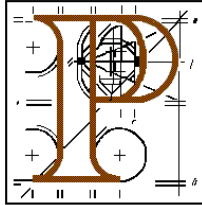


An Bord Pleanála



Inspector's Report

Development: Demolition of Industrial building, Construction of residential nursing home, car parking, retention of one access and removal of secondary access at Haydens Lane, Lucan, Co. Dublin

Planning Application

Planning Authority: South Dublin County Council
Planning Authority Reg. SD15A/0301
Applicant: Carechoice Lucan GP Ltd
Type of Application: Permission
Planning Authority Decision: Grant with conditions

Planning Appeal

Appellant(s): Carechoice Lucan GP Ltd
Type of Appeal: First Party Vs Condition No. 14
Observers: None

1.0 PROPOSED DEVELOPMENT

- 1.1 Demolition of an existing two storey industrial/ factory building (2691sq.m.) and the construction of a residential nursing home on the lands of the former factory building. The development will comprise of 124No. bedrooms (147 bed spaces) with associated/ common facilities and office/ administration areas. The new building will range in height from one storey to part two storey and part three storey. The development will include carparking, site works, landscaping retention of and modification to one existing access and removal of one secondary access plus boundary treatment.

2.0 TECHNICAL REPORTS

Planning report indicates the development contribution payable was calculated on the basis of the entire proposed floor area, 6573sq.m.

3.0 PLANNING AUTHORITY'S DECISION

South Dublin Co. Co. granted planning permission for the development subject to 15No. conditions on 24th of November 2015.

Condition No. 14 requires the payment of a financial contribution of €517,163.64 in respect of public infrastructure and facilities.

4.0 APPEAL GROUNDS

Tom Philips and Associates have taken this appeal on behalf of the applicant. A summary of the appeal submission is as follows:

4.1 Introduction

The decision to grant permission for the development is welcomed by the applicant. However condition No. 14 has been incorrectly applied and does not conform with the adopted development contribution scheme. The board should note:

- (i) Types of development exempt from the adopted development contributions scheme notably the category 'Demolish and Rebuild'.
- (ii) Relevant Planning history, notably extensions to existing factory building that is onsite (and development contributions already paid).

- 4.2 In calculating the specific contribution set out in Condition No. 14 it is assumed the planning authority has used the calculation below :

Rate (Per sq.m. of non-residential class of development)	Area of Proposed Development	Total Contribution Levied
€78.68	6,573sq.m	€517,163.64

The amount is correct in terms of the appropriate rate is €76.68 and the floor area is also accurate. However, the exemptions within the scheme have not been taken into consideration and previous payments of contributions.

4.3 Exemptions (Demolition and Rebuild)

Section 10 (xxvii) of the Scheme states:

Demolition and rebuild: Where an applicant is granted permission to demolish in part or in full an existing building and replace it with another, then the development contribution payable is to be as calculated as follows:

- *Where a contribution has been paid – the contribution will be levied on the increased floor area of the new build over the old*
- *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 in order to expedite assessment and to avail of this exemption.

There has been no consideration of this exemption in the levy calculation. The existing factory is 2,691sq.m. with the proposed new development having a floor area of 6,573sq.m.. Under the Demolition and Rebuild exemption, the development contribution should be €305,435.76

Rate	Area of Proposed Development	Area of Existing factory to be demolished	Total Area subject to Development Contribution	Total contribution
€78.68	6,573sqm.	2691sq.m.	3882sq.m.	€305,435.76

4.4 Planning History and Previous Development Contributions

The planning history revealed planning permissions for extensions to the factory over the years and the levies paid in full in respect of each application.

Reg. Ref.	Proposal	Ext. to factory (sq.m.)	Development Levy
SA756	Factory ext.	Not implemented	N/A
87A/1289	Alterations to factory	Not Available	Not Available
90A/0529	Alt. to factory	1,056sq.m.	€14,535
S94/0491	Retain factory and office extensions	427sq.m.	€4,549 (not paid as ABP ordered levies to be removed)
S99A/0102	Relocation of canteen and staff facilities, and new store,	269sq.m.	€25,810

There has been no further applications on the site since S99A/0102. Confirmation of payment of relevant levies are included on the respective history files. A number of the planning history files were not available to the applicant due to the age of them and this is unfortunate as a full development contributions history cannot be determined. Copies of relevant planning history documentation are appended to the appeal submission.

4.5 Conclusion

The applicant accepts responsibility to pay the development contribution. However, it is considered the planning authority has erred in its calculations and this has resulted in an inflated sum of €517,163.64 been levied. In the interests of fairness and equity Condition no. 14 should be reduced to €305,435.76

5.0 RESPONSES

5.1 Planning Authority

A summary of the submission made by the planning authority to the grounds of appeal is as follows:

- There was no proof of payment of previous levies made by the applicant or his agent.
- In respect of S99A/0102 a sum of €14,864 was paid for that particular permission, which was 269sq.m..
- Therefore the floor area of the current proposal is 6573sq.m. – the 269sq.m. paid for under S99A/0102 which would imply the stated

financial contribution should be reduced by €21,164.92 (269 x €78.68 per sq.m.)

- In respect of 90A/ 0529 there was no evidence submitted that levies had been paid and therefore it could not be taken into consideration on the calculation.

5.2 Applicant's Further Submission

The applicant only recently purchased the site and has made every effort to establish the development levy history on the site. There has been every effort made by both the applicant and the planning authority to recover the missing history files. However, the planning authority's record keeping system is inadequate. It is unfair to impose development contributions that have already been paid on the basis that planning history files cannot be located. The subject site is likely to have changed hands a number of times throughout the years and the applicant cannot be expected to have old records relating to the lands from former owners. It is reasonable to anticipate the existing floor area of the factory should be deducted from the new development.

Under Appeal reference PL06S.095043 the Board has removed levies imposed on the existing factory.

6.0 PLANNING HISTORY

Reg. Ref.	Proposal	Ext. to factory (sq.m.)	Development Levy
SA756	Factory ext.	Not implemented	N/A
87A/1289	Alterations to factory	Not Available	Not Available
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7.0 PLANNING POLICY

- 7.1 This appeal has been brought in the context of Section 48(10)(c), where no other appeal is brought under section 37, of the Planning and Development Act.
- 7.2 Since the decision a new Development Contributions Scheme has been adopted by the local authority. **South Dublin County Council Development Contribution Scheme 2016-2020.**

Level of Contribution

The total of contribution payable for an industrial/ commercial class of development is €75.00/sq.m.

Definitions Exemptions and Reductions

10 (xxviii) Demolition and Rebuild

Where an applicant is granted permission to demolish in part or in full and existing building and replace it with another, then the development contribution payable is to be as calculated as follows:

- Where a contribution has been paid – the contribution will be levied on the increased floor area of the new build over the old
- 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 in order to expedite assessment and to avail of this exemption.

8.0 ASSESSMENT

- 8.1 This appeal relates to Condition No. 14 whereby the full floor area of the proposed nursing home i.e. 6573sq.m. was used in the calculation of the development contribution payable which totalled €517,163.64. The Development Contributions Scheme in place at the time was the 2013-2015 Scheme. That Scheme has since then been replaced by a newer Scheme 2016-2020 which is appended to this report. The appellant has argued the Development Contribution Scheme was not correctly applied because the floor area and the planning history of the existing factory on the subject site to be demolished as part of the overall development proposals, was not taken into consideration during the calculations of the levy imposed by condition No. 14.
- 8.2 On appeal the planning authority has acknowledged the planning history or floor area of the existing two storey factory on the subject site was not taken into consideration during the calculation of the development contribution. It has amended its original calculations to exclude a floor area within the factory that was permitted in 1999.

8.3 Firstly in accordance with Section 9 of the current development Contributions Scheme 2016-2020, the Level of Contribution Payable in respect of Industrial / Commercial development is **€75.00**.

8.4 Under Section 10 of the scheme there are Exemptions and Reductions to the Scheme outlined. The relevant reduction is :

(xxviii) Demolition and Rebuild: Where an applicant is granted permission to demolish in part or in full an existing building and replace it with another, then the development contribution payable is to be as calculated as follows:

- *Where a contribution has been paid – the contribution will be levied on the increased floor area of the new build over the old*
- *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 in order to expedite assessment and to avail of this exemption.

8.5 A detailed planning history relating to the existing factory structure on the subject site, which is to be demolished, has been presented by the applicant on appeal. It is interesting to note that one history file in 1994 was the subject of an appeal to An Bord Pleanála whereby the Board removed the development contribution conditions from the permission (S94A/0491). The planning histories relating to the factory on the site span over decades, and the planning authority has misplaced the older files, therefore it is not possible to establish whether development contributions were paid in respect of the earlier permissions relating to the factory. In this regard, the Board should note there was no enforcement history uncovered during the search for the files relating to non-compliance with planning conditions, therefore it could be assumed the levies were paid in respect of planning registration numbers SA756 and 87A/1289. Under the Board's assessment of the levies imposed on planning registration S94A/0491, the board removed the levy imposed because of the levies paid under a previous planning application 90A/0529, both which the planning authority refused to acknowledge under this current appeal because no evidence of payment can be found on the 90A/0529 case.

8.6 Unfortunately, to the disadvantage of the current applicant who has only recently purchased the site, because the old files have been misplaced or existing files are incomplete, the applicant cannot provide evidence that the previous development contributions have been paid in full. The only file the planning authority has accepted as a reduction in the floor area calculable is S99A/102 whereby on appeal, the planning authority has excluded the 269sq.m. permitted under that planning application. The planning authority has failed in its response to the appeal to address two salient issues:

(i) The Planning authority's misplacement of history files;

(ii) Planning reference S94A/0491 whereby the development contributions relating to a floor area of 427sq.m was removed by the Board, and its reference to an earlier planning history 90A/0529.

- 8.7 The applicant acknowledges the principle of condition no. 14 and the payment of the development contribution. The applicant has no objection to complying with the condition providing the Scheme is reasonably and fairly applied. In the absence of a full planning history relating to the site, the applicant has requested the floor area of the factory on site to be demolished be removed from the calculations. The floor area of the existing factory is 2,691sq.m. I consider this this to be a reasonable reduction.
- 8.8 In note under Section 10 (xxviii) is states the onus is on the agents/ applicants to provide evidence of prior payment at application stage in order to expedite the assessment and avail of the exemption. However, if the information relating to prior payments is contained on old planning history files, which the planning authority has misplaced or cannot locate, then the applicant cannot reasonably be expected pay for the relevant floor area.
- 8.9 I agree with the first party appeal, and the applicant has made every effort to locate the missing files. The floor area of the existing factory should be excluded from the calculations. Therefore in accordance with the current adopted South Dublin Co. Co. Development Contribution Scheme 2016-2020 the following calculations is applicable.

Rate	Area of Proposed Development	Area of Existing factory to be demolished	Total Area subject to Development Contribution	Total contribution
€75.00	6,573sqm.	2,691sq.m.	3882sq.m.	€291,150

9.0 RECOMMENDATION

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, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 14 and directs the said Council under subsection (10) (c) of section 48 of the 2000 Act, to AMEND condition number 14 so that it shall be as follows for the reason stated.

The developer shall pay to the planning authority a financial contribution of €291,150 (Two Hundred and Ninety One thousand, one hundred and fifty euro) 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 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 Act be applied to the permission.

Caryn Coogan

Planning Inspector

25/04/2016