



An
Bord
Pleanála

Inspector's Report PL91.248423

Development	Demolish existing library and construct four storey over basement library and associated site works.
Location	Mary Immaculate College, South Circular Road, Limerick.
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	16/792
Applicant	Mary Immaculate College
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	1 st Party v. condition
Appellant	Mary Immaculate College
Observer(s)	None
Date of Site Inspection	None
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. Mary Immaculate College, a 3rd level institution in Limerick city, is accessed from the South Circular Road to the east, Summerville Avenue to the north and Courtbrack Avenue to the south-west. The existing library building comprises of three floors with a small 4th floor area to the rear and is constructed largely from concrete with a flat roof. It is in the centre of the campus and fronts onto a landscaped and parking area. As per the details provided in support of the application the building dates back to the 1970's.

2.0 Proposed Development

- 2.1. The proposal seeks permission for the phased demolition of the existing library building which has a stated area of 2867 sq.m. and its replacement with a four storey over basement library/learning resources centre and lecture theatre. The stated floor area of the new build is 4955 sq.m. gross. A new plaza to the south-west of the new building and associated works are also proposed. The works are within the curtilage of a protected structure.

3.0 Planning Authority Decision

3.1. Decision

Grant permission subject to 16 conditions.

Condition 2: €495,500 development contribution in accordance with the terms of the scheme made under section 48.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **1st Planner's** report dated **18/10/16** (countersigned) makes reference to FI required by roads and conservation sections. Further information is recommended in terms of a bat survey, construction management plan, a full archival standard photographic study, car parking and pedestrian crossing alterations. The **2nd report** dated **03/04/17** following FI (countersigned) notes that the 2017 contribution scheme

states that exemptions for the payment of contributions will not apply to 3rd level institutions and student accommodation. The applicant has not submitted any evidence of payment of contributions in relation to the existing library. A grant of permission subject to conditions is recommended.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

Irish Water has no objection subject to conditions.

Environmental Health Officer has no comment.

The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs recommends a bat survey.

3.4. Third Party Observations

None

4.0 Planning History

The 1st planning report on file references applications that pertain to buildings within the campus.

5.0 Policy Context

5.1. Development Plan

Limerick City Development Plan 2010-2016

The site is zoned 2B - Education, Community and Cultural, the objective for which is to facilitate the provision of educational, cultural and community facilities to support local communities.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal is against condition 2, only, which requires a development contribution of €495,500. It is considered that the development contribution scheme has been misapplied as follows:

- The 2017-2021 scheme includes a Table in Appendix B that separates 'commercial' into retail, retail warehouse, office, manufacturing and warehouse. It does not include library uses. Therefore library use should come under item 11 of the 'other categories of development' table. This stipulates the rate at €40 per sq.m.
- No allowance has been made for the demolition of the existing library. Regard is had to section 12 of the scheme.
- The provision for a discount of 5% for a BER rating in excess of A as allowed for in the scheme should be written into the condition.

6.2. Planning Authority Response

No contribution was paid on the original library (or no evidence of payment has been submitted). Therefore contributions on the full floor area is recommended.

6.3. Observations

None

7.0 Assessment

The proposal entails the demolition of the existing library on the Mary Immaculate College campus and its replacement with a 4 storey over basement building incorporating a library, resources centre, lecture theatre and ancillary facilities. The existing building to be demolished has a stated gross floor area of 2867 sq.m. The proposed building has a stated gross floor area of 4955 sq.m.

The current appeal is made under Section 48(10)(b) of the Planning and Development Act, 2000 as amended. Consequently, the question to be addressed is whether the terms of the development contribution scheme have been properly applied by the planning authority in its imposition of condition No. 2 only.

The Limerick City and County Council Development Contribution Scheme 2017-2021 pertains. As per section 8 of the scheme 3rd level educational institutions and student accommodation are not exempt from the requirement to pay the development contribution. As such the requirements of the scheme apply to the subject site which is such a 3rd level institution.

In terms of the applicable levy I submit that the proposal would not be appropriately classified as commercial development as set in the table titled 'Commercial Development' in Appendix A. I submit that such commercial development as listed in the table including the category 'other commercial not included in any other class' would have, as its principal function, the provision of goods/service for monetary gain. The purpose of the proposed development is to provide a facility ancillary to the primary educational purpose of the campus. I consider that it would be more appropriately considered as 'development not previously mentioned in the scheme' as set in class 11 of the table titled 'Other Categories of Development' in Appendix A. Thus a levy of €40 per sq.m. is applicable.

Paragraph 12 of the scheme addresses replacement applications and states that the development contributions will be charged on any additional floor area.

Replacement applications where the contributions have not been paid previously will be subject to contributions at the appropriate rate. Evidence of proof of payment is required to avail of this provision.

As noted the proposal entails the demolition and replacement of the existing library building. The increase in floor area in this instance is 2088 sq.m. (4955sq.m. - .2867 sq.m.). As the scheme is quite explicit that the onus is on the applicant to provide evidence of previous payment on the existing building, which has not been done so in this instance either in support of the application or the appeal, then it is reasonable to conclude that a contribution has not been paid previously. The fact that the building may have been constructed prior to the application of such contributions is noted however the scheme does not make a distinction for such

scenarios. Therefore the development is subject to the contribution on the proposed floor area in its entirety.

I submit that the development contribution applicable in this instance is as follows:

4955 sq.m. x €40 = €198,200.

The applicant submits that the 5% reduction allowance for buildings that achieve a BER rating in excess of A as provided for in paragraph 9 of the scheme should be written into the condition. The scheme states that this shall be facilitated following certification of the completed building and will be deducted from the final phase payment. The wording of the Board's condition pertaining to section 48 contributions allows for such phased payments should they be facilitated by the planning authority. I consider that the matter arising can be appropriately dealt with between the parties when agreeing the said phased payment option and recommend against altering the wording of the condition.

8.0 Recommendation

8.1. Having regard to the foregoing I recommend that the planning authority be directed to AMEND condition 2 for the following reasons and considerations.

CONDITION 2:

The developer shall pay to the planning authority a financial contribution of €198,200 (one hundred and ninety eight thousand and two hundred 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.

REASONS AND CONSIDERATIONS

It is considered that the planning authority did not properly apply the terms of the Limerick City and County Council Development Contribution Scheme 2013-2017. The proposed building to comprise of a library and resources centre is not considered to constitute a commercial development as set out in Appendix A of the scheme. The application of the contribution rate set out in class 11 'development not previously mentioned in the scheme' in the Table titled Other Categories of Development in Appendix A is considered appropriate. No evidence of the payment of a contribution for the existing library has been provided therefore the provisions as set out in section 12 dealing with replacement applications do not apply. Condition number 2 of the permission granted under planning register reference number 16/792 should be amended accordingly

Pauline Fitzpatrick
Senior Planning Inspector

July, 2017