



An
Bord
Pleanála

Inspector's Report 29N.RH2049

Details of Reference

Determination of the manner in which social and affordable housing obligations of the applicant should be met in accordance with Condition No.8 of DCC Planning Reg. Ref. 3910/15

Location

Haremount & Lonsdale, 726 & 728
Howth Road, Dublin 5

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3910/15

Applicant

Athwood Ltd.

Type of Appeal

Referral under Section 96(8) of the Act

Referred By

Athwood Ltd.

Date of Site Inspection

4th December 2017

Inspector

Colm McLoughlin

Contents

1.0 Site Location and Description	3
2.0 Referral to the Board for Determination	3
3.0 Planning History.....	4
4.0 Policy Context.....	5
5.0 Legislative Context	6
6.0 The Referral.....	7
7.0 Assessment.....	10
7.1. Introduction	10
7.2. Background.....	10
7.3. Legislative Context.....	12
7.4. Assessment of Options	14
7.5. Matters Arising	17
7.6. Conclusion	18
8.0 Recommendation.....	19

1.0 Site Location and Description

- 1.1.** The referral site is located on the northwest side of Howth Road (R105 regional road), within an expansive and mature residential neighbourhood, 1.5km northeast of Raheny village. It is approximately 150m northwest of the coast and approximately 7.5km northeast of Dublin city centre.
- 1.2.** The site measures approximately 0.65ha and previously contained two detached two-storey dwellings on expansive plots. The property has been recently developed to accommodate 16 no. two to three-storey houses. Fronting onto Howth Road are two pairs of semi-detached houses and a terrace of three houses. Directly to the rear of these houses is an estate access road and nine terraced houses.
- 1.3.** The area in which the referral site lies is generally characterised by mature, two-storey residential development, with housing along Howth Road comprising a mix of detached houses along the northwest side and semi-detached housing along the southeast side. Foxfield Park to the rear comprises two-storey semi-detached houses. To the front of the site is a Dublin Bus stop. Land levels in the area drop gradually towards the coast.

2.0 Referral to the Board for Determination

- 2.1.** This referral has been submitted by Raymond Martin care of MKN Property Group on behalf of the applicant, Athwood Limited. It relates to a dispute between the Planning Authority and the applicant regarding the terms of the agreement to be entered into under Section 96 of the Planning and Development Act 2000, as amended (hereinafter 'the Act'), in relation to the means of providing social and affordable housing in order to comply with Condition No.8 of Dublin City Council (DCC) Planning Register Reference (Reg. Ref.) 3910/15.
- 2.2.** Section 96(8) of the Act states that where an agreement is not entered into before the expiration of 8 weeks from the date of the grant of permission because of a dispute, the applicant, the Planning Authority or any other person with an interest in the land may refer the dispute to the Board, and the Board shall determine the matter, as soon as practicable.

2.3. A period of 21 months has passed since the grant of permission for the housing development at Haremount & Lonsdale, 726 & 728 Howth Road, Raheny, County Dublin. Condition No.8 of that permission required the developer to enter into an agreement under Section 96 of the Act, as detailed directly below.

3.0 Planning History

3.1. The following applications relate to the subject site:

- DCC Reg. Ref. 3910/15 – Permission granted on the 11th day of April 2016 for the demolition of two houses (Haremount & Lonsdale) and associated outbuildings and construction of 16 no. two to three-storey dwellings, six vehicular entrances off Howth Road revised boundary treatments, landscaping and connections to all services. Permission included the following Condition No.8 relating to Part V - social and affordable housing:

‘Prior to commencement of development, the applicant shall enter into an agreement with the Planning Authority under Section 96 of the Planning and Development Act 2000 (as substituted by Section 3 of the Planning and Development Amendment Act 2002) in relation to the provision of social and affordable housing, in accordance with the Planning Authority’s Housing Strategy unless the applicant has applied for and been granted an Exemption Certificate under Section 97 of the Planning and Development Act 2000 (as amended).

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000-2002’.

- DCC Reg. Ref. 2296/09 – Permission granted in May 2009 for demolition of extensions and outbuilding to Haremount, 726 Howth Road, and erection of a three-storey detached dwelling served by a new access off Howth Road (Social Housing Exemption Certificate 0047/09 relates).

4.0 Policy Context

4.1. Dublin City Development Plan 2016-2022

- 4.1.1. The subject site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022 with a stated objective 'to protect, provide and improve residential amenities'.
- 4.1.2. Relevant policies to this referral case contained within the Development Plan include:
- 'QH3: (i) To secure the implementation of the Dublin City Council Housing Strategy in accordance with the provision of national legislation. In this regard, 10% of the land zoned for residential uses, or for a mixture of residential and other uses, shall be reserved for the provision of social and/or affordable housing in order to promote tenure diversity and a socially inclusive city';
 - 'QH6: To encourage and foster the creation of attractive mixed-use sustainable neighbourhoods which contain a variety of housing types and tenures with supporting community facilities, public realm and residential amenities, and which are socially mixed in order to achieve a socially inclusive city'.
- 4.1.3. Appendix 2A of the Development Plan comprises the City Housing Strategy. The specific target for Dublin city to produce 3,347 new dwelling units for social housing provision under a funding allocation of over €292 million (at an estimate average cost of €185k per unit) is noted in the Strategy.
- 4.1.4. Section 2.3.3 of the Housing Strategy notes that recent legislation removes the ability of developers to account for their social housing commitments through cash payments, through providing sites or land elsewhere, and that social housing units should be located predominantly on the site of the original developments.

4.2. National Guidelines

- 4.2.1. Best practice guidelines for 'Delivering Homes, Sustaining Communities - Quality Housing for Sustainable Communities' (2007) are relevant. These Guidelines supersede previous Department of the Environment, Heritage and Local Government social housing guidelines dating from 1997 and 1999. A key tenet of

these Guidelines includes the encouragement of mixed-tenures within housing schemes.

4.2.2. Revised Guidelines on the implementation of 'Part V of the Planning and Development Act 2000' (hereinafter 'Part V Guidelines') were issued by the Minister for Housing, Planning, Community and Local Government under Section 28 of the Act in January 2017, and these guidelines outline the following:

- Consideration of Part V issues should occur as early as possible, including the attendance of Housing Department officials at preplanning meetings when the developer should be advised of the Planning Authority's social and affordable housing requirements for the site;
- Planning application should be accompanied by detailed proposals in order to comply with Part V requirements and the Housing Department should be notified of the application;
- Recommended new wording for a standard 'Part V' planning condition, requiring agreement 'prior to the lodgement of a commencement notice';
- Options available to comply with Part V and details of information to be submitted following a grant of permission;
- Consideration of the options available, albeit 'the acquisition of units on the site of the development is the recommended option in order to advance the aim of achieving a social mix in new developments';
- Situations where acquisition of units on site would not be suitable are stated, including where the size of units is unsuitable, where the land or development costs are particularly high, where the units are of significantly high specification and where excessive annual management fees apply;
- Planning Authorities should ensure that negotiations with the developer are commenced during the 8-week period after the grant of permission.

5.0 Legislative Context

5.1. The legislative requirements in respect of the provision of social and affordable housing are set out in Part V, Section 96 of the Act. Recent legislative guidance is

outlined within the following Departmental Circulars: Housing 5/2017, Housing 41/2016, Housing 20/2016 (PL4/2016), Housing 33/2015 and Housing 36/2015 (PL 10/2015).

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referral is submitted by MKN Property Group on behalf of the applicant, Athwood Limited, and can be summarised as follows:

- In April 2017, DCC proposed acquisition of a dwelling within the development by way of satisfaction of Part V requirements, at a net cost of €397,796 (copy of correspondence from DCC to the referrer's representative is appended);
- The estimated monetary value (EMV), €185,000, to which DCC are entitled to under the terms of Part V of the Act is not disputed, having been agreed with DCC in October 2016 (copy of correspondence from DCC to the referrer's representative is appended);
- Ministerial Guidelines outline that in some circumstances acquiring units in a development would not be an efficient use of resources and the Planning Authority must pursue an alternative viable option;
- Purchase of a house on the market in the vicinity, supplemented by the EMV sum of €185,000, acquired from the developer, would represent better value for the Planning Authority and tax-payers. Examples of properties in Raheny, Coolock and Kilbarrack all within the €275,000 to €515,000 selling price range are included;
- The floor area of the house proposed to be purchased at 152sq.m and with a build cost of €2,130 per sq.m, is well above the average local build cost (€1,500 per sq.m) and much higher than what would normally be required by the Planning Authority;
- The land value of a dwelling on the subject site would be approximately €100,000 and acquisition of such a high cost site would not represent an efficient use of resources;

- The high specification of the houses would not be the norm for a Planning Authority housing project;
- Referrer is willing to engage with the Planning Authority to provide unit(s) at an alternative location or any other options open to the Council.

6.1.2. A brochure outlining the specification of the development, a copy of Circular Housing 5 of 2017 and Ministerial Guidelines relating to Part V of the Act (January 2017) accompanied the referrer's grounds of dispute.

6.2. Planning Authority Case

6.2.1. The Planning Authority's response to the referrer's case can be summarised as follows:

- Following a grant of planning permission in April 2016, the Planning Authority entered into Part V negotiations with the referrer and set out the options available as either involving the acquisition of a dwelling on site or the acquisition of a dwelling at market value less the EMV of €185,000;
- The preferred option of the Planning Authority was the acquisition of a dwelling on site at a net price of €397,796, an option which fits into the Planning Authority capital housing target;
- Cost of acquisition is within Departmental cost parameters and the off-site solution put forward by the referrer does not represent value for money;
- Acquisition of a house on site represents a cost-effective prime example of achieving mixed tenure in developments across the city and accords with the provisions of the Development Plan;
- The Ministerial Guidelines outline that the priority option to be pursued is the acquisition of social housing on the development site, where capital funding is available;
- Compared with the open market price for a dwelling on site (€660,000) the acquisition cost (€397,796) represents excellent value for money;
- A house on site is likely to achieve an 'A-rating' compared with much lower energy ratings for other older dwellings off site, which would require extensive maintenance and repair works;

- The Planning Authority does not consider the referrer's grounds of dispute to be exceptional and therefore they wish to proceed with the acquisition of a dwelling on site.

6.2.2. A copy of correspondence dated the 9th of May, 2017, sent from the City's Architect Division to the Part V Section of the Housing Department, is included with the Planning Authority response. This outlines that House No.2 and No.5 on the referral site may be considered for the purposes of Part V acquisition. A copy of the report from the Planning Authority Quantity Surveyors' Division dated April 2017 is also included with the response, and this concludes that one house should be acquired on the referral site and the costs are well within the Departmental guidelines.

6.3. Response from Referrer to the Planning Authority's Case

6.3.1. The response from the referrer to the Planning Authority's case can be summarised as follows:

- Acquisition of a house on site does not represent value for money and does not protect the exchequer in these matters;
- In these circumstances, the Planning Authority must pursue an alternative option to acquisition of a house on site;
- Build costs and floor area (42% greater than recommended floor area), confirm the proposed acquisition does not represent value for money;
- If the Planning Authority agreed to acquisition of a house off site this could potentially provide for a 41% saving to the Planning Authority in acquiring a home;
- Referrer fails to see the benefit in providing a house with a market value of €650,000, or a monthly rent in excess of €2,700, as part of the social housing stock for the city;
- The house does not meet eligibility criteria of applicants on the housing list and a neighbouring Planning Authority has opted for smaller units off-site in a similar recent situation.

- 6.3.2. The response is accompanied by a cross-section and location plan drawings, a list of three properties in the Raheny-Coolock area on the market for between €295,000 and €318,000 and the subject housing development marketing brochure.

7.0 Assessment

7.1. Introduction

- 7.1.1. This case relates to the means by which the requirement for social and affordable housing, as set out in Part V of the Act, can be best achieved in respect of a recently completed housing development containing a mix of four semi-detached and 12 terraced two to three-storey houses at 'Lonsdale' on the Howth Road in Raheny. It is useful in the first instance to set out the background to the dispute.

7.2. Background

- 7.2.1. A letter signed on behalf of the Housing Development Section of the Planning Authority dated 23rd September 2015 (Part V Ref. 707) is the earliest reference in relation to the provision of social and affordable housing in the referral case. This letter issued prior to lodgement of the subject application (DCC Reg. Ref. 3910/15) on 29th October 2015. The letter confirmed that discussions had taken place between the referrer's representatives and the Planning Authority Housing Section, and that in order to comply with Part V of the Act, the applicant would provide two units on site to be acquired by the Planning Authority, subject to negotiation. In assessing the planning merits of the subject development, the Planning Officer noted this letter, including its reference to preliminary discussions.
- 7.2.2. The Planning Authority's notification of a decision to grant permission dated 11th April 2016, contained a standard condition requiring the applicant to enter into an agreement with the Planning Authority, prior to the commencement of development, unless an Exemption Certificate was applied for or granted (Condition No.8). Section 96(4) of the Act states that the Planning Authority shall have regard to any proposals specified by the referrer when making an application, but is not bound by any such proposals. Having regard to this, and the standard condition attached,

planning permission cannot be inferred to be solely based on the provision of Part V units on-site, or should otherwise be binding under the current circumstances.

7.2.3. All 16 of the permitted houses are constructed and based on my site visit, only two of the houses, both located along Howth Road (Nos. 726a & 728b) are unoccupied. Following the grant of permission, the first record of correspondence between the referrer and the Planning Authority regarding social and affordable housing obligations is contained in a letter dated 12th October 2016. This letter also confirmed the existing use value of the property (€1.85million), the development value (€3.7million) and the resultant total net monetary value (€1.85million). Further correspondence dated 27th April 2017 from the Planning Authority to the referrer reconfirmed the '10% Part V' Net Monetary Value (NMV) the Planning Authority are entitled to under the Act (€185,000). This correspondence also clarified the Planning Authority's preference to acquire one four-bedroom terrace house towards the rear of the site (Type A). The referrer does not dispute the figures put forward by the Planning Authority, including the site NMV for House Type A (€100,825) and the resultant shortfall on 'Part V' NMV to be compensated by the developer to the Planning Authority, in acquiring a House Type A (€84,175). Taking into account the shortfall on 'Part V' NMV and the market value, the Planning Authority proposed to acquire one House Type A on site for a total acquisition cost of €397,796, based on a market value of €481,971 (i.e. less the Part V NMV [€84,175]). A letter dated 9th May 2017 from the City Architect's Division of the Planning Authority to the Housing Section of the Planning Authority outlines that the City Architect's Division understand that only two mid-terrace houses, Nos. 2 and 5 Lonsdale, are to be considered for the purposes of acquisition under Part V.

7.2.4. I have not been made aware of any subsequent correspondence on this matter either by the Planning Authority or the referrer and their representatives, prior to the lodgement of the referral on the 9th of August, 2017. The Planning Authority proposed to acquire one house on the referral site and the referrer states that on the basis of the acquisition cost of the house not being an efficient use of resources, the Planning Authority are precluded from acquiring a house on site and must pursue an alternative means in satisfying Part V requirements based on Ministerial 'Part V Guidelines'. Within the grounds of dispute, the referrer proposes to provide a house at an alternative location or to engage with the Planning Authority in any of the other

options available. In their response to the grounds of dispute, the Planning Authority advised that the only options that they considered to be applicable in this case involved the following:

- Option 1: Acquire one dwelling on site at a net price of €397,796; or
- Option 2: Acquire one dwelling off site at market value less the equivalent monetary value of €185,000; or
- Option 3: Acquire or be provided with land on site.

7.3. Legislative Context

7.3.1. Having regard to the failure to reach agreement the applicant has referred the matter to the Board under Section 96(8) of the Act. I note, however, that the Planning Authority, the applicant or any other person with an interest in the subject land could have availed of this provision at any time after the commencement of the development, which is stated in the Commencement Notice (Ref. CN0020685DC) relating to the development to have occurred on the 27th September 2016. Subsequent to this the permitted development was constructed and the development is now complete.

7.3.2. The Planning and Development Act 2000 was altered by the Planning and Development (Amendment) Act 2002, the Planning and Development Act 2010 and also by the Urban Regeneration & Housing Act 2015¹. The Act now requires an agreement under 'Part V' to be entered into 'prior to the lodgement of the commencement notice'. Furthermore, the six choices under which agreement can now be reached in order to comply with Condition No.8 of DCC Planning Reg. Ref. 3910/15, relating to the provision of social and affordable housing, are set out in Section 96(3) of the Act, as follows:

- 1) Transfer to the ownership of the Planning Authority of a part or parts of the land subject to the planning application (section 96[3] paragraph [a]).

¹ The Urban Regeneration and Housing Act 2015 (No. 33 of 2015), came into operation on 1st September 2015, prior to lodgement of the subject application (DCC Reg. Ref. 3910/15) on 29th October 2015.

Note: This is the default position if it is not possible for the Planning Authority to conclude an agreement via any of the options (2 to 6) below.

- 2) Build and transfer to the ownership of the Planning Authority, or persons nominated by the Authority, of a number of housing units on the site subject to the planning application (section 96[3] paragraph [b][i]).

Note: Up to 10% of the units in the development.

- 3) Transfer to the ownership of the Planning Authority, or persons nominated by the Authority, of housing units on any other land in the functional area of the Planning Authority (section 96[3] paragraph [b][iv])
- 4) Grant a lease of housing units to the Planning Authority, either on the site subject to the application or in any other area within the functional area of the Planning Authority (section 96[3] paragraph [b][iva]).
- 5) A combination of the transfer of the ownership of land under paragraph (a) of section 96(3) and one or more of the options at paragraph (b)(i), (b)(iv) and (b)(iva) of section 96(3) (section 96[3] paragraph [b][vii]).

Note: A combination of a transfer of land and one of more of the other options.

- 6) A combination of two or more of the options set out at paragraphs (b)(i), (b)(iv) and (b)(iva) of section 96(3) (section 96[3] paragraph [b][viii]).

Note: A combination of options not including a transfer of the ownership of land.

7.3.3. The transfer of a housing unit on site to the Planning Authority, as proposed by the Planning Authority, is provided for under Option 2 above. The transfer of a house or houses within the functional area of the Planning Authority, as proposed by the referrer, is provided for under Option 3 above. In relation to the Planning Authority's option of acquiring land on site, I note that the development is complete and no surplus lands remain. Consequently, I do not consider that option 1, or option 5 above, which involve the transfer of land on the site are achievable in this instance. Option 4, granting a lease of housing units to the Planning Authority, would be relevant, but neither party has put this option forward. Option 6 would allow for a combination of options 3 and 4. Consequently, given the fact that both parties have submitted proposals that accord with options 2 and 3 above, I see no advantage in

considering the alternative options available under Section 96(3)(b) of the Act. It is, therefore, a matter for the Board to determine which of the alternatives advanced by the Planning Authority and the referrer, represents the best means of providing for social and affordable housing in this instance. In this respect, the Act sets out matters that must be examined by a Planning Authority when considering whether to enter into an agreement (Section 96[3][c]), and considerations for the purpose of an agreement (Section 96[3][h]). It stands to reason that the same criteria must apply to the Board in reaching its determination.

7.4. Assessment of Options

7.4.1. Section 96(3)(c) of the Act states that the Planning Authority shall consider each of the following when considering whether to enter into an agreement:

- (i) whether such an agreement will contribute effectively and efficiently to the achievement of the objectives of the housing strategy;
- (ii) whether such an agreement will constitute the best use of the resources available to it to ensure an adequate supply of housing and any financial implications of the agreement for its functions as a housing authority;
- (iii) the need to counteract undue segregation in housing between persons of different social background in the area of the authority;
- (iv) whether such an agreement is in accordance with the provisions of the development plan;
- (v) the time within which housing referred to in section 94(4)(a) is likely to be provided as a consequence of the agreement.

7.4.2. Section 96(3)(h) of the Act states that for the purposes of an agreement under this subsection, the Planning Authority shall consider the following:

- (i) the proper planning and sustainable development of the area to which the application relates;
- (ii) the housing strategy and the specific objectives of the development plan which relate to the implementation of the strategy;

(iii) the need to ensure the overall coherence of the development to which the application relates, where appropriate, and;

(iv) the views of the applicant in relation to the impact of the agreement on the development.

7.4.3. In considering whether to enter into an agreement, the legislation also requires consideration of the need to counteract undue segregation in housing between persons of different social background in the area of the authority. Based on housing and demographic data for the area², it is evident that the provision of social housing in the area immediate to the subject site is extremely low. Only slightly higher proportions of social housing are evident in those areas immediate to each of the example sale properties put forward by the referrer. Consequently, having regard to the data available, both options set out respectively by the Planning Authority and the referrer, would contribute effectively and efficiently to counteracting undue social segregation.

7.4.4. The referrer asserts that the land value of a dwelling on the subject site would be €100,000 and acquisition at such a high cost site would not be an efficient use of resources and as a consequence, an alternative viable option must be pursued, based on the aforementioned 'Part V Guidelines'. In response, the Planning Authority outline that the acquisition of a dwelling on site at a net price of €397,796 would fit into the Planning Authority capital housing target, would be within Departmental cost parameters and the off-site solution does not represent value for money. Departmental parameters are referenced in Housing Circular 41 of 2016, and these set out Planning Authority cost guidelines for the acquisition of new and previously-owned dwellings for social housing purposes. The guidelines, which are shortly to be reviewed, set out a cost range of between €380,000 and €615,000 for a four-bedroom dwelling in the DCC area, with an average price of €497,500. The acquisition cost for a House Type A on the referral site would be €397,796 and therefore would be within the cost Guidelines. The referrer considers that the high specification of a house on site would not be the norm for social housing. In response, the Planning Authority outline that a house on site would be likely to achieve an 'A-energy rating', as confirmed in the marketing material submitted with

² As per Pobal Social Housing maps (2016) at <https://maps.pobal.ie/>

the referral, compared with a much lower-energy rating for an older dwelling, which would invariably require extensive maintenance and repair works. The 'Part V Guidelines' outline that where capital funding is available, the priority option to be pursued is the acquisition of social housing on the development site. Accordingly, having regard to the referrer's views, the stated availability of funding, the house type and acquisition cost guidelines, and the 'Part V Guidelines', I consider that the transfer of a house on the referral site would represent an efficient use of resources and, therefore, would not restrict the Planning Authority from entering into an agreement under Part V.

- 7.4.5. In summary, I consider that both the option set out by the referrer and the option set out by the Planning Authority would comply with the terms of Section 96(3)(c) of the Act and would be sufficient to allow the Planning Authority to enter into an agreement with the developer. Furthermore, both of these options would accord with the proper planning and sustainable development of the area and I have considered the views of the referrer in relation to the Planning Authority's preference.
- 7.4.6. Development Plan Policy QH3(i) outlines a requirement for 10% of the zoned land to be set aside to meet the social and affordable housing requirements of the area, in order to promote tenure diversity and a socially-inclusive city. Section 2.3.3 of the Housing Strategy appended to Dublin City Development Plan 2016-2022 notes that social housing provision should be located predominantly on the site of the original development. Furthermore, the acquisition of units on the site of the development is the recommended option in order to advance the aim of achieving a social mix in new developments according to the Ministerial 'Part V Guidelines' issued in January 2017. Accordingly, having regard to the Ministerial Guidelines in consideration of the two options presented, I consider that the Planning Authority's option involving the transfer of a unit on the original site, would contribute most effectively and efficiently to the achievement of the objectives of the Housing Strategy and the policies of the Development Plan.
- 7.4.7. Based on consideration of the terms set out in Section 96(3)(h) of the Act, it is clear that the option proposing the acquisition of a unit on site would better align with the provisions of the Housing Strategy and the Development Plan. It is also noted that in the performance of its functions, the Board must have regard to the Guidelines

issued under Section 28 of the Act, including the 'Part V Guidelines', which also support a preference for acquisition of units on the original site.

7.5. Matters Arising

- 7.5.1. Ministerial guidance on the implementation of Part V agreements consistently emphasises the importance of pre-planning discussions as a means of reaching preliminary consensus on Part V requirements. Initial pre-planning discussions regarding the fulfilment of Part V requirements centred on the referrer providing for two houses on site, which would be acquired by the Planning Authority, subject to negotiation (see letter dated 23rd September 2015 from DCC Housing Development Section). The referrer's position relating to Part V compliance has changed during the planning and development process, as they now seek to provide for a house off site. The Planning Authority granted planning permission for the development on the 11th of April 2016 and, according to the date on the commencement notice received by DCC Building Control Authority, it is understood that the development commenced on the 27th of September 2016. Condition No.8 of the permission required the applicant to enter into a Part V agreement with the Planning Authority prior to the commencement of development. Documentation provided at application stage by the referrer clearly indicates an agreement in principle to provide units on the referral site and this was the Planning Authority's preferred option with regards to meeting Part V obligations. Despite this preliminary consensus and in the absence of a Part V agreement, the development continued to completion stage. I recognise that there is scope to deviate from the principle of the agreement to an alternative option, following the initial discussions.
- 7.5.2. Sixteen of the houses have been completed on the referral site without the developer entering into an agreement with the Planning Authority, as was required by the condition. It would appear from my site visit that 14 of the 16 houses have now been occupied. The two unoccupied houses are located on the Howth Road and these are three-storey five-bedroom houses (House Type B and House Type C), one of which appears to be for sale. These houses would be likely to have a market value in excess of the Type A houses and would not accord with the Departmental Cost Guidelines, with a value in excess of €615,000. In special limited circumstances, a Planning Authority may acquire a dwelling that exceeds the ceiling limit, subject to

the prior approval of the Department, but no evidence of Department approval has been provided. Furthermore, the Planning Authority has not stated whether or not they would be agreeable to acquisition of a Type B or Type C, five-bedroom house. Correspondence dated 9th May 2017 from the City Architect's Division to the 'Part V' Section of the Housing Department in the Planning Authority, outlined that only House No.2 and No.5 (House Type A) to the rear of the referral site were to be considered for the purposes of acquisition under the Part V agreement. On my visit to the referral site, both of these houses, as well as the other seven House Types A to the rear of the referral site, appeared to be occupied.

- 7.5.3. Based on records available on the Property Price Register, House Nos. 2 to 9 of the referral site were sold almost within a fortnight between July and August 2017³. I am not aware of who may have purchased these houses, and I note that the referrer has not stated whether or not all the houses have been occupied and/or would not be available. Considering this, the Board may wish to request further Information from the referrer, to identify whether or not a suitable Type A house on site would be available for the purposes of the Part V agreement.

7.6. Conclusion

- 7.6.1. The referrer has not stated any reasons, as to why the acquisition of a house on site would not be achievable for the purposes of Part V, and I am satisfied that this option, as put forward by the Planning Authority, best aligns with the provisions set out within the DCC Housing Strategy, Dublin City Development Plan 2016-2022 and the Ministerial 'Part V Guidelines' and would be consistent with the criteria listed under the Section 96(3)(c) and Section 96(3)(h) of the Act. In conclusion, I recommend that the means by which the requirement for social and affordable housing, as set out in Part V of the Act, can be best achieved in this case, would be via the transfer to the ownership of the Planning Authority, of a house on the referral site, as facilitated by Section 96(3)(b)(i) of the Act.

³ Details at - <https://www.propertypriceregister.ie>. Sale of House No.2, as recorded in the Register, is likely to relate to a house on the front of the referral site along Howth Road, based on the sale price.

8.0 Recommendation

Having regard to the above, I recommend an Order in the following terms:

WHEREAS a dispute has arisen between the Planning Authority and the developer in relation to the agreement required by condition number 8 of the grant of permission made by Dublin City Council on the 11th day of April, 2016 under planning register reference number DCC Ref. 3910/15 in respect of a development at Haremount & Lonsdale, 726-728 Howth Road, Dublin 5:

AND WHEREAS this dispute was referred to An Bord Pleanála by Raymond Martin care of MKN Property Group, The Seapoint Building, 44/45 Clontarf Road, Clontarf, Dublin 3, on behalf of Athwood Limited, on the 9th day of August, 2017:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to -

- a) Section 96 of the Planning and Development Act 2000, as amended;
- b) the Ministerial Guidelines on implementation of Part V that accompanied Circulars Housing 5/2017, Housing 41/2016, Housing 20/2016 (PL4/2016), Housing 36/2015 (PL 10/2015) and Housing 33/2015, and that were issued under Section 28 of the Planning and Development Act 2000, as amended;
- c) the provisions of the Dublin City Development Plan 2016-2022 and the accompanying Housing Strategy;
- d) the planning history of the site;
- e) the Inspector's report, including observations on site, and;
- f) the submissions made in connection with the case.

AND WHEREAS An Bord Pleanála has concluded that the transfer to the ownership of the Planning Authority, of a house on the referral site, would be consistent with the criteria listed under the Section 96(3)(c) and Section 96(3)(h) of the Act:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 96(5) of the Planning and Development Act 2000, as amended, hereby determines that the developer shall enter into an agreement with the Planning Authority under Section 96 of the said Act, within eight weeks of the date of this order and the developer shall provide transfer to the ownership of the Planning Authority, of a house on the referral site, as facilitated by Section 96(3)(b)(i) of the Act.

Colm McLoughlin
Planning Inspector

6th February 2018