



An  
Bord  
Pleanála

## Inspector's Report ABP-303410-19

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<b>Development</b>	Retention of 17 no. additional bedspaces in a nursing home
<b>Location</b>	Talbot Lodge Nursing Home, Kinsealy Lane, Kinsealy, Co Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F18A/0473
<b>Applicant(s)</b>	Kinsealy Property Unlimited Company.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Kinsealy Property Unlimited Company
<b>Observer(s)</b>	Dublin Airport Authority.
<b>Date of Site Inspection</b>	02 <sup>nd</sup> of April 2019.
<b>Inspector</b>	Karen Hamilton

## 1.0 Site Location and Description

1.1. The site is located along the west of Kinsealy Lane, a local road which radiates south of Malahide, Fingal County. The site is accessed directly off Kinsealy Road and contains an existing nursing home, Talbot Lodge Nursing Home, with associated car parking and open space. The nursing home has developed within the site in recent years and there are three buildings on the site which area interlinked.

## 2.0 Proposed Development

2.1. The proposed development would comprise of the following:

- Retention of 17 no. additional bed spaces in the nursing home permitted under planning reference F11A/0230 including the conversion of a treatment room, dayroom, visitors room and en-suite to bedrooms and the conversion of 7 no. single bedrooms to double bedrooms.

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to grant permission subject to 4no. conditions of which the following are of note:

C 3- Within 6 months of a final grant of permission the rooms proposed for retention shall be provided with noise insulation to an appropriate standard, having regard to the location of the site within the Outer Airport Noise Zone.

C 4- Payment of a development contribution of €329,054 under Section 48 of the Planning and Development Act, 2000.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission following the submission of further information as summarised below:

1. The submission of an Engineer's Report detailing the existing and proposed discharge and the capacity of the treatment system on site which states the nursing home is operating at a 90% capacity level.
2. Justification for the change in the use of the rooms from laundry/ dining room and visitor room for the use of additional bedroom space.

### 3.2.2. Other Technical Reports

Water Services- No objection to the treatment of surface water.

Transport Section- No objection to the proposed development.

Environmental Health- No objection to proposed development.

### 3.3. Prescribed Bodies

Irish Water- No objection subject to conditions.

Dublin Airport Authority- No objection subject to conditions.

### 3.4. Third Party Observations

No third party submissions received.

## 4.0 Planning History

### **Reg Ref F16A/0202**

Permission granted for alterations of a previous permission Reg Ref F12A/0141 for the construction of a 101 bed residential care facility for the elderly to include the alteration of one part of one floor from therapy area to bedroom resulting in an increase in 299m<sup>2</sup> and a total area of 10 bed spaces.

Condition No 8 required the submission of a Development Contribution of €507,134.00 for the provision of public infrastructure.

### **PL06F.239518 (Reg Ref F11A/0230)**

Permission granted by An Bord Pleanála for the upgrade of an existing nursing home in order to comply with H.I.Q.A Standards with 8 no. conditions.

Condition No. 2 states the accommodation provided within the premises shall not exceed 97 bed spaces.

Condition No. 8 required the payment of a Development Contribution Scheme made under Section 48 of the Act.

## 5.0 **Policy and Context**

### **Development Contributions**

#### 5.1. **Development Contributions Guidelines for Planning Authorities, 2013**

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

Stage 5- Identification of Appropriate Adjustment

#### 5.2. **Fingal County Council Development Contribution Scheme 2016-2020**

##### **Section 10- Exemption and Reductions**

(i) The following categories of development will be exempted from the requirement to pay development contributions under the Scheme;

(n) Internal layout alterations where no additional floor area is created and external walls are not being removed.

(ii) For clarification purposes;

(a) Exemptions and reductions shall not apply to permissions for retention of development.

#### 5.3. **Fingal County Development Plan 2017-2023**

The site is located within lands zoned as HA, High Amenity, where it is an objective to "*Protect and enhance high amenity areas*".

#### 5.4. **Natural Heritage Designations**

None relevant.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal are submitted from the applicant in relation to the imposition of Condition No 4 and the issues raised are summarised below:

- Condition No. 4 requires the payment of a financial contribution of €329,054 in respect of public infrastructure and facilities and within the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act, 2001 as amended.
- It is considered the terms of the Development Contribution Scheme have not been properly applied by the planning authority.
- The planner has not deemed any reason as to why they considered the application of a development contribution was appropriate.
- The proposed development did not result in any additional floor space.
- The total area of internal changes applied for was 383 m<sup>2</sup>, the planning fee was appropriate and the planning authority accepted this.
- The contribution applied relates to the total floor area of the entire building (4,362m<sup>2</sup>).
- The application only relates to internal configuration of available accommodation.
- The development contribution includes exemptions for internal layout alterations, where no additional floor area is created and external walls are not being removed.

### 6.2. Applicant Response

The applicant is the appellant.

### 6.3. Planning Authority Response

A response from the planning authority was received to the grounds of appeal which is summarised as follows:

- A levy of €329,054.00 was applied ( 4,574m<sup>2</sup> by €71.94)
- The development contribution scheme provides an exemption for internal layout but not where the proposal is for retention works.
- Following internal consultation it was agreed the actual area that should have been levied was only for the additional 17 bed spaces (384m<sup>2</sup>), therefore Condition No. 4 should be amended to include €27,625.

### 6.4. Observations

A response was received from daa to reiterate the policies in the Fingal County Development Plan in particular Objective DA07 which states the following:

*“Strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone, and actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone, as shown on the Development Plan maps.....”*

## 7.0 Assessment

- 7.1. 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.
- 7.2. 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.
- 7.3. I note an observation was received from the daa relating to the imposition of Objective DA07 of the Fingal County Development Plan 2017-2023 which refers to

the need for noise insulation on buildings located within the Outer Noise Zone. Whilst I do not consider this observation is relevant in my assessment, I note Condition No. 3 of the permission refers to the inclusion of noise insulation.

### **Application of Section 48 Development Contribution Scheme**

- 7.4. The proposed development includes the retention of 17 no. additional bed spaces, located within rooms currently in use by the Talbot Lodge Nursing Home as permitted under PL06F.239518 (Reg Ref F11A/0230).
- 7.5. PL06F.239518 (Reg Ref F11A/0230) was granted for the upgrading of existing nursing home to meet Health Information and Quality Authority (HIQA) standards under planning permission for a building of 2,354m<sup>2</sup> and Condition No 8, as attached to by the Board, stated that :

*“The developer shall pay to the planning authority a financial contribution 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. The contribution shall be paid prior to the 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.*

**Reason:** *It is a requirement of the Planning and Development Act 2000 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.”*

- 7.6. An “Assessment of Financial Contribution” within planning application F11A/0230<sup>1</sup> included a standard levy of €215,698 for a floor area of 2,354m<sup>2</sup>.
- 7.7. The proposed development includes a permission for the retention of 17 no. additional bed spaces in the nursing home. Six of the rooms were originally used as a treatment room, day room, nurses station, visitors room, laundry and dining room.

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<sup>1</sup> <http://documents.fingalcoco.ie/NorthgatePublicDocs/00416003.pdf> (12th of April 2019)

Additional bed spaces were generated from altering single rooms to double rooms. The total floor space for the proposed development is 384m<sup>2</sup>. Condition No 4 included the requirement the payment of €329,054 to the planning authority for payment as a contribution towards public infrastructure. There is no breakdown in the planners report for the calculation of this contribution although the Planning Authority Response to the grounds of appeal states that this figure was based on a floor space area of 4,574m<sup>2</sup>.

- 7.8. The applicant argues that this figure is excessive as the floor space of the proposed development is only 384m<sup>2</sup>, and the works only refer to internal alterations which the development contribution scheme exempts from requiring a development contribution.
- 7.9. The Development Contribution Guidelines for Planning Authorities, 2013 allow the Planning Authority to include reductions or exemptions within their individual contribution scheme. Section 10 of the Fingal County Council Development Contribution Scheme 2016-2020 includes a list of those developments which will be exempt from development contributions including works for (n) internal layout alterations where no additional floor area is created and external walls are not being removed.
- 7.10. Section 10 (ii) includes clarification on the exempted development, and specifically states that exemptions and reductions shall not apply to permissions for retention of development.
- 7.11. The response from the planning authority acknowledges the incorrect imposition of a development contribution calculation based on the entire floor space and considers the recalculation using a floor space of 384m<sup>2</sup> more reasonable. This response refers to the restriction on exemptions from development contribution Under Section 10 (ii) which shall not apply to permissions for retention development and considered this complies with the national development contribution guidelines.
- 7.12. Chapter 2 of the national guidelines for development contributions, Supporting Economic Growth, states that “*no exemption or waiver should apply to any applications for retention of development.*” Having regard to this national guidance and Section 10 (ii) of the Fingal County Council Development Contribution Scheme, I do not consider any exemptions are application to the proposed development for



retention of the 17 no. bed spaces. Although having regard to the scale of the works proposed I consider the application of a development contribution for a floor space of 384m<sup>2</sup> more reasonable.

- 7.13. Section 9 of Fingal County Council Development Contribution Scheme 2016-2020 includes the level of contribution to be paid in respect to different classes of public infrastructure and facilities and €59.46 per m<sup>2</sup> of industrial/commercial class of development is required. As I consider the use of a nursing home as a commercial activity rather than a residential development I consider the total contribution payable is €59.46 per m<sup>2</sup>.
- 7.14. Therefore, I consider Condition No. 4 should be amended to reflect the reduction in the floor size to be retained as 384m<sup>2</sup> and the level of contribution required in the Fingal County Council Development Contribution Scheme 2016-2020 for Industrial/ Commercial (384m<sup>2</sup> x €59.46 = €22,832.64).

### **Appropriate Assessment**

- 7.15. Having regard to the nature and scale of the proposed development within a serviced urban area, the nature of the receiving environment and the proximity to the nearest European sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. 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. The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area were not properly applied as the floor space used in the calculation (4,574m<sup>2</sup>) was in excess of that which was the subject of the proposed development (384m<sup>2</sup>), and direct the planning authority to AMEND Condition No. 4 to include €22,832.64.

## 9.0 Reasons and Considerations

Having regard to:

- a. the Development Contributions Guidelines for Planning Authorities (2013)
- b. the Fingal County Council Development Contribution Scheme 2016-2020,
- c. the scale, nature and inclusion of a development contribution for 2,354m<sup>2</sup> of floorspace under PL06F.239518 (Reg Ref F11A/0230),
- d. the size and nature of the proposed development,
- e. and the pattern of development in the area,

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out, that the terms of the Development Contribution Scheme for the area was not properly applied and that the proposal to AMEND Condition No 4 is required.

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Karen Hamilton  
Planning Inspector

15<sup>th</sup> of April 2019