



An  
Bord  
Pleanála

## Inspector's Report ABP-309238-21

<b>Development</b>	Change of use of permitted nursing home to primary healthcare use.
<b>Location</b>	Boor Road/Convent Road, Fonthill Road and St Johns Road, Clondalkin, Dublin 22.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD20A/0054
<b>Applicant(s)</b>	Valley Healthcare Fund
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party -v-Condition
<b>Appellant(s)</b>	Valley Healthcare Fund
<b>Observer(s)</b>	None
<b>Inspector</b>	Fergal Ó Bric.

## **1.0 Site Location and Description**

**1.1** The appeal site is located south of Clondalkin Village, and north-west of the N7 (Nass Road) National Primary Route. The site is L-shaped and extends from the Fonthill Road to St Johns Road with extensive road frontage onto along the Boot Road in Clondalkin. There is a single storey Primary Care Centre run by the HSE on site currently as well as a two-storey commercial building and a single storey dwelling (vacant with some outbuildings. There are two vehicular access points onto the Boot Road from the site. The area is largely residential in character with the rear gardens of properties along St. Johns Road adjoining the north-west of the site and a four-storey apartment development (Kilwarden Court) on the opposite side of the Fonthill Road. A Church and a primary school are located on the opposite side of the Boot Road to the east.

## **2.0 Proposed Development.**

**2.1.** Permission is sought for alterations to a previously approved healthcare development, Planning Authority reference number SD11A/0135, in 2011, that has not yet been constructed. as follows:

- Block A-approved as a Primary Health care building and would remain so.
- Block B-approved as a nursing home facility and permission is sought to change its use to a Primary Care facility
- Permission is sought for an external café and relocation of sub-station from entrance area to a position on Fonthill Road.
- Minor alterations to Block A, comprising minor internal reconfiguration to stair number 1 core, position of lift shafts and circulation areas.
- Internal alterations to existing office space at first-floor level,

**2.2.** Further information was submitted in relation to: The submission of a Traffic and Transportation report; Details of ducting for traffic signalling and the submission of an acoustic assessment.

### **3.0 Planning Authority Decision**

- 3.1. A grant of planning permission was issued subject to six conditions. The following conditions are of relevance:

Condition number 1: Development shall be carried out in accordance with the documentation and particulars lodged with the application, as amended by further information received by the Planning Authority on the 17<sup>th</sup> day of November 2020.

Condition number 6: Development contribution of €379,792.95.

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

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

Roads Department: No objections, subject to conditions.

Environmental Health Officer: No objections, subject to conditions.

Water Services: No objections, subject to conditions

Planning report: The proposed development was considered to accord with the policies and objectives of the Development Plan and was considered acceptable in the context of the proper planning and sustainable development of the area. An Appropriate Assessment screening concluded that a Stage 2 Appropriate Assessment would not be required given the proposal to connect to public services and the separation distance from the Natura 2000 sites.

### **3.3. Prescribed Bodies**

Irish Water: No objections, subject to conditions.

Development Applications Unit: No objections, subject to conditions

### **4.0 Planning History**

Planning Authority reference number, SD11A/0135, In 2011, planning permission was granted for the demolition of all structures on site and the development of a 3-5

storey Primary Healthcare Centre (Block A) and a 1-3 storey nursing home (Block B). An extension of duration of planning permission was subsequently granted for the development under Planning Authority reference number SD11A/0135/EP (1). To date no development works have commenced on site.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant Development Plan is the South County Development Plan 2016-2022. The site is zoned RES- where the objective is: To protect and/or improve residential amenity.

Chapter 11 pertains to Community Infrastructure.

Policy 11 pertains to Healthcare facilities where it is the policy of the Council “To support the Health Service Executive (HSE) and other statutory and voluntary agencies in the provision of appropriate healthcare facilities, including the system of hospital care and the provision of community based primary care facilities

Policy 11b: To support and encourage the integration of healthcare facilities within new and existing communities that are appropriate to the size and scale of each settlement.

Objective 4: To direct healthcare facilities into town, village, district, and local centres and to locations that are accessible by public transport, walking and cycling, in the first instance.

### **5.2. South Dublin County Council Development Contributions Scheme 2021-2025**

Section 11-Circumstances where no contribution or a reduced contribution apply.

Section 12- Circumstances where development will not be exempt from the requirement to pay development contributions.

### **5.3. Natural Heritage Designations**

None relevant.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A first party appeal has been lodged by Simon Clear and Associates, Planning & Development Consultants on behalf of the first party, Valley Healthcare Fund. The grounds of appeal are as follows:

- The main purpose of the current application is to facilitate the development of a Primary Care Centre (PCC) by changing the use of the permitted nursing home (Block B) to primary healthcare.
- This application is made with the full support of the Health Service Executive (HSE) who require additional floorspace to provide Primary Care Services in this location.
- Correspondence has been submitted from the HSE stating that they are in the process of entering into a lease agreement for the majority of Block A and the entirety of Block B.
- The decision of the Planning Authority to grant planning permission is welcomed, except for condition number 6, requiring payment of a financial contribution, amounting to €379,792.95.
- It is submitted that the terms of the South Dublin County Council Development Contributions Scheme (DCS) 2016-2020 has not been properly applied.
- The appellants state that they requested details of the calculation of the financial contribution. Block B was levied on a floor area of 3,521.51 square metres as a Primary Healthcare Centre.
- The appellants state that they were previously only levied on part of Block A (647 square metres of a total floor area of 3,249 square metres). The 647 square metres comprised of non-HSE floorspace and the contribution was waived by the Planning authority in respect of the HSE element of Block A, comprising 2,602 square metres.

- The development forms part of the Government's Primary Care Strategy, to improve primary care medical infrastructure as part of an integrated approach to care delivery.
- The proposal accords with the HSE National Service Plan 2020.
- The HSE is a registered charitable organisation and holds a registered charity number.
- Within Section 10 of the DCS document, a number of exemptions and reductions are set out. Section 10(a) specifically states that "Development by charities for non-profitable development shall be exempt"
- Section 10(xxx) sets out that the following development will not be exempt from the requirement to pay development contributions: Private medical facilities, including private hospitals, medical facilities, primary care centres and similar developments including any ancillary buildings.
- Under the Draft DCS 2021-2025 Section 12 sets out that "the following developments will not be exempt from the requirement to pay development contributions: Private medical facilities including private hospitals, medical facilities, primary care centres and similar developments including by a registered charity for non-profitable development"
- The development as proposed would be for a registered charity providing non-profit social services and provide a public medical facility, developed in accordance with the Government's programme for the delivery of primary healthcare.
- In determining appeals in relation to financial contributions, the Board has consistently upheld the principle that it is the end user of a proposed development that should be assessed in terms of liability to pay contributions.
- This principle has been applied in respect of financial appeals for new schools to be constructed under the design, build, and operate programme, for example PI 12. 240309.

- The subject development has been designed in consultation with the HSE to meet their particular requirements.
- The HSE has provided written confirmation of their agreement to lease the entirety of Block B.
- The floorspace to be leased by the HSE to provide Primary healthcare services is not commercial floorspace and should not be subject to development levies.
- The development is exempt under the provisions of the scheme as it will provide key social infrastructure to the community and is not for profit or gain.

## 6.2. Planning Authority Response

Response by South Dublin County Council

- The response states that if the Board are mindful to grant planning permission that a condition in relation to the Supplementary Development Contribution scheme in relation to the Kildare Route Project may be applicable.

## 7.0 Assessment

- 7.1. Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. Therefore, the Board, is restricted to considering the merits of condition number ten only and cannot consider the proposed development *de novo*
- 7.2. The South Dublin County Council DCS 2021-2025 came into effect on the 1<sup>st</sup> day of January 2021. The Chief Executive's order to grant planning permission is dated the 14<sup>th</sup> day of December 2020, when the DCS 2016-2020 was in effect. This assessment will consider the provisions of the current SDCC DCS 2021-2025.

- 7.3. I do not consider that the precedent quoted by the appellants, ABP PL 12.240309, which relates to the development of a new school facility under the design, build and operate programme, is comparable to the current case. There are specific exemptions from the payment of financial contributions for non-fee-paying schools set out under Section 11(ix) of the SDCC DCS 2021-2025. However, I can find no similar exemption relating to development by charitable or non-profit making healthcare facilities within the DCS.
- 7.4. Condition number six entails the payment of a development contribution of €379,792.95 in respect of public infrastructure and facilities benefitting development within 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 SDCC DCS 2016-2020 (the scheme at the time the decision was being made by the Planning Authority and subsequently superceded by the DCS 2021-2025 as of the 1<sup>st</sup> day of January 2021) . I have noted the content of the planning report in relation to Development Contributions, where it is stated that the proposals in relation to Block B relate to: A change of use from a permitted nursing home facility to a public primary healthcare use over a floor area of 2,602 sq. m, with the remainder of Block B (627 sq. m) to be in private medical use. The terms of applying Development Contributions are set out within the SDCC DCS 2021-2025. Rudimentary calculations are provided in the planner's report. However, no precise detail in terms of how the calculations were calculated are apparent from the planner's report.
- 7.5. Section 11 (xii) of the DCS states that development by a registered charity for non-profitable developments shall be exempt from the requirement to pay any planning application fee, in accordance with Section 157 of the Planning and Development Regulations 2001(as amended. It is noted that a planning fee of €12,596,92 was paid in this instance, as the applicants are stated to be a sub-fund of the Infrastructure Investment Fund (as per Section 5 of the planning application form), not a registered charity or non-profit organisation,
- 7.6. The appellant states that a waiver on development contributions for Block A was applied by the Planning Authority pertaining to the SD11A/0135 permission, as much



of Block A would be leased by the HSE (a non-profit organisation involved in the provision of public healthcare) and that they are seeking a similar waiver for the public healthcare element of Block B, that being 2,602 sq. m. of floorspace. However, no such waiver was applied by the Planning Authority under the current proposals.

- 7.7. The appellants set out that the development would be subject to a long terms lease between them by the HSE. Correspondence from the HSE has also been submitted as part of the first party appeal submission confirming that an agreement has been signed to enter a long-term lease for the buildings commencing from that date of practical completion.
- 7.8. I accept the bona-fides of the correspondence submitted by the appellants from the HSE. However, this appeal relates to the SDCC DCS 2021-2015 and whether the terms of the DCS have been correctly applied. Section 11(vii) relates to the payment of planning application fees in accordance with Article 157 of the Planning Regulations, not development contributions, and in any event a planning application fee was paid in this instance. I accept that the HSE have charitable status and are a non-profit organisation which are charged with providing public health care within community settings, such as the one proposed. However, there does not appear to be any specific provision set out within Section 11 or indeed any other section within the DCS which provides exemptions or waivers from the payment of financial contributions in these circumstances. Therefore, the development contributions as set out by the Planning Authority and as included within condition number 6 should be upheld. I consider that the financial contributions as proposed are warranted and justified in accordance with the SDCC DCS 2021-2025 and should be upheld. In view of the foregoing, I can conclude that the terms of the South Dublin County Council Development Scheme have been properly applied in this case and that the appeal should be rejected.

## **8.0 Recommendation**

- 8.1. Having regard to the above and based on the reasons and considerations set out below, it is recommended that condition number 6 as set out by the Planning Authority be upheld.

## **9.0 Reasons and Considerations**

The Board considers that although the proposed development is to be carried out on behalf of a voluntary or community organisation within the meaning of Article 157 of the Planning and Development Regulations, 2001 (as amended) by way of delivery of buildings and their future use for the healthcare needs of the local community by the Health Service Executive on a non-profit or gain basis. The applicant by reason of having entered into a lease agreement with the Health Service Executive, does not come within the meaning of a not for profit or gain organisation. It is, therefore, considered that the terms of the development contribution scheme were properly applied, and that condition number 6 should be attached in that the proposed development does not come within the exemptions provided for within Section 11 of the scheme.

## **10.0 CONDITION**

The developer shall pay to the planning authority a financial contribution of €379,792.95 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. 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 the Board to determine.

**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 of the Planning and Development Act 2000.

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Fergal Ó Bric  
Planning Inspectorate

13th April 2021