



An
Bord
Pleanála

Inspector's Report

ABP-317382-23

Development	Point of detail in dispute regarding condition number 30 of previously permitted - ABP309126-21.
Location	Balroy, Carpenterstown Road, Dublin 15
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	SHDW/021/19
An Bord Pleanála Reg Ref.	309126-21
Applicant(s)	Glenveagh Homes Ltd
Referrer	Glenveagh Homes Ltd
Date of Site Inspection	None
Inspector	Stephen Ward

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1.0 Introduction

1.1. It has been submitted that agreement cannot be reached between Fingal County Council and Glenveagh Homes Ltd in relation to Condition No. 30 of a decision made by An Bord Pleanála. The decision was to grant permission subject to conditions under case reference ABP-309126-21 on the 15th of March 2021. In default of agreement, the matter has been referred to the Board for determination by AKM Consultants Ltd on behalf of Glenveagh Homes Ltd.

2.0 Site Location and Description

2.1. The site has a stated area of 1.77ha and is located on Carpenterstown Road in Castleknock, approximately 200m north-west of the M50. It formerly comprised a large residential dwelling (Balroy House) and associated outbuildings. The site has now been developed in accordance with the SHD permission (ABP-309126-21), which is at an advanced stage of construction.

3.0 Proposed Development

3.1. In summary, permission was granted by An Bord Pleanála for a residential development consisting of:

- Construction of 192 no. apartments (and ancillary facilities) in 5 no. 5 storey apartment buildings, comprising 67 no. 1 bedroom apartments, 104 no. 2 bedroom apartments and 21 no. 3 bedroom apartments.
- Ancillary facilities to comprise a creche (c. 174 sq. m), gym (c. 114 sq. m), residential amenity room (c. 40 sq. m) and security office (c. 22 sq. m).
- Vehicular access from 2 no. junctions onto the Carpenterstown Road (including secondary egress (exit only) at western corner of lands, closure of the existing central access, and the main access to be relocated to eastern corner of lands.
- Layout to facilitate future cycle route along the northern boundary.
- 240 car parking spaces (82 surface car parking and 158 basement car parking); 180 no. basement cycle spaces (as well as bin storage and plant/stores at basement level) and 172 surface cycle spaces.

- Provision of landscaped areas, circulation, paths, attenuation and all ancillary site development works, single storey ESB substation, single storey bicycle and bin stores.

4.0 Planning History

4.1. **ABP 305980-19:** An Bord Pleanála originally made a decision to grant permission for the proposed development by Order dated 16th March 2020. Following an application for Judicial Review, that decision was quashed by Order of the High Court perfected on the 6th of January 2021. The case was remitted by that Court back to An Bord Pleanála to again determine the planning application. The case was assigned a new application ref. number, namely ABP 309126-21 (see details in section 3 above). As previously outlined, the Board granted permission for the proposed development on 15th of March 2021, subject to 31 no. conditions. The condition of relevance to this determination is condition no. 30 as follows:

30. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended in respect of the provision of public open space in the area. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: *It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.*

4.2. **Reg Ref FW12A/0054** – Permission granted for a 151 bedroom 2 and 3 storey nursing home including modifications to, partial demolition of, and change of use of the existing 2 storey house to accommodate reception, social, consultation and treatment rooms; 2 story glazed links to 2 blocks; Block A (3 storey and part basement) accommodating chapel, mortuary, 77 bedrooms; Block B (3 storey) accommodating total 64 bedrooms, kitchen and ancillary facilities; 2 storey service annexe; demolition of existing caretakers dwelling and stables (single storey); modifications to existing entrances; 61 no. parking spaces. Extension of duration granted until 22nd December 2022.

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 AKM Consultants Ltd on behalf of Glenveagh Homes Ltd. The referral contends that the calculation of Development Contributions for Condition no. 30 and relating to s. 48 of the Act has not properly applied the Fingal County Council Development Contribution Scheme (i.e. 'the Scheme'). The grounds for the referral can be summarised under the headings below.

5.2. Public open space provision

- The planning authority alleges that there is a public open space shortfall of 8300m², which would amount to 48% of the total site area (1.77ha).
- The development provides 5,013m² (28% of the site) of public open space at the centre of the development. The space is suitably designed, includes a public play area and public cycle path, is fully accessible to the public, and complies with the acceptable types of Class 2 public open space as per the Development Plan. At a minimum, some allowance has to be given to this provision.
- The proposed public open space meets the Development Plan minimum quantitative standards of 10% of the site area (i.e. 1170m²).
- The referrer disagrees with the FCC view that the space is 'communal or semi-private' and 'not for general use of the public'.
- The Development Plan outlines areas of open space that will be disallowed, and the proposed space cannot be disallowed for any of these reasons.

- The Development Plan and the scheme make no distinction between open space that is privately managed and that which is taken in charge.

5.3. Specified works (upgrade of Porterstown Park)

- The FCC scheme outlines that special development contributions may be applied where the particular works are specified in planning conditions.
- The specific works are not specified in the decision.
- The upgrade works have already been completed and paid for prior to the commencement of the development. It is submitted that the contribution being sought would be one third of the overall project cost for Porterstown Park (€1,387,005). By any metric, this would represent a very unfair apportionment of costs, particularly so where this facility will not directly benefit the development.
- The upgrade works are already listed in the FCC scheme (point 15, Appendix 2 of the scheme) which is covered under condition no. 31 of the permission. The proposed charge is, therefore, a double charge for the same works.
- The upgrade works (2km from the site) cannot be considered to be specific exceptional costs which are directly related/beneficial to the development.

5.4. An Bord Pleanála Assessment (ABP Ref. 309126-21)

- The public open space strategy for the site was accepted and the overall quantum and quality of the public open space was accepted as being fully compliant with the Development Plan.
- There were no 'Material Contravention' Statement concerns raised regarding public open space.
- The Board is asked to refer to excerpts from the Inspector's Report (sections 12.8.9 to 12.8.11).

5.5. An Bord Pleanála precedent rulings

- The referrer contends that there are numerous comparable schemes in the area where no public open space was provided but no special contribution was attached.

- In a comparable case under ABP Ref. 307965-20 (FW20A/0078), the Inspector ruled that the continued upgrade of local park facilities was not a specific exceptional cost and, accordingly, a special contribution levy was considered inappropriate.

5.6. Ministerial Guidelines ‘Development Contributions for Planning Authorities’

- The contribution sought is not in line with the spirit and intent of the Guidelines.
- The Guidelines set out that scheme must support economic development, encourage investment, and provide waivers where development does not lead to a demand for new infrastructure.
- There is no new public infrastructure required to facilitate the development.

5.7. Recent legal judgements

- Reference is made to the judgement of 2020 No. 761 JR (Pembroke Road Association).
- The judgement in Pembroke Road Association vs ABP 2021_IEHC_403 specifically deals with the issue, which resulted in follow-up challenges in 2021_IEHC_545 and 2021_IEHC_718.
- Condition no. 30 fails to ‘specify the particular works to be carried out’ as is required by s.48(12)(a) for ‘specific exceptional costs’ within the meaning of s.48(2)(c) where works are not covered by the development contribution scheme.
- The planning authority has wrongly relied on ‘an inapplicable statutory provision in imposing an obligation on the developer (Glenveagh) to make a financial contribution in lieu of provision of public open space’. Condition no. 30 is therefore legally ineffective and *ultra vires*.

5.8. Conclusion

- In light of the above, the contribution payable should be zero.
- If that is not deemed appropriate, the contribution payable should be on the balance or actual shortfall in open space provision of 3,287m² (0.81 acres). Based on FCC methodology, this would result in a financial contribution requirement of €192,899.06.

5.9. The referral was accompanied by the following:

- An Bord Pleanála Order ABP-309126-21
- A description of the development
- FCC Development Contribution Scheme 2021-2025
- FCC Contribution Calculation Sheet (30/3/22)
- Site Layout Plan drawings showing public open space
- Copy of Inspector's Report for ABP Ref. 307965-20
- Correspondence from FCC Bonds and Contributions Section confirming that the contribution relates to the upgrading of recreational facilities in Porterstown Park.
- Correspondence from FCC Finance Department confirming the costs of the Porterstown Park upgrade works.

6.0 Planning Authority's Response

6.1. The planning authority submission of 11th July 2023 includes file correspondence between FCC and the referrer in respect of the proposed development, including evidence of failure to reach agreement in relation to condition no. 30.

6.2. The FCC submission of 24th July 2023 can be summarised as follows:

- Condition no. 30 requires the payment of €487,153 in lieu of an 8300m² shortfall in public open space.
- This was calculated in accordance with the FCC scheme 2021-2025, section 9 Level of Contribution, Note 5. This acknowledges the discretion within the Development Plan to determine a financial contribution in lieu of all or part of the open space requirement for a particular development.
- Development Plan objective DMS57 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. Based on the type of units proposed, there is a bedspace total of 330 persons, which would amount to a requirement for 0.83ha.

- The open space within the development is considered ‘communal or semi-private and not for general use of the public’. Therefore, it will not be included in the calculation of public open space.
- Accordingly, a financial contribution should be provided in lieu of open space provision to be used towards the upgrading of recreational facilities in Porterstown Park.
- The planning authority requests that the terms of condition no. 30 be included in the Board’s determination.

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. 30, 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.

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 the following under 'Community & Parks':

'15 Upgrading of Existing Recreational Hubs & Sports Facilities including (Bremore Regional Park, St. Catherine's Lucan, Porterstown, Ballymastone, Malahide, Ward River Valley).

- A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Scheme 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.

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.

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 (or final instalment thereof, if paid by phased payment under subsection (15)(a)),

(ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under subsection (15)(a)), 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.

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 application of Section 48(2)(c) of the Act
- The amount of special contribution payable.

9.2. The extent of public open space provided

- 9.2.1. The referral contends that the development includes 5,013m² of public open space. It also contends that the Board accepted the public open space strategy for the site in the previous application (ABP 309126-21) and that the overall quantum and quality of the public open space was accepted as being fully compliant with the Development Plan.
- 9.2.2. This point raises a fundamental question regarding the difference between ‘communal open space’ and ‘public open space’. The Inspector’s report under the previous application addressed these matters separately. The report accepted that ‘adequate communal open space has been provided to serve the future residents on site’ and that ‘The communal space provision, as outlined above, complies with the standards as set out in Appendix 1 of the Design Standards for New Apartments (2018)’.
- 9.2.3. However, regarding ‘public open space’, the Inspector’s report stated that ‘it does not appear that any of the spaces proposed could be defined as a public open space’. The report concluded that ‘any public open space provided would not be viable and would not serve the wider area, and as such a financial contribution as suggested by Fingal County Council, and as per Objective PM53, is appropriate in this instance.’ This approach was adopted by the Board and, accordingly, it is clear that the Board was not satisfied that public open space was provided on site in accordance with Development Plan provisions.
- 9.2.4. I note that section 12.7 and Table 12.5 of the Development Plan outline guidance on the types and standards of public open spaces. However, I consider that the key consideration regarding public open space is its accessibility and beneficial use to the wider community. In this regard, I consider that the space included in the development is intended for use by the residents of the scheme and, despite any limited possibility that it would be used by those other than residents, would not constitute ‘public open space’. Accordingly, I would concur with the previous Inspector’s report conclusion that no on-site public open space has been included.

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. Based on this and the proposed dwelling mix, the planning authority has calculated the total bedspace (population) as being 330 persons. At a rate of 2.5 hectares per 1000 population, the quantity of public open space required has then been calculated at 0.83ha. The basis of these calculations has not been challenged and I am satisfied that they are correct in accordance with methodology outlined in objectives PM52 and DMS57.
- 9.3.2. I note that the Development Plan (s.12.7) outlines that the Council will apply a flexible approach to the delivery of public open space and more intensive recreational/ amenity facilities subject to, except under exceptional circumstances, public open space provision exceeding 10% of a development site area. In this regard, 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. In this regard, I do not consider that the flexibility can be applied to the overall requirement of 0.83ha as per objective PM52 and DMS57, but rather to how this is provided in the form of 'public open space', 'more intensive recreational/amenity facilities', or through the discretionary arrangements provided under objectives DMS57A and DMS57B.
- 9.3.3. Having regard to the foregoing, I would conclude that the public open space requirement for the proposed development would be 0.83ha in accordance with Development Plan objectives PM52 and DMS57.

9.4. The application of Section 48(2)(c) of the Act

- 9.4.1. The referrer contends that the 'special contribution' provisions of s. 48(2)(c) of the Act do not apply to this case. The issues raised are discussed in the following paragraphs.
- 9.4.2. Section 48(2)(c) 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.
- 9.4.3. Further guidance is contained in the Development Management Guidelines for Planning Authorities (DoEHLG, 2007). This states that it is essential that the basis for the calculation of the special 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 which might 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.
- 9.4.4. Having regard to the foregoing legislation and guidance on special contributions, I do not consider that the planning authority has established a case for condition no. 30 which is either 'specific' or 'exceptional' as required under s.48(2)(c) and s.48(12) of the Act. The planning authority response to the referral (24th July 2023) does not identify any works at all in relation to this matter. I acknowledge that previous file correspondence states that the contribution would be '*used towards the upgrading of recreational facilities in the Porterstown Park*'. However, this is a vague intention in the context of a 'special contribution', which I do not consider to be 'specific' or 'exceptional'.
- 9.4.5. Section 48(2)(c) also requires that any such '*specific exceptional costs*' are '*not covered by a scheme*'. As previously outlined in section 7.4 of this report, the Fingal County Council Development Contribution Scheme 2021-2025 already provides for contributions in respect of 'Class 3: Community & Parks facilities & Amenities'.

Furthermore, Appendix 11 (*sic*) includes a list of 'Community & Parks' projects that would be funded by the scheme, which includes the upgrading of existing 'Recreational Hubs & Sports Facilities' at Porterstown. Accordingly, I consider that the purpose identified by the planning authority (i.e. upgrading of recreational facilities in the Porterstown Park) is already covered by a scheme and would not comply with the terms of s.48(2)(c).

- 9.4.6. Finally, section 48(2)(c) requires that any such '*specific exceptional costs*' would benefit the proposed development. In this regard, I note that Porterstown Park is significantly distanced c. 2km or a c. 25-minute walk from the application site. I also note that there are other public open spaces in closer proximity to the site such as Tír na nÓg Park (c. 500 metres away) which would more likely be of benefit to the proposed development. The Development Management Guidelines gives further guidance on this matter and outlines that circumstances which might 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. Having regard to the significant distance and limited relationship between the proposed development and Porterstown Park, I am not satisfied that the planning authority has provided justification that a special contribution would be warranted in respect of the benefit that it would provide for the proposed development.
- 9.4.7. I am also not satisfied that the basis for the special contribution has been satisfactorily explained by the planning authority as required under the Development Management Guidelines. I note that the planning authority has provided calculations based on 'Note 5' of the Development Contribution Scheme. However, 'Note 5' is a generic provision which applies to all shortfalls in open space, as is appropriate for a scheme prepared under s.48(2)(a) of the Act. A special contribution under s.48(2)(c) of the Act is an entirely different matter. As outlined in the Development Management Guidelines, any such contribution should be justified by identifying the nature/scope of works, the expenditure involved and the basis for the calculation, as well as how it is apportioned to the particular development. In this case, the planning authority has not provided any such detailed explanation or calculations and I am not satisfied that a special contribution has been justified on this basis.

- 9.4.8. The referral contends that a special contribution does not apply given that the works relating to the upgrading of Porterstown Park have already been completed. I acknowledge that some upgrading works have indeed taken place. However, the difficulty in this case is that the specific nature and extent of the upgrading works is not known. It may be a case that further upgrading works are planned. I would highlight that s.48(12) of the Act refers to '*the particular works carried out, or proposed to be carried out,*', which would indicate that the completion of works would not be an impediment in itself to applying a special contribution. In any case, I am satisfied that the case for a special contribution has not been justified by the planning authority for the reasons previously outlined in this report.
- 9.4.9. I also note the precedent cases suggested by the referrer. However, I am satisfied that my report has adequately covered the relevant issues and there is no requirement to examine the cited cases any further.

9.5. **The amount of special contribution payable**

- 9.5.1. The Board has previously included condition no. 30 as part of the decision to grant permission under ABP Ref. 309126-21. In that context, this is a Section 34(5) referral case for a determination on the amount of special contribution payable, rather than any appeal against the inclusion of the condition in the first instance.
- 9.5.2. The case has afforded the planning authority an opportunity to justify the special contribution in accordance with the applicable legislation and guidance. However, for the reasons outlined in section 9.4 (above), I consider the planning authority's basis for the special contribution falls well short of the required criteria. Accordingly, I do not consider that justification for the special contribution has been demonstrated and, in such circumstances, I recommend that the amount payable under condition no. 30 should be **NIL**.

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/021/19

WHEREAS by Order dated the 15th day of March, 2021, An Bord Pleanála, under application reference number ABP-309126-21, granted subject to conditions a permission to Glenveagh Homes Limited care of John Spain Associates, of 39 Fitzwilliam Place, Dublin 2, for development comprising demolition of the existing two-storey dwelling and ancillary buildings (circa 1,287 square metres) and the construction of a residential development of 192 number apartments and ancillary facilities in five number five-storey apartment buildings, comprising 67 number one-bedroom apartments, 104 number two-bedroom apartments and 21 number three-bedroom apartments, at 'Balroy House' Carpenterstown Road, Dublin:

AND WHEREAS condition No. 30 of An Bord Pleanála decision ABP-309126-21 required that prior to the commencement of development the developer shall pay to the planning authority a *special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended in respect of the provision of public open space in the area, and that 'The amount of the contribution 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 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 no. 30:

AND WHEREAS the matter was referred by the developer to An Bord Pleanála on the 13th day of June 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 30 on foot of this referral results in a nil charge.

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), and
- d) the submissions on file, and the planning history of the site.

The Board considered that, in the absence of evidence of specific exceptional costs not covered by a development contribution scheme which would benefit the proposed development in accordance with section 48(2)(c) of the Planning and Development Act, 2000, as amended, that the appropriate quantum of monies due under condition number 30 of ABP Ref. No. 309126-21 is, therefore, nil.

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