



An
Coimisiún
Pleanála

Inspector's Report ABP-322747-25

Development

Housing development of 83 houses, childcare facility, and all associated site works.

A Natura Impact Statement (NIS) was submitted with the application

Location

Lands in the Townland of Kinsealey including part of the grounds of Lamorlaye, Back Road, Malahide, Co.Dublin

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

F24A/1010E

Applicant(s)

CE Cladewell Estates Limited

Type of Application

Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal

First Party v. Financial Contribution

Appellant(s)

CE Cladewell Estates Limited

Observer(s)

None

Date of Site Inspection

14 August 2025

Inspector

Cáit Ryan

1.0 Site Location and Description

- 1.1. The site is located on Back Road, Malahide, north of Dublin City. The extensive Malahide Castle and Demesne is located on the opposite (northern) side of Back Road. Back Road connects to Dublin Road (R107) approx. 230m north west of the subject site. To north east of the site, Back Road connects to Kinsealy Lane¹ approx. 280m and to The Hill (R124 from Portmarnock) approx. 1.4km.
- 1.2. The stated site area of this irregular shaped site is 3.14ha, and does not include the roughly rectangular-shaped area within northern part of the site, which contains the large existing dwelling house 'Lamorlaye'. The eastern part of the site comprises a field. The site's red line boundary on its Back Road frontage extends eastward to include the roadside frontage of lands to the east, as far as the junction with Kinsealy Lane, at which point the site then turns southwards along the roadside boundary as far as the Oak Park residential scheme.
- 1.3. The site is bounded to west and south west by a cul-de-sac road, which provides access to detached dwelling houses on large sites, and is bounded to east by the vehicular entrance to guesthouse accommodation and accommodation pods.
- 1.4. There are three entrances to Malahide Demesne from Back Road. These are located approx. 280m at the Back Road/R107 junction to the west, and two entrances to the north east on Back Road are approx. 550m and 1150m from the subject site (from the approximate proposed vehicular entrance).

2.0 Proposed Development

- 2.1. The proposed development comprises
 - 83no. houses
 - 2-storey childcare facility and associated outdoor play space (c. 88sqm)
 - primary vehicular, cyclist and pedestrian access serving the development is via a new entrance off Back Road, which will also serve as the modified

¹ On site visit I noted that the name of the lane is signposted as Kinsaley Lane. However, give that this lane is Kinsealy Lane in the description of development, and is annotated as such on www.tailte.ie mapping, for the purposes of this report this road is described as Kinsealy Lane.

access to the existing house at Lamorlaye;

- a secondary pedestrian and cyclist only access to the scheme and pedestrian entrances to 5no. houses are also provided off Back Road;
- 180no. total car parking spaces, including 2no. creche car parking spaces
- all ancillary site development and landscape works, including public open space (c. 2,637sqm)
- 1no. ESB substation;
- demolition of out buildings/stables in the grounds of Lamorlaye;
- provision of temporary foul sewage pumping station; laying a foul rising main along Back Road from the proposed new access to the development eastward to Kinsealy Lane and 198m southwards along Kinsealy Lane;
- all on a site of approximately 3.14Ha.

2.2. The entire site area outlined in red includes a narrow strip of land along the Back Road roadside frontage to the east of the main residential part of the site, extending approx. 330m to the junction with Kinsealy Lane, before continuing 198m south on Kinsealy Lane as far as the Oak Park housing development.

2.3. A number of matters were clarified or minor modifications to the scheme were made pursuant to a Further Information (FI) request. No changes were made to the proposed number of houses, which remained at 83no. An Appropriate Assessment (AA) Screening and Natura Impact Statement (NIS) were submitted. Significant Further Information was advertised.

3.0 Planning Authority Decision

3.1. Decision

Following a Further Information request, the planning authority made a decision to grant permission subject to 24no. conditions. The following conditions are of relevance to this appeal:

Condition 1: Development to be in accordance with plans and particulars lodged with the application and significant additional information received on 20 March 2025

Condition 2: Permission relates to 83no. houses and 1no. childcare facility.

Condition 23: Prior to Commencement of development a financial contribution in the sum of €269,962.63 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 4600 sqm of open space.

REASON: The provision of such services in the area by the Council will facilitate the proposed development. It is considered reasonable that the developer should contribute towards the cost of providing the services.

Condition 24: Prior to commencement of development the developer shall pay the sum of €1,456, 267.41 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefitting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.

- 3.2. In terms of detail, I have viewed the planning authority's online planning search for F24A/1010E (ABP-322747-25), and note that it contains Chief Executive's Order for Final Grant of Planning Permission, dated 15 July 2025. The CE's Order notes that under Section 48(13)(b) of the Planning and Development Acts 2000 (as amended) that the final grant may be issued provided the applicant furnishes security for payment of the full amount of the contribution required.

3.3. **Planning Authority Reports**

- 3.3.1. Planning Reports (16 January 2025 and undated)

Basis for planning authority's decision:

First report:

- Considers net density of c.32uph would be slightly below recommended density ranges in Sustainable Residential Development and Compact Settlement Guidelines.
- Density calculation is not clear.
- Notes internal reports, including that Parks and Green Infrastructure Section report states contribution in lieu of public open space is required and seeks FI relating to location of play area and temporary pumping station and clarity regarding tree removal or retention.
- Considers Appropriate Assessment (AA) required.
- Recommendation for FI on 11no. Items reflects Planner's report.

Second report:

- States FI submission adequately clarifies apparent discrepancy in calculating density and c.32uph net density as originally stated is confirmed.
- Notes Parks report requests a revised playground layout, other amendments to boundary treatment and contribution in lieu of public open space shortfall.
- Notes response to requested de-culverting of portion of Hazelbrook Stream indicates it is under or alongside public road and outside applicant's control.
- Considers that having regard to the NIS, details of the proposed development and associated documentation, the project, with the implementation of the mitigation measures, either alone or in combination with other plans or projects, will not have a significant adverse impact on the any European site.
- Recommendation to grant subject to conditions reflects Planner's report.

3.3.2. Other Technical Reports

Parks and Landscape (23 December 2024 and 25 April 2025): First report recommends FI. Second report states no object subject to conditions.

Water Services Department (16 December 2024 and 24 March 2025): First report states no objection relating to flood risk, and recommends FI relating to surface

water. Second report states no objection subject to condition.

Transportation Department (11 December 2024 and 8 May 2025): First report recommends FI. Second report states no objection subject to condition.

Environment (19 December 2024): Report recommends FI.

Housing Department (29 November 2024): No objection subject to condition.

Conservation (9 December 2024): Amendments to landscaping and layout required.

3.4. Prescribed Bodies

Inland Fisheries Ireland in a letter dated 22 November 2024 states the Hazelbrook Stream located in the development site is a tributary of the Sluice River. The Sluice River is a locally important salmonid system which supports a resident population of Brown trout (*Salmo trutta*), Eel and lamprey species. IFI request that temporary surface water drainage measures be in place before construction in order to protect local watercourses. It states all works will be completed in line with a site specific Construction Management Plan (CMP) which ensures good construction practices throughout the works period and contains mitigation measures. If permission is granted a condition is suggested requiring annual maintenance contract be entered into in respect of efficient operation of stormwater drainage network. Online monitoring and telemetry must provide failsafe mechanisms on the proposed pumping station discharges. Removal of the culverted section of the Hazelbrook stream is requested. Cites Development Plan Objective DMSO158 – Protection of Rivers and Streams, Objective DMSO211 – De-Culverting to Restore Watercourses and Objective IUO27 – De-culverting of Watercourses.

Uisce Éireann in a letter dated 5 December 2024 states no objection in principle. The applicant has engaged with UÉ via a Pre-Connection Enquiry (CDS24007658), and has agreed in principle to pump foul water from the subject site to gravity sewer on Kinsealy Lane which drains to Connolly Avenue Pumping Station. Connolly Avenue has capacity constraints. UÉ is currently developing proposals for a pumping station at Castleway Foul Water Overflow site, scheduled to be operational by Q1 2029, which will facilitate removal of Connolly Avenue pumping station. Statement of design acceptance required ahead of works commencing and of any connection

application for water/wastewater services. 4no. standard UÉ conditions are set out.

Dublin Airport Authority (daa) in a letter dated 28 November 2024 cites Development Plan Objective DAO11 which seeks to control provision of new residential development and other noise sensitive uses within Zones A, B, C and where appropriate Zone D. It requests that in event of a grant, a condition is attached requiring noise sensitive uses to be provided with noise insulation to an appropriate standard, having regard to site location within Noise Zone C of Dublin Airport.

3.5. Observations to the Planning Authority

- 3.5.1. One observation was received on the Significant Further Information. The issues raised may be summarised as the proposed foul rising main would seem to require property acquisition and loss of private garden space, disruption during construction, excessive traffic, reduction of natural light and views impacted.

4.0 Planning History

Relevant planning history is outlined as follows:

P.A. Ref. SHD/004/21 (ABP-313265-22): Permission refused for 100no. residential units, creche and temporary pumping station on a 2.83ha site. Refusal reasons are (1) public open space areas are of poor quality and do not conform to standards in Table 12.5, Objectives DMS66, DMS67 and DMS74 of Fingal Development Plan 2017-2023 and (2) public realm is dominated by car parking and would be contrary to Sustainable Residential Development in Urban Areas and Design Manual for Urban Roads and Streets (DMURS).

P.A. Ref. F06A/1884: Outline permission granted for 10no. houses, and permission consequent granted under **P.A. Ref. F10/0120**.

5.0 Policy Context

5.1. Fingal Development Plan 2023-2029

Chapter 13: Land Use Zoning

The site is zoned RS Residential in the Fingal Development Plan 2023-2029, provide for residential development and protect and improve residential amenity.

‘Residential’ and ‘Childcare Facilities’ are Permitted in Principle.

Chapter 14: Development Management Standards

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

(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).

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.

Table 14.11: Public Open Space and Play Space Hierarchy and Accessibility Standards outlines the standards allow the provision of a wide variety of accessible public open spaces, and a mix of public open space types should be provided where achievable for all developments with a residential component.

Objective DMSO57 – Development Contribution Schemes Require the monetary value in lieu of open spaces to be in line with the Fingal County Council Development Contribution Scheme.

Chapter 4: Community Infrastructure and Open Space

For completeness, I note

- Table 14.12 (Chapter 14) duplicates Table 4.3 (Chapter 4).
- **Objective DMSO51 – Minimum Public Open Space Provision** (Chapter 14) duplicates **Objective CISO38 – Public Open Space Provision** (Chapter 4).

5.2. Fingal County Council Development Contribution Scheme 2021-2025

5.2.1. The Development Contribution Scheme (DCS) refers to the basis for determination of contributions, 3no. categories/classes of development, unit of measurement and the associated rates of charge.

5.2.2. The Fingal County Development Contribution Scheme 2021-2025 sets out under Level of Contributions –

- Note 1: Effective Date that these rates of contribution shall be effective from 1st January 2021 to 31st December 2025.
- Note 2: Indexation outlines that indexation in accordance with Tender Price Index will apply annually from 1st January 2022, and that having regard to economic or other circumstances it may be decided not to apply indexation for

a particular year(s), subject to Council approval.

5.2.3. In terms of open space shortfall, the following is stated:

Note 5: Open Space Shortfall

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

1. Class 1 Open Space - €100,000 per acre to purchase land based on the value of amenity land, Plus €100,000 per acre for development costs.

2. Class II Open Space - €250,000 per acre to purchase land in residential areas, Plus €100,000 per acre for development costs.

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

²Appendix 11 – Project Lists outlines the range of Transportation, Community & Parks and Surface Water (incl. Flood Relief) projects. It is outlined that the project list is indicative only, priorities may change, and other projects may be added and funded as they arise over the course of the Scheme.

Malahide Demesne Development Works (No. 34) is listed under Community & Parks (No. 13) Upgrading of Existing Regional Parks including Malahide and (No.15) Upgrading of Existing Recreational Hubs & Sports Facilities including Malahide.

5.3. Development Contributions – Guidelines for Planning Authorities, 2013

Planning Authorities and An Coimisiún Pleanála³ 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.

² Appendix 2 would appear to be 'Appendix 11'.

³ These Guidelines and other guidelines referenced in this report refer to An Bord Pleanála or the Board. For consistency, I have used the term An Coimisiún Pleanála or the Commission in this report, including with reference to submissions received in relation to this appeal.

5.4. Development Management – Guidelines for Planning Authorities, 2007

These guidelines are intended to promote best practice at every stage in the development management process. Whilst the guidelines' primary focus is on process, the underlying objective of that process is to contribute towards a sustainable and high quality environment. It is outlined (at Section 8.11) that in appeals relating to section 48/section 49 financial contributions conditions only, the Commission is restricted to consideration of the matters under appeal.

5.5. Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities, 2024

Sustainable Residential Development and Compact Settlements Guidelines were introduced by the Department of Housing, Local Government and Heritage in 2024, and replace Sustainable Residential Development in Urban Areas Guidelines 2009. These are Ministerial Guidelines under Section 28 of the Planning and Development Act 2000 (as amended), such that planning authorities and An Coimisiún Pleanála shall have regard to Ministerial Guidelines and shall apply any specific planning policy requirements (SPPRs) of the Guidelines.

The Guidelines include Policy and Objective 5.1 - Public Open Space which requires development plans to include objective(s) relating to public open space in new residential developments, whereby such provision shall be not less than minimum 10% of net site area and not more than minimum 15% of net site area save in exceptional circumstances. Different minimum requirements (within the 10-15% range) may be set for different areas.

5.6. Natural Heritage Designations

The site is not located within or adjacent to any European sites.

5.7. EIA Screening

This case is a first party appeal against a development contribution condition. This

does not come within the definition of a 'project' for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. Refer to Form 1 in Appendix 1 of report.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged against Condition 23 of the planning authority's decision to grant permission. The grounds of appeal may be summarised as follows:

- Stated shortfall of 4600sqm of open space is incorrect. Levy for contribution in lieu of open space is excessive having regard to locational context
- Applicant is not disputing application of Section 48 contribution condition, rather that terms of the contribution scheme have not been properly applied.
- Appeal is being made under Section 48 of the Planning and Development Act 2000, as amended, and it is submitted that it cannot be considered *de novo*.

Planning authority assessment:

- Inconsistencies between stated public open space requirements at application and FI stage. Parks and Green Infrastructure reports
 - dated 23 December 2024 - states required amount of on-site open space is 15% of the site's net size, equating to 4,710sqm, and the 10m ecological buffer zone is environmental open space and does not qualify as public open space. Public open space shortfall for 83 houses is 4,625sqm, required to be made up by financial contribution in lieu. Contribution will be applied towards continued provision and upgrade of local class 1 open space facilities in Malahide area namely Malahide Castle and Gardens.
 - dated 25 April 2025 - requires a minimum public open space provision of 2.5ha per 1000 population, and financial contribution in lieu of 0.46ha shortfall in public open space provision to be used in upgrading existing recreational facilities in Malahide Demesne.

- Fingal DCS Appendix 11–Projects identifies Malahide Demesne Development Works (Community & Parks, No.34) funded by the section 48 DCS. A separate Section 48 financial contribution is attached under Condition 24.

Fingal County Development Plan 2023 – 2029

- Provisions of Table 14.12 result in 7,262.5sqm or c. 25.6% of site (2.83ha) public open space requirement, based on 290.5 population. If this calculation was applied to 2.55ha net site area, that would mean 28.5% public open space requirement. Net site area is based on FI Drg. No. PL-RFI-06 entitled Site Net Density – Site Plan.
- Site is part greenfield, part brownfield. Part of site forms grounds of a private house. Significant difference in a 12-15% requirement and one that exceeds 25%. Appropriate level of public open space provision overall must be 12-15%. This has been subsequently confirmed by Compact Settlement Guidelines. On basis of 12-15% site area, this would result in 0.34ha – 0.42ha requirement, markedly different to 0.726ha required by population calculation.
- Recent determinations in Fingal considered open space requirement having regard to appropriate percentage of site area; ABP-320701-24 and ABP-318393-23 refer.
- Proposed public open space is 4,611sqm less than open space calculation based on overall standard in Development Plan. Overall standard in Table 14.12 equates to 25% of site area, significantly higher than ‘new residential development on greenfield sites’.
- New residential development on greenfield lands/LAP lands
 - 12% of site area is 3,396sqm
 - 15% of site area is 4,245sq
 - Proposed development 2,651sqm public open space, only 745sqm less than min. 12% and 1,549sqm less than 15% requirement.
 - Acknowledges that the Council has discretion to accept a financial contribution in lieu of any public open space shortfall and cites Objective DMSO53. The nature of this financial contribution under

Condition 23 is provided for by the 2021-2025 DCS.

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

- Fingal Development Plan 2023-2039 predates the Guidelines. P.A. failed to have regard to Policy and Objective 5.1 – Public Open Space.
- FI response confirms the net site area for density purposes is 2.55ha.
 - 10% would equate to 2,550sqm
 - 15% would equate to 3,825sqm
- 2no. areas (A) 1,136sqm and (B) 1,515sqm, amounting to 2,651sqm equates to approx. 10.4% of net site area, consistent with the Guidelines.
- FI drawing Site Net Density – Site Plan shows approx. 2,805sqm excluded from net site area for density purposes as this is a riparian corridor.
- Policy and Objective 5.1 notes that not more than 15% of net site area should be provided as public open space. P.A. are seeking 25% of site area, or 28% of net site area as public open space, significantly in excess of the maximum. Malahide Castle Demesne, one of the largest public parks in the County, was not taken into account. It is within a 5 minute walk. Given the discretionary nature of this levy this is considered a material consideration.
- Based on FI drawing Site Net Density – Site Plan, the public open space (2,651sqm) and riparian corridor (2,805sqm) amount to 5,366sqm, or approx. 19% of site area. It is not argued that riparian corridor is public open space, rather that future residents will benefit by enhanced amenity of this corridor being reserved. Riparian corridor will be read as part of overall open space.

Existing public open space

- Malahide Castle Demesne has over 260 acres of parkland and provides formal recreational, sporting and cultural amenities and facilities, a number of which are listed in the submission, and a number of cafés. It is a 350m (5 minute walk) to Malahide Castle entrance at Back Road/R107 junction, and 500m (7 minute walk) to north east along Back Road.
- Future residents will directly benefit from extremely close proximity to the

park. Given proximity to and size of Malahide Castle and Gardens, it would be entirely reasonable the Commission conclude that in all practical terms there is no shortfall of public open space and rate of contribution should be zero.

Application of Section 48 Contribution

- Condition 23 does not specifically state that the financial contribution is being applied under Section 48.
- Cites Development Plan Objective DMSO53 and DCS Note 5 Open Space Shortfall. Both provide discretion to the P.A to determine financial contribution in lieu of all or part of the public open space requirement. The proposed development delivers the minimum Objective 5.1 of Compact Settlement Guidelines. Therefore the Commission has discretion to apply levy at zero.
- Should the Commission determine to apply the levy at its discretion, this should only be applied at 12% or 15% minimum public open space requirement. Compact Settlement Guidelines requirements pertain to net site area, whereas Development Plan refers to site area.
- Acknowledges public open space provided is below Development Plan requirements.
- Development Plan requires a target minimum of between 12%-15% public open space at new residential of greenfield sites (Table 12.14)*. In the event the Commission does not accept that a zero contribution is applicable, applicant submits that the correct financial contribution in lieu of public open space should be calculated with regard to site area (gross) and site area (net). The various calculation options are outlined, arriving at –
 - 10% shortfall: gross site area - €12,550; net site area- €0
 - 12% shortfall: gross site area - €34,000; net site area: €26,050
 - 15% shortfall: gross site area – €95,000; net site area: €71,250.00

*This would appear to be an erroneous reference to Table 14.12.

6.2. Planning Authority Response

The P.A.'s response to the grounds of appeal may be summarised as follows:

- Planning authority has an established strategy relating to quantity, quality and accessibility of public open space, set out in Development Plan Section 4.5.2.1 and Table 14.11 Public Open Space and Play Space Hierarchy and Accessibility Standards and Objective DMSO51, and Fingal's 'Keeping it Green – An Open Space Strategy for Fingal'. It is integral to planned provision of public open space through Development Management and by the Council.
- Minimum standard in accordance with Objective DMSO51 is 2.5ha per 1,000 population which relates to Class 1 and Class 2 Public Open Space. This caters for active recreational and local residential open space requirements and needs of new residential developments.
- Section 5.3.3 of Compact Settlement Guidelines states minimum requirement should be justified taking into account existing public open space provision in the area and broader nature conservation and environmental considerations.
- Applicant's proposal of 2,651sqm equates to 10.27% which is the minimum requirement. Parks & Green Infrastructure Division will accept this due to 2,850sqm biodiversity area not being included in open space calculation and the Compact Settlement Guidelines stating that 'while there is no set standards of open space provision per settlement in Ireland, it is recommended that opportunities to enhance the overall quantum of public open space and to restore and enhance nature and biodiversity within settlements is harnessed where opportunities arise'.
- Cites Development Plan Objective DMSO51 – Minimum Public Open Space Provision. Use of same to conduct a public open space quantum is justified.
- Public Open Space shortfall: Based on the Objective DMSO51 calculation, the applicant is required to provide 0.73ha (7,300sqm). 0.265ha (2,651sqm) has been provided which results in 0.46ha (4,649sqm) shortfall.
- Any shortfall based on Objective DMSO51 may be dealt with by condition, as financial contribution in lieu of public open space in accordance with Section 48 of DCS. This ensures that Class 1 Public Open Space requirement for new population generated is catered for in terms of public infrastructure for active recreation in Local Parks, Neighbourhood Parks and Regional Parks

- This financial contribution allows for acquisition of additional open space or upgrade of existing parks and open spaces subject to these additional facilities meeting standards specified in Table 14.11. Where the Council accepts financial contributions in lieu of open space, the contribution is calculated on the basis of 25% Class 2 and 75% Class 1 in addition to open space development costs. In this case that is 0.35ha of Class 1 Open Space and 0.12ha of Class 2 Open Space.

In relation to the subject site the figures are as follows:

	Units Total	Bedspaces Total	
3+ Bedroom Units	83	290.5	
1 and 2 Bedroom Units		0	
Unit Total	83		
Bedspace Total		290.5	
Open space requirement is 2.5 hectares per 1000 people			
The requirement for this application is		0.73	hectares
Overall site area is	2.58	hectares	
Contribution Calculations			
Overall Open Space requirement (hectares)	0.73		
Provided on site (hectares)	0.26511	Class 1	Class 2
Remainder to be levied for contribution (hectares)	0.46	0.35	0.12
Playground requirement (4sq metres per unit)	322	Square Meters	

- Parks & Green Infrastructure Division acknowledges that the feasibility of providing the required quantum of public open space onsite is not practical.
- The requested €269,962.63 financial contribution will go towards upgrading and enhancement of Class 1 and Class 2 parks and public open spaces in the Malahide area which include Malahide Demesne, Castle and Gardens.
- P.A. requests that Condition 23 remains unchanged.

6.3. **Observations**

None

6.4. **Further Responses**

A first party response was received on 28 July 2025 to the P.A.'s response to the grounds of appeal. Matters raised in the response may be summarised as follows:

- Planning authority has reaffirmed its position in attaching Condition 23.
- No new information has been introduced, nor has the P.A. addressed or disputed the arguments in the first party appeal.
- Applicant has no further comment on the P.A.'s submission and request the Commission give due consideration to grounds outlined in the first party appeal.

7.0 **Assessment**

7.1. This first party appeal has been brought to An Coimisiún Pleanála under the provisions of Section 48(10) of the Planning and Development Act 2000 (as amended) being an appeal against a development contribution. Section 48(10)(b) of the Act makes provision for an appeal to be brought to the Commission 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 Commission.

7.2. In appeals relating to section 48/section 49 financial contributions conditions only,

the Commission is restricted to consideration of the matters under appeal, as outlined in Development Management Guidelines; Section 8.11 refers.

7.3. I consider the issues can be addressed under the following heading:

- Condition 23

7.4. **Condition 23**

7.4.1. The appellant contends that there is no shortfall of public open space in this case and that the rate of contribution should be zero (€0.00), i.e., to omit Condition 23. In the event the Commission does not accept that a zero levy is applicable, the appellant considers that the correct financial contribution should be calculated with reference to the 3no. different shortfall scenarios, and which result in differing contributions based on either gross or net site areas, i.e., to amend Condition 23.

7.4.2. I consider that the key issues in the assessment of Condition 23 are

- Applicability of Fingal County Development Contribution Scheme 2021-2025
- The quantum of public open space to be provided and whether this complies with the Development Plan and/or with the Compact Settlement Guidelines

Applicability of Fingal County Development Contribution Scheme 2021-2025

7.4.3. The Fingal County Development Contribution Scheme 2021-2025 sets out under Level of Contributions, at Note 1: Effective Date that the stated rates of contribution shall be effective from 1st January 2021 to 31st December 2025. Note 2 relates to indexation. Accordingly, I am satisfied that this DCS is currently operative and is the basis on which development contributions are to be applied, where relevant.

Quantum of Public Open Space

Gross and Net Site Areas:

7.4.4. The proposed development comprises 83no. houses and a creche on an overall site area of 3.14ha, as stated in the public notices and in the lodged application form. As outlined under Section 2.0, the entire site area outlined in red includes a narrow strip of land along the Back Road roadside frontage to the east of the main residential part of the site, and continuing south along Kinsealy Lane as far as Oak Park.

7.4.5. In response to FI Item 1 (relating to density calculation, taking account of guidance in

Appendix B of the Sustainable Residential Development and Compact Settlement Guidelines), the gross site area or area within the entirety of the red line boundary is stated to amount to 31,473 sqm. This gross site is also stated in the FI Summary of Accommodation to comprise 3.14ha. The following four areas have been deducted from the gross site area in calculating the net site area:

- Major road/streets: Area along Back Road/Kinsealy Lane that encompasses the foul drainage connection – 2275.8sqm
- Other areas of land that cannot be developed due to environmental sensitivities: Area of riparian corridor – 2810sqm
- Other areas of land subject to flooding: Balance of Flood Zone area – 262.7sqm
- Right of way/land that cannot be developed: Cycle reservation area - 537sqm

It is stated that this amounts to a net site area of 25,587.5sqm (c. 2.58ha). However, I note that there would appear to be a minor discrepancy, whereby 25,587.5sqm would equate to approx. 2.55ha, in contrast to the 2.58ha stated.

7.4.6. In contrast to the 3.14ha gross site area stated in the FI response, the appeal submission states the gross site area comprises 2.83ha. However, the basis for this calculation does not appear to be set out. In this regard I note that the omission of, for example, the 2,810sqm riparian corridor from the overall 31,473sqm site area would result in 28,397sqm (2.83ha). However, the grounds of appeal clarify (at Section 4.3.2) that the first party is not seeking to argue that the riparian corridor is public open space, rather that future residents will benefit directly from enhanced amenity afforded by same.

7.4.7. As a separate example, the omission of Back Road/Kinsealy Lane frontage (2,275.8sqm) and balance of flood zone (262.7sqm) from 31,473sqm would result in a very similar 28,400sqm (2.84ha) area.

7.4.8. In terms of detail, I note for comparison that a recent SHD planning application refused on a slightly smaller site at 'Lamorlaye' comprised 2.83ha; P.A. Ref. SHD/004/21 (ABP-313265-22) refers. However, as outlined above, on the basis of the information on file, I do not consider that the calculation of the 2.83ha gross site area has been adequately set out.

7.4.9. I would agree with the information on file that the 4no. areas of the proposed

development (roads, riparian corridor, flood zone and cycle reservation areas) can reasonably be excluded from the 3.14ha gross site area in order to calculate the net site area. I consider that this would be consistent with the approach outlined at Table 1; Appendix B: Measuring Residential Density of the Compact Settlement Guidelines. I note that Table 1 of the Guidelines states that Net Site Area includes all areas of incidental open space and landscaping. However, as Table 1 excludes other areas of land that cannot be developed due to environmental sensitivities and topographical constraints, I consider it reasonable that the riparian corridor is excluded in the calculation of net site area, and is also excluded from the calculation of quantifying public open space provided on site.

- 7.4.10. Accordingly, for the purposes of this assessment of the public open space requirements for the proposed development, I consider that the gross site area is 3.14ha, and the net site area is 2.55ha. These matters are further discussed below.

Development Plan – compliance with public open space standards

- 7.4.11. The planning authority's appeal submission indicates that the financial contribution in lieu of public open space is based on an overall 2.58ha site area. This site area is slightly above the 2.55ha net site area referenced by the applicant. In this regard I note in particular that the planning authority's assessment would appear to be largely based on a net site area (albeit slightly above the 2.55ha net site area calculated by the applicant), as distinct from 3.14ha gross site area outlined in the lodged application and confirmed in the FI response, and also differs from the 2.83ha gross site area outlined in the first party appeal.
- 7.4.12. The Development Plan public open space quantitative requirements are set out at Section 5.0 of this report.
- 7.4.13. With regard to Table 14.12: Recommended Quantitative Standards (Sustainable Residential Developments in Urban Areas, Guidelines for Planning Authorities 2009), I note that the Development Plan clearly relates these standards to the aforementioned guidelines. I draw to the Commission's attention that the Sustainable Residential Development in Urban Areas Guidelines, 2009 ('the 2009 Guidelines') were replaced by Sustainable Residential Development and Compact Settlement Guidelines, 2024 (the 'Compact Settlement Guidelines'). Accordingly, while the 2009 Guidelines are no longer in place, Table 14.12 forms part of the operative

Development Plan.

- 7.4.14. Table 14.12 includes *inter alia* a public open space standard of 2.5ha per 1000 population. The Development Plan does not appear to expressly state whether this standard is to be applied to a gross or net site area. Given that the planning authority has used a baseline 'overall site area' figure of 2.58ha, marginally above the 2.55ha net site area (calculated by the applicant), in its calculation of this public open space requirement, this would therefore suggest that the 3.14ha gross site area is not the relevant 'baseline' figure.
- 7.4.15. The planning authority calculates that the overall open space requirement is 0.73ha. Public open space of 0.265ha is provided on site, 0.46ha is to be levied for contribution, and there is a 332sqm playground requirement (4sqm per unit).
- 7.4.16. Having regard to Development Plan content relating to public open space provision for new residential developments, and to all information on file including internal reports and submissions made in relation to this appeal, I consider that the net site area should be used as the baseline for the assessment of public open space requirements in this development. However, for completeness, I also comment further below on the application of this standard to the gross site area.
- 7.4.17. In applying the 2.5ha per 1000 population standard to a 2.55ha net site area, the 290.5 bedspaces would result in a public open space requirement for 7,262sqm ($25\text{sqm} \times 290.5$) $\cong$ 0.73ha. This quantum of open space would equate to 28.6% of the 2.55ha net site area. I consider that a requirement to provide 28.6% of the net site area as public open space to be very substantial, such that it would not be easily provided on site.
- 7.4.18. For comparison, the 0.73ha public open space requirement would comprise 23.2% of the 3.14ha gross site area. While the 3.14ha is not used as a baseline figure by the planning authority as discussed above, for comparison I consider that this lower 23.2% figure would also be a substantial proportion of the gross site area.
- 7.4.19. Accordingly, while I note the 'overall standard' set out at Table 14.12, I consider it relevant to highlight that the Development Plan also states (directly following this table) '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'.

7.4.20. For completeness, I note that this matter is further stated in **Objective DMSO53 – Financial Contribution in Lieu of Public Open Space** which *inter alia* requires ‘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.....’ Accordingly, I consider that the proposed quantum of public open space in this case can be further assessed with reference to Table 14.12 and Objective DMSO53. Table 14.12 requires -

- ‘New residential development on greenfield sites/LAP lands’ to provide 12% to 15% of site area as public open space.
- ‘New residential development on infill/ brownfield sites’ to provide 12% of site area as public open space.

7.4.21. The subject site comprises a dwelling house, outbuildings/stables and associated grounds. The eastern part of the site comprises a field. Outbuildings/stables are proposed to be demolished as part of the proposed development. I am of the view that the subject site can be considered part greenfield/part brownfield. Having regard to the existing nature of the subject site and the nature of the proposed development, I consider that achieving the lower minimum 12% quantum of open space, as distinct from the higher 15% range, would be a reasonable target in this instance.

7.4.22. The first party’s appeal submission states the two areas of public open space provided on site (A) 1,136sqm and (B) 1,515sqm, amount to 2,651sqm, and which equates to approx. 10.4% of net site area. This 10.4% quantum of public open space is therefore below the lower range of 12% minimum, and I note that this is based on a 2.55ha net site area.

7.4.23. This submission also states that 12% of the site area is 3,396sqm (c.0.34ha), and 15% is 4,245sqm (c.0.42ha). However, I note that these figures are based on a 2.83ha site area, and not a 2.55ha net site area.

7.4.24. I estimate that 12% of 2.55ha is 3,060sqm (approx. 0.3ha), and 15% is 3,825sqm (approx. 0.38ha). Given that 2,651sqm public open space is provided, this is 409sqm less than the minimum 12% and 1,174sqm less than the 15% requirement.

7.4.25. In this regard therefore I estimate that there is a 409sqm shortfall in meeting the

lower 12% public open space standard.

- 7.4.26. Having regard to the calculations outlined above, there is a substantial difference between this estimated 409sqm shortfall to achieving the minimum 12% target, and the 4,600sqm shortfall arrived at by the planning authority in respect of the 2.5ha per 1000 population calculation. While noting this substantial difference in these two estimated shortfalls, I consider that having regard to the location and existing nature of the subject site, and the nature of the proposed development, that the 409sqm is the relevant 'shortfall' figure which arises in this assessment of Development Plan standards.
- 7.4.27. I draw the Commission's attention to **Objective DMSO53 – Financial Contribution in Lieu of Public Open Space** which outlines *inter alia* that the Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision for acquisition of additional open space or 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.
- 7.4.28. While I note that there is a 409sqm shortfall in public open space, which constitutes 1.6% of 2.55ha, and as such the 10.4% of public open space provided is less than the minimum 12% required by the Development Plan, and notwithstanding that the Council has the discretion to accept a financial contribution in lieu of public open space, I note also that Policy and Objective 5.1 of the Compact Settlement Guidelines requires a minimum of 10% of the net site area to be provided as public open space, save in exceptional circumstances. I am satisfied that the provision of public open space within the proposed scheme is in accordance with the requirements of the Compact Settlement Guidelines. As such, I do not consider that the attachment of a condition requiring a financial contribution in lieu of public open space (based on 409sqm shortfall) is required in this case. The removal of Condition 23 is recommended on this basis. The Compact Settlement Guidelines are discussed further in the following section.

Sustainable Residential Development and Compact Settlement Guidelines – compliance with public open space standards

- 7.4.29. As outlined under Section 5.0 of this report, the Compact Settlement Guidelines replace the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (2009).
- 7.4.30. Policy and Objective 5.1 Public Open Space (at Section 5.3.3) states that 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, and that the minimum requirement should be justified taking into account existing public open space provision in the area and broader nature conservation and environmental considerations.
- 7.4.31. The first party's grounds of appeal set out (at Section 4.3.3.) existing public open spaces, specifically the site's proximity to the 260-acre Malahide Castle and Gardens, and short walking distances to the two nearest entrances to same at the Back Road/R107 junction (350m) and Back Road (500m). I would agree with the grounds of appeal that both entrances are within short walking distances, although in terms of detail, and as measured on www.tailte.ie, I consider that the Back Road/R107 junction is slightly closer and the nearer Back Road entrance (to north east) is slightly further distant from the approximate location of the new vehicular entrance. These approximate distances are set out at Section 1.0 of this report. I consider that the differences in approximate distances are minor and do not materially impact on the assessment of the site's proximity to existing public open spaces at Malahide Castle and Gardens.
- 7.4.32. On site visit I noted that the Back Road/R107 junction would appear to be limited to pedestrian access, whereby the vehicular entrance at the gate lodge is only partially open, to restrict vehicular access. The separate Back Road entrance to the north east allows for vehicular and pedestrian access. There is a further (third) vehicular access to Malahide Castle and Gardens further north east on Back Road, directly west of the Dublin-Belfast rail line. In addition to the public park itself, a number of formal recreational, sporting and cultural amenities within the grounds are listed in the grounds of appeal, including tennis and cricket clubs, pitch and putt, GAA pitches, botanic gardens, playground and visitor centre.

- 7.4.33. Having regard to the proximity to and extent of existing public open space in the immediate vicinity of the subject site, namely Malahide Castle and Gardens, I consider that the achievement of minimum 10% of public open space is justified in this instance.
- 7.4.34. For clarity, I note Policy and Objective 5.1 is not a SPPR (Special Planning Policy Requirement). However, as outlined above, I consider that the proposed development is in compliance with this Policy and Objective of the Guidelines.
- 7.4.35. Accordingly, as 10.4% public open space is provided for in the proposed development, which is compliance with the minimum 10% requirement set out in the Guidelines, and as outlined in the previous section, I recommend the removal of Condition 23 on this basis.

8.0 Recommendation

- 8.1. I recommend that Condition No.23 be REMOVED for the reasons set out hereunder.

9.0 Reasons and Considerations

Having regard to

- (a) The nature, scale and form of the proposed development
- (b) The pattern of development in the area including proximity to public open space to the north
- (c) Fingal County Council Development Contribution Scheme 2021-2025
- (d) Fingal County Development Plan 2023-2029
- (e) Sustainable Residential Development and Compact Settlements – Guidelines for Planning Authorities (2024)
- (f) The detailed submissions on file from the appellant and the planning authority

it is considered that the proposed development would incorporate a sufficiency of public open space on site in excess of 10%, would thereby comply with Policy and Objective 5.1 of the Sustainable Residential Development and Compact Settlements

– Guidelines for Planning Authorities (2024), and that a contribution in lieu of public open space is not warranted. Therefore, the Commission, 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 had not been properly applied in respect of Condition No. 23 and directs the said Council to REMOVE Condition No. 23.

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.

Cáit Ryan
Senior Planning Inspector

15 August 2025

Form 1 - EIA Pre-Screening

Case Reference	ABP-322747-25
Proposed Development Summary	Construction of 83no. houses, creche and temporary pumping station.
Development Address	Lands in the Townland of Kinsaley including part of the grounds of Lamorlaye, Back Road, Malahide, Co.Dublin.
In all cases check box /or leave blank	
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☐ Yes, it is a 'Project'. Proceed to Q2.
	☒ No, No further action required. (Appeal relates to development contribution only)
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested.	N/A
☐ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☐ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.	N/A

No Screening required.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	N/A
☐ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	N/A

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	Screening Determination required (Complete Form 3)
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ **Date:** _____