



An
Bord
Pleanála

Inspector's Report

ABP-320894-24

Development	Construction of 28 houses with all ancillary and associated works.
Location	Lands north of Palmer Road and west of Palmer Avenue, Rush, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F24A/0479E
Applicant(s)	NT Palmer Developments Ltd
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party V Contributions
Appellant(s)	NT Palmer Developments
Observer(s)	None
Date of Site Inspection	21 st January 2025
Inspector	Gerard Kellett

1.0 Site Location and Description

- 1.1. The site relates to vacant lands on north of Palmer Road and west of Palmer Avenue in Rush, County Dublin which is an undeveloped rectangular shaped parcel of land. The site gently slopes north to south. St Catherine's Park and National School is to the immediate north. Palmer Avenue residential development is to the east. Detached dwellings and undeveloped land are to the south, with recent planning permission granted for residential development under Reg. Ref: F23A/0169. Agricultural lands are further to the west.

2.0 Proposed Development

- 2.1. Planning permission is sought for the development at a site of approximately 0.8 hectares, which includes:
1. Construction of 28 residential dwellings (7 two-bed, 19 three-bed, and 2 four-bed houses, each two storeys) with private open space and on-curtilage parking.
 2. A new access from Palmer Road at the southern perimeter of the site with pedestrian footpath and landscaping.
 3. A total of 51 car parking spaces with cycle parking provided within dedicated stores or to the rear of houses.
 4. Approximately 0.113 hectares of public open space at the northern perimeter of the site (566 sqm) and the southwest corner of the site (560 sqm).
 5. An ESB substation (6 sqm) at the southwest corner of the site accessed from Palmer Road, and all associated access, public lighting, landscaping, boundary treatments, bin stores, engineering works, and other infrastructure to facilitate the development.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission on the 29th August 2024 subject to 32.no conditions. Of relevance to this appeal is conditions no.19 and no. 31 which are outlined below:

19.A financial contribution shall be paid by the developer 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 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 864m² of open space.

31.Prior to commencement of development a financial contribution in the sum of €50,706.12 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 864 sqm of open space.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planner's report forms the decision to grant permission following the submission of further information (received 02/08/2024) which is summarised below:
 - Principle of Development: The site is zoned 'RS - Residential,' which permits residential development.
 - No concerns with respect to AA or EIA.

- Public Open Space: The quantum of public open space was increased to approximately 1,186 sqm, equating to 15.3% of the net area. The Parks and Green Infrastructure Division noted that the shortfall in the overall public open space provision should be addressed through a financial contribution in lieu of public open space provision.

3.2.2. Other Technical Reports

- Transport Planning – No objection subject to conditions following submission of further information.
- Water Services Section – No objection subject to conditions following submission of further information.
- Parks and Green Infrastructure – No objection subject to conditions following submission of further information.
- Conservation Officer – No objection.
- Archaeologist / Heritage Officer – No objection subject to condition.
- Environmental Department – No objection subject to condition.
- Housing Department – No objection subject to condition.
- Public Lighting – No objection subject to conditions.

3.3. Prescribed Bodies

- Uisce Eireann – No objection subject to service connection agreement.
- Heritage Council – No report received.
- Department of Housing Local Government and Heritage – No report received.
- An Taisce – No report received.

3.4. Third Party Observations

One third-party submission was received in relation to the proposed development. The submission raised the following concerns:

- Capacity of the Sewer System: Concerns about whether the existing sewer system can handle the additional load from the new development.
- Overdevelopment of the Site: Concerns that the proposed development may be too dense or extensive for the site.
- Boundary Wall: The boundary wall between 69 Palmer Road and the existing property cannot be altered.

4.0 Planning History

No planning history attached to the subject site as per planning register.

Lands to the east of the subject site

PA REF: F24A/0450E – Refers to grant of permission in July 2024 for the construction of 2 new semi-detached 3-storey dwelling houses at 29 & 30 Palmer Avenue, Rush, Co. Dublin.

PA REF: F07A/0484 – Refers to grant of permission in September 2007 for a residential development consisting of eight semi-detached two and a half storey 4-bedroom houses, one four-bedroom, and two three-bedroom two-storey terraced houses.

PA REF: F06A/0775 – Planning permission granted in October 2006 for a residential development consisting of 4 detached 4-bedroom two-storey houses, 14 semi-detached two and a half storey 4-bedroom houses, 2 semi-detached two-storey 3-bedroom houses, 11 terraced two-storey 3-bedroom houses, and 27 two-bedroom apartments in 2 three-storey buildings.

Lands to the south of the subject site

PA REF: F23A/0169 – Refers to granted of permission in January 2024 for the construction of 40 residential units comprising terrace and semi-detached houses.

PA REF: F22A/0034 & ABP-315161-22 – Initial refusal by Fingal County Council but subsequently granted permission by An Bord Pleanála in March 2024 for 74 residential units.

PA REF: F23A/0160 – Planning permission granted in September 2023 for a residential development of 14 dwellings at Palmer Avenue, Rush, Co. Dublin.

PA REF: F20A/0170 – Permission refused in May 2020 for a residential scheme of 43 residential units at Palmer Road, Rush, Co. Dublin.

ABP-305534-19 (Reg. Ref: SHD/003/19) – Planning permission granted in January 2020 for a residential development of 165 units, public open space, and associated works.

5.0 Policy Context

5.1. National Guidelines

Sustainable Residential Development and Compact Settlement - Guidelines for Planning Authorities (2024). (Compact Guidelines thereafter)

Development Contributions - Guidelines for Planning Authorities (2013)

- General Development Contribution Schemes: Under section 48 of the Planning and Development Acts, planning authorities must draw up a development contribution scheme in respect of certain public infrastructure and facilities

Development Management – Guidelines for Planning Authorities (2007)

- Section 7.12 of the Guidelines provides guidance on planning conditions relating to development contributions. Any scheme may be the subject of an appeal where the applicant considers that the terms of the scheme were not properly applied. To help minimise unnecessary appeals, the planning decision should clearly set out how the relevant terms were interpreted and applied to the proposed development.

- Section 8.12 of the Guidelines refers specifically to appeals in respect of development contribution conditions and reiterates that an appeal against a contribution condition can only be made where the applicant contends that the terms of the contribution scheme have not been properly applied.

5.2. Development Plan

The Fingal Development Plan 2023 – 2029 is the relevant Development Plan for the subject site.

The site is zoned 'RS - Residential,' with a zoning objective to *"Provide for residential development and protect and improve residential amenity"*.

- Objective DMSO51 – Minimum Public Open Space Provision: Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.
- Objective DMSO52 – Public Open Space Provision: Public open space shall be provided in accordance with Table 14.12.

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

Land use	Minimum public open space standards
Overall standard	2.5 hectares per 1000 population
New residential development on greenfield sites/LAP lands	12% - 15% of site area
New residential development on infill/brownfield sites	12% of site area

- 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.

5.3. The Fingal County Council Development Contribution Scheme 2021-2025

The Development Contribution Scheme refers to the basis for determination of contributions, 3no. categories/classes of development, unit of measurement and the associated rates of charge. In terms of open space shortfall, the following is stated:

Note 5: Open Space Shortfall

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

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

5.4. Natural Heritage Designations

The site is not located within or adjacent to any designated Natura 2000 site. The closest European Sites are as follows:

6.0 EIA Screening

The proposed development 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. Refer to Form 1 in Appendix 1 of report.

7.0 The Appeal

7.1. Grounds of Appeal

A first party appeal has been lodged against the content of financial contributions of condition No. 19 and condition No.31 of the planning authority's decision to grant permission. The grounds of appeal can be broadly summarised as follows:

- **Improper Application of Development Contribution Scheme:** The appellant argues that Fingal County Council has not properly applied the terms of the Fingal County Development Contributions Scheme 2021-2025. Specifically, the Council has failed to exercise its discretion as provided in Note 5 of the Scheme, which allows for a financial contribution in lieu of public open space.
- **Compliance with National Guidelines:** The appellant contends that the conditions conflict with Policy and Objective 5.1 of the Sustainable Residential Development and Compact Settlement Guidelines 2024. These guidelines state that the requirement for public open space in a development plan should not exceed 15% of the net site area. The proposed development provides 15.3% of the net site area as public open space, thus meeting the guidelines.

- **Precedent Appeal Decisions:** The appeal references a recent decision by An Bord Pleanála (Ref: 318046-23) (July 2024) where a similar financial contribution in lieu of public open space was deemed unwarranted. The Board concluded that the planning authority had not properly applied the Development Contribution Scheme, given the nature, scale, and form of the development, including the extent and quality of open space provided.
- **Existing Public Open Space:** The development site is adjacent to St. Catherine's Park, providing substantial public open space and the rationale for requiring an additional financial contribution on the basis of a perceived shortfall is considered unreasonable and unjustified.
- **Excessive Financial Contribution:** The appellant argues that the financial contribution of €50,706.12 based on a perceived shortfall of 864 sqm of public open space is excessive and unjustified. The development already meets the maximum requirement of 15% public open space as per the sustainable Compact Guidelines.
- **Inconsistency with Development Plan:** The Council's decision to impose financial contributions based on a perceived shortfall in public open space is in conflict with Policy Objective 5.1 of the Compact Settlement Guidelines, which limits the requirement to a maximum of 15% of the site area. The Council's reliance on an overall standard of 2.5 hectares of public open space per 1000 population is considered excessive and not aligned with the updated national guidelines.

7.2. Planning Authority Response

Response received dated 24th October 2024 outlining the following:

- The planning authority outlines development plan objectives with regard to open space.
- The planning authority outlines the steps involved in assessing and calculating Public Open Space for a residential development.

- Step 1 Calculate Overall Requirement: Determine the overall Public Open Space requirement as per 2.5 hectares per 1,000 population based on Objective DMSO51 of the Fingal Development Plan.
 - Step 2 On-Site Provision: Calculate the required Public Open Space to be provided on-site within the proposed residential development. This should be between 10% and 15% of the net site area, as per the Sustainable and Compact Settlements guidelines.
 - Step 3 Compliance Assessment: Assess the applicant's proposals to ensure they comply with the Fingal Development Plan, particularly Table 14.11: Public Open Space and Play Space Hierarchy and Accessibility Standards. This includes considering other policy documents like Fingal's Open Space Strategy, Tree Strategy, Play Policy, Biodiversity Action Plan, and SuDS Guidance Document.
 - Step 4 Shortfall Determination: Determine if there is a shortfall in Public Open Space provision by subtracting the on-site provision from the overall requirement. If there is a shortfall, a financial contribution may be sought in lieu of on-site provision.
- The planning authority states if there is a shortfall of Public Open Space provision, a financial contribution may be sought within the terms of Section 48 of the Planning and Development Act 2000 (as amended) in lieu of provision within the application site. The financial contribution allows for the acquisition of additional open space or the upgrade of existing parks and open spaces
 - The planning authority notes that condition No.19 is a duplicate and should have been omitted.
 - The planning authority requests that condition No. 31 remain unchanged in An Bord Pleanála's determination.

7.3. Applicant Response to Planning Authority

Response received dated 4th December 2024 outlining the following:

- The appellant acknowledges the submission from Fingal County Council that condition no.19 is “*a duplicate and should have been omitted*” from the decision notice.
- The appellant acknowledges the steps in calculating public open space however they consider there has been no justification for a requirement for public open space above 15% at the application site as no exceptional circumstances exist.
- The applicant is of the view the Fingal Development Plan in respect of open space is not in accordance national policy guidelines specifically policy and objective 5.1 of the Sustainable Residential Development and Compact Settlement - Guidelines for Planning Authorities (2024).
- The appellant considers condition No. 31 should be omitted as the proposed development provides in excess of the minimum 15% of the net site area as public open space in accordance with policy objective 5.1 of said guidelines.

7.4. Observations

None

8.0 Assessment

8.1. Introduction

- 8.1.1. This first party appeal has been brought to An Bord Pleanála under the provisions of section 48 (10) of the Planning and Development Act 2000 (as amended) being an appeal against a development contribution.

8.1.2. Section 48(10) (b) of the Act, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority. An appeal in relation to the application of a development contribution, the Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal, which is whether the terms of the scheme have been properly applied.

8.1.3. I consider the issues can be addressed under the following headings:

- Condition No.19
- Condition No. 31

8.2. **Condition No. 19**

8.2.1. The appellant is seeking permission to omit condition No.19 of permission FW24A/0479E which requires, *“A financial contribution shall be paid by the developer 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 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 864m² of open space”*.

8.2.2. I note the appeal documentation submitted which seeks for the omission of this condition. Additionally, I have considered the council’s submission letter dated received 24th October 2024 acknowledging that condition no.19 was a duplicate and should have been omitted from the decision notice. Therefore, I consider that an assessment of this condition is not warranted in this case and I recommend that condition No. 19 be removed.

8.3. Condition No. 31

- 8.3.1. In terms of condition No.31 of permission FW24A/0479E requires, *“a financial contribution in the sum of €50,706.12 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 864 sqm of open space”*.
- 8.3.2. The applicant argues against the imposition of this condition and states the proposed development provides 15.3% of the net site area as public open space, thus meeting the requirements of Policy and Objective 5.1 of the Sustainable Residential Development and Compact Settlement Guidelines 2024. The appeal references a recent decision by An Bord Pleanála (Ref: 318046-23) (July 2024) where a similar financial contribution in lieu of public open space was deemed unwarranted. The Board concluded that the planning authority had not properly applied the Development Contribution Scheme, given the nature, scale, and form of the development, including the extent and quality of open space provided.
- 8.3.3. I have considered table 14.12 (Public Open Space Provision) of the Fingal Development Plan 2023 – 2029 which refers *“to a target minimum amount of 15% public open space except in cases where the developer can demonstrate that this is not possible, in which case the 12% to 15% range will apply”*. It states 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. Furthermore, I note table 14.12 is based on the quantitative standards of the Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities 2009. These standards have now been superseded by the Sustainable Residential Development and Compact Settlement - Guidelines for Planning Authorities 2024.
- 8.3.4. Section 2.1.2 (Development Management) of the above guidelines states, *“the planning authority is required to have regard to the policies and objectives of the Guidelines and to apply the specific planning policy requirements (SPPRs)”*. I have had regard to policy and objective 5.1 of said guidelines which refers to, *“The*

requirement in the development plan shall be for public open space provision of not less than a minimum of 10% of net site area and not more than a minimum of 15% of net site area save in exceptional circumstances”.

- 8.3.5. In that context, I note the site layout plan submitted with the application included a total of approximately 0.113 hectares of (14.64%) public open space, divided between the northern perimeter (566 sqm) and the southwest corner (560 sqm) of the site. The applicant increased the provision of public open space along the northern boundary by a further information request to 15.3%, which I consider acceptable, equating to 0.1186 hectares of public open space. Additionally, the FCC planners report confirmed the proposed development provided an acceptable level of 15.3% of the site area to public open space. However, I note the FCC Parks and Green Infrastructure Division report considers there was a shortfall in the overall public open space of 0.0864ha which should be dealt by way of financial contribution under section 48 of the Act. The Parks report acknowledges the fact the applicant has met the on-site minimum requirement for public open space. Though, I note the above shortfall of open space is based on the number of proposed bed spaces being eighty-two, which would equate to a requirement of 0.205 hectares of open space which in my view would not accord with the national policy objective 5.1 of the Compact Guidelines. The net site area is 0.772 hectares and with a requirement for 15% of the site area to be open space equates to 0.1158 hectares. The applicant has provided 0.1186 hectares (15.3 %) of public open space which I consider is acceptable.
- 8.3.6. In my view, the requirement for public open space requirements of 10% - 15% as set out in policy and objective 5.1 of the Compact Guidelines have been achieved in any case and in my opinion the rationale for the inclusion of a financial contribution in lieu of open space is not justified in this instance by the Parks Division of FCC. In fact, I note the development site is adjacent to St. Catherine's Park, providing substantial public open space and the rationale for requiring an additional financial contribution on the basis of a perceived shortfall is considered unreasonable and unjustified. Having regard to the foregoing, I consider the contribution scheme has not been applied correctly in this case and I recommended that condition No. 31 be removed.

9.0 Appropriate Assessment Screening

- 9.1. Refer to Appendix 2. Having regard to nature, scale and location of the proposed development and proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

10.0 Recommendation

- 10.1. I recommend that condition No. 19 be REMOVED and condition No.31 be REMOVED as set out hereunder.

11.0 Reasons and Considerations

- 11.1. Having regard to:
- a) the nature, scale and form of the proposed development,
 - b) the pattern of development in the area including immediately adjoining public open space to the north.
 - c) the Fingal County Council Development Contribution Scheme 2021 – 2025
 - d) the provision of the Sustainable Residential Development and Compact Settlement - Guidelines for Planning Authorities (2024)
 - e) the detailed submissions on the file from the appellant and the Planning Authority,

it is considered that the proposed development would incorporate a sufficiency of usable public open space in excess of 15 % on site and that an in-lieu contribution is not warranted. Therefore, the Board, in accordance with section 48 of the Planning and Development Act 2000 (as amended) considered that the terms of the Fingal County Council Development Contribution Scheme 2021 – 2025 for the area has not been properly applied in respect of condition No. 19 and condition No.31 and directs the said Fingal County Council that both conditions be REMOVED.

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.

Gerard Kellett
Planning Inspector
13th February 2025

Appendix 1 - Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-320894		
Proposed Development Summary	Construction of 28 houses with all ancillary and associated works.		
Development Address	Lands north of Palmer Road and west of Palmer Avenue, 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	√
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			
No	√		No further action required.
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			
No	√		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			
No	√	Screening determination remains as above (Q1 to Q4)	
Yes			

Inspector: _____ Date: _____

Appendix 2

AA Screening

I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 as amended.

The site is not located within or adjacent to any designated Natura 2000 site.

Having considered the nature and location of the proposed development I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:

- The nature of the development.
- The location of the development in a serviced urban area, distance from European Sites and urban nature of intervening habitats, absence of ecological pathways to any European Site.

I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.