SuDS make a significant and positive contribution to open space, a maximum 10% of open space provision shall be taken up by SuDS. The Council will give consideration to the provision of SuDS on existing open space, where appropriate.

Objective **DMS74** states that underground tanks and storage systems will not be accepted under public open space, as part of a SuDS solution.

7.4. Fingal County Council Development Contribution Scheme 2021-2025

7.4.1. 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. The scheme includes the following provisions:

- Contributions to be paid in respect of different classes of infrastructure and facilities, including 'Class 3: Community & Parks facilities & Amenities'.
- Contributions to be paid in lieu of open space shortfall (Note 5), which shall be used for the provision of open space, recreational and community facilities and amenities and landscaping works – see Appendix 2.
- Appendix 11 (*sic*) appears to be a mistaken title in place of Appendix II or Appendix 2. It includes a list of projects that would be funded by the scheme, including projects under the heading of 'Community & Parks'.

8.0 Legislative Context

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

8.1.2. 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.

8.1.3. 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.

9.0 Assessment

9.1. Having regard to the foregoing and all the correspondence and submissions on file, I consider that the main issues for assessment in this case are as follows:

- The extent of public open space provided
- The extent of public open space required
- The amount of special contribution payable.

9.2. The extent of public open space provided

9.2.1. The referral does not challenge the conclusions of the planning authority and the Inspector's report regarding the 'pedestrian boulevard' i.e. that it should not be counted as public open space on the basis of it being a 'green corridor'. However, it contends that the development (Open Space No. 1 and Open Space No. 2) provides a total of 6,585m² of public open space.

Open Space No. 1

9.2.2. Regarding this space (4,737m²), I note the planning authority's position regarding the omission of the attenuation tank area (1567m²). The referral challenges this approach on the basis that the area will be suitably covered and landscaped and will effectively function as public open space. Similarly, the previous Inspector's report for ABP Ref. 310350-21 accepted that the space above the tank is '*viable as open space and can be utilised to deliver a well designed and usable amenity space at this location*'. The report concluded that it was appropriate '*to consider the entire area of 4737sqm of Open Space No. 1 as calculable as open space*'.

9.2.3. Objective DMS73 deals with the relationship between Sustainable urban Drainage Systems (SuDS) and open spaces. I acknowledge that underground attenuation tanks can form part of a SuDS solution approach. However, I note that such tanks are dealt with separately under Objective DMS74. In my opinion, Objective DMS73 applies to the design of new surface-based solutions such as swales, ponds, wetlands etc. Accordingly, I do not consider that Objective DMS73 is directly applicable to Open Space No. 1.

9.2.4. I note that Objective DMS74 outlines that underground tanks and storage systems will not be accepted under public open space as part of a SuDS solution. However, I

consider that this refers to a proposal to install such tanks/systems within existing public open space, rather than a proposal to provide public open space over an existing attenuation tank as is the case in this development. Accordingly, I do not consider that Objective DMS74 is directly applicable to Open Space No. 1.

- 9.2.5. Having regard to the foregoing and consistent with the previous Inspector's report, I do not consider that there is any directly applicable Development Plan provision to exclude any of the 4,737m² in Area No. 1 as public open space.

Open Space No. 2

- 9.2.6. The referral contends that this space (1,848m²) functions as a viable open space providing active and passive spaces which meet Development Plan requirements in terms of hierarchy, accessibility, quantity, and quality, and is therefore calculable as public open space. The FCC approach has excluded the space by reference to Objective DMS73 on the basis that the SuDS feature does not contribute to the space in a significant and positive way. The previous Inspector's report effectively agreed with the FCC approach to exclude the space, stating that '*Given the level differences involved, the swale cannot in my opinion be considered to contribute in a significant and positive way to the design and quality of open space given the limitations to its usability by residents..*'.

- 9.2.7. I acknowledge the concerns raised by the previous Inspector regarding the usability of this open space. Furthermore, I note that section 12.7 of the Development Plan defines 'green corridors' as '*linear open spaces along paths, water courses, planting or other natural features that provide opportunities for walking and cycling, informal recreation, and biodiversity and wildlife migration*' and states that they will not generally be included as part of the quantitative calculation for open space provision. I consider that Open Space No. 2 is consistent with the definition of a 'green corridor' and I do not consider there to be any exceptional circumstances that would warrant its inclusion as part of the quantitative calculation for open space provision. Therefore, consistent with the previous Inspector's report, I consider that the entire area of Open Space No. 2 should be excluded from public open space calculations.

Conclusion

- 9.2.8. Having regard to the foregoing, I consider that total quantum of public open space provided is limited to the entire area of 4,737m² within Open Space No. 1.

9.3. The extent of public open space required

9.3.1. In terms of quantitative standards, Development Plan objectives PM52 and 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. The proposed development includes 550 no. 1 & 2-bed units and 40 no. 3-bed units. Based on this, I calculate the total bedspace (population) as being 965 persons. At a rate of 2.5 hectares per 1000 population, the quantity of public open space required would therefore be 2.41ha (24,100m²). The referral does not challenge this calculation and, accordingly, I do not propose to discuss the matter further.

9.4. The amount of special contribution payable

9.4.1. Having regard to the foregoing, I consider that the proposed open space (4,737m²) represents a shortfall of 19,363m² compared to the required amount of 24,100m². Objective DMS57B outlines that the Council has the discretion to accept a financial contribution in lieu of remaining open space requirement (25% Class 2 and 75% Class 1), and Objective DMS60 requires the monetary value in lieu of open spaces to be in line with the Fingal County Council Development Contribution Scheme (i.e 'the scheme').

9.4.2. 'Note 5' of the scheme states that the contribution in lieu of open space will be levied at the following rates:

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.

Class II Open Space - €250,000 per acre to purchase land in residential areas, Plus €100,000 per acre for development costs.

9.4.3. Based on the shortfall of 19,363m² equating to c. 4.8 acres, I calculate the amount of contribution payable as follows:

Class of open space	Area (ha)	Levy per acre (€)	Total (€)
Class 1 (75%)	3.6	200,000	720,000
Class 2 (25%)	1.2	350,000	420,000
Total	5		1,140,000

10.0 Recommendation

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

Planning and Development Acts 2000 to 2021

Planning Authority: Fingal County Council

Planning Register Reference Number: SHDW/007/20

WHEREAS by Order dated the 16th day of September, 2021, An Bord Pleanála, under application reference number ABP-310350-21, granted subject to conditions a permission to Puddenhill Property Limited care of BMA Planning of Taney Hall, Eglinton Terrace, Dundrum, Dublin, for development comprising 590 no. apartment units in 4 no. 2 to 10 storey blocks (Blocks 1 to 4) comprising of 234 no. 1 bed apartments, 316 no. 2 bed apartments and 40 no. 3 bed apartments, non-residential uses at ground floor level within Blocks 1 and 2 comprising 2 no. retail/ commercial units totalling 350sqm, 4 no. office units (224sqm), a health/medical centre (526sqm) and a creche (542sqm) with first floor outdoor play area, and all associated roads, streets, public spaces and services infrastructure:

AND WHEREAS Condition No. 34 of An Bord Pleanála decision under Ref. ABP 310350-21 required that prior to the commencement of development the developer shall pay ‘a financial contribution to the Planning Authority in lieu of open space as provided for under Objective DMS57B of the Fingal Development Plan 2017-2023 and in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended’, and that the ‘manner of payment and amount of payment shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination’:

AND WHEREAS the developer and the planning authority failed to agree on the amount of development contribution to be paid in accordance with Condition 34:

AND WHEREAS the matter was referred by the developer to An Bord Pleanála on the 29th of May 2023 for determination:

AND WHEREAS the Board is satisfied that the matter at issue is the amount of development contribution to be paid:

AND WHEREAS the Board had particular regard to the provisions of Section 34(5) of the Planning and Development Act 2000, as amended, the Development Contributions Guidelines for Planning Authorities published by the Department of Environment, Community and Local Government in 2013; the Development Management Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government in 2007; the Fingal Development Plan 2017-2023; the Fingal County Council Development Contribution Scheme 2021-2025 in place from 1st January 2021; 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 Condition 34 on foot of this referral results in a charge of €1,140,000 (one million, one hundred and forty thousand euro).

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 Development Plan 2017-2023 and the Fingal County Council Development Contribution Scheme 2021-2025,
- c) Section 48 of the Planning and Development Act 2000 (as amended),
- d) the submissions on file, and the planning history of the site.

The Board considered that, in the absence of agreement from the Local Authority, and having regard to the design, nature, and scale of the proposed open spaces, the inclusion of the entire area of Open Space No. 1 (4,737m²) as public open space is reasonable, but that the entire area of Open Space No. 2 (1,848m²) should be excluded from the calculable public open space provision.

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.

Stephen Ward

Senior Planning Inspector

21st August 2023