



An  
Bord  
Pleanála

## Inspector's Report PL29N. 248683

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<b>Development</b>	Extend building with residential and takeaway
<b>Location</b>	105 Cabra Road, Dublin 7
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	4116/16
<b>Applicant</b>	Gerry Ryan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	First Party vs. condition
<b>Appellant</b>	Gerry Ryan
<b>Observer</b>	None
<b>Date of Site Inspection</b>	5 <sup>th</sup> September 2017
<b>Inspector</b>	Stephen J. O'Sullivan

## 1.0 Site Location and Description

- 1.1. The site consists of the curtilage of a two-storey building in a suburban parade of shops dating from the middle of the last century. It has a stated area of 211m<sup>2</sup>. It is occupied by a terraced two storey building with a take away on the ground floor and a flat above.

## 2.0 Proposed Development

- 2.1. It is proposed to demolish an existing rear return and to build a new extension that would increase the floor area takeaway and the flat. The ground floor of the extension would accommodate facilities for the takeaway and a kitchen/living area for the flat. The extended first floor would contain another living room, 5 bedrooms, a bathroom, a shower room and storage. Two of the bedrooms would be lit from a lightwell measuring 2.715m by 3.585m. The extension would be across the full width of the property. The ground floor of the extension would be 5.5m from the back of the property, with the first floor set back by another 1.735m.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority granted permission subject to 12 conditions.

Condition no. 2 requires payment of €22,761.74 under the adopted contribution scheme.

Condition no. 4 is –

The first floor lightwell shown on plans submitted on 21st April 2017 shall be enlarged and this shall be achieved by omitting Bedroom No. 3 as shown on plans submitted on 21st April 2017 and extending the lightwell into this space. Any windows from the resultant extended link corridor or bathroom / shower-room onto the lightwell shall have obscure glazing. The exact configuration of the lightwell and the design of the roof over the link corridor shall be subject to agreement with the Planning Authority. Plans and elevation drawings showing the required amendments, or consequent changes to the development, shall be submitted to the Planning

Authority for its written agreement prior to the commencement of development.

**Reason:** in the interest of orderly development.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

The report on the initial application stated that the scale and design of the development would be in keeping with the character of the area. The proposed extension of the takeaway is acceptable. The ground floor space of 25m<sup>2</sup> would provide an acceptable residential amenity. The proposal to have two of the bedrooms lit by rooflights only would contravene section 16.10 of the development plan. The proposed balcony would unduly overlook residential properties to the north. The applicant should submit information to address these concerns, as well as details of the ventilation system for the take-away. The report on the further information noted the proposal to provide a light well to serve bedrooms 3 and 4. The separation between their windows would be only 2.7m and the ventilation ducts for the takeaway would run through it. The modified proposal would result in a substandard form of accommodation for bedrooms nos. 3 and 4. The issue could be resolved by omitting bedroom 3 and having a larger lightwell. The other responses to the request for further information were considered acceptable and a grant of permission was recommended.

#### 3.2.2. Other Technical Reports

The sheet on which the section 48 levy was calculated states that it is based on 41m<sup>2</sup> of additional commercial floorspace at €70.06 per m<sup>2</sup> which is €2,782.46, and 230.2m<sup>2</sup> of residential floorspace at €86.40 per m<sup>2</sup> which is €19,889.28, yielding a total contribution of €22,761.74.

## 4.0 **Planning History**

PL29N. 243385, Reg. Ref. 2043/14 – On 20<sup>th</sup> August 2014 the board granted permission to change the use of the shop on the ground floor to a take-away/café use and to install a new shopfront.

## 5.0 Policy Context

### 5.1. Development Plan

The Dublin City Development Plan 2016-2022 applies. The site is zoned Z3 for neighbourhood facilities. Section 16.10.1 sets out standards for apartments. It states that all habitable rooms must be naturally ventilated and lit.

### 5.2. Contribution scheme

The planning authority adopted a contribution scheme under section 48 of the planning act for the period of 2016-2020. Section 10 sets the level of the contribution per square metre of commercial and residential development. Note 3 states that new extensions to existing developments, including domestic extensions, will be charged at the above rates subject to the Exemptions and Reductions Clause. Section 12 states that the first 40sq meters of extensions to a residential development will be exempt (subsequent extensions or extensions over and above 40 square meters to be charged at the residential rate per square meter). Section 14 states that where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be charged on the net additional floorspace created.

### 5.3. Natural Heritage Designations

None

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Condition no 2 of the planning authority's decision incorrectly calculated the contribution as €22,761.74, which is excessive based on the adopted scheme. The matter was brought to the attention of the planning authority.
- Condition no. 4 is excessive in the context of the extension and without any basis. The removal of bedroom no. 3 would create a lightwell and hallway of

varying widths. It would result in an entrance hall or corridor of 6.7m which is excessive and wasteful of building space.

- The requirement for additional light or the perceived closeness of bedrooms 2 and 3 could have been achieved by stating the condition in a less restrictive or onerous manner without the need to remove the proposed bedroom no. 3. The revised plan submitted as further information provides for a residential property of 230m<sup>2</sup> with a very acceptable quality of accommodation that is far from sub-standard in any respect. Appropriate alterations could have been achieved by agreement with the planning authority which recognises the need for more bedrooms in the present economic environment.
- The site is within 500m of the new DIT campus at Grangegorman and there is significant demand for bedroom spaces in Dublin 7 but little or no development. The net increase in residential development is 136m<sup>2</sup> but based on condition no. 4 would only incorporate 1 additional bedroom as one bedroom and one bathroom would be demolished to access the extension. If condition no. 4 were not amended than the total dwelling of 230m<sup>2</sup> would contain only 4 bedrooms.
- Condition no. 4 places an unnecessary burden on the building/design configuration and was not necessary to achieve additional light or to ensure orderly development, good quality residential accommodation and/or proper planning.

## 6.2. Planning Authority Response

The planning authority did not respond to the appeal.

## 7.0 Assessment

- 7.1. The revised proposals shown on the further information submitted to the planning authority did not provide an adequate level of natural light or an acceptable outlook for bedrooms nos. 2 and 3 as they would depend on windows separated by 2.7m across a lightwell whose other dimension would be 3.6m and through which the ventilation pipes for the takeaway below would run. Planning conditions have to be stated in reasonably precise terms in order to be capable of implementation. Condition no. 4 of the planning authority's decision was necessary to address a deficiency in the proposed development. Its terms have the required level of precision in order for the condition to be meaningful and effective, while retaining a proper degree of flexibility for a final design to be agreed with the planning authority. This condition should be included in the grant of planning permission. The stated floor area of the apartment differs somewhat from the size of the habitable accommodation shown on the submitted drawings.
- 7.2. The calculation sheet for the section 48 levy submitted by the planning authority includes a charge for 230m<sup>2</sup> of residential accommodation. This does not appear to take account of the floor area of the existing flat at 81m<sup>2</sup>, or the allowance to extend a dwelling by 40m<sup>2</sup> without a levy set out in section 12 of the adopted scheme. It also appears to exaggerate the floor area of the extended flat that would be allowed under the permission, which would be 160m<sup>2</sup> according to the drawings submitted as further information and taking into account the omission of the 16m<sup>2</sup> in bedroom no. 3. Only an additional 39m<sup>2</sup> of residential accommodation should be liable to the levy at €86.40 yielding a total of €3,396.60 for the extended flat. The planning authority's figure of €2,782.46 for an additional 41m<sup>2</sup> of commercial floorspace conforms with the authorised development and the terms of the contribution scheme. The contribution payable for the authorised development under the adopted scheme is therefore €6,152.06 and condition no. 2 should be amended to reflect this.

## 8.0 Recommendation

I recommend that condition no. 2 be amended to the following –

*The developer shall pay to the planning authority a financial contribution of €6,152.06 (six thousand, one hundred and fifty two euro and six 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,*

and that condition no. 4 of the planning authority's decision be retained.

## 9.0 Reasons and Considerations

The contribution payable under the development contribution scheme should be based on an additional 41m<sup>2</sup> of commercial floorspace and an additional 39m<sup>2</sup> of residential floorspace in order to take account of the existing commercial and residential floorspace on the site in accordance with section 14 of the scheme and the extension of 40m<sup>2</sup> allowed to dwellings without a levy under section 12 of the scheme.

Condition no. 4 of the planning authority's decision is reasonable and necessary to provide an adequate standard of residential amenity to the occupants of the authorised development.

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Stephen J. O'Sullivan  
Planning Inspector  
5<sup>th</sup> September 2017