



Development Permission for (1) the proposed demolition of the existing swimming pool building on site and removal of the existing ESB substation and for installation of new ESB substation in alternative location on site, (2) the proposed erection of a 144 bed Nursing Home consisting of 4 storeys over a Part Basement Level on Site A which has an area of 0.5592 Hectares, comprised of (a) Laundry, Staff Changing and W.C Facilities and Plant Rooms at Basement Level. (b) 30 no. Bedrooms with Reception area and Administration offices, Nurses Station, day Room Sitting area, Physiotherapy room, Kitchen, Dining Room, Staff facilities, W.C's and ancillary Store rooms at Ground Floor Level, (c) 38 no. Bedrooms with Nurses Station, Day Room Sitting Areas, Hair Salon, Dining Room, Satellite Kitchen facilities, W.C's and ancillary Store rooms at First Floor Level, (d) 38 no. Bedrooms with Nurses Station, Day Room Sitting Areas, Assisted Bathroom, Dining Room, Satellite Kitchen facilities, W.C's and ancillary Store rooms at Second Floor Level and (e) 38 no. Bedrooms with Nurses Station, Day Room Sitting Areas, Assisted Bathroom, Dining Room, Satellite Kitchen facilities, W.C's and ancillary Store rooms at Third Floor Level, (3) the proposed erection of 2 no. Storage Sheds ancillary to the Nursing Home on site (4) the provision of 79 no. car parking spaces (40 no. spaces located on Site A and 39 no. overflow spaces located on Site B) including 6 no. designated Disabled

Parking Spaces, 20 no. bicycle parking spaces and proposed Access from the existing Access Road serving the adjacent C.I.D.P premises and Primary Care Centre. (5) together with all ancillary boundary treatments, services and associated site works on lands denoted as Site A which has an area of 0.5592 Hectares and Site B which has an area of 0.1181 Hectares.

Location	Navan Road, Cabra, Dublin 7
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	4036/17
Applicant(s)	Knockrobin Nursing Home Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party against condition
Appellant(s)	Knockrobin Nursing Home Ltd.
Observer(s)	None
Date of Site Inspection	12 th December 2018.
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site relates to part of 12 hectares of institutional grounds associated with the former Catholic Institute for Deaf People on the north side of the Navan Road in Cabra. The site is in two parcels and amounts to .677 hectares in Sites A and B.
- 1.2. As this appeal relates to a condition attaching a financial contribution under section 48 no detailed site inspection was considered necessary.

2.0 Proposed Development

- 2.1. It is proposed to:
 - Demolish the swimming pool building on site
 - Remove ESB sub station
 - Construct a 144-no. bedroom nursing home on site A - 0.5592 hectares.
 - Construct 2 sheds (omitted in further information)
 - Provide 79 car park spaces (40 on site A and 39 on site B – 0.1181hectres),
 - Provide bicycle parking and access arrangements
- 2.2. The proposal is part of a wider development of the grounds as a Health, Wellbeing and Education Campus in accordance with a Master plan. This follows a number of permissions for elements of the Masterplan in the wider site.
- 2.3. As the applicant is not the owner, letters of consent are attached.

3.0 Planning Authority Decision

3.1. Decision

Following a request for information on matters in relation to access/cycle/pedestrian issues, external cladding, contribution to strategic green network, public open space, tree planting and drainage and a response to same, the planning authority issued notification of a decision to grant permission subject to 21 conditions.

Condition 1 refers to standard compliance.

Condition 2 requires €469,170.80 as section 48 contribution (infrastructure)

Condition 3 requires €254,474.60 as section 49 contribution (LUAS)

Condition 4 states:

The developer shall pay the sum of €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 PDA 2000 as amended in respect of public open space.

The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation....

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.

Condition 5 refers to traffic

Conditions 6, 7, 8 and 13 refer to construction

Condition 9 refers to building amenity

Conditions 10 and 11 refer to drainage

Condition 14 states

The landscape scheme accompanying the application shall be implemented in full in the first planting season following completion of the development and any trees or shrubs which die or are removed within 3 years of planting shall be replaced in the first planting season thereafter. (The landscape scheme shall have regard to the Guidelines for Open Space Development and Taking in Charge, copies of which are available from the Parks and Landscape Services Division.)

Reason: In the interest of amenity, ecology and sustainable development.

Condition 15 refers to tree protection

Condition 16 refers to signage

Condition 17 refers to external finishes

Condition 18 refers to refuse.

Condition 19 restricts further developments

Condition 20 refs to archaeology

Condition 21 requires a bond or deposit.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The principle of development is acceptable in the context of the Z15 objectives.

Section 14.8.14 provides the basis for a masterplan approach and the provision of 25% of the lands for open space and/or community facilities.

It is noted that 5.5ha of open space/leisure facilities are provided on the 12-hectare site and this equates to 45% but the spatial representation and accessibility is not clear. Further info sought in this regard.

In further information the applicant further explains the wider context of open space in the 12-hectare site and commitment to green networks and public open space.

The campus is also accessible to and used by the public by offering a range of indoor and outdoor facilities with pedestrian and cycle routes through the grounds.

In its appraisal the planning authority states that 'with regard to the provision of open space in this institutionally zoned land site z15 the planning authority noted it is that the nursing home site/application site will not be publicly accessible in terms of access to the proposed open/amenity space.' It is also noted that the larger institutional landholding in the ownership of the CIP has over 25% of open space to be retained as publicly accessible space with good pedestrian routes between Ratoath Road and Navan Road provided through the site. However as per development plan requirements for z15 lands there is a requirement for 25% of open space to be accessible to the public to be provided for all development proposal on z15 lands. In the absence of any public open space being provided in this development proposal a financial contribution in lieu of public open space is considered appropriate in this regard.

3.2.2. Other Technical Reports

- Parks: Further information on trees and green roof required.
- Archaeology, Conservation and Heritage: No objection subject to conditions.
- Roads and Traffic: Further information addresses issues – no objection.
- Environmental Health: no objection subject to conditions.

3.3. Prescribed Bodies

- 3.3.1. TII: section 49 supplementary contribution for Luas Cross City applies to the lands.

4.0 Planning History

- 4.1.1. Dublin City Council ref. 4035/17 refers to a concurrent application for a temporary access and associated works to the subject development site.
- 4.1.2. A detailed planning history is set out in the planning authority report for the wider holding and these cases relate to commercial development, access route, a primary care centre, a primary school, a major 6687 sq.m. mixed development comprising new admin, sports, social, religious, heritage and extensive recreational facilities on 5.29 hectares. Other permissions relate to temporary classroom accommodation, security fencing and extension to an activity building. Permission was refused for security fencing in one case along Ratoath Road.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Section 13.3.6 refers to Development Contributions: Dublin City Council may, when granting planning permission, attach conditions requiring the payment of contribution(s) in respect of public infrastructure and facilities, benefiting development in its area. Details of such contributions must be set out in the Council's Development Contribution Scheme, and in Supplementary Development Contribution Schemes, where relevant, which are available to view on www.dublincity.ie. Furthermore, planning authorities may also attach further conditions requiring the payment of a special contribution, in the case of a

development where specific exceptional costs not covered by the Development Contribution Scheme are incurred in respect of public infrastructure and facilities which benefit the development.

- 5.1.2. **Open Space:** Section 16.3.4 requires the provision of meaningful public open space in development proposals on all zoned lands. There is a 10% requirement specifically for all residential schemes as set out in Section 16.10.1. This requirement also relates to other zonings such as Z6 and Z10. In the case of developments on Z12 zoned lands, the requirement will be 20% accessible open space, and for Z15 zoned lands the requirement will be 25% accessible open space and/or provision of community facilities. Depending on the location and open space context, the space provided could contribute towards the city's green network, provide a local park, provide play space or playgrounds, create new civic space/plaza, or improve the amenity of a streetscape. Green spaces can also help with surface water management through integration with sustainable urban drainage systems. Soft landscaping will be preferred to hard landscaping which will be given consideration only in schemes where soft landscaping would not be viable or appropriate.
- 5.1.3. **Financial contribution in lieu:** 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).
- 5.1.4. **Public open space – residential:** Public open space will normally be located on-site, however in some instances it may be more appropriate to seek a financial contribution towards its provision elsewhere in the vicinity. This would include cases where it is not feasible, due to site constraints or other factors, to locate the open space on site, or where it is considered that, having regard to existing provision in the vicinity, the needs of the population would be better served by the provision of a new park in the area (e.g. a neighbourhood park or pocket park) or the upgrading of an existing park. In these cases, financial contributions may be proposed towards the provision and enhancement of open space and landscape in the locality, as set out in the City Council Parks Programme, in fulfilment of this objective.

5.2. Development Contribution Scheme

- 5.2.1. **Contribution In Lieu Of Open Space** - Section 11: The Dublin City 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 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.
- 5.2.2. **Appeal** - Section 21: An appeal may be brought to the Board where the applicant for planning permission under Section 34 of the Act considers that the terms of the Scheme have not been properly applied in respect of any conditions laid down by the Council.
- 5.2.3. **A special development contribution** - Section 23: A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Dublin City Council Development Contribution Scheme 2016 - 2020 are incurred by the Council in the provision of a specific public infrastructure or facility. (The particular works will be specified in the planning conditions when special development contributions are levied). Only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to An Bord Pleanála.

5.3. Legislation - Section 48 Planning and Development Act 2000 as amended

48.— (1) A planning authority may, when granting a permission under *section 34*, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

(2) (a) Subject to *paragraph (c)*, the basis for the determination of a contribution under *subsection (1)* shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

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

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with *paragraph (a)*, the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

F242[(3A) Where a permission which includes conditions referred to in subsection (1) has been granted under section 34 in respect of a development and the basis for the determination of the contribution under subsection (1) has changed—

(a) where the development is one to which Part II of the Building Control Regulations 1997 (S.I. No. 496 of 1997) applies and a commencement notice within the meaning of that Part in respect of the development has not been lodged,

or

(b) where the development comprises houses and one or more of those houses has not been sold, the planning authority shall apply that change to the conditions of the permission where to do so would reduce the amount of the contribution payable.

(3B) Where a development referred to in subsection (3A) comprises houses one or more of which has not been sold the planning authority shall apply the change in the basis for the determination of the contribution referred to in that subsection only in respect of the unsold houses.

(3C) Where the planning authority applies a change in the basis for the determination of a development contribution under subsection (3A) it may amend a condition referred to in subsection (1) in order to reflect the change.]

(4) Where a planning authority proposes to make a scheme under this section, it shall publish in one or more newspapers circulating in the area to which the scheme relates, a notice—

(a) stating that a draft scheme has been prepared,

(b) giving details of the proposed contributions under the draft scheme,

(c) indicating the times at which, the period (which shall be not less than 6 weeks) during which, and the place where, a copy of the draft scheme may be inspected, and

(d) stating that submissions or observations may be made in writing to the planning authority in relation to the draft scheme, before the end of the period for inspection.

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

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

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

(11) Where an appeal is brought to the Board in respect of a refusal to grant permission under this Part, and where the Board decides to grant permission, it shall, where appropriate, apply as a condition to the permission the provisions of the contribution scheme for the time being in force in the area of the proposed development.

(12) Where payment of a special contribution is required in accordance with *subsection (2) (c)*, the following provisions shall apply—

(a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,

(b) where the works in question—

F243[(i) are not commenced within 5 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under *subsection (15)(a)*),

(ii) have commenced, but have not been completed within 7 years of the date of payment to the authority of the contribution (or final instalment thereof, if paid by phased payment under *subsection (15)(a)*), or]

(iii) where the local authority decides not to proceed with the proposed works or part thereof. the contribution shall, subject to *paragraph (c)*, be refunded to the applicant together with any interest that may have accrued over the period while held by the local authority,

(c) where under *subparagraph (ii) or (iii) of paragraph (b)*, any local authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

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

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

payment of the full amount of the special contribution as specified in the condition referred to in *paragraph (a)*.

(17) In this section—

“public infrastructure and facilities” means—

(a) the acquisition of land,

(b) the provision of open spaces, recreational and community facilities and amenities and landscaping works,

(c) the provision of roads, car parks, car parking places, sewers, waste water and water treatment facilities, F243[service connections, watermains and flood relief work],

(d) the provision of bus corridors and lanes, bus interchange facilities (including car parks for those facilities), infrastructure to facilitate public transport, cycle and pedestrian facilities, and traffic calming measures,

F243[(e) the refurbishment, upgrading, enlargement or replacement of roads, car parks, car parking places, sewers, waste water and water treatment facilities, service connections or watermains,

(f) the provision of high-capacity telecommunications infrastructure, such as broadband,

(g) the provision of school sites, and

(h) any matters ancillary to paragraphs (a) to (g).]

6.0 The Appeal

6.1. Grounds of Appeal

- No specific exceptional cost justifying payment of a special development contribution
- No evidence of specific exceptional cost yet the act requires that the condition shall specify the particular works carried out or proposed to be carried out by any local authority to which contribution relates.
- The development is part of a wider area subject of a masterplan which provides a community facility and accessible public open space. (25%)
- Appended letter from Catholic Institute for Deaf People confirms ‘opening up of campus to general public and contributing to green network... the campus is now accessible to the public offering a range of indoor and outdoor sports facilities. Moreover, both pedestrian and cycle access routes have been provided through the grounds connecting through to/from Navan Rd and Ratoath rd. which flank the campus...’
- C.5.5hectares of the campus have been set aside as green space and access hours are 6.30am to 9.30pm weekdays and 9-6 at weekends.

- The enhanced community access is a notably change from 2013 arrangements.
- None of the previous permissions attached a section 48 (2)(c) condition.
- Through access was part of previous permitted proposals as acknowledged by Planning authority.
- Condition 4 has not been properly applied in accordance with the terms of the scheme nor does it accord with the requirement of section 48 (2) c of the development contribution scheme.

6.2. Planning Authority Response

- 6.2.1. In a letter dated 10th May 2018 the planning authority states that the current contribution scheme and development plan require a contribution to be made if the open space requirement is not met. In this regard a report from the Parks and Landscape Services is attached which sets out a strategy statement together with a schedule and costings of works in Pope John Paul II park – a grade one park.
- 6.2.2. It is explained that in the event the planning authority considers the site too small to provide public open space it has the discretion to apply a financial contribution in lieu towards the provision or improvement of amenities in the area in line with the Dublin City Park’s strategy. The site qualifies for consideration for the application of such a contribution as it lies within 500m of the Pope John Paul II Park site. The planned expenditure is set out for €445000 of works which are substantially towards playground and sports and are further to works already carried out in this 8.2-hectare park.

6.3. Applicant Response

The applicant was given the opportunity to comment on the planning authority’s response and states:

- There are no specific exceptional costs not covered in the section 48 contribution that will benefit the proposal.

- The proposed development provides dedicated south facing open space for the particular needs of the nursing home residents.
- The proposal is part of a wider 12-hectare village facility which includes public open space as per appended letter in grounds of appeal and in accordance with z15 zoning.
- The proposed works are essentially for playground facilities that will not benefit the development. The levy amounts to 65% of the value of the works which indicates unreasonableness.
- There are no minimum open space standards for nursing homes.
- The Parks Department reference is within the framework of the development contribution scheme whereas in fact section 48 (2)(c) was the basis for condition 4. Accordingly, the parks department rationale is not consistent with the wording of condition 4 which is based on exceptional costs which will benefit the development.
- The nursing home is a planning gain as it is a community facility on z15 lands. This facility is in addition to public accessible open space.

7.0 Assessment

7.1. General

- 7.1.1. In accordance with section 48(2)(c) a planning authority may, in addition to the terms of a development contribution scheme require the payment of a special contribution in respect of a 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.
- 7.1.2. This provision was used in the attachment of condition 4 in respect of public open space and as evident in the stated reason which refers to specific exceptional costs. The applicant has appealed this condition.
- 7.1.3. There may be some confusion in the scope of the appeal arising from terminology in the submission and correspondence. In initial correspondence the Board referred to

confining the appeal to the application of the terms of the development contribution scheme which would be an appeal under s.48 (10) (b). The appeal however was lodged and accepted as being against a condition under section 48 2(c) with provisions of section 48 (13) applying. I concur with this approach. In the applicant's response to the planning authority comments it is further clarified how the scope of appeal relates to a special contribution notwithstanding the provision for contribution in lieu of open space in the development contribution scheme and development plan.

7.1.4. It is accordingly appropriate to treat this appeal as being under section 48 of the Planning and Development Act 2000. In accordance with the provisions of section 48, the Board is restricted to considering the matters under appeal alone and cannot consider the matter de nova. I have therefore confined my assessment to condition 4.

7.2. **Basis for a 48(2) (c)**

7.2.1. The appellant makes the case that there is no justifiable exceptional cost not covered by the scheme and incurred by the local authority in respect of public infrastructure and facilities which will be of benefit to the proposed development.

7.2.2. The planning authority relies on the basis that there is a deficiency of open space within the proposed development site but I do not consider this has been adequately demonstrated. I say this having regard to:

- The 5.5hectare provision of publicly accessible land on the wider landholding of which the subject development forms an integral part and the supporting documentation and planning history which provide for such arrangements and accordingly the compliance with the Z15 objective for 25% open space in these type of community centred lands.
- The absence of any clear requirement for extensive public open space for a nursing home in the Development Plan
- The provision of quality open space within the immediate environs of the nursing home and the requirement to comply with the Guidelines set by the Parks and Landscape Division for taking in charge in Condition 14.

7.2.3. While the planning authority provides a breakdown of costs in its response to the grounds of appeal, it is counter argued that the works associated with Pope John

Paul II Park are substantially for playground facilities that are of no direct benefit to the proposed nursing home facility. I also note that sports facilities in this park are already identified in the schedule of Parks works in the Development Contribution Scheme which is the basis for the levy in condition 2. I do not consider the planning authority has sufficiently demonstrated that the works as listed in its response are exceptional and directly of benefit to the development which is adequately provided for in terms of amenities.

- 7.2.4. The planning authority also relies on the provision for a contribution in lieu of open space in section 11 of its development contribution scheme, although this is not explicit in the reason of condition 4. Section 23 also refers to the imposition of special contribution levy. While I note the schedule of works toward provision of or improvements to a park and/or enhancement of amenities in the area are in line with its City's Park Strategy as referred to in this section I do not consider for reasons set out in section 7.2.3 above that there is sufficient basis to warrant this.
- 7.2.5. Even if a special contribution is deemed in principle to be warranted, the apportioning of 65% of the costs to the applicant appears to be grossly disproportionate.
- 7.2.6. Having regard to the circumstances of the proposed development which forms part of comprehensive community based institutional development on wider lands on which there is and will be adequate publicly accessible open space, the proposed development is not, in my judgement, deficient in open space provision nor will the proposed development derive any direct benefit from the specified works. Accordingly, the attachment of condition 4 cannot therefore be considered to comply with the provisions of section 48.

8.0 Recommendation

- 8.1. In view of the foregoing assessment I recommend the following decision:

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010, based on the reasons and considerations under, directs the said Council, under section 48 (13) of the 2000 Act, to REMOVE condition number 4 and the reason therefor.

9.0 Reasons and Considerations

The Board considers that in the absence of sufficient evidence that specific and exceptional costs would be incurred by the planning authority in providing public open space to benefit the proposed development, condition number 4 would not come within the scope of section 48(2)(c) of the Planning and Development Act, 2000 and would, therefore, be inappropriate.

Suzanne Kehely
Senior Planning Inspector

12th December 2018