



An  
Bord  
Pleanála

## Inspector's Report ABP-300442-17

### Development

Re-location of GAA football pitch;  
Construction of 4 storey residential  
care home; Construction of 18  
apartments.

### Location

Site adjoining Gaelscoil Ui Earcain, at  
Glसानाon Road, and School Road,  
Finglas East, Dublin 11.

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

4161/16

### Applicant(s)

De La Salle Brothers

### Type of Application

Permission

### Planning Authority Decision

Grant

### Type of Appeal

First Party – Section 48 Condition

### Appellant(s)

De La Salle Brothers

### Observer(s)

None

### Date of Site Inspection

12<sup>th</sup> April 2018

### Inspector

Una O'Neill

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## 1.0 Site Location and Description

- 1.1. The subject site is located approx. 700m to the southeast of Finglas village and approx. 500m west of Johnstown Park. The site is bounded by Gaelscoil Ui Earcain to the west; to the north are the rear of houses on Glasaree Road/Ferndale Avenue; to the east is a road called School road and to the south is Glasanaon Road. A 15m green strip of land separates the site from Glasanaon Road. A high wall forms the boundary of the site to the adjoining streets, Glasanaon Road and School Road. The site has a 130m frontage to Glasanaon Road and 215m onto School Road.
- 1.2. The site is 2.12ha in area and comprises a playing field associated with Gaelscoil Ui Earcain. The site area excluding the playing pitch is 1.25ha. There are no trees or other features of note on the site.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - A four storey nursing home, comprising 155 beds.
  - A three to four storey block comprising 18 apartments, with 18 space car park.
  - Car park comprising 88 spaces serving the nursing home.
  - Public open space.

## 3.0 Planning Authority Decision

### 3.1. Decision

GRANTED, subject to 17 conditions. Condition No. 14 is the subject of this appeal and states the following:

The developer shall pay the sum of €4000 per residential unit and €2000 per nursing home bed space (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2) (c) of the Planning and Development Act 2000, as amended, in respect of public open space.

This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning Officer's report generally reflects the decision of the Planning Authority to grant permission. The layout of the scheme was amended following further information, which resulted in the relocation of parking and open space on site and reservation of strip of land for school expansion.

#### **3.2.2. Other Technical Reports**

Drainage Division: No objection subject to conditions.

Road Planning Division: No objection subject to conditions.

Waste Management Division: No objection subject to conditions.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

A number of this party observations were received by the planning authority.

## **4.0 Planning History**

None.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2016-2022

- **Zoning objective Z15**, ‘to protect and provide for institutional and community uses’.
- **Section 14.8.14 Institutional and Community – Zone Z15**: Lands zoned Z15 to provide for the identification of 25% of the lands for open space and/or community facilities (instead of the 10-20% public open space provided for in earlier in this chapter).
- **Section 16.3.4 Public Open Space – All Development**: In the case of developments on Z15 zoned lands the requirement will be 25% accessible open space and/or provision of community facilities.... In the event that the site is considered by the planning authority to be too small or inappropriate (because of site shape or general layout) to fulfil useful purpose in this regard, then a financial contribution towards provision of a new park in the area, improvements to an existing park and/or enhancement of amenities shall be required (having regard to the City’s Parks Strategy).

### 5.2. Dublin City Development Contribution Scheme, 2016-2020

- Section 10 – Table setting out level of contribution payable in respect of the different classes of infrastructure, including roads and infrastructure; drainage; community facilities and amenities; parks and open space facilities; urban regeneration facilities and amenities.
- Section 11 – Contribution in lieu of open space. The plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. The Plan provides that in the event of the planning authority considering a site to be too small or inappropriate to fulfil Dublin City Development Plan requirements for open space provision a financial contribution towards provision of or improvements to a park and/or enhancement of amenities in the area in line with the City’s Park Strategy shall be required.

### 5.3. Natural Heritage Designations

The site is not located within or adjacent to any Natura 2000 sites.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party appeal is against condition 14, which requires the payment of a development contribution under section 48(2)(c). The grounds of appeal is summarised as follows:

- Appeal relates to condition 14 only.
- The condition is incorrectly drafted and should be struck out by the Board. Section 48(2)(c) requires that a contribution specify the particular works carried out. The condition states the contribution is in respect of public open space. This is not specific and does not meet requirements of 48(12) as the works have not been specified and the applicant cannot monitor the works and claim back money if it is not used for the purpose identified, as allowed for under the act.
- The special levy is an excessive requirement given the provisions of the zoning of the site, the extent of contributions levied in other conditions and the contribution to local amenity and services that are inherent in the development approved.
- The applicant was advised by the parks department that the levy would be on the basis of €4000 per residential unit only.
- The condition is particularly excessive in its application to the nursing home as it levies members of the community who will have little opportunity to make use of the relevant facilities.
- The Bord is asked to note that the applicant is providing for a GAA pitch as part of the subject development. 25% of the site was calculated as the built area of the development and excluded the GAA pitch area. This should have been included in the overall site area.

- The 1500 sqm open space provided for is not segregated from the development and the scheme is accessible to the public.

## 6.2. **Planning Authority Response**

Dublin City Parks Division has responded to the grounds of appeal as follows:

- Dublin City Parks Strategy (Draft) defines Johnstown Park as a Community Grade 1 Park.
- The development plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development. The Plan provides that in the event of the planning authority considering a site to be too small or inappropriate to fulfil Dublin City Development Plan requirements for open space provision a financial contribution towards provision of or improvements to a park and/or enhancement of amenities in the area in line with the City's Park Strategy shall be required.
- Johnstown Park is 500m from the development site and developments within the catchment of Johnstown Park are considered for the application of a development contribution in lieu of public open space.

## 6.3. **Observations**

None.

## 6.4. **Further Responses**

None.

## 7.0 **Assessment**

- 7.1. This is a first party appeal against planning condition 14, which requires a development contribution in line with section 48(2)(c) of the Planning and Development Act 2000 (as amended) in relation to public open space. The condition requires €4000 per residential unit and €2000 per nursing home bed space, which equates to a total of €382,000. Condition 2 of the permission, in accordance with Section 48, requires a contribution of €777,430.94.

- 7.2. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board 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 planning authority. I note that the Board in considering the appeal is required under the provisions of the legislation to apply the scheme as adopted by the Planning Authority. The Board have no legal jurisdiction to interpret or evaluate the merits of any financial contribution scheme as adopted by the Planning Authority.
- 7.3. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal, which is whether the terms of the Scheme have been properly applied.

#### **Application of Development Contribution Scheme**

- 7.4. The applicant considers condition 14 has been incorrectly drafted as subsection 48(2)(c) requires the condition to specify the particular works to be carried out, which has not been done in this instance, the condition states only 'public open space'. If the Board does not agree to strike out this condition, the applicant makes the further point that there is no provision in planning law for this additional contribution and the amount requested is excessive as residential care is levied even though residents of this home will not benefit from the improvement of open space in the area. Furthermore, the applicant contends the area and improvement of the existing playing pitch should have been taken into account and the area of 25% of the site, should have included the playing pitches. Dublin City Council excluded the area of the pitches in calculating the area of 25%. The area of open space provided for, ie 1500sqm, should be taken into account. The area is not segregated from the development and is accessible as the development is not gated. The applicant is also providing for 1494sqm of land to facilitate school expansion, therefore a total area of 2994sqm is dedicated to other community related purposes.
- 7.4.1. Section 48 (2) (c) of the Planning and Development Act, 2000 clearly sets out the special requirements that justify the imposition of special contribution conditions as follows:



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

7.4.2. Accordingly, three essential requirements or characteristics are necessary to justify attachment of a “special contributions” condition. Under this subsection of the Act, the payment must be required

- a) in respect of a particular development,
- b) specific exceptional costs must be incurred as a result of or in order to facilitate it and,
- c) such costs cannot be covered by a Development Contribution Scheme made under Section 48 (2) of the Act.

7.4.3. The adopted Dublin City Council development contribution scheme sets out mechanisms under section 10 to cover costs for different classes of public infrastructure and facilities, including parks and open space facilities. Condition 2 of the grant of permission includes costs for parks and open spaces and Appendix II provides that such money can be attributed to community parks, of which Johnstown Park is one. There is not in my view a satisfactory case presented by the planning authority in relation to specific works and exceptional costs resulting from this development, as per section 48(2)(c) of the Planning and Development Act 2000 (as amended).

7.5. While the Dublin City Council development contribution scheme gives discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development, such a contribution, in my view, comes within the terms of the adopted section 48 scheme and should not be viewed as a ‘special contribution’ under section 48(2)(c).

7.6. Having regard to the inclusion of a section 48 contribution condition in the decision to grant permission, in accordance with the adopted general development contribution scheme which includes a calculation toward parks and open space facilities, I recommend condition 14 be removed.

## 8.0 Recommendation

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to **REMOVE** Condition number 14 and the reasons therefore.

## 9.0 Reasons and Considerations

The Dublin City Development Contribution Scheme 2016-2020 provides for a Community Parks Improvement Programme as part of the general contribution scheme and provides for a contribution in lieu of open space. Condition 2 requires a financial contribution toward parks and open space facilities. Section 48(2)(c) financial contribution conditions may be applied only to exceptional costs not covered by such a scheme. The Board, in accordance with Section 48 of the Planning and Development Act, 2000 (as amended), considered that the terms of Condition 14 does not fall within the scope of Section 48(2)(c) of the Planning and Development Act 2000 (as amended) and Condition 14 should therefore be REMOVED.

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Una O'Neill  
Senior Planning Inspector

30<sup>th</sup> April 2018