



An  
Bord  
Pleanála

## Inspector's Report ABP-319176-24

---

### Details of Referral

Point of detail in dispute regarding condition number 25 of previously permitted ABP-306721-20.

### Location

Lands at Bonnington Hotel, Swords Road, Whitehall, Dublin 9.

### Planning Authority

Dublin City Council.

### Referrer

Irish Social Housing Property II S.a.r.l.

### Type of Referral

First Party regarding Condition No. 25 (Point of Detail).

### Observer(s)

None.

### Date of Site Inspection

None.

### Inspector

Stephen Rhys Thomas.

# Contents

1.0 Introduction .....	3
2.0 Site Location and Description .....	3
3.0 Background to Referral .....	4
4.0 The Referral .....	5
4.1. Referrer's Case .....	5
4.2. Planning Authority's response .....	5
5.0 Planning History .....	7
6.0 Legislative Context .....	9
6.1. Planning and Development Act 2000, as amended. ....	9
7.0 Policy Context .....	11
8.0 Assessment .....	15
8.1. Scope of the Referral/Role of Board .....	15
8.2. Consideration of Condition number 25 .....	15
9.0 Draft Board Order .....	21
10.0 REASONS AND CONSIDERATIONS .....	23
11.0 MATTERS CONSIDERED .....	23

## 1.0 Introduction

- 1.1. **ABP-319176-24** is a referral that was received by the Board from Irish Social Housing Property II S.a.r.l. It concerns a point of detail in dispute between the referrer / developer and the planning authority regarding Condition number 25 attached to a grant of permission under Board order reference number ABP-306721-20.
- 1.2. Condition number 25 of ABP-306721-20 requires the payment of a financial contribution under Section 48 of the Planning and Development Act 2000, as amended. Matters have changed insofar as a lease agreement has been reached with the Planning Authority and the referrer is seeking a determination from the Board that the no development contribution is warranted. The development is now leased to Dublin City Council for use as social housing.

## 2.0 Site Location and Description

- 2.1. According to the site location and description of Inspector's Report dated June 2020 (ABP-306721-20),

*the subject site is in a suburban area 4km north of Dublin city centre. At the time the application was made, the site consisted of a surface car park behind and to the east of the Bonnington Hotel and Leisure Centre. The access to the site from the Swords Road 200m to the west runs along the southern side of the hotel. It also provides the access to an apartment scheme that occupies the land to the east of the site. The access to the apartment complex known as Gracepark Manor is gated just south of the site. The adjoining apartment scheme to the east includes a 5 storey block whose long axis is parallel to the site boundary behind a coniferous hedge boundary. The northern boundary of the site adjoins a former convent currently used for emergency accommodation, known as High Park.*

*The site slopes gently upwards from the southern boundary of the site, but on the whole the site is more or less level. There are no significant level changes between the site and adjacent lands. There is a notable coniferous hedge to most of the site boundaries apart from the undefined boundary of the site with*

*the access road and surface car parking adjacent to the hotel. The hotel to the west is a combination of buildings up to six storeys in height. A private hospital is located to the north and west of the site and suburban style housing aligns the access street to the site. The site lies over the Dublin Port Tunnel.*

- 2.2. I have not carried a site visit with reference to this case as the matter concerns issues to do with a financial contribution, I understand that the entire development is leased to Dublin City Council and a site visit is unnecessary on this occasion.

### **3.0 Background to Referral**

- 3.1. Under ABP-306721-20, An Bord Pleanála granted permission subject to 26 conditions for the construction of 124 build to rent apartments and all associated site works at land adjacent to the Bonnington Hotel, Swords Road, Whitehall, Dublin 9.
- 3.1.1. Condition No.25, which is the subject matter of this referral, required the developer to pay a financial contribution under section 48 of the Planning and Development Act 2000, as amended, in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme, the detail of the condition is as follows:

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

*Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the*

*Development Contribution Scheme made under section 48 of the Act be applied to the permission.*

## **4.0 The Referral**

### **4.1. Referrer's Case**

- 4.1.1. The referrer is seeking a determination as to whether any contribution is owed under Condition number 25, as no agreement has been reached with Dublin City Council in relation to the condition.
- 4.1.2. The referrer sets out the background to the case and states that the development is now leased to Dublin City Council for 25 years. The lease accompanies the reference and is signed by the lessor and lessee (Dublin City Council) initially dated 26<sup>th</sup> July 2021 and commenced 24<sup>th</sup> August 2023. The referrer contends that as the entire development is subject to a lease agreed and signed by Dublin City Council the requirements of the development contribution scheme should be waived because the entire development comprises social housing exempted under paragraph 12 of the Council Scheme. The referrer further points out that the scheme that should apply to the permission should have been the 2016 scheme and paragraph 12 would apply.
- 4.1.3. The referrer has submitted the following documentation to support their case:
- A copy of the lease agreement with Dublin City Council, dated and signed by all relevant parties.
  - Legal opinion.
- 4.1.4. The referrer's submission also includes various correspondence as well as reports, orders and directions issued by An Board Pleanála with reference to their case. The referrer wishes the matter to be determined by the Board with respect to the proper application of the terms of the relevant Development Contribution Scheme.

### **4.2. Planning Authority's response**

- 4.2.1. A response was sought by the Board from the planning authority on the 19<sup>th</sup> March 2024, a response was received on the 2<sup>nd</sup> April 2024 and states that the planning

authority have no further comments to add to the observations they have already made with respect to a previous referral. It is further stated that all relevant documents would have been submitted with the previous appeal documents. In that respect and to assist the Board, I reproduce the Inspectors summary of the comments made by the planning authority in their submission with regard to ABP-313592-22, as follows:

4.2.2. *A response was sought by the Board from the planning authority on the 1<sup>st</sup> June 2022, a response was received on the 28 June 2022 and states as follows:*

- The background to the Dublin City Council Section 48 Development Contribution Scheme 2020-2023 is provided and an explanation of how the scheme is applied with respect to social and affordable housing units is explained. In particular, differences in the scheme between the previous (2016-2020) and the current (2020-2023). It is accepted that a clerical error occurred, no exemption applies and the developer was invoiced.*
- With regard to the previous decision of the Board in relation to ABP-306254-19, it is noted that the Board is not bound by previous decisions. For example, the decision to dismiss the appeal with reference to ABP-309708-21 should be noted.*
- Notwithstanding the developer's proposal to enter a 25 year social housing lease, the development contribution should still be paid. If not, it would mean that the asset would return to the owner at the termination of the lease without any requirement to pay a contribution. An interpretation of the scheme in this way would require the input of the elected representatives, a period of public display, engagement with the public and the inclusion of a leased unit exemption clause.*
- The lease agreement between the developer and the Council has not yet concluded and may never conclude, for example if planning conditions are not complied with. Neither the Standard Long Term Lease or the Enhanced Long Term Social Housing Lease provide for section 48 or Part V exemption.*

4.2.3. *The planning authority's submission includes a legal opinion to reinforce the matters above and concludes that the Inspector's report with reference to ABP-309708-21\* is the correct analysis to make of such a case.*

*\* I note that the quote referenced by the Council's legal opinion is actually taken from ABP-306254-19 and not ABP-309708-21.*

## 5.0 Planning History

### 5.1. The Site

5.2. **Board Order (ABP-313592-22):** On the 16<sup>th</sup> March 2023, the Board decided that the units under ABP-306721-20 cannot be deemed social units for the purposes of the respective Development Contribution Scheme and that the applicable contribution under condition 25 falls to be determined on that basis.

5.3. **Board Order (ABP-306721-20):** On 21<sup>st</sup> September 2020, permission was granted for 124 residential units and all associated site works. Relevant conditions include:

2. The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (March 2018) and be used for long term rentals only. No portion of this development shall be used for short term lettings.

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

22. Prior to the commencement of development, the developer shall submit, for the written consent of the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period.

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

23. Prior to expiration of the 15-year period referred to in the covenant, the owner shall submit for the written agreement of the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

24. Prior to commencement of development, the developer or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

Condition that the Point-of-Detail query refers:

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

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

#### **5.4. Other Relevant Cases**



**Board Order ABP-306254-19** - Construction of a 7 storey/4 storey building, consisting of 23 apartments with balconies. Referral - Points of Detail in dispute. The Board considered it appropriate that the residential units be deemed social housing units, for the purposes of the respective Development Contributions Schemes described above, and that development contributions under condition numbers 15 and 16 be determined on this basis.

## 6.0 **Legislative Context**

### 6.1. **Planning and Development Act 2000, as amended.**

Section 34(5) of the Planning and Development Act, 2000, as amended. 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; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination.*

### 6.2. **Section 48 Development Contributions**

6.2.1. The Planning and Development Act 2000 (as amended) allows for the payment of a contribution or contributions as follows:

*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).*

*(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.*

6.2.2. Inserted (1.09.2015) by Urban Regeneration and Housing Act 2015 (33/2015), s. 29, S.I. No. 364 of 2015:

*(3A) Where a permission which includes conditions referred to in subsection (1) has been granted under section 34 in respect of a development and the basis for the determination of the contribution under subsection (1) has changed—*

*(a) where the development is one to which Part II of the Building Control Regulations 1997 (**S.I. No. 496 of 1997**) applies and a commencement notice within the meaning of that Part in respect of the development has not been lodged, or*

6.2.3. Substituted (22.10.2018) by Planning and Development (Amendment) Act 2018 (16/2018), s. 28(1), (2)(a), (b), S.I. No. 436 of 2018:

*(b) where the development comprises houses and one or more of those houses has not been rented, leased, occupied or sold,]*

the planning authority shall apply that change to the conditions of the permission where to do so would reduce the amount of the contribution payable.

F401[(3B) Where a development referred to in *subsection (3A)* comprises houses one or more of which has not been rented, leased, occupied or sold the planning authority shall apply the change in the basis for the determination of the contribution referred to in that subsection only in respect of any house or houses that have not been rented, leased, occupied or sold.]

(3C) Where the planning authority applies a change in the basis for the determination of a development contribution under *subsection (3A)* it may amend a condition referred to in *subsection (1)* in order to reflect the change.]

- 6.2.4. Likewise, section 9(7) of the Planning and Development (Housing) and Residential Tenancies Act 2016, allows the Board to attach conditions that concern a contribution or contributions as follows:

*Without prejudice to the generality of the Board's powers to attach conditions under subsection (4), the Board may attach either or both of the following to a permission for the development concerned:*

*(a) a condition with regard to any of the matters specified in section 34(4) of the Act of 2000;*

*(b) a condition requiring the payment of a contribution or contributions of the same kind as the planning authority or authorities in whose area or areas the proposed strategic housing development would be situated could, but for this Part, require to be paid under section 48 or 49 (or both) of the Act of 2000 were that authority to grant the permission (and the scheme or schemes referred to in the said section 48 or 49, as appropriate, made by that authority shall apply to the determination of such contribution or contributions).*

## **7.0 Policy Context**

- 7.1.1. The **Dublin City Development Plan 2016-2022** was the applicable development plan at the time of the assessment of the planning application to the Board and is the applicable plan for the purposes of this referral.

- 7.1.2. The site was subject to residential zoning objective 'Z1 – To protect, provide and improve residential amenities'.

### **7.2. Dublin City Development Contribution Scheme**

- 7.2.1. Dublin City Council - Development Contribution Scheme 2016-2020 - Note 1 states the following: This Scheme is effective in respect of Planning Applications lodged with Dublin City Council from the 1<sup>st</sup> of January 2016, where a development contribution is applicable under this Scheme. This Scheme is also effective in respect of existing permissions granted before this date which have not yet commenced.

- 7.2.2. Circumstances where no contribution or a reduced contribution apply:

Paragraph 12. The following development will not be required to pay development contributions under the Scheme:

- Social & Affordable housing units, including those which are provided in accordance with an agreement made under Part V of the Planning and Development Act (as amended) or those which are provided by a voluntary or co-operative housing body, which is recognised as such by the Council.

#### 7.2.3. Dublin City Council Development Contribution Scheme 2020-2023

Note 1: This Scheme is effective in respect of Planning Applications lodged with Dublin City Council from the 1<sup>st</sup> of April 2020, where a development contribution is applicable under this Scheme. This Scheme is also effective in respect of existing permissions granted before this date which have not yet commenced.

Paragraph 11. The following development will not be required to pay development contributions under the Scheme:

Social & Affordable housing units, including;

- those which are provided in accordance with an agreement made under Part V of the Planning and Development Act (as amended)
- those which are provided by a voluntary or co-operative housing body, which is recognised as such by the Council
- those made available under the Council's Scheme of Priority for Affordable Dwelling Purchase Arrangements under Section 85 of the Housing (Miscellaneous Provisions) Act 2009 as amended and Housing (Miscellaneous Provisions) Act 2009 (Part 5) Regulations 2019 (S.I. No.81 of 2019);

#### 7.2.4. Dublin City Council Development Contribution Scheme 2023-2026

The current scheme is the Dublin City Council Development Contribution Scheme 2023-2026 (under Section 48, Planning & Development Act, 2000 as amended).

Note 1 states that the scheme is effective in respect of Planning Applications lodged with Dublin City Council from 1st April 2023, where a development contribution is applicable under this Scheme.

In the case of existing permissions granted before the 1<sup>st</sup> April 2023 which have not yet commenced and in the case of applications lodged but not yet decided the

applicable scheme is the scheme in place at the time of lodgement of the relevant application.

Paragraph 10. The following development will not be required to pay development contributions under the Scheme:

- Social & Affordable (Purchase & Cost Rental) housing units provided,
- in accordance with an agreement made under Part V of the Planning and Development Act (as amended)
- by a voluntary or co-operative housing body, which is recognised as such by the Council
- under the Council's Scheme of Priority for Affordable Dwelling Purchase Arrangements under Section 11 of the Affordable Housing Act 2021
- under Cost Rental Housing as determined under the Affordable Housing Act 2021 (Cost Rental Designation) Regulations 2021

Note: The above exemption does not apply to housing provided under a leasing arrangement.

### **7.3. Housing for All - a New Housing Plan for Ireland 2021**

'Housing for All - a New Housing Plan for Ireland' is the government's housing plan to 2030.

It is a multi-annual, multi-billion euro plan which will improve Ireland's housing system and deliver more homes of all types for people with different housing needs.

The government's overall objective is that every citizen in the State should have access to good quality homes:

- to purchase or rent at an affordable price
- built to a high standard and in the right place
- offering a high quality of life

The government's vision for the housing system over the longer term is to achieve a steady supply of housing in the right locations with economic, social and environmental sustainability built into the system.

### **7.4. Rebuilding Ireland – Action Plan for Housing and Homelessness 2016**

Pillar 2 of 'Rebuilding Ireland: An Action Plan for Housing and Homelessness' aimed at private investment in order to deliver social housing at scale. 'Enhanced Long-Term Social Housing Leasing Scheme' was introduced by the Department of Housing, Planning and Local Government under this pillar.

Key Action - NTMA/Private Sector Housing Fund to deliver increased housing supply. Aim to acquire properties for onward leasing to local authorities and approved housing bodies under long-term leasing arrangements.

#### **7.5. Development Contributions – Guidelines for Planning Authorities 2013**

The principal aim of the guidelines is to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since guidance last issued in 2007. 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.

## 8.0 Assessment

### 8.1. Scope of the Referral/Role of Board

- 8.1.1. This referral on a 'point of detail' is made under Section 34(5) of the Planning and Development Act, 2000, as amended. It is noted that Section 34(5) states: 'The conditions under subsection (1) may provide that points of detail relating to any grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination'.
- 8.1.2. The point of detail request in this case relates to Condition number 25 of ABP-306721-20. This permission was granted by the Board on 21<sup>st</sup> September 2020 following a strategic housing development (SHD) application submitted to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016. The SHD application was lodged with the Board on the 24<sup>th</sup> February 2020, the Dublin City Council - Development Contribution Scheme 2016-2020 is the applicable scheme.

### 8.2. Consideration of Condition number 25

- 8.2.1. Condition number 25 provides as follows:

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

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

8.2.2. The background to the attachment of the development scheme contribution condition is relevant in consideration of this referral. The planning application was made directly to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as a strategic housing development (SHD). The planning authority made a submission, as is required by the 2016 Act, and a Chief Executive's (CE) Report outlines the attachment of a development contribution under section 48 of the Planning and Development Act 2000 (as amended).

8.2.3. Permission was granted by the Board for the development and condition 25 with regard to a development contribution was attached. The referrer makes no reference to the imposition of condition 25, but rather asserts that the development contribution amount advanced by the planning authority should be zero or nil. This is because the developer has provided all of the units as social housing, and a lease has been signed by both the lessor and the lessee. According to the referrer, under the terms of the Council's Development Scheme, no contribution owing should apply with respect to social and affordable housing units and paragraph 12 of the 2016 scheme is highlighted. The referrer further points out that the applicable scheme to apply in this case is in fact the 2016 scheme. This is correct as the application was lodged before the operative date of the 2020 scheme. This makes little difference in any case as the exemptions and reductions under paragraph 12 (2016 Scheme) and paragraph 11 (2020 Scheme) are similar to each other. No other aspect of the Board's decision is disputed and matters such as conditions 2, 21, 22 and 23 that constrain the development to a Build-to-Rent scheme and legal matters to be agreed with the planning authority prior to the commencement of development are not in play.

### **8.3. The referrer's premise**

8.3.1. The referrer's premise for an elimination of any contribution owing can be simplified and summarised as follows:



1. The development is leased for 25 years to Dublin City Council for social housing units, a lease agreement to this effect has been supplied, signed by lessor and lessee.
2. The entire development comprises social housing, so a contribution under the Development Contribution Scheme should be waived, paragraph 12 of the 2016 Council Contribution Scheme refers.

8.3.2. The referrer notes previous decisions of the Board and in order to maintain consistency in administrative decision making, decisions should align with previous ones if the circumstances are the same. In this regard, ABP-306254-19 a point of detail referral with reference to a permission for 23 apartments at Blackhall Place, is quoted as the relevant decision to consider, the facts are similar. The referrer's legal opinions serve to remind the Board that there should be consistency in decision making unless clear explanation is provided for any departures. In addition, legal opinion argues that the direction and order of the Board regarding ABP-306254-19, should be considered in light of the definition of social housing and how it should be ordinarily understood. Specifically, the referrer disagrees with the City Council and its conclusion that the units cannot be considered for any social and affordable exclusion from the development contribution scheme because the lease arrangement is a commercial one. With reference to ABP-306254-19, the Board Order stated the following:

*the Board noted that the signed agreement for lease between the developer and Dublin City Council, provides these residential properties for social housing use and noted the confirmation from Dublin City Council that this agreement is under the 'Enhanced Long Term Social Housing Scheme'. This Scheme is derived from Government Policy under Rebuilding Ireland. It is the opinion of the Board that the units in question therefore fall to be considered within the description 'social housing units', as set out under Item 12 (Exemptions and Reductions) of the Dublin City Council Development Contribution Scheme 2016-2020*

8.3.3. In the previous case on this site (ABP-313592-22) concerning this point of detail reference, I was reticent to fully consider the referrers case about social housing definitions because a signed lease agreement was not in place, this is not the case

now. Consequently, I now turn to consider the referrer's case with reference to what could logically be considered social housing and what would qualify for any exemptions under the relevant development contribution scheme.

8.3.4. The previous reference case looked in detail at the matters that pertained to ABP-306254-19 and ABP-313592-22, the similarities between each case were explored. As the referrer has pointed out matters have changed and now a signed lease is in place. I note that in case reference ABP-306254-19 the Board took into account a signed agreement between the developer and Dublin City Council that highlighted the intention of the developer and certainty that the units would be delivered as social housing. In this instance, Dublin City Council admit that the units on these lands are in use for social housing, but no exemptions exist for what is a commercial lease agreement, correspondence dated 13<sup>th</sup> November 2023 refers. It is correct to take into account a previous decision of the Board with reference to a similar case. Furthermore, I am satisfied that units that are handed over on a 25 year lease agreement to Dublin City Council should be considered as social housing in line with the principles of the Enhanced Long Term Social Housing Scheme, a scheme that enables the Government's ambition to increase social housing supply across the country. In this instance any uncertainty about the status of the units concerned is quickly dispelled insofar as a lease is already in place and has been since at least 25<sup>th</sup> August 2023, the commencement date of the lease and that all of units are in use for social housing. It is noteworthy that if the case before the Board were to be considered in light of the 2023 Development Contribution Scheme, any such relief would be in doubt, as paragraph 12 expressly excludes housing provided under a leasing arrangement. But this is not the case with reference to the 2016 or 2020 Development Contribution Scheme.

8.3.5. I note that in the previous submission to which the planning authority have directed me to, states that the lease agreement between the developer and the Council has not yet concluded and may never conclude, for example if planning conditions are not complied with. Furthermore the planning authority stated that neither the Standard Long Term Lease or the Enhanced Long Term Social Housing Lease provide for section 48 or Part V exemption. In this respect, I note the legal opinions prepared by the referrer that lean on the ordinary meaning of social housing as

falling within the category of a Standard Long Term Lease or the Enhanced Long Term Social Housing Lease agreements.

8.3.6. I have examined the lease agreement, and apart from the mention of rent free deduction arrangements for Part V housing, no specific mention is made of the eventual occupants and how they would be selected, first schedule part 3 of the lease refers. Within the documentation submitted by the referrer, I note a correspondence dated 13<sup>th</sup> November 2023 from the Planning and Property Development section of Dublin City Council, that states the units are leased for social housing but do not qualify for exemption under the development contribution scheme. However, I turn to the previous decision of the Board, where the Board did consider that a long term lease agreement could be a vehicle to lift social housing dwellings units away from the requirement to pay a development contribution, ABP-306254-19 refers. The Board should be aware that I have not considered what will happen when the 25 year lease ends and what is to become of the units in the context of social housing. With respect, the Reporting Inspector regarding ABP-306254-19 paid particular attention to the matter and highlighted that the units at Blackhall Place may be in use for social housing for a defined period of time, but they will revert to the applicant for commercial use. The Board disagreed and did not look to the future state and use of such units and determined that the present units be considered as social housing units, for the purposes of the Development Contribution Scheme. I acknowledge the Council's position when they refer to a lease agreement as a simply commercial decision. However, the fact cannot be ignored that the entire development currently provides social housing for at least 25 years and this would meet national policy in relation to social housing provision by various means.

8.3.7. Summary - There is a difference of opinion between the planning authority and the referrer on what should be considered social housing for the purposes of any exemptions. In the first instance, I note the provisions of section 34(5) of the Planning and Development Act 2000, as amended, it is considered that the details of condition number 25 are correct, are reasonable and are an accurate application of the relevant section 48 Dublin City Development Contribution Scheme. Condition 25 is appropriately and correctly worded. A fully evolved set of circumstances are now in place, specifically the change from an initial intention to sign over all units to

Dublin City Council and now the actual existence of a signed lease between parties that confirms such an intention. I am satisfied that the planning authority are in error to apply the requirements of the Dublin City Council Development Contribution Scheme with reference to the residential units. In addition, I note that the SHD application was lodged on the 24<sup>th</sup> February 2020, before the 2020 Development Contribution Scheme came into operation (1<sup>st</sup> April 2020) and consequently the operative scheme for the purpose of the permitted housing development would have been the 2016 Development Contribution Scheme. Under both contribution schemes (2016 and 2020) I find that this is a circumstance where no contribution would apply, because Dublin City Council now control for a period of 25 years, all units under a signed lease agreement and as paragraph 12 of the 2016 Scheme states.

*The following development will not be required to pay development contributions under the Scheme:*

*- Social & Affordable housing units, including those which are provided in accordance with an agreement made under Part V of the Planning and Development Act (as amended) or those which are provided by a voluntary or co-operative housing body, which is recognised as such by the Council*

- 8.3.8. Under a similar circumstance, the Board previously found that the units should be considered as social housing and that development contributions be determined in accordance with the scheme, ABP-306254-19 refers. In other words, the units should be considered to be exempt from payment of a contribution because they are in use for social housing. If the circumstances are the same, then from an administrative perspective the same decision should issue, the referrer reminds us. In this instance it is precisely because all units are now available for occupation as per the requirements of the lessee for the purposes of social housing, in this case Dublin City Council, no contribution is owed or owing.

## 9.0 Draft Board Order

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

**WHEREAS** by Order dated the 21<sup>st</sup> day of September, 2020 An Bord Pleanála, under planning register reference number ABP-306721-20, granted subject to conditions a permission to Roseberry Investments Limited care of John Spain Associates, 39 Fitzwilliam Place, Dublin 2 for a development comprising the construction of a 'Build to Rent' residential development comprising 124 number apartments as follows: A) 124 number apartments (arranged as two chevron shaped blocks (five to six number storeys)) comprising 48 number one-bedroom units, and 76 number two-bedroom units, each with private amenity space (balcony or terrace). Communal residential facilities in the form of a management office, post room, children's room, games room, coffee dock, reading/media room, group/yoga room, DIY bicycle repair room and garden room are located on the lower ground floor, of the southern block, extending to circa 268 square metres, B) Additional external communal amenity space is located adjacent to the building's perimeter, providing a range of seating, a play area at the eastern elevation, bicycle parking, hard and soft landscaping and informal recreation, extending to circa 2,628 square metres along with a single storey refuse store (circa 38 square metres), C) The northern block includes an under-croft car park accessed via a ramp adjacent to the site entrance and provides 54 number car-parking spaces including four number car club spaces and three number disabled spaces. 150 number bicycle spaces are provided at ground level, (with 80 number spaces within a single storey bicycle store (circa 55 square metres)), at the site's western perimeter, D) Vehicular access is via the existing access road and car park located east of Swords Road (at the western perimeter) with an additional shared pedestrian and bicycle entrance (and fire tender access) provided at the south west corner, with access improvements including a pedestrian crossing, E) Reconfiguration of the junction at Seven Oaks is included in the application., F) Plant room, Electricity Supply Board sub-station are included at lower ground floor level at the western elevation where the

two buildings adjoin, with two areas of enclosed plant included at roof level with a sedum roof provided and G) All associated site development and landscape works.

**AND WHEREAS** condition number 25 attached to this permission required the developer to pay to the planning authority a financial contribution, being the appropriate contribution to be applied to this development in accordance with the Dublin City Council Development Contribution Scheme 2016-2020 as adopted by Dublin City Council in accordance with section 48 of the Planning and Development Act, 2000, as amended

**AND WHEREAS** the developer and the planning authority failed to agree on the amount of the contribution to be paid pursuant to condition number 25, and on the application of the terms of the relevant Development Contribution Scheme in compliance with the terms of the condition and the matter was referred by the developer to An Bord Pleanála on the 28<sup>th</sup> day of February 2024 for determination:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that the residential units at lands adjacent to the Bonnington Hotel, Swords Road, Whitehall, Dublin 9, on foot of planning permission reference ABP-306721-20 do now constitute units for social housing use, by reason of a 25 year Lease Agreement between the developer and Dublin City Council, and that these units therefore can fall to be considered as social housing units which are exempt from the requirement to pay development contributions, for the purposes of the applicable Development Contribution Scheme 2016-2020 made under section 48 of the Planning and Development Act, 2000, as amended. Consequently, the amount payable under condition number 25 of planning register reference number ABP-306721-20 is nil.

## **10.0 REASONS AND CONSIDERATIONS**

Having regard to:

- (a) sections 34(5) and 48 of the Planning and Development Act, 2000, as amended,
- (b) the Dublin City Council Development Contribution Scheme 2016-2020,
- (c) the existence of an agreed and signed 25 year lease between the developer and the planning authority that in turn fulfil the provisions of the 'Enhanced Long-Term Social Housing Leasing Scheme' introduced by the Department of Housing, Planning and Local Government, under Pillar 2 of 'Rebuilding Ireland: An Action Plan for Housing and Homelessness' aimed at private investment in order to deliver social housing at scale,
- (d) the submissions on file and relevant precedent cases, the Board considered it appropriate that the residential units can be deemed social housing units, for the purposes of the respective Development Contributions Schemes described above, and that development contributions under Condition number 25 be determined as nil.

## **11.0 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 Rhys Thomas  
Senior Planning Inspector

16 January 2025