



An
Coimisiún
Pleanála

Inspector's Report

ACP-324182-26

Development	Large Residential Development (LRD) Construction of 302 dwellings with all associated site works. EIAR submitted with application
Location	Townland of Porterstown, Clonsilla, Dublin 15
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	LRD0052/S3E
Applicant(s)	Castlethorn Developments Luttrellstown Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party v Financial Contribution
Appellant(s)	Castlethorn Developments Luttrellstown Limited.
Observer(s)	None.
Inspector	Daire McDevitt

1.0 Introduction

The Commission should note that this is a first-party appeal against a condition of the decision of Fingal County Council to grant permission for a large-scale residential development (LRD). The appeal relates solely to the imposition of a development contribution under Section 48(1) of the Planning and Development Act 2000, as amended. No appeal has been brought by any other person against the decision of the planning authority, and therefore, in accordance with Section 48(13)(a) of the Act, the Commission must not determine this application as if it had been made to it in the first instance, but only the matters subject of this financial contribution appeal.

2.0 Site Location and Description

The site is located in the townland of Porterstown in Clonsilla, Dublin15 to the west of the Diswellstown Road, east of Porterstown Road and is currently occupied by St. Mochta's Football Club. The wider area has been the subject of extensive redevelopment in recent years. The current site before the Commission relates to a parcel of land which forms part of a larger holding which is under development at Kellystown under SHD ABP 312318-21 as amended by LRD0034-S3. This included a Public Park of c.27,869sq.m.

The site is bounded to the north by the Royal Canal and Dublin-Maynooth rail line, to the east by Diswellstown Road, to the south by the permitted residential development SHD312318 as amended by LRD0034/S3 and to the west by Porterstown Road and St. Brigid's Halting Site for Traveller Accommodation beyond which SHD 312318 is located.

3.0 Proposed Development

The proposed development will consist of a large-scale residential development (LRD) comprising:

- 302 residential units
- An EIAR has been submitted with the LRD.

Table 2.1 Key Development Statistics

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Aspect of Development	Development Statistic
Gross Site Area	4.39ha
Net Area of Site	3.96ha
No. of Units	302
Unit Type	Houses/Duplex and Apartments
Site Density	76uph
Percentage Open Amenity Space	18.8% (net site area) (this includes a large area of public open space on the eastern boundary which accounts for c. 16.3%) 14.7% (gross site area) (this includes a large area of public open space on the eastern boundary which accounts for c. 14.7%)

Table 2.2 Mix of Units

Type	Units
4 bed semi-detached house	35
3 bed semi detached house	62
3 bed Duplex	19
2 bed Duplex	7
2 bed Apartment	81
1 bed Apartment	98
Total	302

4.0 Planning Authority Decision

Decision

The planning authority (PA) decided to grant permission by Order dated 5th March 2026 subject to 49 conditions.

Relevant Conditions:

No. 48

Prior to the Commencement of development a financial contribution in the sum of €521,966.87 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 8,894sq.m of open space.

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

Planning Authority Reports

Due to the nature of this appeal, the Commission should note that I have only summarised the relevant content and issues within the planning reports and relevant technical reports.

The first planner's report (30 July 2026) integrated the report prepared by the Parks and Green Infrastructure Division (also with all other reports from technical divisions within the Council), no further comment from the planner is provided relating to the subject of public open space.

Further Information was sought in relation to 3 matters; Biodiversity Chapter in EIAR; concerns raised by Iarnród Eireann relating to a number of matters including works required for Dart + West and lands the subject of temporary and permanent acquisitions relating to potential uses and access and boundary treatment along the rail line; Cross Section of Porterstown Road and other Transportation issues also raised.

Response received noted that extensive discussions took place with Iarnród Eireann and the Dart + West Project Team and agreement reached regarding the safeguarding of lands required for the delivery of the Dart + West Project (this mostly relates to suitable compounds, haul routes etc.

Planner’s report following FI response dated 2 March 2026. Recommended grant of permission subject to 49 conditions.

Relevant Technical Reports

Parks and Green Infrastructure

Report dated 16 July 2025

Public Open Space Provision

	Units Total	Bedspaces Total	
3+ Bedroom Units	116	406	
1- and 2-Bedroom Units	186	279	
Unit Total	302		
Bedspace Total	685		
The Overall Public Open Space requirement for this application is		17125.00	sq.m
Net site area is	3.9635	hectares	
15% of site area is required <u>on site</u> to be Public Open Space	0.5945	hectares	
Playground requirement (4 s.q. metres per unit)	1208	Square Metres	

Public Open Space Requirement / Open Space Provision

Policy & Objective 5.1 of the Sustainable Residential Development and Compact Settlement Guidelines 2024.

The guidelines state that the requirement for public open space in a development should not exceed 15% of the net site area.

The applicant proposes to allocate 16.3% of the net site area to public open space. Although the Parks & Green Infrastructure Division considers this open space, which is located along the eastern side of the development, as functional and usable; Revised drawings will need to clarify the minimum Public Open Space provision in accordance with **Objective DMSO51** of the **Fingal Development Plan 2023-2029** which is 2.5 hectares per 1,000 population. In this regard, Public Open Space in residential schemes is considered Class 2 Public Open Space as it relates to **Table 14.11** of the **Fingal Development Plan** and is calculated as a percentage of the development site

area. This is the 'on-site' provision of Public Open Space. **The Overall Public Open Space requirement for this application is 17125sqm.** The following are areas that would be excluded from this calculation:

- Access or maintenance requirements for the bridge where the active space is located.
- Existing 14M wayleave with a gas and watermain see Watermain Layout DWG No. STM-WMC-ZZ=00-OV-C-300
- Future train station and/or future Metro

Fingal County Council will seek a contribution in lieu of the shortfall of public open space to provide functional and suitable play amenities to Class 1 Public Open Spaces in the area in the form of Local & Neighbourhood which caters primarily for active recreation – e.g. playing pitches, all-weather pitches etc. for the entire lifespan of this development and its future residents.

I note the FI did not include concerns raised in this report relating to clarity on use of lands the subject of temporary acquisitions and public open space provision, open space requirements, boundary hedgerow or revised landscape proposals.

Report on FI Response dated 19 February 2026

Recommended conditions that included:

In the event planning permission is granted, the developer shall pay a financial contribution in respect of any shortfall in the provision of open space, in accordance with section 48(2)(c) of the Planning and Development Act 2000 (as amended).

The amount of the contribution shall be determined in accordance with the Planning Authority's Development Contribution Scheme in force at the time payment. The contribution shall be applied towards the continued upgrade and improvement of existing Class 1 Public Open Space facilities within the Millennium Regional Park.

This corresponds with condition No. 48 attached to the grant of permission.

Third Party Submissions

None received.

5.0 Planning History

There is an extensive planning history associated with the appellant's lands within the Kellystown LAP lands. Applications of relevance include:

Site:

PA Reg. Ref. FW12A/0048, refers to a grant of permission to St. Mochta's Football Club for an all weather pitch, flood lights and associated works.

PA Reg. Ref. F00A/1253, refers to a grant of permission to revision to Riverwood Housing Scheme (PA Reg. Ref. F99A/0659) off Luttrellstown Road.

PA Reg. Ref. 99A/0652 refers to a grant of permission for a community sports facility at Porterstown Road by St. Mochta's FC Community Sports Centre.

In the Vicinity:

PA Reg Ref. FW25A/0233E refers to a decision to refuse permission for 99 houses at Porterstown/Kellystown on the grounds that the density contravened the Kellystown LAP and contrary to the CSGs.

PA Reg. Ref (ACP 500971-DF-26) refer to an application for 87 dwellings at Porterstown Road (current appeal).

SHD application (as amended by a subsequent LRD)

ABP 312318 refers to a SHD granted permission – 349 residential units, 1 childcare facility and 1 retail unit at Porterstown/Kellystown/Diswellstown.

6.0 Legislative Context

Planning and Development Act 2000, as amended

Section 48 Development Contributions

(2)(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

(10) (a) Subject to paragraph (b), no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

(b) An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

(c) Notwithstanding section 34 (11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

(12) Where payment of a special contribution is required in accordance with subsection (2)(c), the following provisions shall apply— (a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,

(13)(a) Notwithstanding sections 37 and 139, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.

(13)(b) Notwithstanding section 34(11), where an appeal referred to in paragraph (a) is received by the Board, and no appeal is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal furnishes to the planning authority, pending the decision of the Board, security for payment of the full amount of the special contribution as specified in the condition referred to in paragraph (a).

7.0 Policy Context

7.1 Kellystown LAP (January 2021)

The site is located within the Eastern Development Area (DA1) which is c. 14.9ha in area (gross).

7.2 Fingal County Development Plan 2023-2029

The lands are zoned under land use objective **RA** – the objective of which is ‘*to provide for new residential communities in accordance with approved local area plans and subject to the provision of the necessary social and physical infrastructure*’

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 draw the Commission's attention to:

- Table 14.12 (Chapter 14) duplicates Table 4.3 (Chapter 4).
- Objective DMSO51 – Minimum Public Open Space Provision (Chapter 14) duplicates Objective CIO5038 – Public Open Space Provision (Chapter 4).

7.2 Fingal County Council Development Contribution Scheme 2021-2025

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

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.

Appendix 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.

7.3 Development Contributions – Guidelines for Planning Authorities, 2013

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

Appendix 2 would appear to be 'Appendix 11'.

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.

7.4 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.

7.5 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.

7.6 Natural Heritage Designations

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

7.7 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.

8.0 The Appeal

8.1 Grounds of Appeal

The applicant lodged an appeal against Condition no.48 of the decision of the Planning Authority (PA) on 1st April 2026 on the following grounds:

- It is submitted that the open space strategy aligns with the principles of the Kellystown LAP.
- Public Open Space provision is 18.8% (8,231sq.m) based on the gross site area of 4.39ha and 16.3% (c.6,544sq.m) based on the net site area of 3.96ha.
- The Net area excludes:
 - Wayleave (c.1,776sq.m)
 - Dart + West Infrastructure (c.1,083sq.m)
 - Connection to Riverwood Square (c.223sq.m)
 - Loop Road (c.1,179sq.m)

- It is submitted that regard should be had in the first instance to Table 14.12 and Objective CIO038 of the CDP. Table 14.12 sets out that minimum public open space standards for 'New Residential development on greenfield sites/LAP lands is 12-15% of the site area. CIO038 requires a minimum public open space provision of 2.5 hectares per 1000 population, this is based on an agreed occupancy rate of 3.5 persons in the case of dwellings with 3 or more bedrooms and 1.5 persons in the case of dwellings with 2 or fewer bedrooms.
- It is submitted that there is no shortfall in public open space having regard to the requirements set out in the County Development Plan for new Development on Greenfield or LAP Lands of 12-15%.
- Furthermore it is submitted that the requirement under the CSG 2024 is 10%.
- A liner park is proposed along the eastern boundary of the site and is designed as the primary area of public open space within the development, the park is structured around a series of interconnecting open lawn areas.
- Public Open Space off site - Public Park permitted under the parent permission (SHD ABP 312318-21 as amended by LRD034-S3) – Luttrellstown Gate Phase 1 has not been taken into consideration for Class 1 and contribution in lieu calculations. Surplus of 4,002sq.m of public open space in Phase 1 (total POS 27,869sq.m of which c.20,978sq.m is Class 1 and c.6,891sq.m is Class 2).
- It is submitted that the surplus open space arising from phase 1 has been fully accounted for and distributed in a coordinated plan led manner across the Kellystown LAP lands.
- In addition to Class 1 and Class 2 public open space c. 3,363sq.m of 'Environmental Open Space' is accommodated within the scheme. If these were to be included in the overall provision, this would add c.3,363sq.m to bring the overall provision to c.26% of the gross site area, well in excess of the 10-15% range.
- The imposition of a financial contribution in lieu of public open space is not justified.

- Reference to precedent – ABP 322747-25, the Commission determined that the provision of 12% public open space was consistent with Table 14.12 and Objective DMSO50 of the Fingal CDP, a reduced contribution in lieu was conditioned relative to the threshold of 12%.
- Current appeals for Development Contribution in Lieu for Luttrellstown Gate Phase 2 (FW25A/0418E and FW25A/0419E).

8.2 Observers

None

8.3 Planning Authority Response to the Appeal

It is noted that the proposed scheme includes 8,231sq.m of Public Open Space located to the east of the site and throughout the site which equates to 16.3% of the site area. This is considered acceptable.

However, the overall public open space required for the scheme is 17,125sq.m. This excludes the following areas from the calculation:

- Access or maintenance requirements for the bridge where active space is located.
- Existing 14m wayleave with gas and watermain traversing (in accordance with Table 14.2 of the development plan in relation to wayleaves).
- Future train station and/or future metro area.

There is a shortfall in public open space and a contribution in lieu is sought to provide function and suitable play amenities to Class 1 Public Open Spaces in the area in the form of Local & Neighbourhood parks which caters for primarily active recreation.

Areas of the development are designated as temporary acquisition of lands for the Dart + West construction compounds. A significant portion of the lands designated as public open space for the development are Temporary Acquisition Lands which raises concerns for the Parks and Green Infrastructure Division.

The shortfall is calculated as 8,894sq.m.

9.0 Assessment

9.1 Context

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. 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.

Having regard to the provisions of Section 48 of the Planning and Development Act 2000, as amended, and specifically Section 48(13)(a) which limits the Commission to only determine the matters of this special contribution appeal as there have been no other appeals, and having regard to all relevant documentation on file, the reports of the planning authority (PA) and having regard to relevant local, regional and national policies and guidance, including the Development Contributions Guidelines for Planning Authorities (2013) and Section 7.12 of the Development Management Guidelines for Planning Authorities (2007), I consider that the substantive issue in this appeal is whether the planning authority's imposition of a special financial contribution complies with the requirements of Section 48(2)(c) and (12) of the Act.

The appellant contends that the contribution in lieu of public open space of €521,966.87 as required under condition No. 48 should not apply as there is no shortfall of public open space in this case and that the shortfall of 8,894 sq.m is overstated by c.4,002sq.m which directly corresponds to the omission of the allocated Class 1 public open space. The shortfall calculation used by the planning authority rises from strict application of the population – based standard. The appellant submits that the reliance on the population based standard alone does not provide an appropriate basis for assessing public open space provision having regard to the CDP, CSG and Kellystown LAP and therefore, the financial contribution

required under condition No. 48 has been calculated on an incorrect basis and should be revised to reflect the actual level of provision.

I consider that the key issues in the assessment of the appropriateness of Condition 48 (contribution in lieu of public open space) are:

- Fingal County Development Contribution Scheme 2021-2025
- Quantum of Public Open Space Gross and Net Site Areas.
- Development Plan – compliance with public open space standards
- Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities, 2024

9.2 Fingal County Development Contribution Scheme 2021-2025

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.

9.3 Quantum of Public

9.3.1 Open Space Gross and Net Site Areas

The proposed development comprises 302 no. residential units and a creche. The grounds of appeal set out that the proposed Public Open Space provision is 18.8% (8,231sq.m) based on the gross site area of 4.39ha and 16.3% (c.6,544sq.m) based on the net site area of 3.96ha. The 18.8 % includes a linear park along the eastern boundary which accounts for c. 16.3% of the net area and that the overall Open Space Strategy aligns with the principles of the Kellystown LAP which covers the lands where the site and adjoining developments by the appellant are located.

The following areas have been deducted from the gross site area in calculating the net site area:

- Gas Main Wayleave (c.1,776sq.m)
- Dart + West Infrastructure (c.1,083sq.m)

- Connection to Riverwood Square (c.223sq.m)
- Loop Road (c.1,179sq.m)

I agree with the information on file that the areas outlined above which are part of the proposed development (wayleave, Dart + West Infrastructure, Loop Road and connection to Riverwood Square) can reasonably be excluded from the 4.39ha 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. Table 1 also excludes other areas of land that cannot be developed due to environmental sensitives and topographical constraints.

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 4.39ha, and the net site area 3.96ha. These matters are further discussed below.

9.4 Development Plan – compliance with public open space standards

Table 14.12 sets out minimum public open space standards for 'New Residential development on greenfield sites/LAP lands is 12-15% of the site area.

CIO038 requires a minimum public open space provision of 2.5 hectares per 1000 population, this is based on an agreed occupancy rate of 3.5 persons in the case of dwellings with 3 or more bedrooms and 1.5 persons in the case of dwellings with 2 or fewer bedrooms.

The proposed public open space provision for the permitted development is 18.8% (8,231sq.m) based on the gross site area of 4.39ha and 16.3% (c.6,544sq.m) based on the net site area of 3.96ha. The grounds of appeals submit that:

- Based on FCC Calculation (population based standard under Objective CIO038/DMSO51 there is a requirement for c.17,125sq.m of open space which results in a shortfall of c,8,894sq.m
- If off site (c.4,002sq.m) open space resulting from surplus associated with Luttrellstown Gate (Phase 1) is credited then the shortfall is c.4,892sq.m

- Table below based on figures submitted with the appeal shows the proposed public open space based on Gross and Net Site Areas for difference scenarios set out in Table 14.12 and the CSGs.

Calculation Options	Based on Gross Site Area	Based on Net Site Area
Proposed POS	8,231.00sq.m	6,455.00sq.m
No shortfall at min 10% (CSG)	+3,841.40sq.m	+2,491.50sq.m
No shortfall at min. 12% (Table 14.12)	+2,963.48 sq.m	+1,698.80sq.m
No shortfall at min. 15% (Table 14.12)	+1,646.60sq.m	+509.75sq.m

In the interest of clarity, I address the public open space requirements separately below.

9.4.1 Compliance with Table 14.12

The appellant submits that there is no shortfall in public open space having regard to the requirements set out in Table 14.12 of the County Development Plan for new Development on Greenfield or LAP Lands of 12-15%, and that the open space strategy aligns with the requirements of the Kellystown LAP.

The planning authority's appeal submission notes that the proposed scheme includes 8,231sq.m of Public Open Space located to the east of the site and throughout the site which equates to c.16.3% of the site area which is considered acceptable.

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.

I acknowledge 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'.

I note that this matter is also referred to in Objective DMSO53 – Financial Contribution in Lieu of Public Open Space which 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.....' On this basis I am of the view 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.

The Development Plan does not appear to expressly state whether this standard is to be applied to a gross or net site area. Having regard to Development Plan content relating to public open space provision for new residential developments on greenfield or LAP sites as set out in Table 14.12, 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.

As outlined previously, the proposed public open space provision for the permitted development is 18.8% (8,231sq.m) based on the gross site area of 4.39ha and 16.3% (c.6,544sq.m) based on the net site area of 3.96ha which exceeds the requirements set out in Table 14.12. Having regard to the foregoing I consider the proposed public open space provision is acceptable given the context of the site (greenfield and on LAP lands) and no short fall occurs when considered in the context of the requirements of Table 14.12.

9.4.2 Compliance with Objective CIO38

The appellant has highlighted that the pro-rata public open space requirement set out in Objective CIO038 would equate to providing on site c.17,125sq.m (39% of the gross site area) based on a population equivalent of 685 persons which is significantly in excess of the requirement of 12-15% set out in Table 14.12.

The planning authority's appeal submission notes that the financial contribution in lieu of public open space is based on the requirement of 17,125sq.m which results in a shortfall of 8,894sq.m. This calculation is based on the population equivalent (2.5ha per 1000 persons) is to be levied for contribution in lieu of €521,966.87. I note Report dated 11 June 2025 from the Parks and Green Infrastructure Division which sets out the requirement of 17,125sq.m based on (2.5ha per 1000 persons) population equivalents based on total bedspaces of 685, and that a contribution in lieu of the shortfall of public open space to provide functional and suitable play amenities to Class 1 Public Open Spaces in the area. Concerns were raised that the proposed 'public open space' for the development falls within lands that have been designated as temporary acquisition for construction compounds and access routes for Dart + West. I note that the LRD at PA stage was the subject of a further information request, however this matter was not included for comment.

In applying the 2.5ha per 1000 population standard to a 3.96 ha net site area, the 685 bedspaces would result in a public open space requirement for 17,125sq.m. Should this quantum of open space be provided on site it would equate to c.39% of the net site area which is significantly in excess of the Table 14.12 requirements.

Objective CIO038 sets out the requirement to provide 2.5ha per 1000 population. If the current site is considered in isolation, this results in a shortfall, however, I am of the view that the provision of public open space needs to be considered in the context of the wider Kellystown LAP lands and permitted Class 1 and Class 2 open space to date. The appellant in this regard has submitted that the planning authority have not taken into account the public open space provisions provided by the appellant in developments across the Kellystown LAP lands which include c.2.8ha of Class 1 public parkland in Luttrellstown Gate (Phase 1) on lands under the appellant's ownership to the south of the Kellystown Link Road. It is their case that the permitted c.2.8ha public park in Luttrellstown Gate (Phase 1), which is in the

immediate vicinity and the surplus from Phase 1, can cater for the shortfall in Class 1 Public Open space for this scheme given the surplus of public open space provided there.

Having regard to the proximity to and extent of existing/permitted Class 1 and Class 2 public open space in the immediate vicinity of the subject site, namely associated with the appellant's permitted residential development to date on lands identified within the scope of the Kellystown LAP, I consider that the provision of the shortfall of open space based on the requirements of 2.5ha per 1000 population is met through the provision of permitted open space on the appellant's lands to date and therefore no requirement for a development contribution in lieu of open space is required in this instance.

This assessment is confined to the assessment of the appropriateness or not of the development contribution attached under Condition No.48.

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

For completeness, I note that Policy and Objective 5.1 of the Compact Settlement Guidelines 2024 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 is required in this case as not only does the proposed scheme exceed the 12-15% requirement set out in Table 14.12, it also exceeds to minimum requirement of 10% set out in the Compact Settlement Guidelines.

10.0 Recommendation

I recommend that Condition No.48 be REMOVED for the reasons set out hereunder.

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 permitted public open space with the Kellystown LAP lands
- (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)

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. 48 and directs the said Council to REMOVE Condition No. 48.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.”

Dáire McDevitt
Inspectorate

10 June 2026