

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL29S.246615

Development: Permission sought for change of use of building from 2-storey doctor's surgery and garden level apartment to single family dwelling and for the demolition of non-original garden level conservatory.

Address: 63, Haddington Road, Ballsbridge, Dublin 4

Planning Application

Planning Authority: Dublin City Council
Planning Authority Reg. Ref.: 2404/16
Applicant: Dr Patanne Harte
Planning Authority Decision: Grant permission subject to 8no. conditions

Planning Appeal

Appellant(s): Patanne Harte
Type of Appeal: First party appeal against contribution condition
Observers: None

Inspector: John Desmond

1.0 SITE LOCATION AND DESCRIPTION

The application site is located south of Dublin City, in Ballsbridge, c.100m southeast of the Grand Canal. The site fronts onto Haddington Road, directly adjacent the western boundary with St Mary's Church.

The immediate area is in mixed use. The street was clearly residential in origin, characterised by terraced two-storey period dwellings (some over pediment basement) dating most probably from the around the early 19th century. Late 20th century infill development on the northern side of the street, most notably opposite the site, is a mix of apartments and office blocks.

The application site has a stated gross area of 205-sq.m. The existing period dwelling is 2-storey over pediment basement with rear return on same format. There is also a modern glazed conservatory located to the rear.

There is no vehicular access to, or off-street parking within the site.

2.0 PROPOSED DEVELOPMENT

The proposed development comprises:

- Change of use of building from doctor's surgery with garden level apartment to use as a single family dwelling.
- Demolition of existing non-original rear conservatory.

3.0 RELEVANT PLANNING HISTORY.

On site –

Reg.ref.2979/03: Planning permission **REFUSED** by Dublin City Council (21/08/03) to Dr Patanne Harte for change of use of the basement from apartment to Doctors (GP) surgery and for provision of external disabled access ramp in the front garden for a single reason on grounds of intensification of use injurious to the amenities of the Residential Conservation Area, contrary to the objectives of the Dublin City Development Plan 1999 for areas zone Z2 and to the requirements of Paragraph 14.23.0 of the Development Plan for Medical and Related Consultants.

4.0 PLANNING AUTHORITY DECISION

Decision to **GRANT** permission subject to 8no. standard conditions. Condition no.2 required the payment of the sum of €7,905.60 as a contribution as provided for under the approved Section 48 Contribution Scheme.

4.1 Planning and technical reports

Planning Officer– The report of 25/04/16 is consistent with the decision of the Planning Authority to grant permission.

Drainage Division – The report of 31/03/16 raises no objection subject to 4no. conditions. Three are standard and the other (no.3) is specific to preventing risk of flooding of basement.

Roads & Traffic Division – The report of 02/03/16 raises no objection subject to 2no. standard conditions.

4.2 Observations

None.

5.0 GROUNDS OF APPEAL

Dr Patanne Harte c/o Prof. Cathal O'Neill & Asso. Architects (19/0516) –

The appeal is against condition no.2, development contributions on the grounds that the Council has misapplied its levy.

The main grounds of appeal may be summarised as follows:

1. A levy of €43.20 per sq.m was misapplied to 183-sq.m.
 - 74-sq.m has always been in residential use.
 - 13-sq.m is proposed to be removed.
 - The net additional floor space is 109-sq.m, which equates to €4,700.80.
2. Unfair and illogical to impose levy on change of use of historic residential building back to residential use in zone Z2 Residential Conservation Area.
 - The building was in use as a residence in 1967 and the non-residential use may be unauthorised.
3. Guidelines for Planning Authorities on Development Levies (January 2013) states '*planning authorities **are required** to include ... Waivers in the case of change-o- use permissions, where change-of-use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructures (including, for example, transport infrastructure)*';
 - The reduction of the normal rate by 50% is not a waiver, which should mean the removing of the fee.

4. The omission of the subject house from the Register of Protected Structures and, by extension, from the Development Contribution Scheme, is arbitrary and unfair.
5. The Council should be doing everything in its power to encourage the conversion of such buildings back to residential use in view of the national housing crisis.
6. There have been no infrastructural improvements made in this area since the area was first laid out in early-mid 19th century. The main change has been the removal of the tram. It is not equitable to be levied for provision of infrastructure that it not planned.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response

None received to date.

6.2 Observations on grounds of appeal

None received to date.

7.0 POLICY CONTEXT

Dublin City Development Plan 2011-2017

Land use zoning - The application site (outlined in red) is zoned Z2 Residential Neighbourhoods (Conservation Areas) '*To protect and / or improve the amenities of residential conservation areas*';

Development Contribution Scheme 2016-2020 (adopted 07/12/15).

Section 22 Review of Scheme: The Scheme is effective from 1st January 2016 until 31st December 2020 unless a new scheme is made in the interim.

Level of Contribution, Section 10: €86.40 applies to residential development.

Exemptions and Reductions, Section 12: The following categories of development will be exempted from the requirement to pay development contributions under the Scheme:

- *Permissions for a change of use from one commercial use to another are exempt. Any net additional floorspace will be charged at the commercial rate;*

- Works to, and change of use from residential use to commercial and vice versa, of buildings included in the Record of Protected Structures. Protected Structure refers to the actual structure(s) and does not include development within its curtilage;

Section 14: The following categories of development will be liable for a reduced rate of development contributions under the Scheme:

- In the case of a change of use from residential use to commercial and vice versa, development contributions will be calculated at 50% of the applicable rate. Where development contributions under a Section 48 Scheme were paid in respect of the former use, the contribution payable on the new proposal will be net of the quantum of development previously paid for. 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 provision.

8.0 ASSESSMENT

- 8.1 This is an appeal against the attaching of condition no.2 requiring payment of a levy under the Council's Section 48 Development Contribution Scheme 2011-2017 on the grounds that the Council has misapplied its levy.
- 8.2 Condition no.2 required the payment of the sum of €7,905.60 as a contribution under the Council's Section 48 Contribution Scheme.
- 8.3 The Development Contribution Scheme 2016-2020, adopted 07/12/15, under the Section 22 Review of Scheme provides for a rate of €86.40 to apply to residential development. No exemption is provided for under the Scheme (section 12) for the change of use of a structure from commercial to residential use, except where the structure is a Protected Structure. The subject structure is not a Protected Structure and the exemption does not therefore apply. A reduced rate of 50% is applicable under the Scheme (section 14) in the case of a change of use from residential use to commercial and vice versa resulting in a rate of €43.20 per sq.m and this is the rate that was applied by the Planning Authority in its calculations of the figure included under condition no.2.
- 8.5 The applicant submits that the adopted Scheme is contrary to the '*Development Contribution Guidelines for Planning Authorities*', published by the Minister of the Environment, Community and Local Government (2013) for the reason that it does not include (as provided for under section 2) waivers for change-of-use permissions, where change-of-use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructures (including, for example, transport infrastructure). It is argued that a reduction of the normal rate by 50% is not a waiver, which should mean the removing of the fee.

8.6 It is my interpretation that a waiver may be interpreted as relinquishing either full or partial rights by a body, however in the context of section 2 of the aforementioned guidelines, which clearly differentiates between 'waiver' and 'reduced rates', it would appear that the term 'waiver' is used to refer to the relinquishing of full rights to the contribution levy as opposed partial rights (reduced rates).

8.7 The published adopted Scheme makes no reference to the Ministerial guidelines, to which it is obliged to have regard under section 28 of the Planning and Development Act, 2000, as amended¹. I am satisfied that the Planning Authority has not demonstrated that it has had regard to the said guidelines and, in the absence of same, its failure to provide for a waiver for such development may therefore be considered contrary to the guidelines.

8.8 However, section 48(10)(b) of the Act provides that:

An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

It is therefore not relevant to the Boards considerations whether the adopted Scheme has had regard to the said Guidelines.

8.9 As noted above a reduced rate of €43.20 is applicable under the Scheme (section 14) for development comprising a change of use from residential use to commercial and vice versa. The appellant submits that the reduced was misapplied to 183-sq.m floor area. It is claimed that 74-sq.m of the subject building has always been in residential use, which is supported by a previous application to change the use of the basement from residential to surgery use under reg.ref.2979/03 (refused by the Planning Authority) and that, furthermore, it is proposed to remove an existing 13-sq.m residential conservatory resulting in net additional residential floor space is 109-sq.m. The appellant calculates the contribution sum at €4,700.80. The appellant's floor area figures are consistent with the floor areas as measured from the application drawings and I am satisfied that the reduced contribution rate should apply to same. However, 109-sq.m X €43.20 amounts to €4708.80 (slightly more than that calculated by the appellant), and this is the figure that should apply under an amended condition no.2.

9.0 CONCLUSIONS AND RECOMMENDATION

9.1 I recommend that contribution condition no.2 should be amended to provide for a contribution to the sum of €4708.80.

¹ S.28.(1) The Minister may, at any time, issue guidelines to planning authorities regarding any of their functions under this Act and planning authorities shall have regard to those guidelines in the performance of their functions.

REASONS AND CONSIDERATIONS

Having regard to the extent of the floor area proposed for change of use from surgery to residential use (109-sq.m), to the terms of the Development Contribution Schemes for the area, including the provisions for exemptions and reductions under sections 12 and 14 of the Scheme, respectively, it is considered that the terms of the Development Contribution Schemes for the area have not been properly applied in respect of Condition Number 2 by reason of the application of the reduced levy to the entire existing floor area (183-sq.m), the Council should be directed under subsection (13) of section 48 of the Planning and Development Act, 2000, as amended, to **AMEND** the said condition number 2 and the reason therefore, as set out below.

Condition no.2

The developer shall pay to the planning authority a financial contribution of **€4708 (four thousand, seven hundred and eight 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 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 An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

John Desmond
Planning Inspector
09/08/16