



An  
Coimisiún  
Pleanála

## Inspector's Report

### ABP-322142-25

<b>Development</b>	Demolition of house and construction of two 1-3 storey apartment buildings comprising 25 residential units, with all associated works.
<b>Location</b>	The Poplars, Quinns Road, Shankill, Dublin 18, D18P6P0
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D25A/0004/WEB
<b>Applicant(s)</b>	John Maybury
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party against financial contributions conditions (S. 48)
<b>Inspector</b>	Natalie de Róiste

## Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision.....	3
3.1. Decision.....	3
3.2. Planning Authority Reports .....	3
3.3. Other Technical Reports .....	4
3.4. Conditions.....	5
3.5. Prescribed Bodies.....	5
3.6. Third Party Observations .....	5
4.0 Planning History .....	5
5.0 Policy Context .....	6
5.1. Dun Laoghaire Rathdown County Development Plan 2022-2028 .....	6
5.2. Dún Laoghaire Rathdown County Council Development Contribution Scheme 2023-2028 .....	10
5.3. National Policy .....	11
6.0 The Appeal.....	12
6.1. Grounds of Appeal.....	12
6.2. Planning Authority Response.....	13
7.0 Assessment.....	14
8.0 Recommendation .....	16
9.0 Reasons and Considerations.....	16
10.0 Amended Condition no 12 .....	17

## **1.0 Site Location and Description**

- 1.1. The subject site, The Poplars, Quinn's Road, Shankill, Co. Dublin, is occupied by a single-storey bungalow on a site of c. 0.43 hectares, with mature landscaping. It is bordered by single- and two-storey housing to the north, south-west, and east, and has c. 55 metres of road frontage to Quinn's Road. The house to the west, Aubrey House, is a protected structure set in its own substantial grounds. The site is c. 5 minutes' walk from Shankill village, and c. 18 km south of Dublin city centre.

## **2.0 Proposed Development**

- 2.1. It is proposed to demolish the existing dwelling and construct 25 dwellings as follows: 8 no. 1-bed apartments, 1 no 2-bed townhouse, 12 no. 3-bed townhouses, and 4 no. 3-bed duplex units, with 17 car parking spaces, 39 cycle spaces, and all associated works. There is a stated area of 85 sqm communal open space and 618 sqm public open space. There is a Biodiversity Exclusion Zone of 299.51 sqm.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant permission.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

One report, dated 27 February 2025, raised issues of note as follows:

- Communal open space - Development Plan guidance and policy (Section 12.8.3.2 and Table 12.9) and Appendix 1 of the apartment guidelines noted regarding communal space. Quantum provided is above the minimum area required, but the layout and hierarchy of open spaces is awkward, with overlap between communal and public area.
- Public open space – proposed area of 618 sqm includes 478 sqm at south of site, plus area in centre of site which is a mixture of public open space,

communal open space and internal access pathway, with little or no differentiation. The public open space appears closer in character to communal open space, rather than being also accessible to residents beyond the development itself.

- Parks and Landscape report noted, but given the proximity to larger higher quality open spaces a contribution in lieu of public open space is more appropriate than the omission of two units.
- It is reasonable to allow 50% as acceptable public open space, and levy a financial contribution for the other 50%.
- Development contributions due on construction of 25 residential units with 2645.9 sqm floorspace, and demolition of 435.9 sqm (existing house). For the purposes of calculating Development Contributions, one of the proposed units is to be in excess of 150 sqm.

### **3.3. Other Technical Reports**

- Transportation Planning, Further Information requested.
- Drainage Planning, Further Information requested.
- Parks and Landscape Services Department, Further Information requested, with comments as follows:
  - Public open space required is 15% of 0.430 hectares, or 645 sqm. Proposed development provides 616.89 sqm, which is inadequate. Additionally, the 98.21 sqm allocated to public open space in front of the terraced units is disconnected from the rest of the public open space, and considered redundant and an insufficient use of space.
  - The public open space near the front shows a children's play area and a path in the Root Protection Area of Category A trees, which are listed in the County Development Plan for protection and preservation.
  - omission of two units near the front of the site requested, to expand public open space and provide a child play area and path outside the Root Protection Area of Category A trees.

- Environmental Enforcement/Waste Management, further information requested
- Housing Department, condition recommended

### 3.4. **Conditions**

Twenty conditions attached included standard conditions, conditions on drainage, transportation, parks and landscaping, construction, the payment of bonds (condition 19), and contributions as per the Development Contribution Scheme 2023-28 (Conditions 16, 17, and 18).

Additionally, Condition 12 is as follows:

The developer shall pay to Dún Laoghaire-Rathdown County Council the total sum of €225,000, (calculated by €7,500,000 x 0.03) as a contribution in lieu of not providing adequate public open space requirement or as otherwise agreed.

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.

### 3.5. **Prescribed Bodies**

- Uisce Éireann, no objections subject to conditions.
- EHO, no objection subject to conditions.

### 3.6. **Third Party Observations**

Eleven submissions received, with comments relating to impacts on neighbouring residential amenity, height, density, and flood risk.

## 4.0 **Planning History**

- None on subject site.
- On adjacent site, Aubrey House:

D16A/0642: Permission was granted for the construction of 2 four bedroom 2 storey detached houses including parking for four cars. The upgrading and widening of the existing vehicular/pedestrian access and entrance from Quinns Road and all associated site development works.

- The appellant refers to the following precedent case at St Anne's, Dublin Road, Shankill:

D23A/0806: Permission granted for refurbishment of protected structure (St Anne's) and construction of 23 residential units in 3 blocks.

## 5.0 Policy Context

### 5.1. Dun Laoghaire Rathdown County Development Plan 2022-2028

The site is subject to zoning objective A, which seeks 'to provide residential development and improve residential amenity while protecting the existing residential amenities'.

There is an objective 'to protect and preserve Trees and Woodlands' along the boundary with Quinn's Road.

Chapter 9 deals with Open Space, Parks and Recreation.

#### **Section 9.2.1.4**

**Policy Objective OSR4: Public Open Space Standards** *It is a Policy Objective to promote public open space standards generally in accordance with overarching Government guidance documents 'Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities', (2009), the accompanying 'Urban Design Manual - A Best Practice Guide', and the 'Sustainable Urban Housing: Design Standards for new Apartments', (2020).*

*The aforementioned documents provide detailed guidance on the provision of open space in new development areas, and for apartment schemes. The Guidelines advocate that, in new development nodes, Local Area Plans should identify preferred locations for larger open spaces that would allow playing pitches and larger recreational facilities to be concentrated away from the housing areas, but still easily accessible from them. The Guidelines emphasise the need for quality in public open spaces in terms of design, robustness, accessibility, biodiversity and passive*

*supervision/ overlooking. There should also be a clear definition between public, communal, and private spaces, to allow for the proper allocation and access to open space in development areas, and for the proper management of same.*

*The Guidelines indicate specific requirements with respect to Open Space and Recreation, which are referenced in the Development Management Section of the Plan (see Chapter 12, Section 12.8). Section 12.8.2 and Section 12.8.3.3, sets out very clear requirements pertaining to public, communal, and private open space. It is a policy objective of the Plan, that the various categories of open space for both residential and mixed use and commercial be provided in accordance with the standards set out in the tables in Section 12.8.3 and Section 12.8.4. In the event that these standards of public open space provision are not met, an additional contribution in lieu may be attached to any permission, by way of planning condition, in accordance with Section 48 of the Planning and Development Act 2000, as amended. In certain instances, a development contribution will also be sought for communal open space provision.*

Chapter 12 deals with Development Management.

#### *12.8.2 Open Space Categories for Residential Development*

*In relation to Development Management, there are three categories of open space: public open space, communal open space, and private open space. This is provided or conditioned by way of a grant of planning permission, to serve the needs of the local population, and is categorised in the table below. Permeability may be required for pedestrians and cyclist across open space.*

*Table 12.7 Categories of Open Space for Residential Development*

<i>Open Space Category</i>	<i>Classification</i>
<i>Public Open Space</i>	<i>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</i>

	<i>instances where public open space is not provided a contribution under Section 48 will be required for the short fall.</i>
<i>Communal Open Space</i>	<i>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.</i>
<i>Private Open Space</i>	<i>Private open space normally refers to balconies and/or private gardens, which are the responsibility of, and only accessible to, the individual resident.</i>

*The following will not normally be considered as part of any Open Space provision:*

- *Car/bus parking.*
- *Bin/fuel stores.*
- *Bicycle parking structures.*
- *ESB substations or other service infrastructure.*
- *Underground flood attenuation tanks.*

*All applications for residential schemes (including Built to Rent) should include a clear written schedule and colour coded drawing with public, private and communal open space provision identified. The written schedule shall include the County Development Plan requirements, the proposed provision and full details of any short fall.*

It is set out in Section 12.8.3 Open Space Quantity for Residential Development that the minimum public open space standard is 15% of the site area for sites such as this one (residential development in the existing built up area). This section goes on to state:

*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).

*It is acknowledged that in certain instances it may not be possible to provide the above standards of public open space. High density urban schemes and/or smaller urban infill schemes for example may provide adequate communal open space but no actual public open space. In these instances where the required percentage of public open space is not provided the Council will seek a development contribution under Section 48 of the Planning and Development Act 2000, as amended. The contribution in lieu to be paid for any shortfall in the quantum of public open space to be provided will be used for the provision of improved community and civic infrastructure and/or parks and open spaces, in the vicinity of the proposed development for use of the intended occupiers of same.*

The minimum provision of communal open space is set out in *Table 12.9 Communal Open Space Standards*

<i>Unit Type</i>	<i>Minimum Area per Unit</i>
<i>Studio</i>	<i>4 sqm</i>
<i>One bed</i>	<i>5 sqm</i>
<i>Two bedrooms (3 bed)</i>	<i>6 sqm</i>
<i>Two bedrooms (4 bed)</i>	<i>7 sqm</i>
<i>Three bedrooms</i>	<i>9 sqm</i>
<i>Four +</i>	<i>12 sqm</i>

*In addition to Public Open Space, provided by the Developer, 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 above in accordance with the standards in the ‘Sustainable Urban Housing, Design Standards for New Apartments’ Section 28 Guidelines, (2020). Communal open space may also be provided for houses if the proposal does not meet the full private amenity space standards for private gardens as set out below. 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.*

*Section 12.8.5 Public Open Space – Quality* sets out further guidance on quality, noting that public open space should be accessible, inclusive, secure, and usable. It should be overlooked and designed to ensure that potential for anti-social behaviour is minimised through passive surveillance, being visible and accessible from the maximum number of dwellings within a scheme. Inaccessible, hidden or backlands open space will not be acceptable, nor will narrow linear strips or roof gardens. Fragmented open spaces resulting from the necessity to protect existing site features may not be included in the calculation of open space requirements, as they are necessary to ensure the protection of existing amenities.

*Section 12.8.5.1 Design* sets out that public open space should be designed to meet a range of user needs, both active and passive recreation, and should strive to incorporate universal design. It should provide a sense of security, and be capable of providing opportunities for play.

*Section 12.8.5.3 Communal Open Space – Quality* sets out that such space should be provided as a garden within a courtyard, or adjoining a linear apartment block, with adequate sunlight. It should be visible and accessible from the maximum number of units in the scheme. Inaccessible or narrow strips will not be acceptable. Playgrounds should be carefully sited to be both easily accessible and overlooked, but not cause a nuisance.

## **5.2. Dún Laoghaire Rathdown County Council Development Contribution Scheme 2023-2028**

Article 6 is of relevance to the current appeal.

### **6. Contribution in Lieu of Public Open Space**

*6.1. The Dun 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 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.*

### **5.3. National Policy**

- 5.3.1. *Sustainable Urban Housing: Design Standards for New Apartments Guidelines, 2023*
- 5.3.2. Section 4.10 addresses communal amenity space for apartments, and highlights the importance of well-designed communal amenity spaces for residential amenity, particularly families with young children and less mobile older people. Section 4.13 sets out that the recreational needs of children must be considered as part of communal amenity space, with small play spaces (c. 85-100 sqm) for children up to 6 for schemes that have 25 or more units with 2 or more bedrooms
- 5.3.3. *Sustainable Residential Development and Compact Settlements: Guidelines for Planning Authorities (2024)*
- 5.3.4. These ministerial guidelines on houses were adopted in 2024, replacing the Sustainable Residential Development in Urban Areas Guidelines of 2009 (which are referred to in the Development Plan), with planning authorities required to have regard to the policies and objectives therein and apply the Specific Planning Policy Requirements (SPPRs).
- 5.3.5. *Section 5.3.3 Public Open Space* states that public open space in a residential scheme is distinct from a public park, and provides for active and passive recreation, nature conservation, pedestrian and cycle connections, and a visual break between streets and buildings.
- 5.3.6. *Policy and Objective 5.1 – Public Open Space* – this sets out that save in exceptional circumstances, a development plan shall set out requirements for between 10-15% of net site area to be public open space. This requirement may be set aside in whole or in part, due to site constraints, or to better serve the needs of the population by

providing or upgrading a nearby park, with a financial contribution sought in lieu of on-site provision.

5.3.7. *Development Contributions – Guidelines for Planning Authorities, 2013*

5.3.8. Planning Authorities and An Bord Pleanála are required to have regard to these Section 28 guidelines in the performance of their functions under the Planning Acts. The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Two appeals were received, a first party appeal against condition 12, and a third party appeal against the grant of permission. The third party appeal was subsequently withdrawn, and rates no further consideration. The first party appeal is summarised as follows:

- There is sufficient quantum and quality of public open space delivered on site, and the planning authority has incorrectly applied a condition requiring a special contribution of €225,000.
- Section 6 of the DLR Development Contribution Scheme 2023-28 sets out that where standards for public open space are not met and/or where public open space cannot be facilitated, an additional financial contribution of €7.5 million per hectare shall be calculated on a pro-rata basis for any shortfall. The planning authority has applied a contribution in lieu of 0.03 hectares of public open space, with no basis, as there is no shortfall.
- The planner's report did not make a balanced assessment of the issue. It is acknowledged there was an error in one drawing within Section 3.3 of the Landscape Design Statement, but the figures and areas set out in drawing no 2412-Z-Z-DR-SCA-AR-1018 are correct and comply with the standards set in the plan.

- The site provides a biodiversity exclusion zone of 300sqm, public open space of 618 sqm, and 85 sqm of communal open space.
- The proposed public open space has been designed and located to be publicly accessible and useable; it is generally free from attenuation measures; it is capable of being taken in charge by the council (although it is intended that it be privately managed). As such, it complies with the standards set out in the Development Plan for public open space.
- There is no mechanism within the Contribution Scheme to allow for a contribution in lieu of 50% of open space based on a subjective assessment of the quality of the space as per the planner's report, with no bearing on Development Plan policy. It is not clear where the 50% figure has come from.
- It is an extraordinary sum, challenging the viability of a small infill scheme.
- The Compact Settlement Guidelines 2024 distinguish between public open space and public parks, and the proposed development complies with the description of public open space set out in those Ministerial Guidelines.
- The reason attached to Condition no 12 is perplexing. It is identical to the reason for Condition 8, and makes no reference to the contribution being in lieu of public open space.
- A strikingly similar proposal at St Anne's, Shankill D23A/0806, was deemed to have sufficient public open space in quality and quantity, and no contribution in lieu was applied.

## 6.2. Planning Authority Response

- 6.3. A response dated 9 April 2025 was received from the Planning Authority, referring the Board to the Planner's Report, and giving the opinion that the grounds of appeal do not raise any new matter which would justify a change of attitude.

A further response was elicited, requesting the Planning Authority specifically address the grounds of the first party section 48 appeal, and supply further details on the calculation of the contribution. A response was received 2 May 2025, reiterating the previous response.

## 7.0 Assessment

- 7.1. This appeal was made against conditions set under S.48 of the Act. Under Section 139 of the Act, the Board is confined to consideration of whether the financial contributions were correctly applied.
- 7.2. The condition under appeal is condition 12, which imposed a contribution of €225,000, predicated on a shortfall of 0.03 hectares (300 sqm) of public open space, stated in the planner's report as 50% of the required area of public open space. The appellant contests that this figure is not based on any rational calculation or development plan standard, and that public open space has been provided on site to the required standard.
- 7.3. The Development Plan requirement (which is in accordance with the recent Compact Settlement Guidelines) is for 15% of the site area to be provided as public open space. The site measures .43 hectares, but the bat survey undertaken (provided as appendix 1 to the submitted Ecological Impact Assessment) found prolonged foraging activity of common pipistrelle bats at the north boundary, and as a result the applicant has designated a 2- to 5-metre wide strip at the north end of the site as a biodiversity exclusion zone, with no lighting, structures, roads, parking etc, to be provided there. This strip measures a stated area of 299.51 sqm. As such the developable area of the site is .40 hectares, or 4000 sqm, and I consider it reasonable to calculate the public open space as 15% of that figure, or 600 sqm, as both the applicant and the planning authority have done. I note the report of the Parks and Landscape Services considered the requirement to be 645 sqm (calculated as 15% of 0.43 hectares). However, it is reasonable to base the figure for public open space on the smaller, developable, area.
- 7.4. The requirement for communal open space is 76 sqm, and this is not disputed by either party.
- 7.5. The proposed development has two blocks running north-south, (one a terrace of houses, one of duplexes) with private open space to the rear of each unit, which has been provided to meet or exceed the standards set out in the Compact Settlement Guidelines.

- 7.6. A landscape design statement has been submitted with the application. This notes that the biodiversity zone contains SuDS measures, takes on a wilder treatment with dense planting, and is not designed to be easily accessible. The accessible open spaces are in the centre of the site, with seating, planting (specimen trees, underplanting, and shrubs) and a formal play area with equipment for small children, and at the south of the site, with some existing mature trees retained, linear nature play elements, and lawn spaces with seating.
- 7.7. The Development Plan sets out a number of standards for public open space and communal open space. I consider the area to the south to comply with the standards for public open space; it is located with a pedestrian access directly off the public road, making it publicly accessible by all; it is free from attenuation measures; and capable of being taken in charge. Additionally, it complies with the standards set out in Section 12.8.5 – it is accessible, inclusive, secure and usable. It is not a narrow linear strip or a roof garden. This area, including the area with the retained trees, measures some 460 sqm – I note the planner's report estimated the area at 478 sqm, but I have excluded the boundary wall and the bicycle parking area.
- 7.8. I note the applicant excluded part of this area from their proposed Public Open Space. This is evident in the drawing submitted with the appeal, which shows the area put forward as public open space in a green hatching. The green hatching does not extend to the front boundary, excluding the area between the trees and the proposed new boundary fence. I did not find any rationale in the documentation for the exclusion of this area. I have consulted the arborist report (which proposes the removal of the existing shrubbery in this area) and the landscape plan, landscape section, and planting plan, which propose the planting of mixed bulbs, grasses, and perennial flowers in this area, with small shrubs along the boundary. I consider that the whole of this area, including the retained trees and the area underneath them, complies with the standards set for public open space in the Development Plan. While the more thickly planted areas provide less opportunity for sitting out and for playing, they make a valuable contribution to the amenity and quality of the open space as a whole. I note that both the Parks and Landscape Services report and the planner's report included this area in their calculations of public open space.
- 7.9. Regarding the area in the centre of the site, the applicant sets out that 85 sqm (hatched orange on the plan) constitutes communal open space and the balance

comprises public open space. The area put forward as public open space is fragmented, and includes the grasscrete truck turning area (57 sqm) north of the communal open space, two tree pits to the west of the communal open space, and a narrow irregularly shaped strip (157 sqm), to the east and south of the communal open space, measuring 42 metres in length. The landscape plan and the CGI image (View 7 proposed) show no physical distinction between the communal open space and the public open space, and the tree pits functionally form part of the communal open space area, which is at the wider end of the wedge-shaped area. I do not consider the inclusion of the truck turning area as public open space to be appropriate, due to the fragmented and functional nature of this area. The landscape plan and the CGI image (View 7 proposed) show an attractive planting plan for this central area. However, when the communal open space is discounted, the area proposed for public open space is a narrow linear strip, dominated by its function as a footway and pedestrian route. As a narrow linear strip (albeit an attractive well-landscaped one) it does not comply with the standards set out in Section 12.8.5 of the Development Plan for public open space. I note the Development Plan also precludes the use of narrow strips for communal open space, to ensure the useability of amenity spaces.

- 7.10. As such, I consider the provision of public open space to be 460 sqm of the required 600 sqm, with a shortfall of 140 sqm, and I consider the planning authority incorrectly applied the terms of the Development Contribution Scheme.

## **8.0 Recommendation**

I recommend that condition 12 be amended for the following reasons and considerations below:

## **9.0 Reasons and Considerations**

Having regard to the quality and character of the area of open space to the front of the site which measures 460 sqm, with lawns, playground equipment, mature trees to be retained, and a planting scheme to be implemented, I consider that this area corresponds with the standards for Public Open Space as set out in the Development Plan, with a shortfall of 140 sqm requiring a Development Contribution



in lieu. Having regard to the area in the centre of the site (in proximity to the area designated as communal open space) which the applicant proposed as public open space, this is a narrow linear strip which does not comply with the standards set out in 12.8.5 of the Development Plan for public open space.

## 10.0 Amended Condition no 12

The developer shall pay to the planning authority a financial contribution of €105,000 (one hundred and five thousand euro) as a contribution in lieu of public open space. This contribution shall be paid prior to commencement of development 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.

Public open space required: 15% of 0.4 hectares = 600 sqm (0.06 hectares)

Public open space provided: 460 sqm (0.046 hectares)

Shortfall of 140 sqm (0.014 hectares) @ €7,500,000 per hectare.

Reason: to comply with Section 6.1 and Section 6.2 of the Dun Laoghaire-Rathdown Development Contribution Scheme, made under Section 48 of the Planning and Development Act 2000, as amended, and to comply with Sections 9.3 *Open Space and Recreation*, 12.8.3 *Open Space Quantity for Residential Development*, and 12.8.5 *Public Open Space Quality* of the *Laoghaire-Rathdown County Development Plan 2022 – 2028*.

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.

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Natalie de Róiste  
Planning Inspector

26 June 2025