



An
Coimisiún
Pleanála

Inspector's Report ACP-323902-25

Question

Determination on request of method of provision of social and affordable housing obligation of the applicant in accordance with condition 11 of reg D25A/0101. Harrow House, Church Road, Killiney, Co. Dublin

Location

Harrow House, Church Road, Killiney, Dublin, A96HV08

Declaration

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D25A/0101

Referral

Referred by

Louise Reynolds

Owner/ Occupier

None

Observer(s)

None

Date of Site Inspection

None

Inspector

Kenneth Moloney

Contents

1.0 Introduction	4
2.0 The Referral	4
3.0 Planning Authority Response	4
4.0 Planning History	5
5.0 Legislative Context	6
6.0 Policy Context	7
7.0 Assessment	7
8.0 Recommendation	10

1.0 Introduction

- 1.1. This appeal refers to a dispute between the applicant and Dun Laoghaire Rathdown County Council regarding condition no. 11 and of the decision of the Planning Authority under reg. ref. D25A/0101.
- 1.2. Condition no. 11 refers to compliance with Part V in accordance with Section 96(4) of the Planning and Development Act 2000, as amended, shall be the subject of an agreement with the County Council's Housing and Community Department.

2.0 The Referral

The following is a summary of the referrer's case.

- DLR CC Housing Dept.'s preferred Part V compliance is the transfer of a completed unit. This is confirmed in the Housing Dept.'s report to the Planner in case ref. D25A/0101.
- It is not viable to finance the build and transfer of a completed unit to DLR CC.
- The default option to transfer undeveloped land, within the grounds of Harrow House, is proposed as an alternative.
- The undeveloped land has a separate access and a right of way adjoining the public roadway, Balure Lane. As such the transferred site will not be the subject of any future maintenance charges or obligations associated with the permitted development.
- Details for the calculated values of land as required to comply with the provisions of Part V are based on the opinion of Value by QRE (Real Estate Advisors).
- Proposal for compliance with Part V will be subject to agreement in land values and funding been made available.

3.0 Planning Authority Response

The following is a summary of a response from the Planning Authority.

- PA Ref. D22A/0617 (appeal ref. 315000-22) relates to the permission of 4 no. units. Part V was exempted.
- PA Ref. D25A/0101 relates to the permission of 4 no. units and is subject to Part V compliance.
- The applicant identifies PA Ref. D22A/0617 as Phase 1 and PA Ref. D25A/0101 as Phase 2.
- Section 96(3)(iv) provides a framework for negotiation and agreement for Part V compliance.
- The option for on-site provision for a residential unit has not been adequately examined, as there is no detail of construction, development or land costs.
- Lack of details in respect of the proposed transfer of 132 sq. m. of land, such as unfettered vehicular / pedestrian access, presence of services to land, and the impact on trees to be retained.
- An Arboricultural Impact Assessment and Tree Protection Report is attached and notes the protection of trees during development along the boundary.
- The transfer of 132 sq. m. of land on site of 0.47 ha does not meet the Part V requirements for both phases of development.
- The transfer of 132 sq. m. of land appears to relate only to D25A/0101.

4.0 Planning History

4.1.1. The recent relevant planning history to this case includes the following.

Planning Authority Reg. Ref: D25A/0101:

Planning permission was granted for a development of 5 no. dwellings on a site in Killiney, Co. Dublin, on the 13th of October 2025. The PA granted permission, subject to 21 no. conditions. Of relevance to the subject point of dispute is condition no. 11:

Condition no. 11

Prior to the commencement of development, the developer shall comply with the Dun Laoghaire Rathdown County Council Housing Strategy, drawn up in accordance

with Part V, Section 96(4) of the Planning and Development Act 2000, as amended, and in accordance with agreement to be reached with the County Council's Housing and Community Department unless the developer shall have applied for and been granted an exemption certificate under Section 97 of the Planning and Development Act 2000, as amended.

Reason: To comply with the County Council Housing Strategy & Part V of the Planning and Development Act, 2000, as amended.

- ABP-315000-22 (D22A/0617)

Construction of 4 houses and all associated site works. Permission **granted** by the Board, subject to 17 no. conditions (following a first party appeal against refusal). Part V was exempted.

5.0 Legislative Context

5.1. Planning and Development Act 2000, as amended

5.1.1. Section 34(5) of the Planning and Development Act, 2000, as amended

The relevant section of the Act states:

The conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person carrying out the development; if the planning authority and that person cannot agree on the matter, the matter may be referred to the Board for determination.

5.1.2. Section 96(5) of the Planning and Development Act, 2000 (as amended) states that

In the case of a dispute in relation to any matter which may be the subject of an agreement under this section, other than a dispute relating to a matter that falls within subsection (7), the matter may be referred by the planning authority or any other prospective party to the agreement to the Board for determination

6.0 Policy Context

6.1. Dun Laoghaire-Rathdown County Development Plan, 2022 – 2028.

- 6.1.1. The appeal site is zoned 'Objective A' and the stated objective for such land use is
'to provide residential development and improve residential amenity while protecting the existing residential amenities'.
- 6.1.2. Harrow House is a Protected Structure (RPS. No. 2040) and there is a specific objective 'to protect and preserve trees and woodlands' on the subject site.

7.0 Assessment

- 7.1. The point of detail request in this case relates to condition no. 11 of the Dun Laoghaire Rathdown decision under D25A/0101. The grounds of the referrer's case argue that it is not viable to finance the build and transfer a completed unit to the Planning Authority and the default option to transfer undeveloped land, within the grounds of Harrow House, is acceptable as an alternative.
- 7.2. The legislation in respect of Part V compliance is clear, and in this case the Planning Authority required as a condition of a grant of permission that the applicant enter into an agreement with the Planning Authority to provide for the transfer of land, or the transfer of units, to meet social housing requirements within the meaning of the Housing Act, 2009.
- 7.3. I would note from the information on the file that the Housing Department of the DLR CC have indicated their preferred method of compliance with Part V is the building and transfer of the residential unit, on completion.
- 7.4. The applicant has identified a site in the western corner of the overall landholding, adjacent to the junction between Church Road and Balure Lane, as a site for the transfer of land in lieu of the building and transfer of a completed residential unit to meet the Part V requirement. I would note that the applicant submits that the size of the site is 0.013 ha or 132 sq. metres.
- 7.5. I have noted above that the principal reason submitted by the referrer in their referral submission against the provision of a completed residential unit for transfer is that it

would not be viable to finance the build and transfer of a completed unit. I acknowledge that the referrers submission includes an Opinion of Value from Real Estate advisors based on calculated values of land proposed for transfer. However the valuation is based on the detached site with independent access, and I have noted below that an independent access to the site onto Balure Lane, does not have the benefit of planning permission, and furthermore any such access would impact on the site configuration and accordingly restrict the development potential of the site, and as such the value of the site.

- 7.6. I therefore would be of the view that the submitted valuations are more guidance and the above issues in respect of vehicular access would cast some doubts on the validity of the estimated site values. Notwithstanding I would note that the PA submit that the on-site provision for a residential unit has not been adequately examined, as there is no detail of construction, development or land costs. Therefore, I would consider that the principal reason submitted for non-agreement on this point of detail has not been adequately demonstrated.
- 7.7. I would also note that the PA questions the size of the site proposed for transfer on the basis that the size of the site (0.013 ha) does not meet the Part V requirements for the overall landholding of the site which is 0.47 ha for both phases of permitted development.
- 7.8. Section 96(3)(a) of the Planning and Development Act, 2000 (as amended) requires that a Part V agreement shall provide for the transfer to the planning authority of the ownership of 20 per cent of the land, subject to Section 96(3)(j) of the Act. I would note that Section 96(3)(j)(ii) of the Act provides that in a case where the permission is granted during the period beginning on 1 August 2021 and ending on 31 July 2026, and that land to which the permission relates was purchased, by the applicant, during the period beginning on 1 September 2015 and ending on 31 July 2021, that the reference to 20% of land shall be read as 10% of land.
- 7.9. I would acknowledge that both relevant planning permissions on the site, i.e. ABP-315000-22 (D22A/0617) and PA Ref. D25A/0101, were permitted in the qualifying period referenced above and that the referrer indicates in their submission to ACP that the land was purchased in January 2021, which also meets the qualifying criteria above.

- 7.10. The referrer's submitted drawings (P2-01 PV Compliance) that accompanied the referral submission indicates that the overall size of the site is 0.478 ha (including the existing house), and I have estimated that 10% of the land would equate to 0.0478 ha. However, should the Commission consider that the actual size of the site would not include the existing house (protected structure) and its curtilage and that the size of the overall development site comprises of phase 1 and phase 2, as indicated on the submitted drawings, then the site size is 0.190 ha. I would note that 10% of this land would be 0.0190 ha. In both cases referred to above the provision of 0.013 ha of land would not adequately meet the Part V requirements in accordance with Section 96(3)(a) of the Planning and Development Act, 2000 (as amended).
- 7.11. In addition to the above issues in respect of valuations and the size of the site, I would have a number of concerns with the site identified by the applicant. Firstly, I would have concerns with the size of the site which the applicant has submitted has an area of 0.013 ha. The limited size of this site would, in my view, present challenges for the delivery of a housing unit that would be acceptable to the planning authority. I would also note that the applicant submits that the said site has a separate access and a right of way adjoining the public roadway Balure Lane, which would address concerns in respect of any future maintenance charges or obligations associated with the permitted development.
- 7.12. Notwithstanding an independent vehicular access onto Balure Lane which would require the benefit of planning permission, and a traffic assessment, to ensure that the access would not endanger public safety by reason of traffic hazard. Furthermore, a vehicular access from the subject site onto Balure Lane would have implications for the site configuration in terms of layout for a proposed house, and in my view would restrict the site further in terms of the provision of a house on the site to meet the Part V requirements of the permitted development.
- 7.13. In addition, I would also have concerns with the site as the site currently contains a series of mature trees, as is evident from the submitted drawings and Google Street View. I would also note from Land Use Zoning Map 7 of the CDP that the subject site has an objective '*to protect and preserve Trees and Woodlands*'. The applicant's submitted drawing (P2-01 PV Compliance) illustrates that there is a concentration of mature trees on the site of the land proposed to be transferred for Part V compliance.

- 7.14. Furthermore, I have reviewed the relevant planning history for this site, including ABP-315000-22 (D22A/0617), and it is notable from the Tree Survey Report, that accompanied this application, that a number of trees are identified as A2 and B2 situated on the proposed site for transfer, and in both cases these trees in groups would add landscape value to the subject site. Therefore, and in the interest of proper planning and sustainable development, I would have concerns whether the provision of a house on the site would be achievable having regard to the CDP objectives on the site for the protection of trees.
- 7.15. In conclusion therefore I would be of the view that the size of the site proposed for Part V compliance, without the benefit of planning permission, would present challenges for the delivery of a house or residential unit on the subject site, having regard to restrictive nature and size of the site, the CDP objectives for the site to protect and preserve trees and woodlands which would restrict development potential further, and also having regard to the capability of the site to provide an independent access that would not endanger public safety by reason of traffic hazard, which has not been demonstrated.
- 7.15.1. I would conclude, having regard to the reasons outlined above, that the identified site is unsuitable for Part V compliance in this instance, and I recommend that condition no. 11 requires that the developer transfers a completed unit of the permitted development to the Council, as required by the Local Authority.

8.0 Recommendation

- 8.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

WHEREAS by order dated the 13th day of October 2025, Dun Laoghaire Rathdown County Council, under planning register reference number D25A/0101, granted subject to conditions permission to Louise Reynolds for development comprising the construction for 4 no. houses, at Harrow House, Church Road, Killiney, Dublin.

AND WHEREAS condition no. 11 attached to the said permission required the developer to comply with the Dun Laoghaire Rathdown County Council Housing Strategy, drawn up in accordance with Part V, Section 96(4) of the Planning and Development Act 2000, as amended, and in accordance with agreement to be reached with the County Council's Housing and Community Department unless the developer shall have applied for and been granted an exemption certificate under Section 97 of the Planning and Development Act 2000, as amended.

AND WHEREAS the developer and the planning authority failed to agree on the terms of the said condition and the matter was referred by the developer to An Coimisiun Pleanála on the 26th day of November 2025 for determination.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 34(5) and 96(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that Condition 11 requires the transfer of a completed unit to comply with the Part V requirement of the permitted development.

REASONS AND CONSIDERATIONS

An Coimisiún Pleanála, in considering this referral, had regard particularly to –

- (a) Section 34(5) and 96(5) of the Planning and Development Act 2000, as amended,
- (b) the policies and objectives of the Dun Laoghaire-Rathdown County Development Plan, 2022 – 2028, including the provisions of the Dun Laoghaire Rathdown County Council Housing Strategy,

- (c) the size of the site identified for transfer and its restrictive nature for development potential
- (d) the proper planning and sustainable development of the area

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.

Kenneth Moloney
Senior Planning Inspector

19th June 2026