



An
Bord
Pleanála

Inspector's Report

ABP-318046-23

Development	Demolition of residential dwelling Hollytree House. Construction of 85 apartments and all associated site works.		
Location	Hollytree House, Nevinstown, Swords, Co. Dublin.		
Planning Authority Ref.	Fingal County Council.		
Applicant(s)	Clondev Properties Limited.		
Type of Application	Permission	PA Decision	Grant permission with conditions.
Type of Appeal	First party v Financial Contribution conditions (2)	Appellant	Clondev Properties Limited.
Observer(s)	None on file.		
Date of Site Inspection	N/A	Inspector	Des Johnson

1. Site Location

1.1 The site is located at Hollytree House, Nevinstown, Swords, Co. Dublin. The site is at the junction of the R132 and the Boroimhe Link Road west of the Airside Retail Park.

2. Description of development

2.1 The proposal is for the demolition of a residential dwelling Hollytree House, and construction of 85 apartments and all associated site works.

2.2 The floor area of the proposed development is stated to be c.8809 sqm, and the site area is 0.54ha.

3. Planning History

3.1 None directly relating to the subject site.

3.2 Reg Reference: 18A/0306 – permission granted for 36 residential units consisting of 30 two-storey houses and 6 two-bedroom apartments in a three storey block, with ancillary open spaces, boundary treatment and site works at Fosterstown North.

4. Policy

Fingal County Council Development Contribution Scheme 2021-2025 (under Section 48, Planning & Development Act 2000 (as amended)).

4.1 The Scheme sets levels of contribution per sqm payable in respect of Residential Development and Industrial/Commercial class of development. The rate for residential development is E98.21 per sqm. The rates of contribution are effective from 1st January 2021 to 31st December 2025.

4.1.1 Note 5 of the Scheme relates to Open Space Shortfall. It states that the Development Plan provides discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. Rates applied are Class 1 Open Space – E100,000 per acre purchase costs and E100,000 per acre development costs, and Class II Open Space – E250,000 per acre purchase costs and E100,000 per acre development costs. The contributions collected will be used for the provision of open space, recreational and community facilities and amenities and landscaping works.

4.1.2 The Scheme provides for Exemptions and Reductions, and lists categories of development to which these may apply. Specifically, exemptions and reductions do not apply to Special Development Contributions under Section 48(c) of the Act.

4.1.3 The Scheme states that a Special Development contribution may be imposed under section 48 of the Act, where exceptional costs not covered by the Financial Contributions Scheme are incurred in the provision of a specific public infrastructure or facility. The works will be specified in the planning conditions. Only developments

that will benefit from the public infrastructure or facility in question will be liable to pay a Special Development contribution.

Development Management Guidelines for Planning Authorities, 2007.

4.2 Development contribution conditions may only be attached if they accord with the provisions of either section 48 or section 49 of the Planning Act and these are based on the application of the terms of one or more development contribution schemes which have been formulated and adopted in accordance with those sections of the Act, or on the need for a Special financial contribution.

4.2.1 There are three categories of conditions under which the payment of financial contributions may be required – (a) Section 48 (general) schemes, (b) Section 49 (supplementary) schemes, and (c) ‘Special’ contributions imposed under section 48(2)(c) of the Planning Act.

4.2.2 ‘Special’ contributions can be required where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities that benefit the proposed development. A condition requiring Special Contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.

Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities, 2022.

4.3 These guidelines are made under section 28 of the Act. The Planning Authority and An Bord Pleanála are required to have regard to the guidelines and apply any specific planning policy requirements (SPPRs) in carrying out their function. SPPRs take precedence over any conflicting policies and objectives of Development Plans. Plans should be amended by the relevant planning authority to reflect the content of these guidelines and properly inform the public of the relevant SPPR requirements.

4.3 1 Childrens play needs around the apartment building should be catered for

- Within private open space associated with individual apartments
- Within small play spaces (about 85 – 100 sqm) for the specific needs of toddlers and children up to the age of six, with suitable play equipment, seating for parents/guardians, and within sight of the apartment building, in a scheme that includes 25 or more units with 2 or more bedrooms
- Within play areas (200 – 400 sqm) for older children and young teenagers, in a scheme that includes 100 or more apartments with 2 or more bedrooms.

Fingal County Development Plan 2023-2029

4.4 The Plan came into effect on 5th April 2023.

4.4.1 Objective DMS051 refers to Minimum Public Open Space Provision. There is a requirement for a minimum Public Open Space provision of 2.5ha per 1000 population. 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 3 or more bedrooms and 1.5 persons in the case of dwellings with 2 or fewer bedrooms. Consideration may be given to the inclusion of civic spaces within overall open space calculations, but only on a case-by-case basis and only in instances where the space proposed is of a size and layout suitable to cater for civic events.

4.4.2 Table 14.12 relates to Recommended Quantitative Standards (Sustainable Residential Developments in Urban Areas, Guidelines for Planning Authorities 2009). The following standards are given:

- Overall Standard 2.5 ha per 1000 population
- New residential development on greenfield sites 12%-15% of site area
- New residential development on infill/brownfield sites 12% of site area.

4.4.3 Objective DMS053 refers to Financial Contributions in Lieu of Public Open Space. There is requirement for minimum open space as outlined in Table 14.12 for a proposed development site area to be designated as Public Open Space. The target minimum amount is 15%, except in cases where the developer can demonstrate this is not possible, in which case the 12% to 15% range will apply. The Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision for the acquisition of additional open space or the upgrade of existing parks and open spaces subject to these additional facilities meeting standards. Where a financial contribution is accepted in lieu of

open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space.

5. Natural Heritage Designation

4.1 Not applicable to this appeal.

6. Planning Authority Decision

6.1 Grant permission subject to 22 conditions.

Key conditions in this appeal are as follows:

Condition 20

Prior to commencement of development a financial contribution in the sum of E217,164.59 be paid by the applicant to Fingal County Council in lieu of open space provision towards the cost of amenity works in the area of the proposed development in accordance with the requirements of the Fingal Development Plan based on a shortfall of 3,700 sqm of open space.

Reason: *The provision of such services in the area by the Council will facilitate the proposed development. It is considered reasonable that the developer should contribute towards the cost of providing the services.*

Condition 22

That a financial contribution in the sum of E39,996.00 be paid by the applicant to Fingal County Council in lieu of a shortfall in playground provision in the area of the proposed development in accordance with the requirements of the Fingal Development Plan based on a shortfall of 198 sqm of playground provision.

Reason: *The provision of such services in the area by the Council will facilitate the proposed development. It is considered reasonable that the developer should contribute towards the cost of providing the services.*

7. First Party Appeal v Financial Contribution Conditions

7.1 The grounds of appeal are against the content of financial contributions included in Condition 20 and Condition 22 only, and may be summarised as follows:

1. It is reasonable to consider the two conditions as requiring 'special contributions' as Condition 21 requires a payment of E812,762.02 as a contribution towards expenditure incurred by the planning authority in respect of public infrastructure and facilities as provided for in the Contribution Scheme.
2. Section 7.12 of the Development Management Guidelines 2007 set out, in relation to Section 48 (general) Schemes, that the planning decision should clearly set out how the relevant terms were interpreted and applied to the proposed development.

Condition 20

3. Condition 20 relates to a financial contribution in respect of a purported shortfall of public open space. The calculation for Public Open Space contribution is set out in the Fingal Development Contribution Scheme 2021-2025, but the terms of the Scheme have not been properly applied. The condition is unreasonable and unjustified.
4. In excess of 12% of the site area is provided as Public Open Space in accordance with Table 14.12 of the Fingal Development Plan: Recommended Qualitative Standards. The provision of Public Open Space is appropriate.
5. The 3,700 sqm required, based on 2.5ha per 1000 population, is not achievable given the total site area of 0.54ha, which also includes 0.08ha of open space – Open Space zoned lands. It is not reasonable to expect 68% of the gross site area to be provided as Public Open Space.
6. Note 5 of the Development Contribution Scheme was not properly applied. This gives the planning authority discretion to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. It provides a rate for Class 1 open space and a rate for Class 2 open space. These rates were used to calculate financial contribution amounts. The provision of open space is considered appropriate for this higher density residential development at a strategic location as a gateway entrance to Swords, and in close proximity to existing and proposed public transport connections. The planning authority have not properly assessed the provision of Public Open Space proposed and, as such, have not properly applied the terms of the Scheme.
7. Open space provision on the appeal site and the wider Fosterstown Place development (currently under construction by the applicant) is a material

consideration in assessing the Public Open Space provision in the proposed development, as they combine to form a single coherent mixed housing and apartment development. The combined Public Open Space, zoned Open Space lands, and communal open space equates to 51% of the total site area; this is significant given the density of development and the size of the site.

8. The appellant acknowledges that there are development plan standards in respect of the taking in charge, but the proposed development will be maintained by a private management company responsible for the upkeep and presentation of the open spaces on the site.
9. The draft Sustainable and Compact Settlements Guidelines (published in September 2023) define public open space, and how this can be calculated: *“For the purposes of calculating public open space provision, it can include areas used for Nature Based Urban Drainage and other attenuation areas”*. The area provided cannot be said to be dominated by SuDs. The draft Guidelines also include Special Planning Policy Requirement 3, stating *“Statutory development plans shall not include objective(s) in respect of minimum public open space requirements that exceed 10% save in the case of a historic setting ...”*. These are material considerations.
10. The planning authority concerns regarding ‘Fire Truck Access’ is acknowledged, and a revised proposal is submitted for 624 sqm of Public Open Space.
11. It is acknowledged that the Public Open Space provision falls below Development Plan requirements under Objectives DMS051 and DMS052. The requirement is not achievable on this small site. The Development Plan standards are excessive for a higher density development on a strategic site, and not in accordance with National Policy. The planning authority should apply a flexible approach to quantitative open space standards and put greater emphasis on qualitative standards.
12. The proposed provision accords with the Fingal Development Plan and National Policy, in particular the ‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)’. There should not be a requirement for any financial contribution in lieu.
13. There are recent precedents in Fingal where a shortfall in Public Open Space provision did not attract a financial contribution. Under ABP Reference 308526-23, the Board removed a condition requiring financial contribution towards a

shortfall of open space as the condition failed to meet the requirements of section 48(2)(c) of the Act. There are similarities with the current appeal in that the Planner's Report, the Parks & Green Infrastructure Report or the Development Contributions Sheet fail to make reference to what the financial contribution is to be used for. Under ABP reference 310359-21, the Board omitted a condition requiring a financial contribution in lieu of Public Open Space provision with the first party arguing that the proposed development was compliant with objectives of the Development Plan. Other cases referred to are ABP 308366-20, 316065-23, and 315709-23.

14. Should the Board conclude that a financial contribution is required in lieu of Public Open Space provision, at a minimum it should acknowledge the provision of Public Open Space provided to the west of the apartment building, the Open Space zoned lands in the northern part of the site, and have due consideration to the larger combined site and extensive provision of Public Open Space.

Condition 22

15. The Planner's report outlines a shortfall in playground facilities provided in accordance with the requirements of the Fingal County Development Plan 2023-2029, and includes reference to a requirement for playground facilities at a rate of 4 sqm per residential unit. It states that the applicant has provided play facilities on the Communal Open Space but has not met requirements. The shortfall may be addressed in the form of a financial contribution towards play provision in the Swords area. There is no breakdown of how the figure of E39,996 was calculated or how the contribution would go towards play provision in the Swords area. The condition does not comply with the requirements of the Act and Development Management Guidelines for a Special Contribution.
16. The requirement for 4 sqm per residential unit is more relevant to a typical lower density housing scheme. The 35 one bed units permitted would not generate additional need for playground facilities. The remaining 47 units would generate a requirement for 188 sqm and a reduced shortfall of 58 sqm.
17. A balance should be applied taking account of the strategic location of the site and the planning benefits including an area of communal open space in excess of the Development Plan requirement of 530 sqm, and the provision of open space on Open Space zoned lands.

18. The proposed development meets and exceeds the requirement of section 4.13 of the Apartment Guidelines 2022 and accords with the overall objectives of FCC 'Space for Play' document (2022), which encourages play opportunities outside the traditional playground model.
19. The wording of this condition is ambiguous in the nature/scope of works and no details are provided on the breakdown of expenditure involved.
20. Recent precedents are referred to – ABP 315709-23 (the decision of the Board and methodology provided in the ABP Direction are directly relevant to Condition 22 under appeal).

Should the Board decide that a financial contribution is justified, it should be for a reduced sum, reflecting the number of 1 bed units in the development.

8. Responses

8.1 Planning Authority

This is summarised as follows:

1. The Financial Contribution in Condition 20 was calculated in accordance with the Development Contribution Scheme at the following rates:
Class 1 Open Space – E100,000 per acre to purchase plus E100,000 per acre for development costs
Class 2 Open Space - £250,000 per acre to purchase land in residential areas plus E100,000 per acre for development costs.
2. Development Plan Objective DMS053 refers to Financial Contribution in lieu of Public Open Space. Table 14.12 sets out minimum open space requirements, with a target minimum amount of 15% except where the developer can demonstrate that this is not possible, in which case the 12% - 15% range will apply. The planning authority has the discretion to accept a financial contribution, and this contribution is based on 25% Class 2 and 75% Class 1 Open Space in addition to development costs.
3. The Financial Contribution is based on 0.37ha and occupancy of 149 bedspaces. This is broken down as follows:
 - 13 x 3 bed units – 45.5 bedspaces
 - 69 x 1 bed and 2 bed units – 103.5 bedspaces
 - Unit total – 82 and bedspace total 149

- Shortfall 3700 sqm
 - Class 1 (75%) @ E200.000 per acre = E137,156.58
 - Class 2 (25%) @ E 350.000 per acre = E80,008.01
 - Total Open Space shortfall = E217,164.59
4. The area indicated as Public Open Space does not meet Development Plan standards in terms of layout, dominance of SuDS features and usability. It is deemed that no Public Open Space is provided.
 5. Regarding Playground Provision, Objective DMA068 refers. This sets a requirement of 4 sqm per residential unit. A scheme in excess of 50 units must incorporate playground facilities. Other relevant Objectives are DMS069 (Requirements for Equipped Playgrounds), GINH020 (Green Infrastructure and Recreation) and DMS050 (Monetary Value in lieu of Play Facilities).
 6. The requirement is in accordance with Development Plan standards at 327 sqm. The applicant has proposed 130 sqm within the Communal Open Space, giving a shortfall of 198 sqm. The estimated cost of providing a play facility is E202.00 per sqm (includes ground works, safety surface, boundary treatment, play equipment, seats, and signage). The figure is based on other play facilities developed in Fingal. Applying E202.00 to 198 sqm gives a total of E39,996.

8.2 Applicant's Response to Planning Authority

This is summarised as follows:

Condition 20

1. The planning authority did not properly apply the terms of the adopted Contributions Scheme under section 48 of the Act, and criteria set out in the Development Management Guidelines.
2. The requirement under Objective DMS051 is excessive and significantly in excess of the Guidelines and SPPR of the draft Sustainable and Compact Settlement Guidelines.
3. The condition should be omitted but, if the Board concludes that a Financial Contribution is required, the figure should be reduced given that the development already includes zoned Public Open Space at the northern end of the site.

4. The proposed development includes amendments to extant permission F18A/0306 to the south, which also provides Public Open Space accessible to the residents. Together, the combined sites provide in excess of 15% of the overall site as Public Open Space.
5. The planning authority view that no Public Open Space has been provided is not accepted. A requirement of 3700 sqm, based on 2.5ha per 1000 population is not achievable and is not reasonable.
6. The Public Open Space provision was revisited and refined at Further Information stage ensuring that the space is usable. It is provided as an open grassed area for informal recreation. The attenuation feature is usable as this will be dry in all but extreme weather conditions. All Public Open Space would be under the management of an operational management company, and will not be maintained or taken in charge by the Local Authority.
7. The Development Plan standards are not in accordance with national policy and are excessive for a higher density development at a strategic gateway location. The planning authority has accepted the height, density, and quantum of development.

Condition 22

1. The planning authority did not properly apply the terms of the adopted Contributions Scheme under section 48 of the Act, and criteria set out in the Development Management Guidelines.
2. The design and quantum of play areas fully accords with the Apartment Guidelines 2022. This was a main consideration in ABP 315903-23, which is noted as a precedent case.
3. The calculation should be based on a 47-unit development generating a need for 188 sqm play facility in accordance with Objective DMS068. Should the Board consider that there is a requirement for a financial contribution, this should be based on a shortfall of 58 sqm.
4. The estimated cost is not set out in the Development Contribution Scheme and the basis for inclusion as a financial contribution is not justified.
5. The proposed playground provision is proportionate to the size of the development.

Any calculation should be based on Note 5 of the Contributions Scheme (split as 75% Class 1 Public Open Space and 25% Class 2 Public Open Space) and relating to a shortfall of 58 sqm only.

9. Environmental Screening

9.1 Not applicable in this appeal case.

10. Assessment

Introduction

10.1 This is a First Party appeal against two Financial Contribution conditions (Conditions 20 and Condition 22 of Reg Ref: F22A/0687). No other conditions are appealed by the first party and there are no third-party appeals made under Section 37 of the Planning and Development Act 2000, as amended (the Act). Under Section 48(10)(b) of the Act, an applicant for permission granted under Section 34, may bring an appeal where it is considered that the terms of an adopted Development Contribution Scheme may not have been properly applied. I submit that the sole consideration for the Board in this appeal, is whether Condition 20 and Condition 22 reflect the correct application of the adopted Development Contribution Scheme. The planning merits of the development, or any part of the development, the subject of the permission granted under Register Reference: F22A/0687, lie outside the parameters of this appeal, and are not subject to assessment in this report.

Section 48 of the Act

10.2 Section 48(1) provides for a planning authority to include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities in the area of the planning authority that is provided, or that is intended to 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) provides the basis for the determination of such a contribution which must be set out in a section 48 development contribution scheme; a planning authority may make one or more schemes in respect of different parts of its functional area.

10.2.1 Under section 48(2)(c), a planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit a proposed development.

10.2.2 A scheme must state the basis for determining contributions to be paid in respect of public infrastructure and facilities (section 48(3)(a)). 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(3)(c)).

10.2.3 Under section 48(1)(b), an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority. Where an appeal is brought in respect of a financial contribution condition, and no other appeal is brought by any other person under section 37, the authority makes the grant of permission as soon as may be after the expiration of the period for the taking of an appeal.

10.2.4 Section 48(12) refers to provision that must apply where the payment of a special contribution is required.

The Financial Contribution Conditions

10.3 There are three financial contribution conditions attached to the permission under F22A/0687. Condition 21 (which is not under appeal) requires a financial contribution of E812,762.02 towards expenditure that was/or that is proposed to be incurred in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme made by the Council. The conditions, the subject of this appeal are Condition 20 and Condition 22. These conditions, and the reasons for their imposition are detailed in Section 6 of this report.

10.3.1 Conditions 20 and 22 both require financial contributions in lieu of a shortfall in the provision of open space and playground provision respectively. Condition 20 specifies that the shortfall in open space is 3,700 sqm. Condition 22 specifies that there is a shortfall of 198 sqm of playground provision. Both conditions relate the

stated shortfalls to standards in the Fingal Development Plan, but do not specifically reference the Financial Contribution Scheme.

10.3.2 The first party appellants argue that the two conditions, in effect, require ‘special contributions’, as the financial contribution required by Condition 21 relates to the adopted Financial Contribution Scheme. In this regard, I note that neither Conditions 20 or 22 state that they are ‘special contributions’ under section 48(2)(c) of the Act, and I submit that they do not relate to ‘specific exceptional costs not covered by a scheme’ and, as such, are not ‘special contributions’. They relate to shortfalls in the provision of open space and playground facilities serving the permitted development, as determined by the planning authority.

Financial Contributions Scheme

10.4 The Fingal County Council Development Contribution Scheme 2021-2025 (under Section 48 of the Planning & Development Act 2000 (as amended)) is effective for the period 1st January 2021 to 31st December 2025. The Scheme was in effect at the time of the planning authority’s decision, dated 22nd August 2023, and remains in effect. The Scheme was made under section 48 of the Act, and provides the basis for financial contributions to be attached to planning permissions granted under section 34 of the Act in respect of public infrastructure and facilities benefiting development in the County of Fingal and that is provided, or that it is intended to be provided, by or on behalf of Fingal County Council.

10.4.1 Note 5 of the Scheme relates to Open Space Shortfall. It states that the Development Plan provides discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. Rates applied are Class 1 Open Space – E100,000 per acre purchase costs and E100,000 per acre development costs, and Class II Open Space – E250,000 per acre purchase costs and E100,000 per acre development costs. The contributions collected will be used for the provision of open space, recreational and community facilities and amenities and landscaping works.

10.4.2 I submit that the adopted scheme does provide for financial contributions to be required in respect of open space shortfall, and provides the basis for the calculation of such a contribution. The scheme does not contain similar provisions in respect of a shortfall in playground provision. The Development Plan sets a

requirement of 4 sqm per residential unit for playground provision and, in response to the grounds of appeal, the planning authority provides an estimated cost of E202.00 per sqm, based on other play facilities in Fingal, in respect of playground provision.

10.4.3 The scheme includes 'Development of New Play Facilities' in Appendix 11 - Project Lists.

10.4.4 The Scheme states that a 'special' development contribution may be imposed under section 48 of the Act, where exceptional costs not covered by the Financial Contributions Scheme are incurred in the provision of a specific public infrastructure or facility. The works will be specified in the planning conditions. Only developments that will benefit from the public infrastructure or facility in question will be liable to pay a special development contribution.

Public Open Space

10.5 Condition 20 requires a financial contribution of E217,164.59 to be paid in lieu of a shortfall of 3,700 sqm of open space. The financial calculation is based on rates included in the Financial Contribution Scheme, and the quantum calculation is based on standards included in the Fingal Development Plan. The planning authority's view that the open space provided is substandard and unacceptable. The appellants acknowledge that the open space provision falls below Development Plan requirements, but state that the standards are excessive for a higher density development on a strategic site, and are not achievable on this small site of 0.54ha. The first party contend that the site area includes 0.08ha of open space on Open Space zoned lands. The zoned Open Space lands are at the northern boundary of the site adjoining the L2300. The planning authority view that no open space has been provided, and the open space proposed is not acceptable.

10.5.1 The usability and acceptability of the open space being proposed was subject to Further Information request on 14th February 2023 and Clarification of Further Information request on 16th June 2023. Modifications were submitted including linking the proposed open space to an open space area to the west permitted under Reference F18A/0306. There was a clear difference of opinion between the planning authority and the applicants on this issue during the consideration of the application by the planning authority. Many of the arguments made at that stage that the open

space was usable and appropriate were similar to arguments contained in the grounds of appeal before the Board in this section 48 appeal.

10.5.2 I submit that the Board's consideration on this issue is whether the terms of the Financial Contribution Scheme have been properly applied. Matters, such as the quality, usability and suitability of lands proposed as open space fall outside the narrow confines of a section 48 appeal.

10.5.3 Based on the information submitted, the terms of the Fingal Financial Contributions Scheme 2021-2025, and the provisions of section 48 of the Act, I conclude on this issue that the Scheme provides for the requirement for a financial contribution in lieu of open space provision, the planning authority has determined and calculated a shortfall, and that the appropriate rates for calculation have been applied. As such, I recommend that Condition 20 be retained.

Playground Provision

10.6 Condition 22 requires a financial contribution in the sum of E39,996.00 in lieu of a shortfall in playground provision. The Financial Contribution Scheme does not specifically provide for financial contributions to be required in respect of playground provision shortfall, and does not provide a basis for the calculation of such a contribution. It does include 'Development of New Play Facilities' in the list of projects in Appendix 11.

10.6.1 In its response to the grounds of appeal, the planning authority states that the requirement for 327 sqm is in accordance with Development Plan standards, and that the estimated cost of providing a play facility is E202.00 per sqm (includes ground works, safety surface, boundary treatment, play equipment, seats, and signage) based on other play facilities developed in Fingal. Applying E202.00 to 198 sqm shortfall gives a total of E39,996.00.

10.6.2 I submit that the Board's consideration on this issue is whether the terms of the Financial Contribution Scheme have been properly applied. As the scheme does not specifically provide for requiring a financial contribution in lieu of playground facilities provision or the basis for the calculation of such a contribution, I conclude that the terms of the Financial Contribution Scheme were not properly applied, and that this condition should be omitted.

Conclusions

10.7 I conclude as follows:

- This is a section 48 appeal against two financial conditions and the Board is required to determine if the terms of the Fingal County Council Development Contribution Scheme 2021-2025 were properly applied in the calculation of financial contributions
- The planning merits of the permitted development in whole or part fall outside the confines of a section 48 appeal
- The Financial Contribution Scheme provides for a financial contribution in lieu of a shortfall in the provision in open space provision, and provides the basis for the calculation of the financial contribution
- The Financial Contribution Scheme does not provide for a financial contribution in lieu of a shortfall in the provision in playground provision, and does not provide the basis for the calculation of a financial contribution
- Condition 20 should be retained
- Condition 22 should be omitted.

Recommendation

I recommend that Condition 20 be retained and that Condition 22 be removed.

Reasons & Considerations

The Fingal County Council Development Contribution Scheme 2021-2025 was adopted and in effect at the time of the making of the decision to grant permission. The adopted Scheme includes, in Note 5, provision for requiring a financial contribution in lieu of all or part of open space requirement for a development, but does not contain similar provision in respect of playground provision. The financial contribution required under Condition 20 is calculated based on rates contained in the Contribution Scheme. In these circumstances, the Board considers that

Condition 20 falls within the terms of the Scheme and should be retained, and that Condition 22 should be removed.

Des Johnson

Planning Inspector

Date

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.