



An
Coimisiún
Pleanála

Inspector's Report

ABP-322795-25

Development	Demolition of public house, construction of 2 apartment blocks comprising of 41 apartments along with all associated site works. NIS submitted with application.
Location	The Orchard, 1 The Hill, Stillorgan, Co. Dublin. D08C98X
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D24A/0370/WEB
Applicant(s)	Belgrave Capital Ireland.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Belgrave Capital Ireland.
Observer(s)	None.
Inspector	Jennifer McQuaid

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning History.....	8
4.0 Policy Context.....	8
4.1. Development Plan.....	8
4.2. National Policy	9
4.3. Natural Heritage Designations	11
4.4. EIA Screening	11
4.5. Water Framework Directive.....	11
5.0 The Appeal	11
5.1. Grounds of Appeal	11
5.2. Applicant Response	13
5.3. Planning Authority Response.....	13
5.4. Observations.....	13
5.5. Further Responses	13
6.0 Assessment.....	13
7.0 AA Screening.....	17
8.0 Recommendation.....	17
9.0 Reasons and Considerations.....	17

1.0 Site Location and Description

- 1.1. The subject site (0.29ha) is located at The Orchard, 1 The Hill, Stillorgan, Co. Dublin. At present, the site comprises the “Stillorgan House” public house and restaurant, and a 1-2 storey hipped and thatched roof terrace, with flat-roof buildings extending to the rear. The existing business provides a hardstanding parking to its rear with vehicular access from its northern boundary with “The Hill” road.
- 1.2. The site is bound by public footpath and “The Hill” road to its front, the rear gardens of Linden Lea Park to its south, Stillorgan Plaza to its west and the terrace of 1-11 The Hill to its north.

2.0 Proposed Development

- 2.1. The proposed development consists of:
- the demolition of The Orchard public house (677. 8sq.m).
 - the construction of 2 no. apartment blocks:
 - Block A will contain 33 apartments along with a restaurant/retail unit at ground floor level (517. 2sq.m).
 - Block B will contain 8 apartments.
 - A first-floor podium will be provided between the two blocks with landscaping and car parking under.
 - Green roofs are provided on the roof levels of both apartment blocks.
 - An ancillary ESB switch room (38sq.m) and bin store (9. 2sq.m) are also proposed within a recess to the southern boundary of the site.
 - The existing vehicular access from The Hill will be modified.
 - All associated site works.
 - The application is accompanied by a Natura Impact Statement.

2.2. Planning Authority Decision

2.3. Decision

The Planning Authority granted permission subject to 28 no. conditions.

2.4. Planning Authority Reports

2.4.1. Planning Reports

Initial Planning Report

- The proposed development is acceptable in principle.
- No objection to the demolition of the public house as it has been renovated and altered throughout the 1970s-80s, and now presents as faux-historic, incongruous to the original form of The Hill terrace.
- A total of 248.4sqm (9.2%) public open space is provided, a total of 15% is required. Concern in relation to the shortfall of public open space in quantitative terms. A contribution in lieu of the shortfall is required – 403.65sqm as per Section 12.8.3 of the CDP and Section 6 of the Section 48 Development Contribution Scheme 2023-2028. Further information required for the applicant to amend the proposed open space.
- Concerns raised in relation to how the height meets the requirements of Criterion 1c of the Building Height Strategy. Block A may not integrate with the existing terrace at The Hill. Further information required to provide drawings and details of the scheme with one of the immediate storeys of block A removed.
- Concerns raised in relation to the finishes proposed given its similarity to the palette of materials used at the completed “Cornerstone” development on the Old Leisureplex site.
- External storage is required.
- Pedestrian permeability link between The Hill and the rear of Stillorgan Plaza shall be retained/reinstated.

Further Information Report

- A revised plan for Block A has been received and omits 3 no. units and it is considered acceptable.
- In regard to the pedestrian link, it is noted by the Planning Authority that this route has been in place for over 40 years, the applicant has stated concerns in regard to opening up this link to the public. The Planning Authority have concerns in relation to removing the established route to/from an adjoining site. The applicant is requested by way of clarification to address the Planning Authority concerns.
- In regard to public open space, the applicant has increased the red line boundary by 200sqm (from 0.27ha to 0.29ha) to include lands owned by the Council to the front of the site, the applicant will landscape these lands and make a significant contribution to public realm. With the Council lands the public open space increases to 14.7%. Park's section is of the opinion that the proposed development would require the demolition of the existing building and extensive ground/foundation works are required. This would result in substantial disruption and excavation works along the public realm anyway. The public realm space should not be included as it incorporates the public footpath on The Hill and the vehicular entrance to the Orchard site and cannot be considered to form part of quality public open space provision, as per the content of Section 12.8.2 of the CDP. Parks have calculated a contribution based on no public open space provision, whereas the applicant is providing c.248.4sqm. A section 48 development contribution based on the content of Section 6.2 of the Development Contribution Scheme 2023-2028 should apply calculated based on the shortfall of 156.6sqm (applicable to the original site of 0.27ha), a total of €117,450 should apply.
- The external storage proposed is acceptable.
- The external finishes proposed are acceptable however, it is recommended that a condition to be attached requiring the applicant to provide a full suite of materials and finishes for the agreement of the Planning Authority.

Clarification of further information report

- The concerns raised by Drainage have been addressed.

- The pedestrian link will be retained. The Planning Authority have concerned the dimensions of the pedestrian route through the site to access the pedestrian link do not appear to meet the 2m width for the majority of its length. A condition shall be attached requiring the applicant to provide unimpeded access via that pedestrian link with a revised layout for a 2m wide pedestrian route through the site.
- Transportation concerns have been addressed.

2.4.2. Other Technical Reports

- Drainage: Further information required in relation to surface water drainage, roof drainage, green roof coverage, permeable paving, wayleave details and flood risk assessment. Further information received and the majority is acceptable, clarification required in relation to green roof and Site-Specific Flood Risk Assessment. Clarification of information received and no objection subject to conditions.
- Transportation: Further information required in relation to cycle parking, all works required for public realm are within applicant ownership or letter of consent from DLRCC or relevant landowner. Clarification of information to be sought in relation to pedestrian link, provision of secured and covered cycle parking and the provision of charging spaces for electric bicycles. Clarification of information received and no objection subject to conditions.
- Housing: Part V compliance required.
- Public Lighting: No objection
- Environmental Enforcement: Further information required in relation to preliminary Construction & Environmental Management Plan, Construction & Demolition Waste Management Plan and Operational Management Plan. Further information received and no objection subject to conditions.
- Parks and Landscape Services: No objection subject to conditions. Further information received. Development contribution in lieu of public open space shortfall is required for the full 15%. It is considered that the proposed public realm works are necessary as part of the development of the site and cannot

be included as public open space. A financial contribution should be applied on top of the proposed public open space works along “The Hill”.

2.4.3. Conditions

Condition 22: Prior to the commencement of development, the developer shall enter into an agreement with the Planning Authority to provide for the payment of a financial contribution in the amount of €117,450.00 in lieu of public open space within the site in accordance with section 12.8.8 of the Dun Laoghaire Rathdown County Development Plan 2022-2028 and as provided for in section 6 of the 2023-2028 Development Contribution Scheme made by Dun Laoghaire-Rathdown County Council on the 9th of October 2023, made under Section 48 of the Planning and Development Act 2000 (as amended). The contribution shall be paid prior to the commencement of the development or in such phased payments as the Planning Authority may agree to facilitate.

Reason: In the interest of the proper planning and sustainable development of the area, given the shortfall in public open space provided within the site, and the need to provide for public open space in the wider area to cater for the proposed development.

2.5. Prescribed Bodies

- Irish Water: No objection subject to conditions.
- Environmental Health Officer: Further information required in relation to noise and operational waste management plan. Further information received and no objection subject to conditions.

2.6. Third Party Observations

One number observation was received, the concerns raised were:

- Excessive scale and height
- Incongruous design in relation to cottages in close proximity
- Car parking
- Set an undesirable precedence of his rise buildings.
- Loss of social amenity.

- Not in accordance with policy for older people and for those with disabilities.

3.0 Planning History

PA. Reg: D03A/0208: demolition of existing single storey rear entrance porch, replaced with new entrance porch, new extension and minor alterations and all ancillary site works.

Adjacent sites:

ABP-313266-22: Permission granted for 377no. build to rent apartments, creche and associated site works.

ABP-300520-17: Permission granted for 179no. student accommodation and all associated site works. Extension of duration refused for ABP-300520-17

D18A/0876: Permission refused for the extension and refurbishment in part to include a 2-bedroom dwelling over 3 floors to the rear.

4.0 Policy Context

4.1. Development Plan

Dun Laoghaire-Rathdown County Development Plan 2022-2028 (DLRCDP)

Section 12.8.3 Open Space Quantity for Residential Development

Section 12.8.3.1 relates to Public Open Space

Table 12.8 outlines Public Open Space Requirements for residential developments.

- Residential Development in new residential communities as shown in the Core Strategy – figure 2.9 requires a minimum standard of 15% (of site area).
- Residential Development in the existing built-up area – requires a minimum standard of 15% (of site area).
- Institutional and Redevelopment of SNI use - requires a minimum of 25% (of site area).

Section 12.3.8 states:

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.

Dun Laoghaire Rathdown Development Contribution Scheme 2023-2028

Section 6 relates to Contributions 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 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.

4.2. National Policy

Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities.

Policy and objective 5.1 – Public Open Space

It is a policy and objective of these Guidelines that statutory development plans include an objective(s) relating to the provision of public open space in new residential developments (and in mixed-use developments that include a residential element). 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. Different minimum requirements (within the 10-15% range) may be set for different areas. The minimum requirements should be justified taking into account existing public open space provision in the area and broader nature conservation and environmental considerations.

Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities

The DLR CDP refers to the 2009 guidelines which recommend a minimum of 10% public open space for brownfield sites.

Development Contributions – Guidelines for Planning Authorities (2013)

With regard to the types of Development Contribution Schemes, it is noted that development contributions provide the only statutory mechanism for capturing planning gain as part of the development management process. There are three types of development contribution schemes with the following applicable to the subject development:

General Development Contribution Schemes: Under section 48 of the Planning and Development Acts, planning authorities must draw up a development contribution scheme in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority.

Development Contributions are to support economic development and should consider measures to support new or existing enterprises such as reduced contributions rates and deferral of payment. With respect to Retention Permission, the guidelines state that 'no exemption or waiver should apply to any applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications.

Development Management – Guidelines for Planning Authorities (2007)

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

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

OPR Practice Note PN03 2022.

Section 3.16 relates to Conditions requiring financial contributions or Ceding of Lands

4.3. Natural Heritage Designations

4.3.1. Not applicable to the subject appeal.

4.4. EIA Screening

4.4.1. Not applicable to the subject appeal.

4.5. Water Framework Directive

4.5.1. Not applicable to the subject appeal

5.0 The Appeal

5.1. Grounds of Appeal

The grounds of appeal have been submitted from the applicant. The concerns raised are in relation to a development contribution as per Condition 22 only.

- Incorrect Application of DLR Development Contribution Scheme: The size of the site was originally 0.27ha. The proposed public open space provision was

248.4sqm which equated to 9.2% of the site area. The subject site is a brownfield site and a minimum of 10% should be applied. Based on the Compact Settlement Guidelines, a minimum of 10% is recommended, the shortfall in terms of public open space for the proposed development was only 21.6sqm or 0.8%.

At further information stage the site area was increased to 0.29ha including 200sqm of lands owned by Dun Laoghaire Rathdown (DLR). This equates to 426sqm for public open space which exceeds the 10% minimum under the Compact Settlement Guidelines. Therefore, no levy should be applied. Even if section 6 of the DLR DCS was applied based on minimum of 15% a levy of €6,750 applies (€750 per sqm X 9sqm).

- Council View: The Council consider the additional lands owned by DLR should not be included as it incorporates the footpath and vehicular entrance on The Hill. They state the original 248.4sqm provision should apply and there is a shortfall of 156sqm based on the original site area of 0.27ha. This equates to €117,450 (€750 x 156sqm).

The proposed vehicular entrance is not included on the scheme for public open space under the large 0.29ha site included land owned by DLR. It is considered the fact that the area includes a former path to be irrelevant. The applicant will provide the Council with a high-quality area of landscaped open space that will be available for public use and will also allow the public to traverse in the same manner as they did before.

- Compact Settlement Guidelines: It is argued that the 2024 guidelines should be applied and on this basis 10% should be applied and not 15%. It is also noted that the 10% requirement should be applied to brownfield site under the 2009 Guidelines.

A minimum of 10% should be applied on the original size of 0.27ha and a levy of €16,200 (21.6sqm x €750/sqm) should be applied but as the size of the site was increased then the larger site area should apply.

5.2. Applicant Response

- As above.

5.3. Planning Authority Response

- 5.3.1. A breakdown of the contribution calculation provided along with a copy of the Development Contribution Scheme 2023-2028.

5.4. Observations

- None

5.5. Further Responses

- None

6.0 Assessment

- 6.1. This appeal has been brought to An Coimisiún Pleanála under the provisions of section 48(10)(b) of the Planning and Development Act, 2000 (as amended) and relates solely to Condition No. 22 of PA reg. ref: D24A/0370/WEB. This condition requires the applicant to pay a financial contribution of €117,450.00 in lieu of public open space within the site in accordance with section 12.8.8 of the Dun Laoghaire Rathdown County Development Plan 2022-2028 and as provided for in Section 6 of the 2023-2028 Development Contribution Scheme.
- 6.2. In the above context, as this appeal relates to a Development Contribution only, I consider that the Commission is required to apply the Development Contribution Scheme as adopted by Dun Laoghaire Rathdown County Council and not to evaluate the merits of the planning application as if it was made to it in the first instance. The Commission is confined solely to the consideration of whether the terms of the relevant Development Contribution Scheme have been properly applied.
- 6.3. Having regard to the limitations imposed on the Commission under section 48(10) Planning and Development Act, 2000 (as amended), I will limit my assessment accordingly under the following headings:

- Condition No. 22 – Contribution

6.4. **Condition No. 22 - Contribution**

- 6.5. Dun Laoghaire-Rathdown County Council Development Contributions Scheme 2023-2028, section 6 relates to Contribution in Lieu of Public Open Space, section 6.1 provides that in the event that the standards for public open space referred to in the CDP 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. Section 6.2 outlines the 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. Section 12.8.3 of the CDP refers to Open Space Quantity for Residential Development, table 12.8 refers to Residential Development in the existing built-up area and states a minimum of 15% (of site area) is required. The CDP further states that all residential schemes must provide a minimum provision of public open space, which has regard to the content of the Section 28 Guidelines “Sustainable Residential Development in Urban Areas” (2009).
- 6.6. The grounds of appeal state that DLR have incorrectly applied the DLR Development Contribution Scheme. The subject site is a brownfield site and a minimum of 10% should be applied based on the Compact Settlement Guidelines. The site area is 0.29ha and this equates to 426sqm for public open space, this exceeds the 10% minimum requirement under the Compact Settlement Guidelines. Even if section 6 of the DLR DCS was applied based on minimum of 15% a levy of €6,750 applies (€750 per sqm X 9sqm). The Planning Authority consider that the lands owned by DLR should not be included as it incorporates the footpath and vehicular entrance on The Hill. They state the original 248.4sqm provision should apply and there is a shortfall of 156sqm based on the original site area of 0.27ha. This equates to €117,450 (€750 x 156sqm). The proposed vehicular entrance is not included on the scheme for public open space under the large 0.29ha site included land owned by DLR. It is considered the fact that the area includes a former path to be irrelevant.
- 6.7. I note following a further information request, the proposed development was altered, and the site area was increased from 0.27ha to 0.29ha, the total public open space area is noted as 431sqm (14.7%) of the total site area. The increased area relates to

the front boundary of the subject site along “The Hill” and incorporates a public realm area, site access and footpath. I have reviewed the landscape design submitted and the public open spaces are noted as essentially strips of green area to the southern and western boundary and a small area behind the ESB sub and switchroom. I note the open space provided to the front of the restaurant/retail units which consists of outdoor seating/dining areas. A plaza public realm area is also provided to the front of the site along the eastern boundary known as “The Hill” with street trees, pollinator planting and natural stone paving.

6.8. Section 12.8.3.1 Public Open Space of the CDP outlines to qualify as public open space the area must be designed and located to be publicly accessible and usable 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 also stated that 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.

6.9. I have serious concerns regarding the proposed public open space, the areas noted to the western and southern boundaries of the subject site are simply strips of grass verge, I do not consider these qualify as public open space, the area is not designed or located to be publicly accessible or usable by all in the County. The area to be rear of the ESB sub-station is not accessible or overlooked and cannot be considered as suitable open space. I note the proposed area along the northern boundary, the immediate area in front of the restaurant/retail units is defined by outdoor seating area, I would associate this area as part of the restaurant/retail units and therefore not designed or located to be publicly accessible and usable by all in the County, the area may well only be usable by those paying customers for the restaurant/retail units on the ground floor. In regard to the public realm area to the front of the outdoor seating area, it may be considered as public open space as it is publicly accessible and useable by all in the County and the Compact Settlement Guidelines, section 5.3.3 state public open spaces in residential schemes refers to the open spaces that form part of the public realm within a residential development. It further states open spaces provide for active and passive recreation, nature

conservation, pedestrian and cycle connection and provide an important visual break between streets and buildings. Therefore, in accordance with the Compact Settlement Guidelines, it could be argued that the public realm area could be considered as public open space. However, in my opinion, I do not consider the public realm area to the northeastern boundary of the subject site as public open space due to the public footpath passing through the space, the lack of active or passive recreation area and the location of bicycle parking. I note Parks and Landscape Services of DLR also consider that the public realm space should not be included as public open as the proposed development would require the demolition of the existing building and extensive ground/foundation works are required along the public realm anyway. Therefore, a levy for public open space for the full 15% of public open space was recommended as a condition. I do note the applicant has provided above the recommended standard for communal open space however, it is in my opinion that a development contribution in lieu of the full public open space requirement should be applied as the public open space proposed are not suitable usable public open spaces.

6.10. In relation to whether the area should be 10% or 15% requirement for public open space, I note the CDP does refer to the Sustainable Residential Development in Urban Areas Guidelines 2009, Section 4.20 states in areas such as large infill sites or brownfield site public open space should generally be provided at a minimum rate of 10% of the total site area. In addition, the Compact Settlement Guidelines, although not referred to in the CDP, policy and objective 5.1 – Public Open Space states 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. Taking the section 28 guidelines into account, I consider a 10% public open space allocation should be applied to the subject site.

6.11. In regard to the above, I will calculate that the applicant shall provide 10% public open space and a development contribution in lieu of the full 10% shall be applied. I consider that the public realm area within the ownership of Dun Laoghaire Rathdown County Council shall be removed from the total site area as this area will be developed by the applicant at their expense and it is within the ownership of DLR. Therefore, 10% shall be calculated on the original area of 0.27ha (2691sqm). The

Development Contribution Scheme sets a financial contribution in lieu of public open space at €7,500,000 per hectare. The proposed development consists of 0.2691 of a hectare and should provide 10% public open space, which is 0.02691 of a hectare. Therefore, the development contribution is calculated as $€7,500,000 \times 0.02691 = €201,825$. I consider that the applicant shall be conditioned to pay €201,825 in lieu of 10% public open space as per DLR CDP, SRDUA and in accordance with the Development Contribution Scheme 2023-2028.

7.0 AA Screening

7.1. Not applicable in this appeal case.

8.0 Recommendation

8.1. I consider that the Planning Authority correctly stated that a development contribution is required in accordance with Dun Laoghaire Rathdown Development Contribution Scheme 2023-2028, however, I consider that they have not correctly applied the required public open space when considering the Dun Laoghaire-Rathdown County Development Plan 2022-2028, Sustainable Residential Development in Urban Areas Guidelines 2009, Section 4.20 and the Sustainable Residential Development and Compact Settlement Guidelines 2024, policy and objective 5.1 or the amount of levy required considering that in my opinion the applicant has failed to provide any usable public open space. I recommend that Condition 22 shall be attached and amended to reflect the revised calculation of €201,825.

9.0 Reasons and Considerations

9.1. Having regard to:

- a. Section 48 of the Planning and Development Act, 2000 as amended.
- b. The Development Contribution Guidelines for Planning Authorities (2013).
- c. Dun Laoghaire Rathdown Development Contribution Scheme 2023-2028.
- d. Dun Laoghaire Rathdown County Development Plan 2022-2028.

In respect of Condition No. 22, the Commission, in accordance with section 48 of the Planning and Development Act, 2000, as amended, consider that condition 22 shall be attached and amended to the revised development contribution of €201,825.

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.

Jennifer McQuaid
Planning Inspector

2nd September 2025