



An
Bord
Pleanála

Inspector's Report ABP-302460-18

Development	1) Change of use of an existing building from office to retail shop 2) 1 LED backlit advertising totem pole
Location	Westlink House, Old Lucan Road, Palmerstown, Dublin 20.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD18A0221
Applicant(s)	Randalswood Holdings Ltd
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	First Party
Appellant(s)	Randalswood Holdings Ltd
Observer(s)	n/a
Date of Site Inspection	None Required
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site is located at Westlink House on the southern side of the Old Lucan Road, Palmerstown, Co Dublin and contains an existing two storey vacant commercial unit.

2.0 Proposed Development

- 2.1. The planning application submitted to SDCC on the 15th June 2018 sought permission for (1) change of use of an existing building (1500.7sqm) from office to retail shop, with associated internal reconfigurations and ancillary office use and (2) 1 LED backlit advertising totem pole to front of site together with all associated ancillary site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. South Dublin County Council issued a notification of decision to grant permission subject to 11 Conditions. Condition No 11, the subject of this appeal, set out the following:

The developer shall pay the planning authority a financial contribution of €119,650.81 (one hundred and nineteen thousand and six hundred and fifty euros and eighty one cents) in respect of public infrastructure and facilities benefitting development within 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 2016 – 2020, made under Section 48 of the Planning and Development Acts 200 – 2011 (as amended).

The contribution shall be paid prior to commencement of development, or in such phased payments as the planning authority may facilitate. Contributions shall be payable at the rate pertaining to the year in which implementation of

the planning permission is commenced as outlined in the Couth Dublin County Council Development Contribution Scheme 2016 – 2020.

***Reason:** The provision of such facilities will facilitate the proposed development. It is considered reasonable that the payment of a contribution be required in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.*

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

3.2.2. The **Case Planner** recommended that permission be granted. The notification of decision to grant permission issued by SDCC reflects this recommendation. The Case Planner in their report indicates that a Development Contribution for a change of use of 1500.7 sqm floor area to retail use is applicable. This is reflected in Condition No 11 of the notification.

3.2.3. Other Technical Reports

3.2.4. **Water Services** – No objection subject to condition relating to surface water drainage.

3.2.5. **Roads Department** – No objection

3.3. **Prescribed Bodies**

3.3.1. **Irish Water** – No objection subject to conditions

3.4. **Third Party Observations**

3.4.1. There is one observation recorded on the appeal file from Riverview, Riversdale, Old Lucan Road Residents Group. The issues raised relate parking, access and traffic impact.

4.0 **Planning History**

4.1. The following planning history is relevant to this appeal:

- **SD17/0432** – In February 2018 planning permission was granted for the change of use from office use to fitness gymnasium/recreational use and ancillary retail use (1,652sq.m.) with internal modifications and new signage subject to 11 conditions. Condition No 11 sought the payment of a Section 48 financial contribution in the amount of €119,231.20 in respect of public infrastructure and facilities benefitting development in the area. The Case Planners report indicates that a Development Contribution for a change of use of unit measuring 1,652 sqm from office to gym (*1,652 sqm includes ancillary retail area of 93sqm and ancillary office area of 56.34sqm which leaves a floor area of 1,502.66sqm*) is applicable.
- **SD14A/0009** – In 2014 planning permission was granted for the change of use from office use to airsoft air rifle range and practise course and ancillary retail use (1,652 sqm) subject to 7 conditions. Condition No 7 sought the payment of a Section 48 financial contribution in the amount of €126,360.08 in respect of public infrastructure and facilities benefitting development in the area. The Case Planners report states that *no new floor area is proposed a part of this application and no car parking spaces in excess of the County Development Plan standards are provided*. The report also states that the leisure / recreational floor area is 1,725 sqm and the retail floor area is 37sqm.
- **S96A/0130** – In 1996 planning permission granted for the construction of a mezzanine storage floor (156 sqm) in the existing commercial building subject to 5 conditions. Condition No 4 sought the payment of a financial contribution in the amount of £1,265 towards the cost of public services in the area. Condition No 5 sought the payment of a financial contribution in the amount of £1,000 towards the cost of roads improvements and traffic management in the area.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan for the area is the **South Dublin County Council Development Plan 2016 – 2022**. The **South Dublin County Council Development Contribution**

Scheme 2016 – 2022 is effective in respect of permission granted from 1st January 2016.

5.2. Natural Heritage Designations

5.2.1. The site is not located within a designated Natura 2000 site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The **first party** appeal against Condition No 11 (S48 Development Contribution) of the notification of decision to grant permission only, has been prepared and submitted by the applicant, Randalswood Holdings Ltd and may be summarised as follows:

- The terms of the Contribution Scheme 2016 – 2020 were not properly applied.
- The following planning history is set out:
 - 1) SD17A/0432 Change of use from office to gym. Permission granted subject to conditions.
 - 2) SD14A/0009 Change of use from office to airsoft / recreational use. Permission granted subject to conditions.
 - 3) S96A/0130 Construction of a mezzanine floor inside commercial building. Permission granted subject to conditions.
 - 4) Original permission not “available”
- Pursuant to Section 10(xxvii) of the South Dublin Development Contribution Scheme 2016 – 2020 (exemption and reduction for a change of use) the subject structure was permitted as a commercial building some time preceding 1996. There would appear to be no record in existence for the original permission, however permission was granted for a mezzanine in 1996 for which a development contribution was required under conditions No 4 (€1,265) and No 5 (€1,000).

- Given that the development in 1996 would have been considered as part of the wider existing commercial development within which it was proposed to locate, it is reasonable to presume that any preceding planning permissions and indeed compliance with associated conditions were assessed at this time.
- Even if the Planning Authority were unsure whether levies were charged on the parent permission, due to a missing file, it seems extremely unreasonable that they would apply the full charge on the off-chance that no levies were charged.
- So up until 1996 the development was authorized and levied financially. Whilst there have been planning applications permitted on the subject site since 1996 it would appear that none of those permissions were taken up to date. So it begs the question as to why the full amount of development contributions was applied to the proposed change of use under SD18A/0221.
- Board requested to assess Condition No 11 in terms of whether or not the South Dublin Contribution Scheme 2016 – 2020 was properly applied in this instance.

6.2. The appeal was accompanied by notification of grant of permission pertaining to S96A/0130.

6.3. **Planning Authority Response**

6.3.1. SDCC in their response to the appeal state that having reviewed the planning file they have no further details to add regarding the calculation and levying of the Financial Contribution in this case.

6.4. **Observations**

6.4.1. There are no observations recorded on the appeal file.

6.5. **Further Responses**

6.5.1. An Bord Pleanála sought the following information from SDCC on the 23rd October 2018

- SD17/0432 - Planning application and associated details, reports on file including the Case Planners Report
- SD14A/0009 - Planning application and associated details, reports on file including the Case Planners Report
- S96A/0130 - Planning application and associated details, reports on file including the Case Planners Report
- Any planning applications on this site prior to 1996 to include details of the planning application and associated details, reports on file including the Case Planners Report and the Managers Order.

6.5.2. SDCC submitted the following response to the foregoing on 1st November 2018. No details of any planning applications prior to 1996 was submitted.

- SD17/0432 – Decision, Case Planners report, drawings, plans and particulars.
- SD14A/0009 – Decision, Case Planners report, drawings, plans and particulars.
- S96A/0130 – Decision and correspondence re the public notice

7.0 **Assessment**

7.1. Further to my examination of the planning file and the grounds of appeal I note that the first party appeal is confined to the development levy set out in Condition No 11 (Section 48 Development Contribution) of the notification of decision of the planning authority to grant permission. Section 48 (13) of the Planning and Development Act 2000 states that an appeal that relates solely to a condition dealing with a special contribution and where no appeal is brought by any other person under Section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance but shall determine only the matters under the appeal. I consider that it is therefore appropriate that this appeal should be confined to the consideration of whether or not the terms of the South Dublin County Council Section 48 Development Contribution were properly applied in this instance.

7.2. Condition No 11 seeks payment of a financial contribution in the amount of €119,650.81 in respect of public infrastructure and facilities benefitting development

within the area of the planning authority, in accordance with the terms of the Development Contribution Scheme 2016 – 2020, made under Section 48 of the Planning and Development Acts 200 – 2011 (as amended). It would appear from the Case Planners report that this is based on the stated floor area of 1500.7 sqm i.e. the entire floor area of the existing building to the change of use relates.

7.3. The applicant in their appeal refers to Section 10 (xxvii) of the South Dublin Development Contribution Scheme 2016 – 2020 (exemptions and reductions for change of use) and the planning history pertaining to the site or lack thereof in this case. The applicant submits that the structure was permitted as a commercial building some time preceding 1996 but that there would appear to be no record in existence for this original permission. The applicant also submits that as part of the 1996 application for a mezzanine storage floor within the existing building that any preceding planning permissions and compliance with associated conditions (including development contributions) would have been assessed at that time. It is therefore the applicant's position that up until 1996 the development was authorized and levied financially. The applicant concludes that even if the Planning Authority were unsure whether levies were charged on the parent permission, due to a missing file, it is unreasonable that they would apply the full charge on the off-chance that no levies were charged.

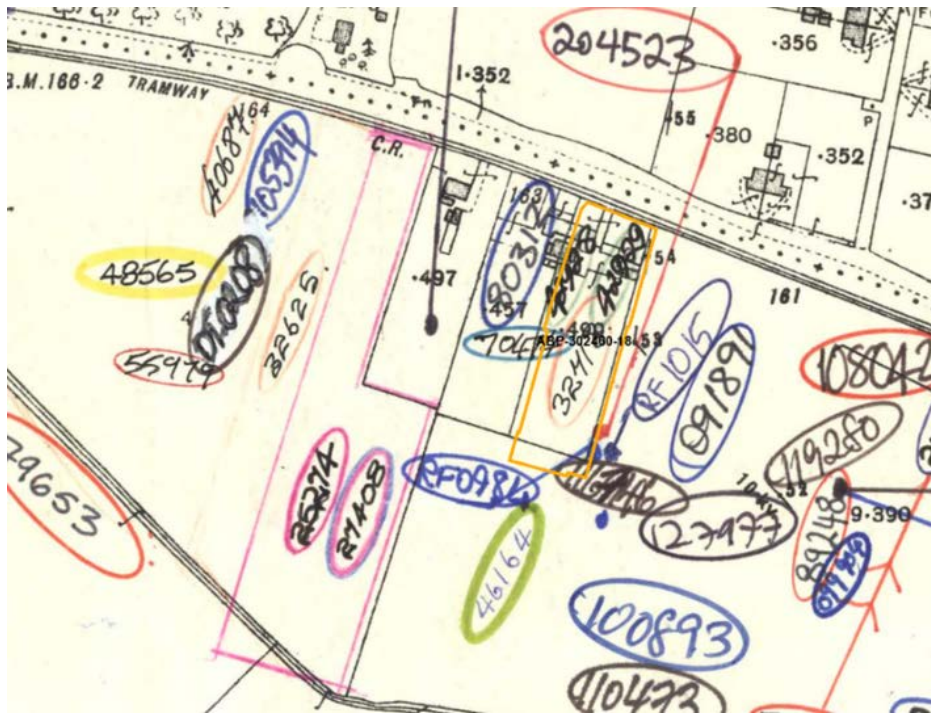
7.4. The relevant contribution scheme in this case is the South Dublin County Council Development Contribution Scheme 2016 – 2022 which is effective from 1st January 2016. This scheme is applicable to all planning permissions except where exemptions apply. Section 10 sets out categories of development that will be exempted from the requirement to pay development contributions or will pay a reduced rate under the scheme. Section 10 (xxvii) states as follows:

(xxvii) Change of use: In respect of a permission for change of use, where development contributions were paid in respect of the former use the contribution payable on the new proposal will be net of the quantum of development previously paid for. Where a contribution was not previously paid or the original development was carried out before 1963 it shall be treated in its entirety as new development and assessed accordingly.

7.5. It would appear from the wording of this exemption that where contributions were paid in respect of a former permitted use i.e. the existing commercial use in this

case, that the net development area previously permitted can be offset against the net development area of the proposed change of use. As there is no proposal to extend the building at this location the pertinent issue to be established in this case is whether or not a development charge was levied against the original commercial building when it was first permitted and what the details of same are.

- 7.6. Having regard to the planning history pertaining to the site it is evident that the existing building was permitted prior to 1996. However, no further useful history has been made available with the appeal file. The Case Planners report in this case as with the most recent planning history's pertaining to the site (SD17/0432 & SD14A/0009) is silent in this regard. I refer to the planning history available to view on the appeal file and summary of same set out in Section 4.0 Planning History of this report. The applicant states that in their efforts to establish the development contribution history of the site that the original permission was not available to them. An Bord Pleanála also wrote to SDCC on the 23rd October seeking details of any planning application on this site prior to 1996 but no information was forthcoming in their response of 1st November 2018. Therefore based on the information available on the appeal file it cannot be established if a development contributions was paid in respect of the former use. The Council attaching conditions without detailed justification as in this case and the two previous applications for a change of use does not of itself adequately demonstrate that a financial contrition is payable for the entire building in this case.
- 7.7. In the absence of a detailed planning history from SDCC I have had regard to the Boards appeal history in an effort to ascertain if any development contributions have been paid for the existing building on site. There is no evidence of any recent appeals on the site. Instead I refer to the extract from the Boards appeal register below. The appeal site is outlined in orange.



7.8. Having regard to the Boards Register (not the physical file) the following history for the appeal was extracted:

70477 – “Cancelled”

42928 – Car repair workshop and car park at 1 Clarkeville, Palmerstown, Dublin 20. Refused permission in 1979.

42929 – Retention of existing unauthorised use for car parking of vehicles at 1 Clarkeville, Palmerstown, Dublin 20. Refused permission in 1979.

32718 – Pre dates register

80312 & 204523 – Relate to adjoining properties.

7.9. Unfortunately these histories do not shed any further information on the situation as to whether or not development contributions have been paid in respect of the existing building on site.

7.10. Having regard to the planning history provided by the applicant and SDCC together with the Boards history above it can be concluded that at some point between 1979 and 1996 permission was granted for the building now occupying the site. However without the details and particulars of this planning permission it cannot be established if development contributions were paid. It is my view that it is the responsibility of SDCC in this instance, as the custodians of the planning register and associated details to prove their case that development contributions were or

were not paid it eh first instance. Attaching a development contributions without detailed qualified justification is not acceptable and does not in my view adhere to the criteria of the scheme.

8.0 Conclusion

- 8.1. Without written records of the planning history pertaining to the existing building it cannot be definitely established whether or not a development contribution was paid on the parent permission. It is for the Planning Authority, SDCC, in this instance to prove their case and set out detailed justification where they are seeking payment of a development contribution for the entire building as in this case. SDCC have failed to qualify their position and it would, in my view, be wholly unreasonable in this case to charge the applicant the full amount. It is therefore recommended that the condition be **OMITTED**.
- 8.2. For clarity and completeness I have had due regard to the provisions of the Habitats Directive and conclude that having regard to the source-pathway-receptor model along with the nature of the proposed development I would not consider that an NIS or Appropriate Assessment is necessary in this case.

9.0 Recommendation

- 9.1. Having regard to the nature of the condition the subject of the appeal and based on the reasons and considerations set out below, I am 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 and recommend that the Board directs the Council under subsection (13) (a) of Section 48 of the Planning and Development Act, 2000 to OMIT Condition No 11.

10.0 Reasons and Considerations

10.1. Having regard to:

- a) Section 34(5) of the Planning and Development Act 2000, as amended,
- b) The provisions of the South Dublin County Council Development Contribution Scheme 2016 – 2022

- c) Section 48 of the Planning and Development Act 2000 (as amended),
- d) The submissions on file, and the planning history of the site made available by South Dublin County Council

- 10.2. The Board considered Section 10 (xxvii) of the South Dublin County Council Development Contribution Scheme 2016 – 2022 whereby *in respect of a permission for change of use, where development contributions were paid in respect of the former use the contribution payable on the new proposal will be net of the quantum of development previously paid for. Where a contribution was not previously paid or the original development was carried out before 1963 it shall be treated in its entirety as new development and assessed accordingly* and was not satisfied that the Planning Authority, South Dublin County Council in this case had adequately demonstrated that the financial contribution in respect of the parent permission, namely the existing commercial building on this site had not been paid either partially or in full.
- 10.3. It is considered that it would be inappropriate to attach a Section 48 Development Contribution in this instance.

Mary Crowley,
Senior Planning Inspector,
20th November 2018