



An
Bord
Pleanála

Inspector's Report

ABP 320701 – 24

(Section 48 Appeal)

Development	Construction of 49 dwellings with all associated site works
Location	Park Road, Rush, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F24A/0066
Applicant(s)	Carroll Estates
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Section 48 Appeal
Appellant(s)	Carroll Estates
Observer(s)	None.
Date of Site Inspection	19 th August 2024
Inspector	Aisling Dineen

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Appendix 1 – Form 1: EIA Pre-Screening

1.0 Site Location and Description

- 1.1. The site has a stated area of 1.56 Ha and is located north of Rush Town Centre. There are residential dwellings in the vicinity of the site and there is also horticultural land use on adjacent land. Park Road and the Hyde Court residential development are situated to the east of the site.
- 1.2. The site is a flat open space which is bounded by high earth beams on its west boundary. Development works including a footpath and entrance gates are constructed on site along Park Road.

2.0 Proposed Development

- 2.1. It was proposed to construct a residential development of 49 dwellings and associated site works. The number of dwelling units was reduced to 40 dwellings subsequent to additional information.

3.0 Planning Authority Decision

3.1. Decision

The planning authority made a decision to grant planning permission subject to 33 No conditions on the 2nd August 2024.

Conditions are of a generic nature and address the residential development.

Condition No 20 states the following:

A financial contribution shall be paid by the applicant to Fingal County Council in lieu of open space provision towards the costs of amenity works in the area of the proposed development in accordance with Section 48 of the Planning and Development Act 2000, as amended, and as provided for in the Contribution Scheme for Fingal County Council made by the Council. This shall be based on a shortfall of 0.2338 ha of open space.

Condition No 31 requires a security bond.

Condition No 32 requires a development contribution in lieu of open space to the sum of € 137 211.44.

Condition No 33 requires a development contribution for public infrastructure and facilities to the sum of € 587 871.15.

(Note: Condition numbers 20 and 32 are subject of this appeal)

The Chief Executive's decision reflects the planner's report.

3.2. Planning Authority Reports

3.2.1. Planning Reports

A further information request issued relating to roads layout, site layout, drainage, landscaping, Uisce Eireann details and lighting scheme. The additional information was deemed to be significant and was readvertised. The number of houses was reduced from 49 houses to 40 houses. Following the receipt of additional information a decision to grant planning was made subject to conditions.

3.2.2. Other Technical Reports

Transportation Planning Section

This section required additional information and had no objections subject to conditions.

3.3. Prescribed Bodies

Inland Fisheries Ireland: No objection subject to conditions.

3.4. Third Party Observations

None

4.0 Planning History

Planning Register Reference Number: 15A/0294 pertains to the grant of planning permission for infrastructural site development works.

Planning Register Reference Number: 15A/0294 E1 pertains to an Extension of Duration application, which was granted permission in March 2021 for a period of 3 years, up to and including the 11th May 2024.

5.0 Policy Context

5.1. Fingal Development Plan 2023 - 2029

The site is zoned RA – Residential Development, wherein it is an objective to provide for new residential communities subject to the provision of the necessary social and physical infrastructure.

Public Open Space:

Land Use	Minimum Public Open Space Standards
Overall Standard	2.5 hectares per 1000 populations
New Residential Development on greenfield sites/LAP lands	12% - 15% of site area
New Residential Development on infill/brownfield sites	12% of site area

Table 14.12: Recommended Quantitative Standards (Sustainable Residential Developments in Urban Areas, Guidelines for Planning Authorities 2009).

Objective DMSO52 – Public Open Space Provision Public open space shall be provided in accordance with Table 14.12.

Objective DMSO53 – Financial Contribution in Lieu of Public Open Space

Require minimum open space, as outlined in Table 14.12 for a proposed development site area (Target minimum amount of 15% except in cases where the developer can demonstrate that this is not possible, in which case the 12% to 15% range will apply) to be designated for use as public open space. 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 the standards specified in Table 14.11. Where the Council accepts financial contributions 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.

5.2. Development Contribution Scheme

5.3. Fingal County Development Contribution Scheme 2021 – 2025 (the DCS)

This was the operable Development Contribution Scheme at the time of the decision and it is the application of the terms of this scheme, which are under assessment.

The rates of the DCS shall be effective from 1st January 2021 to 31st December 2025.

- 5.3.1. Section 9 of the DCS sets out the contributions to be paid (except where an Exemption or Reduction applies, see Section 11 below) in respect of the different classes of public infrastructure and facilities.
- 5.3.2. Exemptions and Reductions are stated under Section 11.
- 5.3.3. Appendix 1 of the DCS sets out Costs included in the scheme.
- 5.3.4. Contributions in respect of different classes of public infrastructure and facilities are as stated under Section 11.
- 5.3.5. Contributions in respect of Shortfall in Open Space are set out under Section 9, Note 5, as follows:

Open Space Shortfall

(a) The Fingal Development Plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. This contribution in lieu of open space will be levied at the following rates;

- 1. Class 1 Open Space - €100,000 per acre to purchase land based on the value of amenity land, plus €100,000 per acre for development costs.
- 2. Class II Open Space - €250,000 per acre to purchase land in residential areas, plus €100,000 per acre for development costs.

These rates may be reviewed by the Council from time to time have regard to market conditions. The contributions collected will be used for the provision of open space, recreational and community facilities and amenities and landscaping works – see Appendix 2.

5.4. Development Contributions – Guidelines for Planning Authorities 2013

These guidelines were issued under section 28 of the PDA 2000 (as amended) with a stated aim to provide guidance on the drawing up of development contributions to reflect radical economic changes.

5.5. Natural Heritage Designations

The site is not located within or adjoining a Natura 2000 site.

5.6. EIA Screening

This case is a first party appeal against a development contribution condition. This does not come within the definition of a 'project' for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first party appeal, which relates to financial contribution conditions only.

The following points are put forward by the appellant.

- Conditions numbers 20 and 32 relate to an alleged shortfall in public open space, which is considered to be incorrect and there shouldn't be two conditions relating to the same levy. The applicant is being asked twice to pay for the upkeep of open space.
- The levy is incorrectly calculated in this instance.
- The application reduced the number of proposed dwellings from 49 to 40 under the additional information request, which required the applicant to make provision for the North – South Rush Relief Road and which impacts the viability of the site. It must be noted that this road reservation is not a Roads objective of the Development Plan and was provided by the applicant at the request of the Council.

- The reduction in the number of proposed dwelling units resulted in an approved layout, which has 1956 sq. m. of public open space, which is 15% of the site area and which complies with the Development Plan requirements.
- It is argued that the alleged shortfall of 2338 sq. m. is based on 49 dwelling units and not on 40 dwelling units which is a miscalculation relating to open space.
- It is requested that the board remove condition numbers 20 and 32 to accurately reflect the substantial open space provided on the site.
- The applicant is already contributing towards open space through the standard Section 48 Development Contribution. The requisite 15% public open space is already provided on site. The requirement for an additional contribution is not justified in this case. The additional levy places further financial burden on the project.

6.2. Planning Authority Response

- The planning authority notes that condition No 20 is a duplicate condition.
- The open space contribution was incorrectly calculated on the provision of 49 No units as per the original application to the planning authority.
- A table relating to development contributions in the site-specific context is provided. The total open space requirement is 2.5 hectares per 1000 people. The requirement for this site is 0.35 hectares. The total area of open space provided on site is 0.1956 Ha. The remainder to be levied for contribution is 0.15 Ha.
- Only one open space shortfall financial contribution should be sought.
- Condition No 32 should be amended to reflect a sum of € 88 031. 29 in lieu of open space provision.

6.3. Observations

None.

6.4. Further Responses

None.

7.0 Assessment

7.1. This is an appeal made under the provisions of Section 48 of the Planning and Development Act 2000, as amended and therefore the Board is restricted to considering Condition No's. 20 and 32 alone and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the above conditions relevant to the development contributions applied, and that have been appealed and the consideration of whether or not the terms of the relevant Fingal County Development Contribution Scheme 2021 – 2025 was properly applied in this instance.

7.2. It is noted that a Section 48 development contribution was applied under Condition No 33. This condition is not under appeal.

7.3. Condition No 20

7.4. The aspect of the appeal centres on the first party's contention that the Planning Authority in applying both conditions numbers 20 and 32 has levied the applicant twice in respect of open space for the site.

7.5. The planning authority has submitted to the appeal that Condition No 20 is a duplicate condition. Therefore, the planning authority is in agreement with the appellant on this issue. I note that the content of Condition No 20 relates to open space provision and open space provision is addressed under Condition No 32. I consider that there is no requirement for two conditions relating to the same issue/levy. Therefore, I recommend that the Board omit condition No 20.

7.6. Condition No 32

7.7. The appellant submits that the open space calculation was miscalculated and was calculated on the basis of 49 dwelling units and not based on the modified layout following the additional information, which was 40 dwelling units. The planning authority under its submission to the appeal agree with the appellant and states that the open space calculation was incorrect and was calculated based on the provision of 49 No units as per the original submission. Therefore, there is agreement by both

parties that Condition No 32 should apply to 40 units as opposed to 49 units. I concur with this viewpoint.

7.8. However, the appellant also opines that the contribution applied under General Contribution Scheme, as per Section 48 Development Contribution, should suffice for the provision/upkeep of open space and that the requisite 15% public open space is already provided on site. It is therefore argued that the requirement for an additional contribution in lieu of open space is not justified in this case. The appellant also refers to the financial burden that this condition places on the project and argues that a reservation was made in agreement with the planning authority for provision of the North South Rush Relief Road, which is not an objective of the plan. Relating to the said relief road, I see no agreement on file, which addresses any provisions relating to any waiver of development contributions or reduction of same, with respect to the provision of a reservation for the said road.

7.9. I consider there to be three issues in respect of Condition No 32, as follows:

- Whether there is provision under the Development Plan and terms of the DCS for contribution in lieu of shortfall open space.
- Whether there are circumstances where no contribution or a reduced contribution apply.
- Calculation of a contribution in lieu of shortfall in open space, if required

7.10. Whether there is provision under the Development Plan and terms of the DCS for contribution in lieu of shortfall open space

7.11. Table 14.2 and Objectives DMSO52 and DMSO53 of the Development Plan make provisions for development contributions in lieu of open space.

7.12. As per para 5.3.5 above contributions in respect of Shortfall in Open Space are set out clearly under Section 9, Note 5 of the DCS. This is clearly adopted under the scheme as an additional requirement in addition to the standard Section 48 Development Contribution Scheme. I am satisfied that the terms of the DCS clearly provide a basis, in principle, for the application of a contribution in lieu of shortfall in open space.

- 7.13. Whether there are circumstances where no contribution or a reduced contribution apply
- 7.14. The Exemptions and Reductions specified under Section 11 of the DCS are not applicable in this case.
- 7.15. The appellant refers to the discretion of the Council in regard to this condition. It is noted that Section 9, Note 5 of the DCS states that a contribution in lieu of shortfall of open space is 'discretionary'; it states that it *'provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development'*.
- 7.16. It is noted that the planning authority in its submission to the appeal acknowledges the error in the calculation of the contribution under Condition No 32 and has not, under discretion, recommended that a contribution lieu of a shortfall in open space, be omitted entirely. It is considered that in the interest of consistency and fairness, that the approach adopted by the planning authority in respect of the DCS must be consistent and the precedent, which would be established, by any departure from same, must be considered. I am of the viewpoint that a contribution in respect of a shortfall in the provision of open space is applicable to this development.
- 7.17. Calculation of a contribution in lieu of shortfall in open space, if required.
- 7.18. The open space requirement is 0.35 Ha = 3 500 sq. m.

The open space provided is 1956 sq. m. The shortfall is 1544 sq. m., which is rounded to 1 500 sq. m. by the planning authority, in its calculations, which is considered to be reasonable in the site-specific circumstances.

The calculation of the appropriate contributions is as follows:

Shortfall Area: 1500 sq. m. = 0.371 acres

Calculation of Class 1: 0.371 acres x Class 1 (75%) = 0.2785 x € 200 000 = € 55 650

Calculation of Class 2: 0.371 acres x Class 2 (25%) = 0.09275 x € 350 000 =
€ 32 462.50

Class 1 = € 55 650

Class 2 = € 32 462.50

Total = **€ 88 112.50**

8.0 Recommendation

- 8.1. Having regard to the nature of the conditions, which are the subject of the appeal and based on the reasons and considerations set out below, I am satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted. I consider that 2 No conditions were applied in respect of the same issue/levy and therefore one should be omitted, and otherwise the terms of the development contribution scheme have been properly applied and I recommend that the Board directs the Council under subsection (13) (a) of Section 48 of the Planning and Development Act, 2000 (as amended) to REMOVE Condition No 20 and to ATTACH Condition No 32 as follows.

9.0 Reasons and Considerations

Having regard to:

- (a) Section 34(5) of the Planning and Development Act 2000, as amended,
- (b) The provisions of the Fingal County Development Contribution Scheme, 2021 – 2025 as amended,
- (c) Section 48 of the Planning and Development Act 2000 (as amended),
- (d) The submissions on file, and the planning history of the site.

It is considered that it would be appropriate to remove a condition and attach a Section 48 Development Contribution for development in this instance.

10.0 Conditions

Condition 32

The developer shall pay to the planning authority a financial contribution of € 88 112.50 as a contribution lieu of the public open space requirement in respect of public open space benefitting the development in the area of the planning authority is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the adopted Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any indexation provisions of the Scheme at the time of payment.

Reason:

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

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.

Aisling Dineen
Planning Inspector
22nd November 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP 320701 – 24			
Proposed Development Summary	Construction of 49 dwellings with all associated site works. (Section 48 APPEAL)			
Development Address	Park Road, Rush, Co. Dublin			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes		
		No X	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes		Class.....	EIA Mandatory EIAR required	
No			Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No				No EIAR or Preliminary Examination required
Yes		Class/Threshold.....		Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No		Preliminary Examination required
Yes		Screening Determination required

Inspector: Aisling Dineen

Date: 22nd November 2024