



An  
Bord  
Pleanála

## Inspector's Report ABP-302925-18

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<b>Development</b>	Revisions to development permitted under ref no. 4161/16. Re-location and improvement to G.A.A. football pitch, accommodation extension, and all associated site development works
<b>Location</b>	Site adjoining Gaelscoil Ui Earcain, at Glasanaon Road and School Road, Finglas East, Dublin 11
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	3055/18
<b>Applicant(s)</b>	De Le Salle Brothers
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party – Section 48 and Section 48(2)(c) Conditions
<b>Appellant(s)</b>	De La Salle Brothers

**Observer(s)**

Anita Rock

**Date of Site Inspection**

13<sup>th</sup> February 2019

**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

- 2.1.1. The proposed development comprises revisions to a development permitted under ref. no. 4161/16 and ABP-300442-17 (appeal of a contribution condition).
- 2.1.2. The revisions now proposed comprise:
  - Provision of basement car-park under the residential care home to service the residential care home, with 72 no. car parking spaces, 20 no. bicycle parking spaces, laundry, storage and plant.
  - Additional three and four-storey block of 22 apartments (Block A), at location of previously permitted surface car park for residential care home.
  - Replacement of permitted block of 18 apartments with 22 apartments.
  - Total number of proposed apartments 44 no., served by 46 no. surface car-parking spaces, and 44 no. bicycle parking spaces.

## 3.0 Planning Authority Decision

### 3.1. Decision

GRANTED, subject to 23 conditions. Conditions No. 2 and 6 are the subject of this appeal:

**C2:** The developer shall pay the sum of €1,156,281.31 to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority as provided for in the approved Section 48 (Planning and Development Act 2000 as amended) Contribution scheme for Dublin City Council.

The amount due is payable on commencement of development. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

**Reason:** It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.

**C6:** The developer shall pay the sum of €4,000.00 per residential unit and (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 planning officer notes the recent ABP decision under ref ABP-300442-17 in relation to the parent permission, which omitted condition 14, section 48(2)(c) contribution condition. The planner's report states that the public open space proposed on the site is considered small and inappropriately located. The Parks and Landscape Services Division advise the application of a contribution in lieu of the provision of public open space. A section 48(2)(c) condition was applied to the decision.

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

Roads and Traffic Planning Division – Following receipt of further information proposing changes, no objection subject to conditions.

Environmental Health Officer – Conditions recommended.

Archaeological Report – Condition recommended.

Drainage Division – Conditions recommended.

Parks and Landscape Services Division – A contribution in lieu of public open space is recommended.

### **3.3. Prescribed Bodies**

None.

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

Two third party observations were received raising concerns in relation to overlooking, traffic generation, impact on the character of the area, requirement for a nursing home in the area given presence of an existing one and location of the bin store.

## 4.0 Planning History

**ABP-300442-17** (DCC reg ref 4161/16) – Permission was granted for a nursing home, apartments, relocation of existing GAA pitch and extension to existing school. The application was granted by DCC and appealed by the applicant. The appeal related to Condition 14 only, which required the payment of a contribution in lieu of public open space under section 48(2)(c) of the Planning and Development Act 2000 (as amended). Condition 14 was removed by ABP.

## 5.0 Policy Context

### 5.1. National Policy

#### 5.1.1. Development Contributions Guidelines for Planning Authorities, 2013

**Chapter 3** – Guidance for the Planning Authority in the making of a development contribution Scheme

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

- **Zoning objective Z15**, ‘to protect and provide for institutional and community uses’.
- **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).

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

- #### 5.3.1. 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.

- Level of Contribution for 2019: € per square metre of Residential Development is €86.40; € per square metre of Industrial/Commercial Development is €75.10.

5.3.2. **Section 14** - The following categories of development will be liable for a reduced rate of development contributions under the Scheme:

- Ancillary non-surface, non-residential car parking will be calculated at 50% of the applicable rate of contribution.
- Ancillary undercroft car parking will be calculated at 50% of the applicable rate of contribution.

5.3.3. **Section 11 – Contribution in lieu of open space.**

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 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.

5.3.4. **Section 23 - Special Development Contributions**

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.

5.4. **Natural Heritage Designations**

The site is not located within or adjoining a Natura 2000 site.



## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party appeal is against conditions 2 and 6, which requires the payment of a development contribution under section 48 and section 48(2)(c) respectively. The grounds of appeal is summarised as follows:

#### **Condition 2:**

- The amount of the contribution has been over estimated and should be reduced by €54,380.02.
- The area used by DCC to calculate the levy is 11,714.60 sqm for the full rate levy and 734.40 sqm for the undercroft parking 50% levy. The extent of the basement car park floorspace that should benefit from the 50% levy is underestimated. DCC appear to have calculated the area on the basis of the individual car parking spaces only.
- The area of basement which should benefit from the 50% levy should include the individual car parking spaces, road, pathways and cycle stands in the basement, which equates to an area of 2389.6sqm and this area should be subject to the 50% levy. The full levy should apply to remaining basement area of 807.7sqm. The total basement area is 3197.3sqm. The 50% commercial rate applicable to the basement is €30.03.

#### **Condition 6:**

- ABP dismissed condition 14 of ref 4161/16, which related to a section 48(2)(c) contribution in relation to public open space, which is similar to condition 6 of the appeal application. The same issue arises with condition 6 in this application as the previous application. As per the previous ABP decision, this condition should be removed.

### 6.2. Planning Authority Response

None.

### 6.3. Observations

1 observation was received from the owner of 179 Glasaree Road, which adjoins the northern boundary of the appeal site. The observation is summarised as follows:

- Parking associated with the playing pitches is not clear.
- No feedback in relation to the proposal has been forthcoming from the developer and there has been no interaction with DCC.
- The additional parking block removes communal space and is unnecessary. The land should be utilised for purposes that better serve the community, in particular children.
- Concern is raised in relation to overlooking of no. 179 from the apartment blocks and blocking of sunlight/overshadowing.
- Parking in the area will become increasingly problematic.
- The development contribution does not propose to spend money on improvements in the area, which are needed.
- Drainage in the area is an issue.
- Wildlife using the site will be impacted upon.

### 6.4. Further Responses

None.

## 7.0 Assessment

7.1.1. This is a first party appeal against planning conditions 2 and 6, which require a development contribution in line with section 48 and section 48(2)(c) of the Planning and Development Act 2000 (as amended) respectively.

7.1.2. 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.

- 7.1.3. 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.

## 7.2. Application of Development Contribution Scheme – Condition 2

- 7.2.1. Condition 2 requires the developer to pay a development contribution of €1,156,281.31.

- 7.2.2. The planning authority applied a rate of €70.06 per square metre of 'Commercial/Retail' class of development, where the permitted area was 11,714.60sqm for the full commercial levy. 50% of €70.06, ie €35.03, was applied to 734.40sqm of 'Parking ancillary/Undercroft' space. The total commercial levy applied was as follows:

- Care Home Element: €846,450.91

- 7.2.3. The applicant contends the levy for the Care Home element should be as follows:

- (9269sqm for care home building + 807.7sqm of basement area not part of car park) x €70.06 + (2389.6sqm ancillary basement parking area) x €36.03 = €792,070.89.

I note a slight error in the floor areas stated by the applicant. The application form submitted with the application states the floor area of the nursing home is 9252sqm, which was reduced from 9269sqm in the parent application.

- 7.2.4. I note the Development Contribution Scheme 2016-2020 states the following in relation to calculations:

**Note 2:** With the exception of ancillary non-residential surface car parking, the floor area of proposed development shall be calculated as the gross floor area. This means the area ascertained by the internal measurement of the floorspace on each floor of a building (including internal walls and partitions)

and including mezzanine floors. In the case of multi-unit residential buildings, only the gross floor area of each residential unit will be included.

Section 14, in relation to categories of development liable to a reduced rate of contribution, states the ancillary undercroft car parking will be calculated at 50% of the applicable rate of contribution; and ancillary non-surface non-residential car parking will be calculated at 50% of the applicable rate of contribution.

- 7.2.5. In terms of what should constitute the area of the basement car parking to which the 50% levy applies, I consider it reasonable that the calculation should not be based on the area of the car parking spaces only, as appears to be the approach taken by Dublin City Council, but should include the road/pathway in the basement serving the spaces and also the cycle parking spaces. The applicant states that the area of the basement which comprises the car parking spaces, the road, pathways, and cycle stands equates to 2389.6sqm. I note there are additional rooms in the basement relating to the laundry room, heating plant, and equipment store, with the total floor area of the basement stated to be 3197.3sqm. These rooms therefore equate to an area of 807.7sqm (3197.3sqm – 2389.6sqm). It is my view, that the area of the basement subject to the full commercial/industrial rate is 807.7sqm (ie the other rooms within the basement area) and the area subject of the 50% commercial/industrial rate is 2389.6sqm (ie the area associated with parking).
- 7.2.6. With regard to the residential component, the gross floor area as calculated by the planning authority is 3586 sqm (area excluding circulation areas as stated on the overall floor plans for Block A and Block B) and this figure is not disputed by the applicant.
- 7.2.7. I note the Development Contribution Scheme 2016-2020 states 'Consideration may be given to applying indexation to the rates of contribution effective from 1st January 2018 in consideration of the SCSi Construction Tender Price Index'. At the Monthly Meeting of Dublin City Council held on 3<sup>rd</sup> December 2018, it was approved that the SCSi Tender Price Indexation rate of 7.2% be applied to the industrial/commercial development levy rate of the Scheme with effect from the 1st January 2019. The total amount per square metre of industrial/commercial class of development has therefore increased, from €70.06 to €75.10. There was no increase applied to residential development, which remains at €86.40 per square metre of residential

development. I have applied the new rates in calculating the contributions, which were not in force at the time of the decision issued by the planning authority.

7.2.8. The following contribution applies to the site:

- Apartments – 3586sqm x €86.40 = €309,830.40
- Residential Care Home – 9252sqm + 807.7sqm = 10,059.7 sqm x €75.10 = €755,483.47
- 50% levy to basement car park – 2389.6 x €37.55 = €89,729.48
- Total Development Contribution = €1,155,043.35

### 7.3. Application of Development Contribution Scheme – Condition 6

7.3.1. Condition 6 requires the developer to pay €4,000.00 per residential unit in respect of public open space in accordance with section 48(2)(c) of the Planning and Development Act 2000 (as amended) in relation to public open space. The reason is stated as follows: 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.

7.3.2. Section 48 (2) (c) of the Planning and Development Act, 2000 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”.

7.3.1. 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.

- 7.3.2. The Dublin City Development Contribution Scheme 2016-2020 states section 48(2)(c) applies '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)'.
  - 7.3.3. Condition 6 does not specify what particular works or exceptional costs are required in line with the City's Parks Strategy to facilitate or support this development.
  - 7.3.4. Condition 2 of the grant of permission includes costs for parks and open spaces. Appendix II provides that such money can be attributed to community parks under the heading 'Community Parks Improvement Programme'. Johnstown Park is identified by the parks and services division as a Grade 2 Community Park (although I note the Dublin City Parks Strategy 2017-2022 identifies it as a Grade 1 Community Park), therefore a contribution entitlement towards that park is already allowed for/possible under condition 2. No specified works, or exceptional costs associated with specified works, in relation to the development of Johnstown Park or any other location as a result of/to facilitate this development have been identified in the planner's report or in the planning condition, as required by the Development Contribution Scheme, therefore exceptional costs (above standard contributions required under condition 2 towards parks and open space) have not in my view been justified as part of Condition 6.
  - 7.3.5. In conclusion, 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) and as per the Dublin City Development Contribution Scheme 2016-2020, to justify application of a section 48(2)(c) contribution, therefore I recommend that condition 6 be removed.

## 8.0 Recommendation

- 8.1. It is recommended that condition 2 is AMENDED and condition 6 is REMOVED.

## 9.0 Reasons and Considerations

The Board, in accordance with section 48 of the Planning and Development Act, 2000, (as amended) considered that the terms of the Dublin City Council Development Contribution Scheme 2016-2020 had not been properly applied in respect of Condition 2 and directs the said Council to **AMEND** said condition to reflect the accurate reckonable floor area in relation to the basement car parking and to give effect to the approved SCSi Tender Price Indexation rate of 7.2% applied to the industrial/commercial development levy rate of the Development Contribution Scheme with effect from the 1st January 2019:

### **Condition 2:**

The developer shall pay to the planning authority a financial contribution of €1,155,043.35 (one million, one hundred and fifty five thousand, and forty three euro and thirty five cent) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any 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 An Bord Pleanála to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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 6 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 number 6 does not fall within the scope of Section 48(2)(c) of the Planning and Development Act 2000 (as amended) and Condition 6 should, therefore, be **REMOVED**.

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Una O'Neill  
Senior Planning Inspector

18<sup>th</sup> February 2019