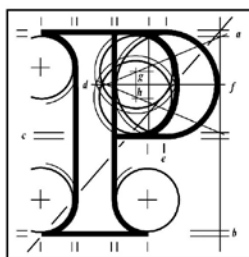


An Bord Pleanála



Inspector's Report

Development: Demolition of the existing single and three storey structure and construction of a four storey over basement nursing home comprising 122 bedrooms (147 bedspaces) with south west facing balconies at first, second, and third floor levels, also 40 basement and 25 surface car parking spaces. Ancillary accommodation comprises back-up generator, bin store, and cover cycle parking. Site works include relocation of existing vehicular entrance, landscaping, and ancillary works, at Menni House, Parnell Road, Harold's Cross, Dublin 12.

Application

Planning authority: Dublin City Council
Planning application reg. no. 3756/15
Applicant: Carechoice (Parnell Road) Limited
Type of application: Permission
Planning authority's decision: Grant, subject to 15 conditions

Appeal

Appellant: Carechoice (Parnell Road) Limited
Type of appeal: Section 48
Observers: None
Date of site inspection: n/a
Inspector: Hugh D. Morrison

Site

The site is located on the Parnell Road section of the R111, which accompanies the southern bank to the Grand Canal. This section runs between the junctions formed by the intersection of the R111 and Harold's Cross Road, in the east, and Crumlin Road, in the west. This site is of irregular shape and it extends over an area of 0.5008 hectares. Access is off Parnell Road.

Proposal

Demolition of the existing single and three storey structure (1689 sq m) and construction of a four storey over basement nursing home (7961 sq m) comprising 122 bedrooms (147 bedspaces) in a mix of single and double bedrooms with south west facing balconies at first, second, and third floor levels, also 40 basement and 25 surface car parking spaces (65 in total). Ancillary accommodation comprises back-up generator, bin store, and cover cycle parking. Site works include relocation of existing vehicular entrance, landscaping, and ancillary works.

Planning authority's decision

Permission was granted subject to 15 conditions, the second of which requires that, under Section 48 of the Planning and Development Act, 2000 – 2015, a development contribution be paid to the planning authority of €425,684.56 in respect of public infrastructure and facilities benefitting development in the administrative area of the authority.

The third condition requires that the western end of the proposed nursing home be reduced in height to two storeys by the removal of four single bedrooms on the second and third floors with associated changes to the staircase and lift at this end of the home.

Grounds of appeal

The second condition is contested on the basis that the development contribution required under condition 2 would be too high. The following points are made in this respect:

- The total gross floorspace proposed would be 7961 sq m
- Condition 3 attached to the permission would lead to the omission of 194 sq m from the total gross floorspace proposed, to give 7767 sq m.
- Under Paragraph 13 of the DCS, the floorspace of the building to be demolished can be deducted from this total. This floorspace is 1689 sq m and so the relevant floorspace figure becomes 6078 sq m.

- Note 2 to Paragraph 9 and Paragraph 13 of the DCS allow for “Ancillary non-surface, non-residential car parking” to be calculated at 50% of the applicable rate of contribution. The proposed basement car park would have a total gross floorspace of 1410.15 sq m and the full applicable rate of contribution is €70.06 per sq m. Thus, 1410.15 x €35.03 is the applicable calculation, i.e. €49,397.55.
- If the floorspace of the basement car park is deducted from the aforementioned total gross floorspace, then 4667.85 sq m remains to be the subject of the €70.06 per sq m rate of contribution, i.e. €327,029.58.
- If the two aforementioned figures are aggregated, then the relevant development contribution is **€376,427.13** and so the planning authority’s figure of €425,684.56 is an overestimate of €49,257.43.

Response

The planning authority did allow for the contraction in floorspace that would arise under condition 3 in its calculation of the relevant development contribution. (The floorspace in this respect is cited as being 196 sq m). However, the authority accepts that its calculation omitted to apply the reduced rate to the basement car park. In this respect, the methodology advocated is one wherein the area of each of the 40 car parking spaces is taken to be 10.20 sq m and so the relevant calculation is 408 sq m x €35.03, which gives a figure of €14,292.24.

The remaining area of the basement car park, i.e. 1002.15 sq m, is subject to the full rate, along with the total gross floorspace of the proposed nursing home as adjusted to reflect condition 3 and the demolition of existing floorspace on the site. Thus, 5,668 sq m is subject to the full rate, i.e. a figure of €397,100.08.

If the two aforementioned figures are aggregated, then a development contribution of **€411,392.32** emerges.

Response to response

The applicant welcomes the planning authority’s acknowledgement that the development contribution required by condition 3 is an over estimate. However, they contend that the authority’s reading of the DCS is mistaken with respect to Paragraph 13 and its insistence that “car parking” should be equated with “car parking spaces”. They express the view that, if the DCS meant spaces by this term, then it should have explicitly said so.

Accordingly, the planning authority’s utilisation of 408 sq m as the area that should be the subject to the reduced rate is challenged and the applicant’s utilisation of 1410.15 sq m is confirmed as the appropriate area for this purpose.

Without prejudice to the foregoing, the applicant considers that, if the Board is minded to accept the planning authority's methodology, then the area of a car parking space adopted by the authority should be increased to reflect the dimensions of the spaces actually proposed, i.e. 5m deep and 2.5m wide = 12.5 sq m. Accordingly, the area of the 40 spaces would aggregate to 500 sq m rather than 408 sq m and so the relevant figure would be €17,515. If this figure is added to €390,794.68 for the floorspace deemed to be commercial, i.e. 5578 sq m x €70.06, then the development contribution required would be **€408,309.68**.

Development Plan

Under Section 14.4 of the Dublin City Development Plan 2011 – 2017 (CDP), the planning authority undertakes, when granting permission(s), to attach condition(s) requiring the payment of contributions in accordance with a Development Contribution Scheme (DCS).

The DCS on the date of the planning authority's decision was the Dublin City Council Development Contribution Scheme 2013 – 2015.

Assessment

1. The applicant has appealed condition 2 attached to the planning authority's permission under Section 48(10)(b) of the Planning and Development Act, 2000 – 2015. Thus, the only question to be addressed under this appeal is whether the terms of the DCS have been properly applied or not.
2. The applicant and the planning authority have exchanged views on the condition in question and, while they have reached substantial agreement on how the Dublin City Council Development Contribution Scheme 2013 – 2015 (DCS) should be applied to the current proposal as amended by condition 3 attached to the permission, they differ on how to interpret the term "car parking" within a clause in Paragraph 13 of this Scheme.
3. Paragraph 13 addresses categories of development that are entitled to a reduced rate of development contribution. The clause in question states the following:

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

Under the proposal a car park would be included within the basement. The planning authority considers that the aggregate area of the car parking spaces is the appropriate area for the purpose of this reduced rate, whereas the applicant considers that the total area of the car park, i.e. the spaces and associated circulation spaces, is the appropriate area.

4. Paragraph 13 uses the term “car parking”. The planning authority reads this term as if it were “car parking spaces” and the applicant reads this term as if it were “car park”. On-line dictionaries do not offer a definition of this term, presumably, because it is colloquial one. However, its use in everyday speech can mean either of the two aforementioned readings.
5. I consider that Paragraph 13 addresses the provision of car parking spaces but that such provision is obviously dependent upon the associated circulation spaces. Thus, to separate one from the other is unwarranted.
6. I, therefore, take the view that, given the ambiguity of the term “car parking” and the illogicality of separating car parking spaces from circulation spaces, that the appropriate area is that of the proposed basement car park rather than simply the aggregate areas of the proposed car parking spaces.
7. The planning authority and the applicant register a nominal difference in the area to be omitted under condition 3, i.e. 196 sq m and 194 sq m, respectively. I will adopt the latter rather than the former figure.
8. I have reviewed the other points on which the parties are agreed and I accept that these points reflect a proper application of the DCS to this case. Thus, the development contribution in question should be calculated as follows:
 - The total gross floorspace proposed would be 7961 sq m
 - Condition 3 attached to the permission would lead to the omission of 194 sq m from the total gross floorspace proposed, to give 7767 sq m.
 - Under Paragraph 13 of the DCS, the floorspace of the building to be demolished can be deducted from this total. This floorspace is 1689 sq m and so the relevant floorspace figure becomes 6078 sq m.
 - Note 2 to Paragraph 9 and Paragraph 13 of the DCS allow for “Ancillary non-surface, non-residential car parking” to be calculated at 50% of the applicable rate of contribution. The proposed basement car park would have a total gross floorspace of 1410.15 sq m and the full applicable rate of contribution is €70.06 per sq m. Thus, $1410.15 \times €35.03$ is the applicable calculation, i.e. €49,397.55.
 - If the floorspace of the basement car park is deducted from the aforementioned total gross floorspace, then 4667.85 sq m remains to be the subject of the €70.06 per sq m rate of contribution, i.e. €327,029.58.
 - If the two aforementioned figures are aggregated, then the relevant development contribution is **€376,427.13**.

Recommendation

The planning authority should be directed to replace the figure of €425,684.56 with that of €376,427.13 in condition 2 attached to the permission granted to application reg. no. 3756/15.

Reasons and considerations

It is considered that the planning authority did not properly apply Dublin City Council's Development Contribution Scheme 2013 – 2015 insofar as it omitted to apply the reduced rate of contribution sanctioned by Paragraph 13 of this Scheme to the basement car park. Furthermore, this reduced rate should be applied to the floorspace of this car park in its entirety. Accordingly, a revised development contribution should be inserted in condition 2 of the permission granted to application reg. no. 3756/15.

Hugh D. Morrison

Inspector

6th April 2016