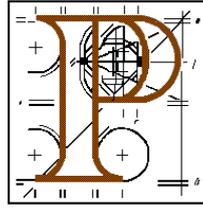


An Bord Pleanála



Inspector's Report

Reference: PL06S.245321

P.A. Reference: SD15A/0138

Title: Construction of new hotel wing comprising 104 bedrooms, meeting rooms and lounge area, etc.

Location: Red Cow Complex, Naas Road, Dublin 22

Applicant: Guestford Limited

Appellants: Same

Observers: None

PA: South Dublin County Council

Type of Appeal: Third party against application of DCS

Decision: Permission granted with conditions

Date of Site Visit: none

Inspector: Philip Davis

1. Introduction

This appeal is by the applicant against a financial contribution condition made under Section 48(10) of the 2000 Act, applying to an extension to a large hotel at the Red Cow roundabout in Dublin. The applicant has argued that the development contribution has not been correctly applied, as it should have been calculated on a net basis, subtracted from the area of an industrial building built in the 1990's to be demolished. The planning authority states that there is no evidence of a contribution having been paid at that time. There are no other issues raised in this appeal so I will address only that of Condition 10, relating to the application of the development contribution scheme.

2. Proposal

The proposed development is described on the site notice as follows:

Construction of a new hotel wing comprising 5 storeys (c.5340sq.m total GFA) and containing 104 bedrooms, meeting rooms, lounge area, link to existing hotel, and plant area (c.40sq.m); modifications to existing hotel comprising demolition of c.2.5sq.m to accommodate new hotel link and change of use of hotel administration area to gym (c.73sq.m); demolition of existing 'Pavilion' building (c.2709sq.m); modification to hotel parking areas to now provide a total of 420 spaces (existing and new), with revisions to internal roads, set down areas, coach parking and delivery areas; closure of secondary entrance to Red Cow Business Park access road; all associated site development landscaping, open spaces, boundary treatment works, car parking and infrastructural services provision.

4. Technical Reports and other planning file correspondence

Planning application

The planning application, with supporting documentation and plans was submitted to the planning authority on the 26th May 2015.

Reports and correspondence.

Planners Report: With regard to development contributions, the development plan stated that 'the relevant development contributions apply', but did not address this in any detail. There is no correspondence on the original planning file with regard to the development contribution.

5. Decision

The planning authority decided to grant permission subject to 10 no. conditions. Condition 10 stated that the developer shall pay a financial contribution of €425,894.84 in respect of public infrastructure and facilities benefiting development within the area of the planning authority in accordance with the 2013-2015 Development Contribution Scheme. There was no other development contribution set.

6. Planning Context

Planning permissions – appeal site

The applicant has provided details of previous permissions on the site – TA/934, SA/1288 and SA 1871.

Planning permissions – other relevant

A number of similar appeals on development contributions are relevant – most notably PL06S.244509; PL06S.244500 and PL06S.242404

7. Grounds of Appeal

The appeal is made pursuant to Section 48(10) of the 2000 Act, as amended against condition 10 of the permission, i.e. that the terms of the development contribution scheme have not been properly applied.

The argument submitted is that the contribution was applied on the total floorspace at €78.69 per square metre commercial floorspace, but that the planning authority applied it to the gross floorspace applied for, rather than the net floorspace – i.e. excluding the 2,709 sq.m ‘Pavilion’ building which is to be demolished. It is noted that Article 10 of the scheme states that if contribution was paid on a scheme which is to be replaced, then the levy will apply only to the increase in floor area. Correspondence is enclosed dated 4th May 1992 in support of the argument that a contribution was paid for the ‘Pavilion’ building under planning reference TA/934 and SA/1871 (Dublin County Council).

8. Planning Authority’s Response

It is submitted that it is not clear if the documentation submitted by the applicant relates to the ‘Pavilion’ building, and it is also stated that condition 5 of SA/1871 which set a financial contribution of IR£11,500 is not included in the compliance letter.

It is suggested that there is insufficient evidence of previous payment of development contributions in respect of the Pavilion building, and

that the Council applied the correct assessment of the DCS in respect of the planning application.

9. Applicants response

In response, the applicant has submitted additional information with regard to the Pavilion Building. It is stated that this equates to what is now known as McCairns Motors, building no. 3, and plans are submitted to confirm that this is the building to which TA/934 referred.

Additional copies of correspondence relating to the Dublin County Council permission at the time is submitted in support of the argument that all relevant conditions, including development contributions, had been discharged.

It is noted that Article 10 of the Scheme states only that 'a' development contribution has to have been paid, so it is sufficient to demonstrate that any one of the financial contribution conditions has been adhered to.

It is further noted that a figure of 2,477 sq. metres was given in the original planners report as the floorspace of the Pavilion building – it is stated that if the Board accepts the principle of a reduction in area, then the building can be resurveyed to identify the precise area.

10. Assessment

I consider that to assess whether the development contribution scheme has been applied correctly, the following questions need to be addressed:

- *Does Article 10 (xxvii) apply to the proposed development?*
- *Were development contributions paid for the existing commercial/industrial buildings on the site?*
- *Is it relevant if not all contributions were paid?*
- *What is the relevant reduction in development contribution?*

Does Article 10 (xxvii) apply to the proposed development?

The South Dublin County Development Plan Development Contribution Scheme 2013-2015 sets a contribution for development described as 'industrial/commercial' at €78.68 per square metre. 'Exemptions and Reductions' are set out in Article 10 of the Scheme. Article 10 (xxvii) states:

Demolition and Rebuild: Where an applicant is granted permission to demolish in part or in full an existing building and replace with

another, then the development contribution payable is to be calculated as follows;

- i. where a contribution has been paid – the contribution will be levied on the increased floor area of the new build over the old .*
- ii. if no contribution was previously paid - the contribution will be levied on the new development in full.*

The Development Contribution Scheme does not provide for any rebate or refund in this regard. Agents/applicants should provide evidence of prior payment at application stage in order to expedite assessment and avail of this exemption.

The proposed development involves the demolition of a commercial building (apparently used as a motor repair centre) to incorporate it into the expanded hotel. Both uses fall under 'industrial/commercial'. As such I would consider that the correct assessment of the contribution is a net floorspace – i.e. the proposed additional floorspace minus the floorspace to be demolished.

The question arises as to whether the 'contribution' described in the Scheme only applies to those made under S.48 of the 2000 Act, as amended, or applies to all financial contributions made under the Planning Acts from 1963 onwards. This has been addressed with regard to Article 10 (xxvi) (change of use) in appeals, notably PL06S.244509; PL06S.244500 and PL06S.242404, and in those cases the Board concluded that it applies to contributions paid prior to the enactment of the 2000 Act. I therefore conclude on this basis that any financial contribution made under any of the Planning Acts activates an exemption or reduction under Article 10, as written.

Were development contributions paid for the existing commercial/industrial buildings on the site?

The applicant has submitted copies of correspondence between the original developer and the planning authority of the time, Dublin County Council, with regard to planning permission ref. TA/934 for site development works at Red Cow. This proposal is quite clearly the 'Pavilion' building which is to be demolished. This is part of a larger site which was granted permission for a number of industrial units in 1979 under SA/1288. Condition 3 of this permission set a financial contribution of £11,550 for a development of five industrial units (this was calculated on the acreage of the site, not the floorspace of development). Correspondence on file dating from May 1992 (submitted with the appeal) states that condition no. 3 had been complied with – i.e. the financial contribution has been paid.

The planning authority has questioned whether 'Unit 3' is part of the overall industrial estate permission SA/1288. The applicant has submitted plans from the original permissions and I am quite satisfied

after examining these that the Pavilion building is 'Unit 3', which was built under an original permission from 1979 (SA/1288) and then a subsequent permission (TA/934). While TA/934 did not have a financial contribution condition, SA/1288 did (condition 3) and the correspondence on file indicates that this condition was discharged.

I am therefore satisfied on the basis of the available evidence that a financial contribution has been paid for the 'Pavilion' building.

Is it relevant if not all contributions were paid?

The planning authority has questioned whether all financial contributions have been paid in respect of the building, noting only direct evidence for SA/1288. However, the wording of the Scheme does not make such a distinction – it only says that 'a' contribution has to have been paid. I therefore do not consider it to be relevant if there is no evidence that other financial contribution conditions were discharged.

What is the relevant reduction in development contribution?

There is, as the applicant has noted, some ambiguity in the floorspace of the Pavilion building. The planning application subject to this appeal states that it is 2,709 square metres, but as is noted SA/1871 the planning report states that it is 2,477 square metres.

From a very approximate measurement of the plans as submitted, I would calculate the floorspace of the Pavilion building to be closer to the lower number, but to ascertain the precise area would require a new survey.

If the development calculation is based on the floor areas submitted with the planning application, then the correct development contribution would be 5340 square metres minus 2709 square metres, which equals 2631 square metres. The contribution therefore should be 2631 by $€78.68 = €207,007.08$

11. Conclusions and Recommendations

I conclude that a financial contribution has been paid for the 'Pavilion' building and that as such the exemption set out Article 10 (xxvii) of the Scheme applies, so the development contribution under the scheme should be the gross floor area proposed minus the area to be demolished (i.e. the 'Pavilion' building). I therefore conclude that the development contribution scheme has not been applied correctly by the planning authority.

As there is ambiguity about the floorspace of the Pavilion building I would suggest there are three alternatives for the Board to consider:

1. Set a new contribution based on the floorspace given in the planning application.
2. Set a condition such that the applicant and planning authority agree a new development contribution based on a net floorspace to be agreed, with a referral back to the Board in the event that they cannot agree on this.
3. The Board requests the applicant provide an independent surveyor's report on the floorspace of the Pavilion building and make a decision based on this report.

I would recommend on the basis of the planning authority having accepted the details of the proposed development at application stage that the Board applies option 1, above.

I therefore recommend that the Board directs the planning authority to alter condition 10 of the planning permission, whereby the development contribution to be paid is €207,007.08.

REASONS AND CONSIDERATIONS

Having regard to the provisions of the South Dublin County Council Development Contribution Scheme 2013 - 2015 and, in particular, Section 10(xxvii) regarding exemptions/reductions for demolition and rebuilding, the planning history of the site which includes the previous payment of contributions for the 'Pavilion' building to be demolished, and the correspondence received by the Board at appeal stage, the Board considers that the terms of the South Dublin County Council Development Contribution Scheme 2013 - 2015 were incorrectly interpreted and applied by the Planning Authority in that no allowance was made for the existing building on the site and the contributions paid in respect of same. The amount of contribution sought under condition number 10 should be amended to €207,007.08 (two hundred and seven thousand, seven euro and eight cent).

Philip Davis,
Inspectorate.
2nd December 2015