



An  
Bord  
Pleanála

## Inspector's Report PL29S.249289

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<b>Development</b>	Removal of roof, provision of two extra storeys and one part storey with extensions to stairs, landings and corridors, new internal layouts and firefighting entrance.
<b>Location</b>	89-92 Lower Lesson Street, Dublin 2.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	3320/17.
<b>Applicant(s)</b>	Catholic University School.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Catholic University School.
<b>Observer(s)</b>	Transport Infrastructure Ireland
<b>Date of Site Inspection</b>	18 <sup>th</sup> of December 2017.
<b>Inspector</b>	Karen Hamilton

## **1.0 Site Location and Description**

1.1. The subject site contains the Catholic University School which fronts onto Lower Lesson Street and has a numerous buildings within a small campus which backs onto Quinn's Lane, Dublin 2. The proposed development is for a modern addition along Quinn's Lane. The main buildings along Lesson St Lower (No 89-92) are protected structures.

## **2.0 Proposed Development**

2.1. The proposed development is for an extension and alteration to a school which may be summarised as follows:

- Provision of two extra storeys and one part storey.
- Extension to stairs, landings and corridors and new internal layouts and firefighting entrance.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Decision to grant permission subject to 9 no conditions of which the following are of note:

C 2- Requirement for €60, 742.02 to be paid to the Planning Authority for the purposes of infrastructure as required under Section 48 (Planning and Development Act 2000 as amended) Contribution Scheme for Dublin City Council.

C 3- Requirement for €32, 946.00 to be paid to the Planning Authority for purposes of the LUAS Cross City Scheme as required under the Supplementary Contributions Scheme made for the area under Section 49 of the Planning and Development Act 2000 (as amended).

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

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission and includes a breakdown of the size of the extension (867m<sup>2</sup>) which is to be used as a calculation for both the Section 48 & 49 Contribution.

### 3.2.2. Other Technical Reports

Roads and Traffic Division- No objection subject to conditions.

Drainage Division- No objection subject to conditions.

### 3.3. Prescribed Bodies

Transportation Infrastructure Ireland (TII) - Request the inclusion of a Section 49 Levy scheme Luas Cross City (St Stephens Green to Broombridge Line) Contribution Scheme if the development is not exempt.

### 3.4. Third Party Observations

None received.

## 4.0 Planning History

### 2313/13

Permission granted for an extension to the east of an existing three storey detached educational block (449.78m<sup>2</sup>) at ground, first and second floor plus an additional storey above to create a four storey detached block (753m<sup>2</sup>). Condition No 12 included a Section 48 Development Contribution Levy of €14,176.48.

## 5.0 Policy Context

### 5.1. Development Contributions

#### 5.1.1. Development Contributions Guidelines for Planning Authorities, 2013

**Chapter 3** – Guidance for the Planning Authority in the making of a development contribution Scheme

**Stage 5-** Identification of Appropriate Adjustments

The next stage is to consider whether any specific adjustments, mainly in the current environment, reductions or exemptions, should be made to the emerging scheme in order to achieve specific objectives of the development plan such as promoting certain categories of or locations for development or economic activity.

**5.1.2. Supplementary Development Contribution Scheme (under Section 49, Planning & Development Act, 2000 as amended) Luas Cross City (St. Stephen's Green To Broombridge Line)**

**Section 10. Rate of Levy**

Residential: €2,000 per unit

Commercial / Retail: €38 per square metre

**Section 11. Exemptions**

The following categories of development will be exempted from the requirement to pay development contributions under the Scheme:

- Non-fee paying primary schools and secondary schools;
- Not-for-profit, community-run childcare facilities;
- Development to be used for social, recreational or religious purposes and not to be used for profit or gain;

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

- Third level educational institutions and student accommodation
- Fee paying schools
- Hospitals, medical facilities, primary care centres and similar developments including any ancillary buildings.

**5.1.3. Dublin City Council Development Contribution Scheme 2016 - 2020 (under Section 48, Planning & Development Act, 2000 as amended)**

**Level of Contribution**

- € per square metre of Residential Development €86.40

- € per square metre of Industrial/ Commercial class of Development  
€70.06

### **Exemptions**

12. The following categories of development will be exempted from the requirement to pay development contributions under the Scheme:

- Non-fee paying primary schools and secondary schools;

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

- Third level educational institutions and student accommodation
- Fee paying schools
- Hospitals, medical facilities, primary care centres and similar developments including any ancillary buildings

### **5.2. Dublin City Development Plan 2016-2022.**

The site is included in the land use Z8, Georgian Conservation Area, where it is an objective *“To protect the existing architectural and civic design character, and to allow only for a limited expansion consistent with conservation objective.”*

### **5.3. Natural Heritage Designations**

None relevant.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of appeal are submitted by the applicant and the issues raised are summarised below:

- It is requested that the Board remove Conditions 2 & 3 which relate to the Local Authority Contributions for Public Infrastructure and the LUAS Cross City Scheme.

- It is submitted the levies are not due as the School is a Registered Charity.
- The Planning Fees have been refunded on the invalidated planning application (Reg Ref 3190/17) and DCC instructed no further fees where due on the submitted application.

## 6.2. Applicant Response

The applicant is the appellant.

## 6.3. Planning Authority Response

A response from the Planning Authority refers to the current development contribution scheme and states that neither the applicant nor the development are exempt under this contribution scheme.

## 6.4. Observations

Transportation Ireland (TII) have made an observation which refers to the initial observation on the planning authority stating the following:

- The site falls within the area set out in the Section 49 Levy Scheme Luas Cross City (St. Stephen's Green to Broombridge Line) Contribution Scheme.
- If the application is not exempt, as per the scheme, a condition relating to the Section 49 scheme, should be applied.

## 7.0 Assessment

### 7.1. Assessment

7.2. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.

7.3. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it was made to it in the first instance

and will only determine the matters under appeal, which is whether the terms of the Scheme have been properly applied.

### **Application of Section 48 Development Contribution Scheme**

- 7.4. Condition No 2 includes the requirement for €60,742.02 to be paid to the Planning Authority towards expenditure in respect of public infrastructure and facilities as provided for in the approved Section 48 (Planning & Development Act, 2000 (as amended) Dublin City Council Development Contribution Scheme 2016 – 2020. The planning authority applied a rate of €70.06 per square metre of Industrial/ Commercial class of Development, where the proposed extension to the school was 867m<sup>2</sup>, which I consider reasonable. The grounds of appeal are submitted from applicant, Catholic University School (CUS) who argue that, based on their charity status the development contributions detailed in Condition No 2 are not relevant and should not be applied to the proposed development. The applicant states that fees from an invalid planning application were returned and no further planning application fees were requested from Dublin City Council.
- 7.5. The Development Contributions Guidelines for Planning Authorities, 2013 allow the Planning Authority to include reductions or exemptions within their individual contribution scheme. Point 12 of the Dublin City Council Development Contribution Scheme 2016 - 2020 includes a list of those developments which will be exempt from development contributions and states that non- fee paying primary schools and secondary schools will be exempted from the requirement to pay development contributions. Point 13 includes clarification and specifically states that those fee paying school will not be exempt from a requirement to pay development contributions.
- 7.6. The applicant has not submitted any additional specific information on the status or operation of the school and I note information contained on the schools web site [www.cus.ie](http://www.cus.ie) state that the school accommodates both primary and secondary schools. In addition, it is noted from this same source of information that the fee for the current academic year is €5,200 per annum for both primary and secondary. I note Condition No 12 of a previous grant of permission (Reg. Ref 2313/13) for extension and alteration to the school, required the payment of € 14,176.48 for the provision of infrastructure as per the Section 48 Development Contribution Scheme.

- 7.7. In relation to the applicants reference to the removal of any requirement to pay planning application fees, these are determined under Part 12, Section 157 of the Planning and Development Regulations, 2001 which allows the local authority to exempt certain developments from planning fees and where it is the opinion of the planning authority that the development proposed is carried out by or on behalf of a voluntary organisation and is designed or intended to be used for social, recreational, educational or religious purposes and is not to be used for profit or gain, then a fee shall not be payable on the making of an application. I do not consider the argument in relation to the fees is relevant to the imposition of a development contribution as it is not included within the levy scheme for exemptions.
- 7.8. Therefore, having regard to the Point 12 and 13 of the adopted Development Contribution Scheme stating that fee paying schools shall not be exempt from paying a development contribution in respect to the provision of infrastructure, I recommend that Condition No 2 is not amended.
- 7.9. **Application of Section 49 Levy Scheme Luas Cross City (St. Stephens Green to Broombridge Line) Contribution Scheme.**
- 7.10. Condition No 3 includes the payment of a contribution of €32, 9946.00 in respect the LUAS Cross City Scheme was made under Section 49 of the Planning and Development Act (as amended). The planning authority applied a rate of €38.00 per square metre of Industrial/ Commercial class of Development, where the proposed extension to the school was 867m<sup>2</sup>, which I consider reasonable. The Catholic University School (CUS) argue that, based on their charity status the development contributions detailed in Condition No 3 are not relevant and should not be applied to the proposed development.
- 7.11. Section 11 of the Supplementary Development Contribution Scheme (under Section 49, Planning & Development Act, 2000 as amended) Luas Cross City (St. Stephen's Green To Broombridge Line) allows for exemption for the payment of fees for non-fee paying primary schools and secondary schools and for clarification purposes it is specifically stated that fee paying schools will not be exempt from the requirement to pay development contributions. I note an observation from Transportation Infrastructure Ireland (TII) requested the inclusion of a contribution under this scheme, where the development is not exempt.



7.12. As discussed above, I consider the Catholic University School is a fee paying school and therefore based on the terms within this Supplementary Contribution Scheme, I do not consider the applicants are exempt from paying the contribution included in condition no 3.

### **Appropriate Assessment**

7.13. Having regard to the nature and scale of the proposed development within a serviced urban area, the nature of the receiving environment and the proximity to the nearest European sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

8.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted. The Board, in accordance with section 48 and section 49 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area were properly applied.

## **9.0 REASONS AND CONSIDERATIONS**

It is considered that the terms of the Dublin City Council Development Contribution Scheme 2016 - 2020 and the Section 49 Levy Scheme Luas Cross City (St. Stephens Green to Broombridge Line) Contribution Scheme, were properly applied to the extension of an existing school, as set out in Condition No 2 and Condition No 3 of the planning authority's decision, as the Catholic University School, as a fee paying school, may not be classified as exempt from the payment of development contributions in respect to the Scheme, which provides for the payment of financial contributions.

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Karen Hamilton  
Planning Inspector

18<sup>th</sup> of January 2018