



An
Bord
Pleanála

Inspector's Report PL29N. 248134

Development	7 houses and extension to music school
Location	The Artane School of Music, St. David's Park, Dublin 5
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4282/16
Applicant	The Artane School of Music
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party vs. s48 contribution
Appellant	The Artane School of Music
Observer	None
Date of Site Inspection	12 th May 2017
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site is in a suburban area of Dublin. It has a stated area of 0.989ha. It consists of the curtilage of an early 20th century building with a floor area of 1,346m² used as a music school. There is a small area of hard standing by the building, while the rest of the site has been cleared. The adjoining land is occupied by a shopping centre and semi-detached housing from the second half of the last century, as well as a secondary school that occupies the former Artane Industrial School with which the site would have been associated. Access is along a residential cul-de-sac.

2.0 Proposed Development

2.1. It is proposed extend and refurbish the music school, increasing its floor area by 344.6m², and to build 7 houses on the site. It is also proposed to reconfigure the remaining open space on the site to provide a marching area for the band and car parking.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 17 conditions. Condition no. 2 required a contribution of €127,875.81 to comply with the scheme adopted under section 48 of the act.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report did not propose an amount for the required contribution. A separate sheet calculated a levy of €128,875.81 of which €104,803.20 would arise from the 1,213m² of residential development authorised and €24,072.61 from 346.6m² of commercial development.

3.3. **Third Party Observations**

Submissions were made to the planning authority objecting to the development on grounds relating to traffic, zoning and residential amenity.

4.0 **Planning History**

No previous applications relating to this site were raised by the parties.

5.0 **Policy Context**

5.1. **Development Plan**

The Dublin City Development Plan 2016-2022 applies. The site is zoned for community and institutional use under objective Z15.

5.2. **Contribution Scheme**

The planning authority adopted a scheme under section 48 of the planning act for the period from 2016 to 2020. It sets a contribution of €70.08 per square metre of industrial/commercial development for the period up to 31st December 2017. Section 12 of the scheme states that various categories of development would be exempt from the requirement for a contribution, including –

Non-fee paying primary schools and secondary schools;

.....

Development to be used for social, recreational or religious purposes and not to be used for profit or gain;

Section 13 of the scheme states –

For clarification purposes, the following development will not be exempt from the requirement to pay development contributions;

o Third level educational institutions and student accommodation

o Fee paying schools

o Hospitals, medical facilities, primary care centres and similar developments including any ancillary buildings

6.0 The Appeal

6.1. Grounds of Appeal

- The appeal is against condition no. 2 of the planning authority's decision which requires a contribution of €128,875.81 under the adopted contribution scheme for 2016 to 2020. It is made under section 48(10) of the planning act on the basis that the terms of the scheme have not been properly applied.
- Section 12 of the scheme exempts certain categories of development from the requirement to pay contributions including "development to be used for social, recreational or religious purposes and not to be used for profit or gain". The proposed extension to the music school falls within this category and so a contribution should not be imposed in respect of it. The proper amount of the contribution should reflect the authorised houses only and would therefore be €104,803.20.
- The applicant, The Artane School of Music, is a registered charity No. CHY 10025. It is a major community provider in Artane. The planning authority exempted it from application fees under section 157(1)(a) of the planning regulations as a voluntary organization proposing a development for social, recreational, educational or religious purposes not to be used mainly for profit or gain.
- While the school of music charges fees for its work it is a non-profit organization and not a commercial operation. The fees are capped at levels that make the services affordable to all including those from disadvantaged backgrounds. This is central to the school's mission and its Deed of Trust. The cost to children in the flagship Artane Band is only €60 per month with instruments and uniforms provided. A fee of €75 is otherwise payable for private tuition or €25 for the choir. This places a financial strain on the organisation and many uniforms and instruments are old and in poor condition. The fees received are not sufficient to cover the running costs of

the school and additional fundraising is required. A fund is maintained for families who cannot pay the normal fees. The school and band are pivotal to the local community. They hold history value for them and also for a wider community associated with national commemorations and for the GAA.

- It is therefore clear that the school of music is an educational facility that primarily serves the locality which should be exempt from development contributions by section 12 of the adopted scheme.

6.2. Planning Authority Response

- The application of the commercial rate of €70.08 per m² was correct and appropriate. The status of the School of Music as a registered charity does not exempt it from the applicable contribution under the scheme, nor does its exemption from application fees. The school charges fees for its services.

7.0 Assessment

7.1. The issue in this appeal does not relate to the actual use of the site, but rather to the manner in which it is organised and controlled. A music school could be established as a commercial undertaking with the objective of providing a profit for its operators and the owners of the premises in which it operated. Or a music school might operate in a similar way in a similar premises even though it was established for social and recreational purposes and not for profit or gain. There may be no distinction in landuse planning terms between the two. However the terms of the relevant contribution scheme distinguish between them. The scheme is a policy adopted under law by the elected members of the planning authority, so it is for them to determine if such distinctions are appropriate. The propriety of its terms are not open to review in this appeal, only their application in this particular case.

7.2. The position of the planning authority has a reasonable basis in the text of the adopted contribution scheme which states that fee paying schools will not be exempt from development contributions. The proposed development would involve the extension of a school that charges fees to its students. However the common usage of the term 'fee paying school' in Dublin refers to a particular type of school that provides general full-time education for children, and which charges fees so that the

admission of pupils to them depends upon the financial means of their parents in a manner that has consequences in terms of social segregation and mobility. They are the counterpart of the 'non-fee paying primary and secondary schools' whose exemption is specified under section 12 of the scheme. The school in this case is not a fee paying school in that sense. As the contribution scheme was drafted by the planning authority and it imposes a financial charge on a private body, ambiguities in its text should be resolved in favour of the applicant. I therefore advise the board that the statement in section 13 of the scheme that fee paying schools are not exempt from development contributions does not apply in this case.

- 7.3. The applicant has asserted that it is a registered charity who holds the site according to a deed of trust that requires the school to provide services on a basis that is affordable to all in the community, including those from disadvantaged backgrounds. The applicant did not provide comprehensive details of its constitution, its ownership of the site, its operation or its finances to support this assertion, other than the amount of the fees that it charges its students. These amounts would not render the school socially exclusive, nor would they indicate that it generates a substantial surplus that would support the taking of profits by the owners of the school. While the planning authority is correct to state that an applicant's registration as a charity would not necessarily determine the status of a proposed development, in the circumstances that arise in this case the assertion by the applicant that the school is run for social and recreational purposes and that it is not used for profit or gain is accepted. The exemption provided in section 12 of the scheme for development to be used for social, recreational or religious purposes and not be used for profit or gain therefore applies to the authorised extension to the school. The amount of the contribution payable under the scheme in this permission should therefore be amended in the manner sought by the applicant, with a levy of €104,803.20 in respect of the 1,213m² of residential floorspace that is authorised and nothing in respect of the authorised extension to the school.

8.0 Recommendation

- 8.1. I recommend that condition no. 2 of the planning authority's decision be amended to the following-

The developer shall pay to the planning authority a financial contribution of €104,803.20 (one hundred and four thousand, eight hundred and three euro and twenty cent) 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.

9.0 Reasons and Considerations

The board accepts that the Artane School of Music is used for social and recreational purposes and not for profit or gain, so the extension to it is exempt from the requirement to pay contributions by virtue of section 12 of the Development Contribution Scheme for Dublin City 2016-2020 adopted by the planning authority under section 48 of the Planning and Development Act 2000, as amended. Having regard to the type of instruction provided in that school, it would not constitute a 'fee paying school' within the meaning of section 13 of the adopted scheme.

Stephen J. O'Sullivan
Planning Inspector

16th May 2017