



An  
Coimisiún  
Pleanála

## Inspector's Report PL-500486-DF-25

<b>Development</b>	Housing development of 47 residential units comprising a mix of 35 houses and 12 no duplex/apartment units and all ancillary site development works.
<b>Location</b>	Land in the townlands of Porterstown and Kellystown, Dublin 15.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW25A/0419E
<b>Applicant(s)</b>	Castlethorn Developments Luttrellstown, Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	First Party v. financial condition contribution
<b>Appellant(s)</b>	Castlethorn Developments Luttrellstown, Limited.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	14 <sup>th</sup> day of May 2026
<b>Inspector</b>	Fergal Ó Bric

## 1.0 **Site Location and Description**

- 1.1 The site is located within the townlands of Kellystown and Porterstown and form part of the lands within the boundary of the Kellystown Local Area Plan. To the north of the subject lands is the Dublin-Maynooth rail line, to the south, south-west and east of the subject site are lands that are part of a permitted Strategic Housing Development (SHD) development scheme which is presently under construction. Immediately west of the subject site is a recently permitted residential development of fifty-six residential units and is subject to a concurrent planning appeal in relation to a financial contribution condition.
- 1.2 The stated site area of this largely rectangular site is 2.17ha, and includes a dog-leg element to the southwest of the site which provides for access to a foul-water pumping station, a surface water attenuation pond and active and passive open space lands to serve all of the residential zoned lands in this vicinity, including the subject site.
- 1.3 The site is bound to the south by the existing Kennan Green/Drive/Avenue residential development, part of the permitted residential scheme which is largely completed and inhabited on foot of the SHD planning permission referenced in paragraph 1.1 of this report above and the Kellystown link road which is being developed on an incremental basis as the development progresses. The Dublin to Maynooth rail line and the Royal Canal are both located just north of the subject site.
- 1.4 The subject site is located within c.240 metres north-east of the permitted passive and active open space areas permitted under the adjoining SHD scheme. To date three multi-purpose ball courts, a grass pitch area and a public park area have been developed as part of that permitted SHD scheme

## 2.0 **Proposed Development**

- 2.1 The proposed development would comprise:
- 47 residential units, comprising 35 no. three and four bed houses and 12 no, one and two bed duplex apartment units.

- Landscaping and boundary treatment works,
- 54 no. surface car parking spaces and 152 no. bicycle parking spaces,
- Bin stores, private, communal and public open space,
- Public lighting, minor amendments to the permitted surface water attenuation pond,
- Vehicular access off the existing Kellystown link road via the internal roads of Luttrellstown Gate,
- All associated and ancillary site development works.
- On a site of approximately 2.17Ha.

### 3.0 Planning Authority Decision

#### 3.1 Decision

The Planning Authority issued a decision to grant permission subject to 32 no. planning 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

Condition 3: Permission relates to 47 no. residential units.

Condition 26: Prior to commencement of development the applicant shall submit for the written agreement of the Planning Authority, a detailed plan clearly identifying all public open spaces and play areas within the overall ownership of the applicant, as shown on the Site Location Map:

- a) The plan shall use a clear colour coding system to distinguish each individual open space and play area, ensuring that they are easily identifiable
- b) Each open space or portion thereof shall be annotated with the relevant planning application reference e.g. LRD0034/S3, SHDW/004/21; Phase 2, Site A and Site B to demonstrate the relationship between the approved applications and the designated open space.
- c) The plan shall indicate the precise area, in square metres (sq. m), of each

individual open space and play area.

Reason: In the interest of clarity.

Condition 31: Prior to Commencement of development a financial contribution in the sum of €93,547.92 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 1,594 sq. m. 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 32: Prior to commencement of development the developer shall pay the sum of €604,596,22 (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 **Planning Authority Reports**

Planning Report

Basis for planning authority's decision:

- Notes that the site is zoned RA-Residential area as per the Kellystown LAP 2021.
- Table 2.14 within the current Fingal Dev Plan 2023 sets out a Core strategy allocation for the Castleknock LEA is 2,623 residential units and the proposals would contribute towards achieving this target.

- States that a net density of c.36.1units per hectare is proposed.
- No objection, subject to conditions from Transportation, Environment, Architects, Archaeology, public lighting and Housing Departments.
- Notes Parks and Green Infrastructure Department report raised concerns regarding the protection of the hedgerow and trees within the site boundary and that a POS requirement of 3,512 sq. m. should be provided as per the FCDP provisions, and specifically table 14.12.
- The overall design and layout have been afforded considerable attention having regard to the site context.
- Recommendation to grant subject to conditions reflects Planner's report.

#### Internal Technical Reports

Water Services; No objection subject to conditions.

Parks and Green Infrastructure No objection subject to conditions.

Transportation Planning: No objection subject to conditions.

Environment Department; No objection subject to conditions.

Community Archaeologist; No objection subject to conditions.

Public Lighting: No objection subject to conditions.

Air and Noise Department: No objection subject to conditions.

Housing Department: No objection subject to condition.

Architects Department: Amendments to landscaping and internal layout of a number of residential units required.

### **3.3 Prescribed Bodies**

Uisce Éireann: No objection in principle, subject to pre-connection agreements being signed ahead of works commencing on any connection for water/wastewater services.

Dublin Airport Authority (DAA); Observation 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 D of Dublin Airport.

Transport Infrastructure Ireland; No objections. Decision to have regard to proviso of TII policy guidance.

Irish Rail: Seeking confirmation of landownership along northern site boundary, that adjoining the Dublin-Maynooth rail line.

### 3.4 **Observations to the Planning Authority**

None received as stated in the planning report prepared by the PA.

### 4.0 **Planning History**

Relevant planning history is outlined as follows:

#### On site:

P.A. Ref. no. FW25A/0233; Planning permission refused for 99 no. residential units, all associated and ancillary site works, landscaping and boundary treatment and access off existing Kellystown link road and via internal access roads of Luttrellstown gate Phase 1 development. Refusal reason was (1) The low-density development would materially contravene the density range set out within the Kellystown LAP 2021).

#### Adjacent sites

Board reference no. ABP-312318-21: Permission granted for an SHD development of 349 residential units and a childcare facility, upgrade and extension of Kellystown link road, internal pedestrian/cycle link and green routes, segregated pedestrian/cycle way along western boundary of Porterstown Road, new dedicated park (c. 2.1 hectares) providing for active and passive recreation facilities, smaller public pocket park areas, green infrastructure links and communal private pen

space. This site is located to the south-east, south and south-west of the subject site and is presently under construction.

Board reference no. LRD0034/S3 amendments permitted to the SHD permission referenced above providing for an increase of 28 residential units, creation of public plaza, relocation of communal space, reduction in car parking and increase in bicycle parking.

LRD0052/S3E-Permission granted for a large scale residential development of 302 units on the St Mocha's Football club grounds, further east of the subject site on the eastern side of the Porterstown Road, car and bicycle parking spaces, private, communal and public open space, new children's playground, active recreational facilities, associated landscaping and boundary treatments, and access off existing Kellystown link road and via internal access roads of Luttrellstown gate Phase 1 development. This scheme is presently under construction.

FW25A/0418E- Planning permission granted for 56 no. residential units, comprising of 50 dwelling units and 12 no. duplex/apartments units and all associated and ancillary site works, landscaping and boundary treatment and access off existing Kellystown link road and via internal access roads of Luttrellstown gate Phase 1 development. This site is located immediately west of the subject site and construction works have commenced on foot of this permission. This site is subject to a con-current planning appeal in relation to a financial contribution condition.

## 5.0 Policy Context

### 5.1 Fingal Development Plan 2023-2029

#### Chapter 13: Land Use Zoning

The site is zoned RA-Residential Area in the Fingal Development Plan 2023-2029 where the objective is 'To provide for new residential communities subject to the provision of the necessary social and physical infrastructure'. 'Residential' uses 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 to allow for 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 CIOSO38 – Public Open Space Provision (Chapter 4).

## 5.2 Fingal County Council Development Contribution Scheme 2021-2025

The Development Contribution Scheme (DCS) 2021-2025 was the scheme applicable at the time of the planning assessment and decision by FCC. It sets out the following as the basis for the determination of contributions, 3no. 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.

### 5.3 Fingal County Council Development Contribution Scheme 2026-2030

The Development Contribution Scheme (DCS) 2026-2030 was approved by the elected members on the 8<sup>th</sup> day of December 2025. Section 7 of the DCS 2026 sets out the following: 'This Development Contribution Scheme provides funding for three general classes of "public infrastructure and facilities", namely: - Class 1: Transportation and Active Travel Infrastructure & Facilities, Class 2:: Surface Water Infrastructure & Facilities (incl. Flood Relief): and Class 3: Community Facilities, Parks & Open Space Amenities & Biodiversity related Infrastructure, Tourism, Cultural & Library Development, Economic Development and Regeneration infrastructure'. It sets out the following refers to the basis for determination of contributions, 3no. categories/classes of development, unit of measurement and the associated rates of charge.

The Fingal County Development Contribution Scheme 2026-2030 sets out under Level of Contributions –

- Section 19: The Fingal County Development Plan 2023-2029 provides the Planning Authority with discretion to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. This shortfall is based on the Overall Public Open Space requirements as outlined in the current Development Plan standards. (Ref. Objectives: DMSO51 DMSO52, DMSO53, DMSO54 and DMSO57.

- Section 20: This contribution in lieu of open space will be levied at the following rates: -.
  1. Class 1 Open Space - €150,000 per acre to purchase land based on the value of amenity land, plus €150,000 per acre for development costs.
  2. Class II Open Space - €450,000 per acre to purchase land in residential areas, plus €150,000 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.

The above contribution will apply to all relevant permissions including provision of residential units to the Council for social housing and under Part V of the PDA.

- Section 35: Effective Date that these rates of contribution shall be effective from 1st January 2026 to 31st December 2030.

#### 5.4 **Development Contributions – Guidelines for Planning Authorities, 2013**

Planning Authorities and An Coimisiún Pleanála<sup>1</sup> 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.

#### 5.5 **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

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<sup>1</sup> 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.

appeals relating to Section 48/Section 49 financial contributions conditions only, the Commission is restricted to consideration of the matters under appeal.

## **5.6 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.

## **5.7 Natural Heritage Designations**

The subject site is not located within the boundaries of any designated European sites.

## **5.8 EIA Screening**

This case is a first party appeal specifically in relation to a planning condition relating to a development contribution. 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. Please refer to Form 1 in Appendix 1 at the end of my report below.

## 6.0 The Appeal

### Grounds of Appeal

A first party appeal has been lodged in relation to the inclusion of Condition 31 within the Planning Authority's decision to grant permission. The grounds of appeal may be summarised as follows:

- The stated shortfall of 1,594 sq. m. of open space is incorrect. The levy for contribution in lieu of open space has been incorrectly calculated and that sufficient open space has been provided in this particular instance having regard to the locational context of the site.
- The POS calculation by the PA is excessive having regard to locational context and having regard to the extent of parkland open space permitted adjacent to the subject site
- The appeal is being made under Section 48(10) c) of the Planning and Development Act 2000, as amended, and it is requested that the Coimisiún restricts its consideration to condition no. 31 alone. A de novo assessment is not required.
- The PA in its assessment set out 'it is evident that significant consideration has been given to the layout of the scheme and has had due regard to the impact on existing site context'.
- The Parks and Green Infrastructure Section within FCC set out the following 'The scheme provides for a total of c.1,918 sq. m. of public open space. The Parks and Green Infrastructure Division calculates the overall space requirement for the scheme to be 3,512 sq. m.
- The contribution amount of €93,547.92 corresponds to an equivalent shortfall being calculated at a rate of €233,870 per acre for Class 1 and 2 open space, neither of which tally with the Class 1 and 2 contributions in lieu as set out within the DCS 2021-25.
- In any event, the PA has not had regard to the full quantum of open space proposed to be delivered by the applicant, both on site and off site in this case, for the benefit of the proposed development and the wider emerging

community in Kellystown.

Planning Authority assessment:

- Parks and Green Infrastructure report:
  - States that the required amount of on-site public open space should amount to c.3,512 sq. m, and that Root Protection Zones around hedgerow and trees do not qualify as public open space. Public open space shortfall for the development of 47 residential units is calculated by the Parks Dept at 1,594 sqm, required to be made up by a financial contribution in lieu.
  - Parks Department require a minimum public open space provision of 2.5ha per 1000 population as per table 14.12 within the current Fingal County Development Plan (FCDP) 2023. The financial contribution in lieu of 0.1594ha shortfall in public open space provision is to be used towards the cost of amenity works in the area of the proposed development.

Fingal County Development Plan 2023 – 2029

- Provisions of Table 14.12 provide for a number of recommended quantitative standards for the calculation of public open space. An overall standard of 2.5 hectares per 1,000 population would result in the provision of 3,512sqm or c. 26.9% of net site area (1.3ha) public open space requirement, based on 140.5 population. Table 14.12 also provide for 12-15% of site area for new residential development of Greenfield sites.
- The subject site is greenfield. There is a significant difference in a 12-15% Development Plan POS requirement and one that exceeds 25% of net site area. The Development Plan sets the appropriate level of public open space provision to be in the range of 12-15%. This has been subsequently confirmed within the Compact Settlement Guidelines. On the basis of 12-15% of site area, this would result in 0.156ha – 0.195ha POS requirement, markedly different to 0.3512 ha required by population calculation.
- Recent determinations in Fingal considered open space requirement having regard to appropriate percentage (12-15%) of site area; ABP-322747-25 refer.

- FCC set out that the proposed public open space is 1,594 sqm less than open space calculation based on overall standard in Development Plan. Overall standard in Table 14.12 equates to approximately 28% of the 1.33ha net site area which includes the Root Protection Zones (applicants appear to have mistakenly referenced gross site area in their appeal submission on Pg 5, Section 5.2). This 27% figure is significantly higher than 'new residential development on greenfield sites' where 12-15% of site area is required.
- New residential development on greenfield lands/LAP lands
  - 12% of site area is 1,561 sq. m.
  - 15% of site area is 1,951 sq. m.
  - 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 31 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.
- The net site area for density purposes is 1.3ha.
  - 10% would equate to 1,301 sqm
  - 12% would equate to 1,561.2 sqm
  - 15% would equate to 1,951.5 sqm
- The proposed Site layout Sheet 1 of 2 submitted to the Coimisiún on 17<sup>th</sup> December 2025 identifies 3 no. areas of POS within the red line appeal site boundary. These include area (A) 979 sq. m. to the south and south-east of the site, area (B) 1,015sqm, to the east of the site and area C) 189 sq. m. to the north-east of the site amounting to 2,183 sq. m. which equates to c.16.5% of net site area, in excess of the standards set out within the Guidelines. Section 5.5.1 of the appeal submission sets out that 1,918 sq. m. of public open space is proposed to be provided on site.

- The appeal submission states that 275 sq. m. is excluded from net site area for density purposes as this is designated as a Root Protection Zone (RPZ), an area of environmental sensitivity. This leaves an on-site net POS provision of 1,908 sq. m.
- The applicants state that the 1,908 sq. m of on-site POS combined with 1,397 sq. m of off-site POS provision, which arises within the excess POS provided as part of the adjoining SHD scheme, where an excess of c.7,494 sq. m. of POS was provided in the form of a public park that has recently been developed, adjacent to and within 240 metres south-west of the subject site boundary.
- Policy Objective 5.1 within the Compact Settlement Guidelines notes that not more than 15% of net site area should be provided as public open space. P.A. are seeking in excess of 25% of net site area as public open space, significantly in excess of the maximum. The adjacent park area, permitted under 312318-21, located within 240 metres of the subject site which has recently been completed in the form of a park area, three multi-purpose ballcourts and a grassed patch area (as of the 15/5/2026), was not taken into account. It is within a c. 3-minute walk of the subject site and was permitted to serve not just the SHD development but also adjacent residential developments, including the subject site. Given the discretionary nature of this levy, this is considered to be a material consideration.
- The applicants do not accept the approach adopted by FCC is subtracting the RPZ area from the POS, which results in a reduction of the net POS by c. 275 sq. m. It is stated by the applicants within their appeal submission that the RPZ corridor is part of the net public open space and that future residents will benefit by enhanced amenity of this corridor being reserved. The benefit of environmental corridors as part of the amenity afforded to residents is specifically referenced within the CSG's where there is an acknowledgement of the contribution of such features as part of POS provision.
- However, the applicants consider that the RPZ area will be read as part of overall open space.

Existing/permitted public open space

- The subject site is located to the north, north-west and north-east of a permitted SHD residential scheme, originally permitted under Board reference 312318-21 and as amended under LRD0034/SE. This permitted development provided for a number of multi-purpose ballcourts, playing pitches and a park area all located to the south-west of the subject site. The applicants set out that the permitted SHD provide for an excess of 7,494 sq. m. of public open space which would be used as excess POS to serve future residential development, including within the subject site. The permitted SHD/LRD scheme is within a 240 metre (3 minute walk) of the subject site, is located on the southern side of the Kellystown link road and is being developed on an incremental basis in tandem with the adjoining residential development, in the form of three multi-use ball courts, a full sized grassed pitch and a parkland area in immediately adjoining a foul pumping station and surface water attenuation pond.
- Future residents will directly benefit from close proximity to the public park (comprising approximately 2ha) permitted on foot of the permitted SHD development. Given proximity to and size of the adjoining permitted park area., it would be entirely reasonable the Coimisiún 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 31 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 Coimisiún has discretion to remove/modify the condition, if in their opinion that the terms of the DCS have been incorrectly applied.
- Should the Coimisiún determine to apply the levy at its discretion, this should only be applied at 12% or 15% minimum public open space requirement as

per table 14.12 in the current FCDP 2023. The Compact Settlement Guidelines requirements pertain to net site area, whereas Development Plan refers to site area.

- Development Plan requires a target minimum of between 12%-15% public open space at new residential of greenfield sites (Table 14.12). In the event the Coimisiún does not accept that a zero contribution is applicable, the 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 in Section 5.5.1 of the applicants' appeal submission as follows:
  - 10% public open space-No shortfall: net site area- €0
  - 12% public open space-No shortfall: net site area- €0
  - 15% public open space-Shortfall of 33.5 sq. m;

## 6.2 Planning Authority Response

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

- The 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 14.12 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.
- This appeal specifically relates to condition no 31 which requests a development contribution in lieu of the shortfall in public open space provision under Section 48 (10) (b) of the P & D Act 2000, as amended. The applicants are claiming inconsistency in the calculation of POS by the PA.
- The Parks & Green infrastructure Division state that a cumulative total of 31,000 sq. m of POS has been provided across the Phase 2 lands (sites A & B) including the subject site, and the adjoining permitted SHD development as amended by the permitted LRD development located south, south-east and south-west of the subject site.

- The Parks and Green Infrastructure Division understand the applicants would provide class 2 open space within the red line boundary of the current appeal supplemented by residual POS from within the permitted Class 1 public park, which is partially developed and located approximately 240 metres south-west of the subject site.
- The PA submission specifically references condition no 26 of the FW25A/0419 permission which seeks information in relation to POS and play area provision within lands within the overall ownership of the applicants.
- The requested €93,962.63 financial contribution will go towards upgrading and enhancement of Class 1 and Class 2 parks and public open spaces in the area. However, no specifics are set out by the Parks and Green Infrastructure Division in relation to which parks/recreation areas would be improved or provided.
- P.A. requests that Condition 31 remains unchanged.

### 6.3 Observations

None

### 6.4 Further Responses

A first party response was received on 16th day of February 2026 to the P.A.'s response to the grounds of appeal. Matters raised in the response may be summarised as follows:

- A colour coded map has been provided illustrating the POS provided within the subject site and within the adjoining permitted residential developments within their ownership.
- A table outlining the POS requirements on foot of the permitted SHD development and the two concurrent planning proposals, both the subject of current appeals, including the subject site,
- The remaining excess of POS arising from the SHD development has been allocated to the current live LRD application-LRD0052/S3E on lands east of the subject site-St Mochta's FC grounds development and the POS allocation

to the two concurrent planning proposals under appeal. The proposed development delivers compliant public open space provision both on-site and offsite under the permitted SHD development under Board reference 321318-21 (as amended) and no shortfall in POS arises.

- The expected occupancy within the 47 residential units results in a population equivalent of 140.5 persons. This would give a pro-rata POS requirement of a minimum of 3,513 sq. m. This was proposed to be met through 2,193 sq. m of on-site Class 2 POS and 1,320 sq. m of Class1-off-site POS permitted as part of SHD development.
- The 1,320 sq. m. has already been provided within the adjacent Phase 1 lands in accordance with the Kellystown LAP 2021, which had a total excess provision of 7494 sq. m. above the requirements of their class 1 POS. This was specifically provided to cater for subsequent phases within the Eastern Area of Kellystown LAP boundary, including the subject lands.
- The discount of the class 2 POS within the Root Protection Zones (RPZ's) as qualifying POS is unreasonable as mature trees add to, rather than detract from the amenity and useability of Class 2 public open space.
- The applicants request that the discretionary contribution in lieu of POS under Condition no 31 should not apply.
- The applicants set out that the Planning Authority has reaffirmed its position in attaching Condition 31 as per their submission to the Coimisiún.
- No new information has been introduced, nor has the P.A. addressed or disputed the arguments set out within the first party appeal.
- Applicant has no further comment on the P.A.'s submission and request the Coimisiún give due consideration to the 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 This appeal is a first party appeal against condition no 31 specifically in relation to a development contribution in lieu of public open space provision and, therefore, the 2021-2025 DCS is the scheme relevant to this assessment, given that was the scheme in operation at the time of the planning decision.

7.4 I consider the issues can be addressed under the following heading:

- Condition no. 31

#### 7.4 **Condition 31**

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 31. In the event the Coimisiún 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 31.

7.4.2 I consider that the key issues in the assessment of Condition 31 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 provisions of the current Fingal County 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 forms 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 47 no. residential units (35 no houses and 12 no duplex apartment units) on an overall gross site area of 2.17ha, as set out within the planning documentation (in the public notices and the planning application form).
- 7.4.5 Having regard to the guidance set out within 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 2.17 hectares, although within their appeal submission a gross floor area of 1.33 hectares is referenced within the tabular information (this appears to be a mistake and refers to the net site area inclusive of the RPZ,s). The applicants state that the three no. pocket parks and the Root Protection Zones (RPZ's) provide for 2,193 sq. m or 16.5.% of public open space (POS) of the net site area, and if the RPZ's are removed from the calculation of POS (as requested by the PA) the usable public open space on site reduces to 1,918 sq. m, or 14.7% of the net site area. The appellants submit that no shortfall in public open space (POS) arises for the proposed development, as the Development Plan requirements for new residential developments on Greenfield/LAP lands is 12-15% of site area. The minimum requirements as set out within the Sustainable Residential Development and Compact Settlement Guidelines (CSG's) is 10% of net site area and a maximum ceiling of 15%.
- 7.4.6 The applicants also state that Hedgerow 8 (along the southern site boundary) which is incorporated within the development as an 'environmental area' has been excluded from the POS calculation, even though the CSG, s acknowledge the contribution of such features as part of POS provision.
- 7.4.7 The PA have failed to acknowledge the excess level of POS comprising 7,494 sq. m. provided within the permitted SHD scheme 312318-21) as amended by LRD0034-S3 which provides for a public park to the south of the Kellystown link road, the development of which is largely complete in that the public park, looped tarmacked cycle/walkway and 3 no. ballcourts and grassed sports pitch are completed. The permitted public park is located within approximately 240 metres south-west of the

nearest dwelling within the subject site, located on the north side of the Kellystown link road. The addition of the off-site public open space in the form of the permitted park in addition to the on-site POS, results in a zero shortfall in POS for the proposed development.

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

- Internal road/streets within the residential scheme.
- The surface water attenuation pond which is located immediately adjoining the existing permitted park area, ballcourts and grass pitch area.
- The area of riparian corridor comprising 4-metre-wide combined cycle/footpath and areas along hedgerow 8 root protection zone – 275 sq. m

It is stated that this amounts to a net site area of 13,010 sq. m. (c. 1.30ha).

7.4.9 As per the public notices and the gross site area is stated to be 2.17ha. However, I note that the omission of, for example, the 275 sqm Root Protection Zone (RPZ) from the overall 13,285 sq. m. net site area. However, the grounds of appeal clarify (at Section 4.3.2) that the applicants disagree with the PA's approach to discounting the RPZ's from the POS calculation, and state that the CSG's acknowledge that future residents benefit directly from enhanced amenity afforded by same.

7.4.10 I would concur, based on the planning documentation submitted that the areas of the proposed development (internal roads/streets, the surface water attenuation pond ,riparian corridor comprising the 4 metre wide footpath/cyclepath and RPZ along hedgerow) can reasonably be excluded from the 2.17ha 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 sensitives and topographical constraints, I consider it reasonable that the environmental corridor alongside hedgerow 8 that provides for the Root Protection Zone (RPZ) associated with the hedgerow and trees and which would also provide for a combined 4 metre wide cyclepath/footpath be excluded in the calculation of net

site area, and is also excluded from the calculation of quantifying public open space provided on site.

- 7.4.11 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 2.17ha, and the net site area is 1.30ha. These matters are further discussed below.

Development Plan – compliance with public open space standards

- 7.4.12 The Planning Authority's appeal submission sets out the overall context in which the subject site is set, in terms of the permitted SHD development 312318-21 , as amended under Board ref no. LRD0034/S3 , the development proposed within the subject site for 47 no. residential units permitted under planning reference no. FW25A/0419E and the adjoining and concurrent development for 56 no. residential units, located immediately contiguous to and west of the subject site permitted by FCC under planning ref. no. FW25A/0418E and that a cumulative total of 31,000 sq. m (3.1 hectares) of public open space has been provided between these three permitted developments.. This figure is stated to include 'the Class 1 public park recently developed, which is stated to comprise approximately 20,790 sq. m, and is located approximately 240 metres south-west of the nearest dwelling on site and immediately adjacent to the surface water attenuation pond that would serve the subject site.

- 7.4.13 The PA appeal observation sets out the following 'It's the understanding of the Parks and Green Infrastructure Division that the applicants intend to meet the proposed POS quantum for FW25A/0418 and FW25A/0419 by providing class 2 open space within the red line boundaries of the current applications (the subject of current appeals) supplemented by residual POS from the class 1 public park.' As part of their appeal submission the PA requested that the applicants submit an overall detailed site map identifying 'all POS and play areas within the overall ownership and that this requirement is included as condition no. 26 under PA reference number FW25A/0419E.

- 7.4.14 I acknowledge the efforts of the LA to ascertain the precise extent of public open space (POS) associated with each of the sites within the applicants' ownership. This matter is to be rectified under compliance with condition no 26 of this permission. However, this appeal specifically relates to condition no. 31 and, therefore,

compliance with condition no 26 is not a matter for consideration under this appeal. I also consider that the applicants have adequately set out the public open space provision associated with the subject site and the two adjoining sites permitted under FW25A0418E and SHD312318-21 as amended under LRD0034/S.

- 7.4.15 The PA set out that the financial contribution in lieu of public open space is based on an overall 1.3 ha net site area. In this regard, I note in particular that the Planning Authority's assessment would appear to be largely based on the 2.5ha per 1,000 population standard and not on a site percentage basis, between 12-15% as provided for within Table 14.12 of the current FCDP 2023-29.
- 7.4.16 The Development Plan public open space quantitative requirements are set out at Section 5.0 (Development Plan policy) of this report above.
- 7.4.17 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 Coimisiún'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.
- 7.4.18 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.
- 7.4.19 The planning authority calculates that the overall open space requirement is 0.3512ha. Public open space of 0.1918 ha is provided on site, 0.1594ha is to be levied for contribution.
- 7.4.20 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.

- 7.4.21 In applying the 2.5ha per 1000 population standard to a 2.17ha net site area, the 140.5 bedspaces would result in a public open space requirement for 3,513sqm (25sqm x 140.5)  $\cong$  0.35ha. This quantum of open space would equate to c. 27% of the 1.3 ha net site area. I consider that a requirement to provide c. 27% of the net site area as public open space to be excessive, such that it would not be easily provided on site.
- 7.4.22 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 below 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'.
- 7.4.24 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.
- 7.4.25 The subject is greenfield. Having regard to the provisions of the current Fingal Development Plan 2023-29, POS in the range of 12-15% is required for greenfield sites. Having regard to the nature of the subject site in close proximity to a developed and permitted public park area and multi-purpose ballcourts and playing pitches, and the nature of the proposed development, I consider that achieving the lower minimum 12% quantum of public open space, as distinct from the higher 15% range, would be a reasonable target in this instance.
- 7.4.26 The first party's appeal submission states the three areas of public open space provided on site (A) 979 sq. m. to the south and south-east of the site, area (B) 1,015sqm, to the east of the site and area C) 189 sq. m. to the north-east of the site

amounting to 2,183 sq. m. equates to c.16.5% of net site area (this figure includes the root protection zone areas). With the exclusion of the RPZ's (275 sq. m) the POS amounts to 1,908 sq. m or 14.7% of net site area as on-site POS provision. This 14.7% quantum of public open space is, therefore, marginally below the upper range of 15% as set out within the current FCDP 2023-29.

7.4.27 In this regard, I estimate that there is a 33.5 sq. m shortfall in meeting the upper 15% public open space standard.

7.4.28 Having regard to the calculations outlined above, there is a substantial difference between this estimated 33.5 sq. m. shortfall to achieving the maximum 15% target, and the 1,594 sq. m. shortfall set out 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 33.5 sq. m. is the relevant 'shortfall' figure which arises in this assessment of Development Plan standards.

7.4.29 I draw the Coimisiún'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.

7.4.30 While I note that there is a 33.5 sqm shortfall in public open space, which constitutes 0.26% of the 1.3ha net site area, and as such the 14.7% of public open space provided is marginally below the maximum 15% 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 33.5 sq. m. shortfall) is appropriate or necessary in this case. The removal of Condition 31 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

- 7.4.31 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).
- 7.4.32 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.
- 7.4.33 The first party's grounds of appeal set out (at Section 4.3.3.) existing public open spaces, specifically the site's close proximity to the permitted and developed active and passive POS located within a 240 metre distance south-west of the subject site (approximately a 3 minute walk) to the off-site public park(which comprises approximately 2ha), to the proposals to provide two generous pocket parks and a smaller pocket park as on-site POS within the proposed residential layout. I would agree with the grounds of appeal that permitted and developed off-site POS is within short walking distance, although in terms of detail, and as measured on [www.tailte.ie](http://www.tailte.ie), 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 close proximity to existing active and passive public open spaces on the southern side of the Kellystown link road.
- 7.4.34 Having regard to the proximity to and extent of existing public open space in the immediate vicinity of the subject site, namely the adjacent park area and multi-purpose ballcourts and grassed playing pitch, I consider that the achievement of

14.7% of on-site public open space is justified in this instance.

7.4.35 For clarity, I note Policy and Objective 5.1 within the Compact Settlement Guidelines is not an 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.

7.4.36 Accordingly, as 14.7% public open space is provided for within the proposed development, which is in excess of the minimum 10% requirement set out in the Guidelines, and as outlined in the previous section, I recommend the removal of Condition 31 on this basis.

## 8.0 Recommendation

I recommend that Condition No.31 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 existing permitted active and passive public park/ballcourts and playing pitch area to the south-west of the subject site
- (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. 31 and directs the said Council to REMOVE Condition No. 31.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Fergal Ó Bric  
Planning Inspectorate

27th day of May 2026

## Appendix 1 - Form 1

### EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	PL-500486-DF-25		
<b>Proposed Development Summary</b>	Construction of residential development comprising forty-seven residential units and all associated site works		
<b>Development Address</b>	Porterstown and Kellystown, Dublin 15.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)	<b>Yes</b>		
	<b>No</b>	√ Appeal relates to development contribution only	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>			
<b>No</b>		N/A Appeal relates to development contribution only	
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			
<b>No</b>		N/A Appeal relates to development contribution only	Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>		N/A Appeal relates to development contribution only	Preliminary examination required (Form 2)

<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>	√	<b>Screening determination remains as above (Q1 to Q4)</b>
<b>Yes</b>		

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_