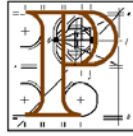


# An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** 4335/15

**Development:** a) Part single storey and part two storey front extension to clubhouse, (b) single storey rear extension to clubhouse, and renovation of part of existing ground floor, (c) viewing terrace at first floor level on roof of single storey extension, and (d) 40 car parking spaces, at Old Belvedere Rugby Football Club, Anglesea Road, Donnybrook, Dublin 4.

### Planning Application

Planning Authority: Dublin City Council  
Planning Authority Reg. Ref.: 4335/15  
Applicant: Old Belvedere Rugby Football Club  
Planning Authority Decision: Grant, subject to 9 conditions

### Planning Appeal

Appellant(s): Old Belvedere Rugby Football Club  
Type of Appeal: Section 48  
Observers: None  
Date of Site Inspection: n/a

**Inspector:** Hugh D. Morrison

## 1.0 SITE LOCATION AND DESCRIPTION

The site coincides with the applicant's grounds, which lie in a backland position and are accessed off Anglesea Road and Ailesbury Drive.

## 2.0 PROPOSED DEVELOPMENT

(a) Part single storey and part two storey extension to front (south-west) of existing clubhouse building to provide disabled lift and toilet: 18.7 sq m at ground floor, and 8.3 sq m at first floor: total 27 sq m.

(b) Single storey extension to rear (north-east) of existing clubhouse, and renovation of part of existing ground floor to provide changing rooms, equipment store, and medical room: 163 sq m.

(c) Viewing terrace at first floor level on roof of single storey extension at (b) above with 2 new doors from first floor with 2 external staircases to ground level: 180.3 sq m.

(d) 40 car parking spaces.

All on site of 3.96 hectares at Anglesea Road, Donnybrook, Dublin 4, with frontage and entrance to Ailesbury Grove, Dublin 4.

## 3.0 PLANNING HISTORY

The site has been the subject of several applications in recent years. Of these, the following two are of relevance:

- 6602/06 for various redevelopment works comprising partial demolitions, erection of new structures and all associated site works was granted subject to 9 conditions, the ninth of which required that the applicant pays the planning authority €75,311 in accordance with its Development Contribution Scheme (DCS) made under Section 48 of the Planning and Development Act 2000 (as amended). This condition was appealed (PL29S.225841) and the Board directed that the figure be halved to €37,655, as the applicant, Old Belvedere Rugby Football Club, was deemed to be a voluntary organisation that provides recreational facilities and so entitled to a 50% reduction in the development contribution normally chargeable.
- 2963/09 for the demolition of an existing and the construction of a replacement gym was granted subject to 7 conditions, the seventh of which required that the applicant pays the planning authority €8,788.40, a figure which reflects the net increase in floorspace comprised in the new gym and the application of the then applicable commercial rate.

#### **4.0 PLANNING AUTHORITY DECISION**

Permission was granted subject to 9 conditions, including one denoted as 2, which requires that the applicant pays the planning authority €25,922.20 in accordance with its Development Contribution Scheme (DCS) made under Section 48 of the Planning and Development Act, 2000 – 2015. (This figure was reduced by 25% to reflect the fact that Irish Water is now the statutory body responsible for both water supply and waste water services).

#### **5.0 GROUNDS OF APPEAL**

The planning authority applied the commercial levy of €70.06 to 370 sq m of floorspace, i.e. the “habitable space” of 190 sq m + the roof terrace and external stairs of 180 sq m. The planning authority have accepted that only the “habitable space” should have been levied and so the required amount by their reckoning should have been €13,311.40, i.e. 190 sq m x €70.06.

Attention is drawn to application reg. no. 6602/06, which was the subject of appeal ref. no. PL29S.225841. This application was similar to the current one and the applicant contended that, as they are a sports club and not a commercial venture, the imposition of the full levy was inappropriate. (In this respect they referred to the fact that all commercial activity undertaken on the site is designed to contribute to the running costs, which are considerable, of the sports club). The Board accepted the applicant’s contention and the planning authority was directed to impose 50% of the full levy.

The applicant considers that their aforementioned contention from 10 years ago remains good today. They draw attention to the on-going pressure that they face to relocate their grounds, with a consequent loss to the surrounding area of a valuable recreational and amenity asset to the community. To categorise sports clubs as commercial entities is to misconstrue their character and to impose a full commercial levy militates against their ability to upgrade their facilities.

In a supplementary letter to the Board, the applicant draws attention to their status as a charity (Revenue Commissioners ref. GS 2758) and a not-for-profit organisation. They are in receipt of a sports capital grant from the Department of Transport, Tourism and Sport, which would meet part of the construction costs of their current proposal. However, this grant can only be drawn down once a final grant has been issued and so they request that, in the light of the aforementioned grounds of appeal, that the Board please expedite its decision on the contested condition.

#### **6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL**

##### **6.1 Planning Authority response**

- The planning authority states that the proposal is not exempt under the DCS and that the commercial, i.e. non-residential, rate was correctly applied.

- Reference is made to the precedent set by the applicant's earlier permitted application 6602/06, to which a development contribution condition was attached.
- Reference is also made to the practise under all DCSs since 2010 of exempting sports clubs from levies where non-structural developments are proposed.

## 7.0 POLICY CONTEXT

Under Section 14.4 of the Dublin City Development Plan 2011 – 2017 (CDP), planning permissions are to be granted subject to conditions requiring the payment of contributions in respect of public infrastructure and facilities, benefiting development in its area. Such contributions are determined by reference to the planning authority's Development Contribution Scheme (DCS), the current one of which is for the period 2016 – 2020.

## 8.0 ASSESSMENT

1. The applicant has appealed condition 2 that was attached to the planning authority's draft permission that was granted to application reg. no. 4335/15. This condition requires the payment of a development contribution under the authority's DCS. Under Section 48(10) of the Planning and Development Act, 2000 – 2015, an applicant can appeal such a condition, where they consider that the terms of the DCS have not been properly applied in the attachment of the same. The Board can consider such an appeal without undertaking a *de novo* assessment of the application.
2. The description of the proposal states that the proposed two storey and single storey extensions to the clubhouse would have a total floorspace of 190 sq m and that the viewing terrace and external stairs would have an area of 180 sq m. The submitted plans show the viewing terrace on the roof of the proposed single storey extension and so it would itself be an unroofed outdoor space. The applicant advises that the planning authority has accepted that it was in error in including the area of this roof terrace in its calculation of the development contribution in question. Accordingly, the parties agree that the relevant area upon which any such calculation should be based is confined to that of the indoor floorspace, i.e. 190 sq m. I note that the planning authority's response to the applicant's grounds of appeal is silent on this matter.
3. Under the Table displayed in Section 10 of the DCS, the industrial/commercial levy to be imposed on each sq m of new build development is €70.06. Under Section 12 of the DCS, where development would be used for "social, recreational or religious purposes and not to be used for profit or gain", the normal development contribution payment is waved entirely. The planning authority's response to the applicant's grounds of appeal seeks to

distinguish non-structural development from structural development. In the case of sports clubs, the former type of development does not attract a levy whereas the latter type does. This distinction may relate to the definition of development in Section 3(1) of the Planning and Development Act, 2000 – 2015, which refers to use and physical works. Nevertheless, I have been unable to see this distinction within the current DCS and so I am not at liberty to follow it in my assessment.

4. The proposal would be used for a recreational purpose and the applicant states that Old Belvedere Rugby Football Club operates on a not-for-profit basis. I accept that this proposal would be used for a recreational purpose. I note that, according to the Revenue website (accessed on 9<sup>th</sup> August 2016), the applicant is listed as a sports body, which has been granted tax exemption at 22<sup>nd</sup> July 2016 under Section 235 of the Taxes Consolidation Act, 1997. This exemption is granted to sports bodies where it has been established that their income is for the sole purpose of the promotion of sports. I, therefore, accept that the applicant is a not-for-profit body. I also note the Board in its previous decision on an earlier appealed development contribution condition concluded that that the applicant was a voluntary, as distinct from commercial, body and so entitled to the reduction applicable under an earlier DCS.

## **9.0 CONCLUSIONS AND RECOMMENDATION**

In the light of my assessment, I conclude that, under Section 12 of the planning authority's DCS, the proposal would be for recreational use and, as the applicant for/user of this proposal is a not-for-profit body, no development contribution is chargeable. Accordingly, I recommend that the Board direct the planning authority to omit condition 2 from the final grant of permission to application reg. no. 4335/15.

### **REASONS AND CONSIDERATIONS**

It is considered that, as the proposal would be used for a recreational purpose and the applicant is a not-for-profit body, under Section 12 of the Planning Authority's Development Contribution Scheme 2016 – 20220, this proposal does not attract a development contribution and so condition 2 should be omitted from the final grant of permission.

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Hugh D. Morrison  
Planning Inspector  
11<sup>th</sup> August 2016