

An
Bord
Pleanála

Inspector's Report

ABP-321864-25

Development

Construction of 4 residential apartment blocks ranging in height from 2 to 4 storeys with 26 units and all associated site works.

Location

46A-49 Patrick Street and 1-6 Rogan's Court, Dún Laoghaire, Co. Dublin.

Planning Authority

Dún Laoghaire-Rathdown County Council.

Planning Authority Reg. Ref.

D24A/0927/WEB.

Applicant(s)

DKG Properties Limited.

Type of Application

Permission.

Planning Authority Decision

Grant Permission with conditions.

Type of Appeal

First Party Appeal

against financial
contributions conditions
(S. 48)

Appellant(s)

DKG Properties Limited.

Observer(s)

None.

Inspector

Aiden O'Neill.

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1.0 Site Location and Description

- 1.1 The appeal site is c. 0.2ha in area, and is located on Patrick Street, a one-way predominantly residential street, to the south of Dún Laoghaire. The site comprises existing two-storey properties in office/residential use at 46A-49 Patrick Street, with a block of two-storey offices at Rogan's Court to the rear, accessed from Patrick Street. To the south is the three-storey office/apartment Oriel Building, to the west is Ashford House Nursing home to the west, and to the north are single and two-storey residential properties, and a builder's merchants.

2.0 Proposed Development

- 2.1 The proposed development will consist of 1) Demolition of properties at nos. 47(a and b), and no. 49 Patrick Street and outbuilding to the rear. Construction of new residential apartment blocks in their place. 2) Renovation, refurbishment, extension and change of use of existing buildings no's. 46(a and b), 48(a and b) and 1-6 Rogan's Court to residential apartments. 3) The scheme will provide a total of 4 no. apartment blocks (blocks A-D) ranging in height from 2 to 4 storeys; delivering 26 no. units comprising 2 no. studios, 6 no. 1- beds, 16 no. 2-beds (3 & 4 person), and 2 no. 3-beds. All apartments will have private open space either facing north/ south/ east/ west. 4) Provision of single storey bicycle storage building (Block E). 5) Continued use of the existing vehicular and pedestrian/cyclist access from Patrick Street between No's. 46b and 47a to serve the new development. 6) Removal of existing vehicular access to No. 49. 7) Provision of communal open space, car parking, bin stores, landscaping, boundary treatments, sites services and all associated site development works.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was granted by Dún Laoghaire-Rathdown County Council on 22nd January, 2025 subject to 24no. conditions.

3.1.1 Conditions:

The following conditions are relevant to this appeal:

Parks and landscaping

13. The developer shall lodge to Dún Laoghaire-Rathdown County Council the total sum of €227,250.00 (calculated by €7,500,000.00 x 0.0303) as a contribution in lieu of not providing the 15% public open space requirement.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks facilities & Recreational amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

Bonds/contributions

20. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €3,300.89 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Local Authority in respect of the provision of Surface Water Infrastructure benefiting development in the area of the Planning Authority, as provided for in the Development Contribution Scheme 2023-2028 made by Dún Laoghaire-Rathdown County Council on the 9th of October 2023.

These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index commencing from 1st January 2025. Contributions shall be payable at the index-adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Article 4.7 of the Scheme. Outstanding balances as of the 1st of January each year shall be subject to indexation and adjusted accordingly until the contribution has been paid in full. (See Article 8.3 of the Scheme).

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Infrastructure benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

Note on above Condition: Please note that with effect from 1st January 2014 Uisce Éireann are now the statutory body responsible for both water and wastewater services.

Accordingly, the contribution payable has been reduced by the amount of the contribution associated with these services. Further details/clarification can be obtained from Uisce

Éireann at Tel. 1800 278 278.

21. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €49,514.75 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Local Authority in respect of the provision of the Transport Infrastructure benefiting development in the area of the Planning Authority, as provided for in the Development Contribution Scheme 2023-2028 made by Dún Laoghaire-Rathdown County Council on the on the 9th of October 2023. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index commencing from 1st January 2025. Contributions shall be payable at the index-adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Article 4.7 of the Scheme. Outstanding balances as of the 1st of January each year shall be subject to indexation and adjusted accordingly until the contribution has been paid in full. (See Article 8.3 of the Scheme)

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Transport Infrastructure benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

22. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €277,282.43 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Local Authority in respect of the provision of the Community & Parks facilities & Recreational amenities benefiting development in the area of the Planning Authority, as provided for in the Development Contribution Scheme 2023-2028 made by Dún Laoghaire-Rathdown County Council on the 9th of October 2023. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index commencing from 1st January 2025. Contributions shall be payable at the index-adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Article 4.7 of the Scheme. Outstanding balances as of the 1st of January each year shall be subject to indexation and adjusted accordingly until the contribution has been paid in full. (See Article 8.3 of the Scheme)

REASON: It is considered reasonable that the payment of a contribution be required in

respect of the provision of the Community & Parks facilities & Recreational amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planners' Report dated 22nd January, 2025 notes the following:
 - The site is subject to zoning objective 'A' which seeks to 'provide residential development and improve residential amenity while protecting the existing residential amenities'. Noting the previous refusal of permission and the changed policy environment, the revisions have resulted in a substantially different scheme and is acceptable in principle.
 - The proposals would generally comply with the residential standards for new apartment development.
 - The applicant is not proposing any public open space, which is considered acceptable having regard to its location and the infill nature of the scheme, and can be mitigated by the imposition of a financial contribution condition.
 - The applicant proposes 381sqm of communal open space in an informal courtyard, significantly larger than the minimum requirement. Green roof structures are proposed for apartment blocks A and B, and a blue roof for the bike storage shed.
 - The planner's report is the basis for the Planning Authority's decision to grant planning permission for the proposed development as applied for.

3.2.2. Other Technical Reports

- The Transportation Planning Report states that there is no objection subject to conditions.
- The Drainage Planning Report recommends further information, including the proposed surface water outfall rate; a drawing detailing the green roof coverage; and further details on the proposed rain gardens.
- The Parks & Landscape Services Department Report states that there is no objection subject to conditions, including
 - Financial contributions in lieu of open space. Section 12.8.8 of the Dún

Laoghaire County Development Plan 2022-2028 seeks a contribution in lieu of open space of €7,500,000 per hectare pro rata at a requirement of 15% of the site in public open space.

- The proposed development is 0.21817ha: 15% equates to 0.032725, which results in a total sum of €245,437.50.
- The contribution will go towards improving local facilities including Peoples Park Dún Laoghaire, Killiney Hill, Royal Terrace Square and Crosthwaite Park.
- The Environmental Enforcement/Waste Management Report recommends further information, including a CMP, a RWMP, and an OWMP.
- The Housing Department Report recommends conditions.
- The Public Lighting Report recommends the submission of a lighting design and report.

3.3. Prescribed Bodies

- The Uisce Éireann submission states no objection subject to the requirement to enter into a Connection Agreement.
- The report of the Environmental Heath Office recommends further information including a detailed CEMP and Demolition Management Plan, a RWMP and an OWMP.

3.4. Third Party Observations

- 7no. observations were received, raising the following concerns:
 - Scale and height are too high and out of context.
 - Conflicts with the Development Plan in respect of height and infill development, and out of character with period properties. Demolition of no. 49 Patrick Street a great loss to the street.
 - Overdevelopment and impact on privacy and residential amenity, including daylight and sunlight.
 - Depreciation of property values.
 - Concerns over the management of the scheme.
 - Not enough parking and green space. Traffic is already high.

- An underground stream passes through the site.
- A previous development at 50 Patrick Street resulted in a large volume of water being diverted down Patrick Street.
- Landscaping to be enforced if permission is granted.

4.0 Planning History

- ABP-312104-21 Refusal of permission by Dún Laoghaire Rathdown County Council (D21A/0825) also refused on appeal on 18th May, 2023 for the demolition of properties Nos 46A-49 Patrick Street. Construction of a Build to Rent apartment complex of 3-4 storeys comprising 22 no. units and all associated site development works, landscaping, boundary treatments and services. Permission was refused for the following reason:
 - Having regard to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022-2028, and to the design and layout of the proposed development, it is considered that the proposed development would result in a substandard form of development for future residents by reason of the configuration of the proposed build-to-rent units in close proximity to the existing on-site office buildings and undercroft car parking, the over-provision of car parking for existing on-site office buildings, and the poor quality provision of private open space which will be largely overlooked from Patrick Street at ground floor level and by the communal open space and rear offices at first floor level. The proposed development would be contrary to Policy Objective PHP42 of the development plan in relation to provision of high-quality design and would give rise to an unsatisfactory standard of residential amenity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- D20A/0386: Permission was refused by Dún Laoghaire Rathdown County Council on 24th July, 2020 for the demolition of no. 49 Patrick Street, and the construction of an apartment complex ranging from 3 to 4 storeys in height fronting onto Patrick Street around a central first floor podium open space for 2no. reasons:
 - 1. Having regard to the density, scale, design and layout of the proposed development and to the restricted separation distances between the apartments and the site boundaries; it is considered that the layout of the proposed development would provide a substandard form of accommodation for future

occupants in terms of residential amenity and the development would be contrary to Policy UD1: 'Urban Design Principles' of the County Development Plan, which promotes high quality design in accordance with the 'Urban Design Manual. The proposed development would therefore result in a poor standard of residential development, would constitute overdevelopment of a limited site, set a poor precedent for similar infill development, would be contrary to the proper planning and sustainable development of the area and would seriously injure the amenities or depreciate the value of property in the vicinity.

- 2. It is considered that the proposal by reason of height, scale, massing, and separation distances to boundaries and abrupt transition in scale relative to the receiving environment, would result in an incongruous and overbearing development, would interfere with the character of the surrounding urban landscape, would seriously injure the amenities and depreciate the value of property in the vicinity and would be contrary to the zoning objective which is 'to protect and or improve residential amenity', Policy RES3 'Residential Density', Section 8.2.3.4 (vii), as well as the Building Height Strategy and related Policy UD6 of the Dún Laoghaire-Rathdown Development Plan 2016-2022 and therefore would be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

Dún Laoghaire-Rathdown County Development Plan 2022-2028

The subject site is zoned A, to provide residential development and improve residential amenity while protecting the existing residential amenities.

Table 12.7 of the Plan defines Categories of Open Space for Residential Development. Public Open Space is defined as being generally freely available and accessible to the public, and in the case of certain residential developments has, or is intended to be, 'taken-in charge' by the Local Authority. In all new residential development schemes, there should be some appropriate provision made for public open space within the site. In all instances where public open space is not provided a contribution under Section 48 will be required for the shortfall.

Table 12.8 of the Plan indicates that 15% public open space is required for residential Development in the existing built up area. Section 12.8.3.1 of the Plan states that to qualify as public open space the area must be designed and located to be publicly accessible and useable by all in the County; generally free from attenuation measures; and capable of being taken in charge (i.e. must accord with the Council policy on taking in charge of open spaces).

Communal open space is for the use of a set group of residents within the development only and would ordinarily be maintained by a Management Company i.e. is privately owned. This would be typical of apartment - type residential developments and can be gated/ located adjacent to one/two specific apartment blocks for their exclusive semi-private use. It can also apply to some housing schemes.

Section 12.8.3.2 of the Plan states that in addition to Public Open Space, communal open space must also be provided for apartments and in some instances for houses, in accordance with the minimum standards set out in Table 12.9. Communal open space is for the exclusive use of the residents of the development and should be accessible, secure, and usable outdoor space which is inclusive and suitable for use by those with young children and for less mobile older persons.

Dún Laoghaire-Rathdown County Council Development Contribution Scheme 2023-2028

Article 4 of the Scheme sets out the level of contribution required. This article includes a table (Table A: Countywide) setting out the classes of public infrastructure which require funding, and the levy for different types of development on a countywide basis (except where an exemption or reduction applies provided by Article 7).

Table A: Countywide			
Classes of Public Infrastructure	€ per unit of Residential Development	€ per square metre of Domestic Extensions in excess of 40 sq.m.	€ per square metre of Commercial class of Development
Class 1: Community & Parks facilities & Recreational amenities	€10,990.14 (€11,317.65 (2025))	€94.91	€94.91
Class 2: Transport	€1,962.53	€16.95	€16.95

infrastructure	(€2,021.01 (2025))		
Class 3: Surface Water Infrastructure	€130.83 (€134.73 (2025))	€1.13	€1.13
Total of Contributions Payable	€13,083.50 (€13,473.39 (2025))	€112.99	€112.99

Article 4.7 states that on the 1st of January, 2025 and on the 1st January every year thereafter throughout the lifetime of the Scheme, the above rates are to be updated in accordance with the SCSi Tender Price Index.

Article 6 sets out the level of contribution in lieu of public open space:

6.1. The Dún Laoghaire-Rathdown County Development Plan 2022 – 2028 provides that in the event that the standards for public open space referred to in the County Development Plan are not met and/or where public open space cannot be facilitated within a development, an additional contribution may be required by way of condition when granting planning permission.

6.2. Where the Planning Authority considers that the standards for public open space referred to in the County Development Plan are not met and/or that open space cannot be facilitated within the development As adopted 9th October 2023 concerned, an additional financial contribution of €7,500,000 per hectare shall be calculated on a pro rata basis on the quantum of the shortfall in public open space and monies paid in accordance with such condition shall be applied to the provision of and/or improvements to a park and/or enhancement of amenities in the area.

Article 7 sets out the relevant exemptions:

Article 7.1 xiv includes the change of use of an existing premises, including “Living Over The Shop”. For clarification purposes, this exemption shall not apply to any additional floor area that is to be added (including where physically separate from the principal building but within the curtilage thereof) and any such development shall be elide at the appropriate rate determined in accordance with the Scheme.

Article 7.2 includes:

- i. Where existing residential development is demolished and replaced by new residential development, contributions payable in respect of the replacement development shall be reduced by an amount equivalent to 50% of the contribution that would have been levied in respect of the original existing development had it been subject to the Scheme. Therefore, by way of example, if a one existing housing unit is demolished and replaced by ten housing units, the contributions payable shall be reduced by the equivalent of 50% of the contribution payable in respect of one housing unit.
- ii. Where existing commercial development is demolished and replaced by new commercial development, contributions payable in respect of the replacement development shall be reduced by an amount equivalent to 50% of the contribution that would have been levied in respect of the original existing development had it been subject to the Scheme. Therefore, by way of example, if 100 square metres of existing commercial development is demolished and replaced by 500 square metres of commercial development, the contributions payable shall be reduced by the equivalent of 50% of the contribution payable in respect of 100 square metres of commercial development.

The reductions at i. and ii. above apply on a 'like for like' basis only and therefore, for the avoidance of doubt, no reduction shall apply where commercial development replaces existing residential development or vice versa.

5.1. Relevant National or Regional Policy / Ministerial Guidelines (where relevant)

- Development Contributions: Guidelines for Planning Authorities (DECLG 2013)

These non-statutory guidelines note that the primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, while an important balance needs to be struck between this aim and the need to encourage economic activity and promote sustainable development patterns. They set out the types of development that should have reduced rates or waivers (including town centre development, certain works to protected structures, works to businesses grant-aided by bodies such as the IDA, and temporary permissions).

- Sustainable Urban Housing: Design Standards for New Apartments Guidelines, 2023 Section 4.12 states that for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, communal amenity space may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality.
- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, 2024. Policy and Objective 5.1 in relation to Public Open Space states that public open space provision shall be provided at not less than 10% of net site area and not more than a minimum of 15% if net site area, save in exceptional circumstances. This requirement may be set aside (in part or whole) in cases where the planning authority considers it unfeasible, due to sit constraints or other factors, to locate all the open space on site. In such circumstances, the planning authority may seek a financial contribution within the terms of Section 48 of the Planning and Development Act, as amended, in lieu of provision within an application site.

5.2. Natural Heritage Designations

The proposed development site is c. 1.09km to the south-east of South Dublin Bay and River Tolka Estuary SPA (004024), the South Dublin Bay SAC (000210) and the South Dublin Bay pNHA (000210). It is also c. 837m to the west of the Dalkey Coastal Zone And Killiney Hill pNHA (001206).

6.0 EIA Screening

See completed Form 1 at Appendix 1 to this report. Under the provisions of section 48(13)(a) the Board shall determine only the matters relating solely to a condition dealing with a special contribution. Preliminary examination and/or EIA, therefore, is not required.

7.0 The Appeal

7.1. Grounds of Appeal

- The detailed First Party Appeal submitted under S48(10)(b) of the Planning and Development Act, 2000, as amended, against conditions 13, 20, 21 and 22 attached to

the decision to grant planning permission under PA Ref. No. D24A/0927/WEB on 22nd January, 2025, makes the following points:

- The terms of the Scheme, including exemptions, have not been properly applied in the attachment of condition nos. 20, 21 and 22.
- The Council has applied levies/developer contributions that are excessive given the small, infill development of 26no. apartments:
 - Condition no. 13 (in lieu of providing public open space): €227,250 (€8,740 per apartment)
 - Condition no. 20 (surface water infrastructure): €3,300.89
 - Condition no. 21 (transport infrastructure): €49,514.75
 - Condition no. 22 (community/parks facilities): €277,282.43
- The open space contribution equates to €504,532.43 (€227,250 + €277,282.43) c.90.5% of the overall contribution (€557,348.07).
- The total contribution equates to €21,436.46 per apartment.
- The amount is significantly in excess of the contribution payable per unit of €13,083.50 in Table A of the Scheme, excluding applicable exemptions.
- Sections 7.1 and 7.2 of the Scheme exempts the change of use of an existing premises, and the contribution payable on a replacement residential or commercial development is reduced by 50% on a like for like basis of the contribution that would have been levied in respect of the original existing development had it been subject to the Scheme.
- The Council has not considered the change of use of nos. 46 (a and b), 48 (a and b) and 1-6 Rogan's Court from offices to residential use.
- The rate is applied to 24.5 units, but does not take into account the change of use of the existing building and the demolition of the existing house. The rate should be applied to 15.5 units, comprising:
 - 10no. offices subject to a change of use
 - 0.5 unit to demolished (i.e., only 1no. residential dwelling is to be demolished. The exemption does not apply to the 2no. offices to be demolished).
 - Therefore 26 (as applied for) -10.5 (exemptions) = 15.5.
- The applicable contributions should therefore be:
 - Condition no. 20 (surface water): €2,088.32
 - Condition no. 21 (transport infrastructure): €31,325.66

- Condition no. 22 (community and park facilities: €175,423.58)
- In relation to the contribution in lieu of public open space, which is discretionary, this has not taken into account:
 - The small nature of the site, less than 0.25ha;
 - The high-quality of the Open Space of 380.96m²;
 - The policies of the Compact Settlement Guidelines, the Apartment Guidelines or the Dún Laoghaire-Rathdown County Development Plan.
- The proposed development provides 380.96m² of open space (161m² communal open space and 219.96m² public open space (c. 11%) combined) which is 17.96m² in excess of the minimum requirement for communal open space and public open space.
- The Compact Settlement Guidelines state that a minimum of 10% public open is required, and that the requirement for public open space may be set aside (in part of whole) and may seek a financial contribution in lieu. The Apartment Guidelines state that communal open space may be relaxed in part of whole on sites of less than 0.25ha.
- In this context, the Board may determine the open space provided could be wholly deemed Public Open Space rather than Communal Open Space, albeit not defined as such. The site (0.202ha) would, at 15%, equate to 303m² public open space, or 202m² having regard to the Compact Settlement Guidelines. The provision of 380.96m² open space is in excess of either standard.
- All private open space requirements are either met or exceeded.
- There are a number of public open space areas in the vicinity of the proposed development.
- The mix of units equates to c. 161m² communal open space. The provision is c. 3 times this amount.
- It is not practical, due to the small size and infill nature of the site to separate out the communal open space and public open space.
- There is no shortfall in open space.
- It is unnecessary and punitive to apply a contribution in lieu in this tight urban site, particularly when the Compact Settlement Guidelines apply a 10% requirement for public open space.
- If it is to be applied it should only be applied to the deficit of open space, i.e., 83.04m², if the Plan standard of 15% is used. This would equate to €12,456.00

(83.04m² *€7,500,000).

- The Board is requested to:
 - Omit the contribution.
 - Omit the contribution and deem the provision on site to be public open space and privately managed.
 - Amend to require a payment for the shortfall only.

7.2. Applicant Response

- N/A

7.3. Planning Authority Response

- The response of Dún Laoghaire-Rathdown County Council dated 10th March, 2025 states the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

7.4. Observations

- None.

7.5. Further Responses

- A further response of Dún Laoghaire-Rathdown County Council dated 19th March, 2025 states as follows:
 - The contribution calculation is based on 24.5 units as the applicant has benefitted from a reduction in line with section 7.2 of the Dún Laoghaire-Rathdown Council Development Contribution Scheme 2023-2028, i.e., demolition of 3 residential units resulting in a credit of 50% reduction or in this case 1.5 units.
 - The calculation in lieu of open space is applied as per Section 6 of the Scheme. The site area of .202ha x 15% = 0.0303ha. 0.0303 * €7,500,000 = €227,250.
 - The Council therefore determines that the development contributions were applied as per the terms of the Scheme.
- The First Party also responded on 8th April, 2025 to the further response of Dún Laoghaire-Rathdown County Council dated 19th March, 2025, as follows:

- The submission from the Council does not address or justify their approach, rather just reiterates their contribution conditions.
- The rate of 24.5 units does not take into account the exemption for a change of use of the existing 10no. offices to 10no. residential units set out in Section 7.1 (XIV) of the Scheme, nor does it clarify how the 2no. offices to be demolished have the benefit of the exemption. The First Party reiterates that the rate should be applied to 15.5 units.
- There is no justification for why the discretionary approach available in Section 6.1 of the Scheme, i.e. the reference to 'an additional contribution may be applied', or policy and objective 5.1 of the Sustainable Residential Development and Compact Settlements 2024, which states that the planning authority may seek a financial contribution in lieu of public open space provision, has not been taken in this instance.
- It is unnecessary and punitive to apply a contribution given the oversupply of open space.

8.0 Assessment

- 8.1 A First Party Appeal against conditions 13, 20, 21 and 22 of PA Ref. No. D24A/0927/WEB is made under the provisions of Section 48 (10)(b) of the Planning and Development Act, 2000, as amended, and therefore the Board is restricted to consideration of these financial contribution conditions only. The assessment is therefore confined to the application of the terms of the Dún Laoghaire-Rathdown County Council Development Contribution Scheme 2023-2028 and any index related increase that may be in place.
- 8.2 The First Party has made the case that the terms of the Scheme have not been properly applied with respect to (a) the change of use of 10no. office buildings to residential use; and (b) the provision of public open space.
- 8.3 In relation to the change of use of 10no. offices to residential use, Section 7.1 xiv of the Scheme exempts the change of use of an existing premises, with the exemption applying to the existing floorspace, and not any additional floorspace.
- 8.4 The proposed development includes the renovation, refurbishment, extension and change of use of existing buildings no's. 46(a and b), 48(a and b) and 1-6 Rogan's Court to

residential apartments.

8.5 In this context, it is clear that the exemption set out in Section 7.1 xiv of the Scheme applies to the existing office floorspace for which a change of use to residential use is sought. The First Party appeal on this point is accepted.

8.6 I also agree with the First Party that the exemption under Section 7.2 i. of the Scheme only applies to 1no. dwelling (no. 49 Patrick Street (261m²)), and that it does not apply to the 2no. offices (nos. 47(a and b) Patrick Street (120m²)) to be demolished.

8.7 Therefore, as set out by the First Party, the exemptions of the Scheme that apply are as follows:

- Section 7.1, which exempts the change of use of an existing premises, in this instance the change of use of nos. 46 (a and b), 48 (a and b) and 1-6 Rogan's Court, i.e. 10no. offices to 10no. residential units. The architect's schedule of internal floor areas identifies the area subject to the change of use as 778.1m².
- Section 7.2, where the contribution payable on a replacement residential development is reduced by 50% on a like for like basis, in this instance, the demolition and replacement of 1no. dwelling at no. 49 Patrick Street, equating to 0.5 unit (50%).

8.8 The contribution therefore applies to 15.5 units, i.e. 26no. units as applied for, excluding the 10no. units for which a change of use applies, and the 0.5 units for which Section 7.2 of the Scheme applies.

8.9 This results in an amendment to condition nos. 20, 21 and 22 as follows:

- Condition no. 20 (surface water infrastructure): from €3,300.89 to €2,088.32 (€134.73 (2025 rate) * 15.5)
- Condition no. 21 (transport infrastructure): from €49,514.75 to €31,325.66 (€2,021.01 (2025 rate) * 15.5)
- Condition no. 22 (community/parks facilities): from €277,282.43 to €175,423.58 (€11,317.25 (2025 rate) * 15.5)

8.10 It is my recommendation to AMEND conditions nos. 20, 21 and 22, as follows:

- Condition no. 20: The developer shall pay to the planning authority a financial contribution of €2,088.32 in respect of Surface Water Infrastructure 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.

- Condition no. 21: The developer shall pay to the planning authority a financial contribution of €31,325.66 in respect of Transport Infrastructure 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.
- Condition no. 22: The developer shall pay to the planning authority a financial contribution of €175,423.58 in respect of Community & Parks facilities & Recreational amenities 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.

- 8.11 In relation to the application of a contribution towards public open space in lieu of provision on site, the First Party states that this has not taken into account the small nature of the site, the high quality of open space, the provisions of the Compact Settlement Guidelines, the Apartment Guidelines and the Dún Laoghaire-Rathdown County Development Plan.
- 8.12 It is argued that the proposed development provides 380.96m² of open space (161m² communal open space and 219.96m² public open space (c. 11%) combined) which is 17.96m² in excess of the minimum requirement for communal open space and public open space of 10% in the Compact Settlement Guidelines.
- 8.13 It is further argues that the Compact Settlement Guidelines state that a minimum of 10% public open is required, and that the requirement for public open space may be set aside (in part or whole) and may seek a financial contribution in lieu. The Apartment Guidelines also state that communal open space may be relaxed in part or whole on sites of less than

0.25ha.

- 8.14 It is also stated that the Board may determine the open space provided could be wholly deemed Public Open Space rather than Communal Open Space, albeit not defined as such. The site (0.202ha) would, at 15% (the Plan standard) equate to 303m² public open space, or 202m² having regard to the Compact Settlement Guidelines. The provision of 380.96m² open space is in excess of either standard.
- 8.15 The Board is asked to omit the contribution or to consider the open space provision as solely public open space, or apply the contribution to the deficit in provision of 83.04m² (when communal open space is provided at the rate specified in the Apartment Guidelines of 161m², and public open space at 15% as per the Plan, equating to 303m², a total of 464m²).
- 8.16 I note that the proposed development includes a high-quality central area of what is specifically identified in the application as communal open space of 380.96m² at ground floor level, which, in line with Section 12.8.3.2 of the Plan, will be directly accessible to all residents, that will be overlooked, and be safe and secure. This level of communal open space is in excess of the standard required in the Apartment Guidelines, which would equate to 161m².
- 8.17 I also note the First Party's Planning Report that accompanied the planning application that, as the overall site area equates to c. 0.2ha, it should be considered to qualify for a levy a contribution in lieu of public open space.
- 8.18 I note the applicant's arguments that if the identified communal open space were to be assessed as public open space, it is in excess of both the Plan standard (303m²) and the Compact Guidelines standard (202m²). The 380.96m² of open space could also be considered to comprise 161m² communal open space and 219.96m² public open space combined), where the public open space provision is in excess of the Compact Settlement Guidelines standard (202m²) but under the Plan standard (303m²).
- 8.19 The assessment in this instance, however, is confined to the application of the terms of the Dún Laoghaire-Rathdown County Council Development Contribution Scheme 2023-2028, and whether the terms of the development contribution scheme have been properly applied. There is no discretion to revisit the Scheme or apply a different standard, notwithstanding the arguments presented.
- 8.20 The application documentation clarify specifies that the open space provided is communal open space only. The application documentation also acknowledges that the site should be considered to qualify for a contribution in lieu of public open space.

- 8.21 In this context, while acknowledging the arguments put forward by the applicant, and that the provision of communal open exceeds the quantum required by 219.96m², it is my recommendation that condition no. 13 requiring a financial contribution in lieu of public open space is ATTACHED.

9.0 AA Screening

The appeal has been made under the provisions of section 48(10)(b) of the Planning and Development Act, 2000, as amended, therefore the Board shall determine only matters relating solely to a condition dealing with a contribution. As such, the requirements S177U of the Planning and Development Act 2000, as amended, do not apply.

10.0 Recommendation

- 10.1 I recommend the Board to ATTACH condition no. 13 and the reason therefor. I also recommend the Board to AMEND condition nos. 20, 21 and 23 for the reasons and considerations set out below.

11.0 Reasons and Considerations

Notwithstanding the small size of the site, the high quality of the area of communal open space provided on site which is in excess of the provisions for communal open space in the Sustainable Urban Housing: Design Standards for New Apartments Guidelines, 2023, I consider that the Planning Authority has correctly applied the terms of the Development Contribution Scheme with respect to a contribution in lieu of public open space.

Having regard to Article 7.1 xiv. of the current Dún Laoghaire Rathdown Contribution Scheme 2023-2028 which lists changes of use of an existing premises as being exempt from the requirement to pay development contributions under the Scheme, I consider that the Planning Authority has incorrectly applied the terms of the Development Contribution Scheme with respect to the available exemption for the 10no. office buildings subject to a change of use to residential use in this instance.

12.0 Amended Condition nos. 20, 21 and 22

- Condition no. 20: The developer shall pay to the planning authority a financial contribution of €2,088.32 in respect of Surface Water Infrastructure 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.

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.

- Condition no. 21: The developer shall pay to the planning authority a financial contribution of €31,325.66 in respect of Transport Infrastructure 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.


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.

- Condition no. 22: The developer shall pay to the planning authority a financial contribution of €175,423.58 in respect of Community & Parks facilities &

Recreational amenities 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.

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.

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.



Aiden O'Neill
Planning Inspector

28th April, 2025

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-321864-25		
Proposed Development Summary	Construction of 4 residential apartment blocks ranging in height from 2 to 4 storeys with 26 units and all associated site works.		
Development Address	46A-49 Patrick Street and 1-6 Rogan's Court, Dún Laoghaire, 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	Tick if relevant and proceed to Q2.
		No √	Tick if relevant. 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)?			
Yes	Tick/or leave blank	State the Class here.	Proceed to Q3.
No	Tick or leave blank		Tick if relevant. No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required
No	Tick/or leave blank		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	Tick/or leave blank	Screening determination remains as above (Q1 to Q4)
Yes	Tick/or leave blank	Screening Determination required

Ad on full

28th April, 2025

Inspector: _____

Date: _____