



An  
Bord  
Pleanála

## Inspector's Addendum Report

(following receipt of further  
information in response to a  
S.132 request)

**RP06F.RP2140**

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<b>Details of Referral</b>	Point of Detail regarding Condition No.13 of PL06F.244126.
<b>Location</b>	The Bower House, The Bower, Fancourt, Balbriggan, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council.
<b>Referrer</b>	Ballywholan Ireland Limited.
<b>Type of Referral</b>	First Party regarding Condition No. 13 (Point of Detail).
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	15 <sup>th</sup> June 2017
<b>Inspector</b>	Patricia Calleary.

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## 1.0 Introduction

- 1.1. **RP06F.RP2140** is a referral which was received by the Board from Ballywholan Ireland Limited. It concerns a point of detail in dispute between the referrer / developer and the planning authority regarding Condition no.13 attached to a grant permission under Board order ref. no: PL06F.244126.

## 2.0 S.132 Request for information

- 2.1. On 24<sup>th</sup> April, the Board requested further information under Section 132 of the Planning and Development Act, 2000, as amended, from both the referrer and the Planning Authority, the contents of each which are summarised below.

### 2.2. Information requested from the Planning Authority

1. Clarification was sought as to whether or not Fancourt Height estate has been taken in charge by the Local Authority including if the public open space where the footpath would be provided is in charge;
2. Details were sought on costings which would be incurred for the delivery of the footpath to include the cost of land acquisition (if the answer to No.1 is negative), design and construction of the footpath and any other associated costs.

### 2.3. Information requested from the referrer

1. Details were sought of what efforts, if any, the referrer / developer has made to acquire the lands to facilitate the delivery of the footpath (by the local authority) in order to facilitate implementation of the permission which is subject to Condition No.13 attached to the Board's Order under PL06F.244126.

## 3.0 Responses to S.132 request

- 3.1. The responses to the above requests are summarised under as follows:

### 3.2. **Planning authority response**

- Fancourt heights has been taken in charge but this does not include the subject lands on which the footpath would be provided;
- Confirms that the lands are not in the ownership of Fingal County Council, are not on the Local Authority's open space register and are not taken in charge;
- Provides a spreadsheet outlining the cost of the works (Total = €10,357.09);
- Local Authority not in a position to include a cost of the associated land acquisition to facilitate the works.

### 3.3. **Referrers response**

- Makes references to inspectors report on the original application (PL06F.244126) which (according to the referrer) inferred that the lands on which the footpath were proposed were owned by the Council and that the Council were willing to facilitate the provision of the footpath;
- The Transportation section reflected the above position in exchanges during the planning process;
- The Planning Authority did not determine the amount due and confirmed in November 2016 that they did not own the required land;
- Referrer was not aware that the lands were to be acquired from a third party;
- In the absence of any figure or detail of any exceptional costs envisaged, referrer is prevented from making an agreed contribution;
- States area of ground is currently in use as a grass verge and accommodates public street lighting.

## 4.0 **Assessment**

- 4.1. The background to the attachment of the special contribution condition and detailed consideration up to the request for information is set out in my earlier report dated 4<sup>th</sup> April 2017.

- 4.2. Having reviewed the response which the Board received from the Planning Authority on 22<sup>nd</sup> May 2017, it is evident that the Local Authority do not own the area of ground over which the footpath would be delivered. It measures c. 30 m in length and is currently laid out in grass, elevated over the existing adjoining road.
- 4.3. The spirit of Condition No. 13 was to require the payment of a special contribution by the developer in respect of the provision of the footpath and there was no stated requirement that the developer needed to also acquire the land. Furthermore, the Planning Authority confirmed in their initial response to the referrers case that Fingal County Council has no budgetary provision to purchase the lands in order to facilitate the provision of the footpath. They also made it clear in the recent response to the Board's S.132 request that they are not in a position to include a cost for land acquisition for these works. I therefore see little point in specifying a monetary amount given that the footpath works are undeliverable without the land.
- 4.4. Of note, the extent of road in question is very lightly trafficked, being a small portion of the overall Fancourt Heights road. This stretch of road serves eight houses on the northern end after which it reaches a cul de sac, in addition to serving the four new houses granted under PL 06F.244126 and one or two other existing houses along Bower Lane which is also a cul de sac. There is no footpath on the remainder of the stretch of road which runs north of the junction. The existing carriageway has no line markings at this location. For the duration of my site visit, no cars passed.
- 4.5. I note that if the footpath is not delivered, the area would still remain as green space which would offer a reasonably safe place of refuge for pedestrians if required.

## 5.0 **Conclusions and Recommendations**

- 5.1. Arising from my assessment above therefore, I recommend that the Board determine that a 'nil' amount is required under the provisions of Section 48(2)(c) to satisfy Condition No.13.

### **REASONS AND CONSIDERATIONS**

Arising from my assessment above therefore, I consider that the Board should determine that the amount payable under the provisions of Section 48(2) (c) of the

Planning and Development Act 2000, as amended, and to satisfy Condition No.13 is a 'nil' amount.

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Patricia Calleary.

Senior Planning Inspector

27<sup>th</sup> June 2017