



An
Bord
Pleanála

Inspector's Report ABP-302977-18

Development	Change of use of unit 4 from use as a butcher's shop to use as a delicatessen.
Location	Unit 4 Montpelier Court, Kiltalown, Tallaght Dublin 24.
Planning Authority	South Dublin County Council.
Planning Authority Reg. Ref.	SD18A/0131.
Applicant	Ian Stritch.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	First Party V. Financial Contribution
Appellant	Ian Stritch
Observer(s)	None.
Date of Site Inspection	Not applicable.
Inspector	Susan McHugh.

1.0 Site Location and Description

- 1.1. The appeal site is located within a mixed use development at Kiltalown Way, c. 2km to the south west of Tallaght town centre.
- 1.2. The site has a stated area of 73.11sqm and comprises a ground floor retail unit with apartments over. The site (Unit No. 4) adjoins a Centra retail store and post office to the west, pharmacy to the east with a Chinese takeaway (Unit No. 1) further to the east.

2.0 Proposed Development

- 2.1. The applicant is seeking permission for a change of use of Unit 4 from use as a retail shop (formerly in use as a butcher's shop) to use as a delicatessen where hot food and cold edible food products will be prepared within the unit for their purchase on and consumption off the premises (not as a use commonly known as a fast food takeaway). The development includes associated internal alterations with minor changes to elevations.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to **grant** planning permission subject to 11 no. conditions.

Of relevance to this appeal is condition no.11 as follows;

'The developer shall pay to the planning authority a financial contribution of €5,829.06 (five thousand eight hundred and twenty nine euros and six cents), in respect of public infrastructure and facilities benefiting 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 Development Contribution Scheme 2016-2020, made under Section 48 of the Planning and Development Acts 2000-2011 (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 South 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 benefiting development in the area of the Planning Authority and that is provided, or that is intended to will be provide, by or on behalf of the Local Authority.'

3.2. **Planning Authority Reports (11/06/2018 and 16/10/2018)**

3.2.1. Planning Reports

The first planning report is the basis for the Planning Authority decision.

Includes:

- Planning history.
- Policy context.
- An assessment of the proposal in relation to effective planning control, visual impact and signage, internal layout and land-uses, access and car parking, public health, drainage and services and appropriate assessment.
- Further information was recommended.

The second planning report recommended permission subject to conditions. The development contribution assessment is based on the gross floor space of the proposed development as 73.11m². Condition no. 11 refers to contribution.

4.0 **Planning History**

Parent Permission

P.A. Reg. Ref. S01A/0771 Permission **granted** February 2002 to demolish existing retail units and erect a new mixed retail and residential development. The

overall floor area was approx. 560 sqm. The relevant conditions are summarised in the table below.

Condition No.	Financial Contribution	Towards the Cost of
10	€43,000	Roads improvements and traffic management in the area.
11	€19,522	Improvement of public open space in the area.
12	€17,576	Boherboy Water Supply Scheme.
13	€29,760	Dodder Valley Catchment Drainage Improvement Works.
Total	€109,858	

Condition No. 14 referred to the lodgement of an approved Insurance Bond of €58,408 or lodgement of a cash sum of €40,632.

P.A. Reg. Ref. SD04A/0036 Retention permission **granted** April 2004 for a) amendments of elevations to Kitalown Walk, Montpelier Walk and Kitalown Way. b) Additional 7.5 sq. m. floor area in unit 24,33 to give new floor area of 75 sq. m./unit. C) Units 24,33 converted from 1 bed to 2 bed units. (Planning Permission No. 0261, Reg. Ref. No. S01A/0771). A total increase in floor area of 15sqm.

The relevant condition is summarised in the table below.

Condition No.	Financial Contribution	Towards the Cost of
3	€14,076	Public infrastructure and facilities benefiting development in the area.

Condition No. 3 *'That arrangements be made with regard to the payment of financial contributions and lodgement of security in respect of the overall development, as*

required by Condition No. 10.11.12.13 and 14 of Register Reference S01A/0771, arrangements to be made prior to commencement of development.

Reason: It is considered reasonable that the developer should contribute towards the cost of providing services and to ensure that a ready sanction may be available to the Council to induce provision of services and prevent disamenity in the development.'

Unit 2 & 3

P.A. Reg. Ref. SD14A/0114 Permission **granted** July 2014 for Amalgamation of the existing pharmacy unit to the adjoining retail unit (Retail Unit 3) with associated internal modifications. The overall existing floor area was 117sqm. No development contributions were applied to this permission.

5.0 Policy Context

5.1. The “Development Contributions Guidelines for Planning Authorities” published by the Department of the Environment, Community and Local Government in January 2013.

The Guidelines outline guidance in relation to the preparation of development contribution schemes and methodology to be applied in setting out the scheme including provision for exemptions and waivers in relation to assessing development. The guidance states in section 2 under the heading double charging that *“the practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution”*.

5.2. Development Plan

The operative plan is the South Dublin County Development Plan 2016-2022.

The subject site is zoned 'LC' *'to protect, improve and provide for the future development of Local Centres'*.

5.3. South Dublin County Council Development Contribution Scheme 2016-2020

- 5.3.1. Section 9 refers to level of contributions for South Dublin County Council effective from 1st January 2019. An indexation rate of 7.2% will be applied to the scheme and become effective on permissions granted after 1st January 2019.

This indicates development contributions for a commercial class of development will be applied at the following rates €85.47 per sq.metre;

- 5.3.2. Section 10 refers to Exemptions and Reductions.

Subsection (xxvii) refers to permission for change of use and indicates

'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.'

The Development Contribution Scheme does not provide for any rebate or refund in this regard. Agents/applicants should provide evidence of prior payment at application stage in order to expedite assessment and avail of this exemption.'

6.0 The Appeal

6.1. Grounds of Appeal

The appeal condition relates to condition no. 11 of the Planning Authority's decision to grant planning permission the payment of a sum of €5,829.06 applied to the development in accordance with the Development Contribution Scheme adopted by South Dublin County Council.

The grounds of appeal can be summarised as;

- Refers to 'changes if use' under the Scheme.

- Appears that approx. €109,858.00 was conditioned under S01A/0771, and that no part of the financial contributions levied under that planning application has been offset against the proposed contribution.
- Appears that the full area for development has been used as the basis for establishing the proposed contribution. This is unreasonable.
- The unit was previously in use for a commercial purpose specifically a butcher's shop, and the proposed use is also for a commercial purpose as a delicatessen.
- There is no increase in floor area.
- The roads and public infrastructure already exist and have serviced the last commercial use.
- Refers to exemptions from contributions listed in the scheme which relate to 'Signage/Shop Fronts, Entrance Gates / Railings / Fencing, Elevational Alterations, Internal layout change – where no additional floor area is created'. The same circumstances apply as there is no additional floor area no contribution should apply.

6.2. **Planning Authority Response**

The planning authority in a response dated 4th of December 2018 confirms the decision and has no further details to add regarding the calculation and levying of the Financial Contributions.

6.3. **Observations**

None.

7.0 **Assessment**

- 7.1. As this is an appeal against 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.

- 7.2. An appeal may be brought to the Board where an application for permission under section 34 considers that the terms of a Development Contribution Scheme has not been properly applied in respect of any condition laid down by the planning authority. In this appeal the issue to be considered is whether the terms of the Scheme have been properly applied.
- 7.2.1. The current proposal is for a change of use to an existing retail unit with a stated floor area of 73.11 sqm. The calculation of the levy of €5,829.06 appears from the planners report to be based on the floor area of the development. I calculate the commercial levy as €79.72 per sqm based on (€5,829.06 / 73.11sqm.). I note the current 7.2% increase in the levy to €85.47 per sq.metre for permissions granted after the 1st January 2019.
- 7.2.2. The Development Contribution Scheme in section 10 permits exemptions and reductions, but no reference was made by the planning authority to the relevant exemption in this case, namely for a change of use which indicates
- ‘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.*
- The scheme is also clear that *‘Agents/applicants should provide evidence of prior payment at application stage in order to expedite assessment and avail of this exemption.’*
- 7.2.3. The applicant submits that the proposed development constitutes a change of use and that there is no additional floor area and as that no contribution should be payable.
- 7.3. In support of its appeal the applicant refers to levies been paid in respect of the previous permissions on the site and that no part of the financial contributions levied under that planning application has been offset against the proposed contribution.
- 7.4. No evidence to support this claim however, in relation to payment of levies has been submitted in the grounds of appeal.
- 7.5. The application is for a change of use of a retail shop (formerly in use as a butcher’s shop) to use as a delicatessen where hot food and cold edible food products will be

prepared within the unit for their purchase on and consumption off the premises (not as a use commonly known as a fast food takeaway). There is no information available to me in respect to whether the levies in respect of the previous permissions have been paid in full either by the planning authority or the appellant.

- 7.6. The parent permission for a mixed-use development granted under P.A. Reg. Ref. S01A/0771 had an overall floor area of approx. 560 sqm. A total levy of €109,858.06 was applied to this development. The subsequent amendment permission under P.A. Reg. Ref. SD04A/0036 for retention of additional floor area of 15sqm applied a levy of €14,076. I note that the increase in floor area was in relation to the residential element of the proposal.
- 7.7. I also note permission granted under P.A. Reg. Ref. SD14A/0114 for amalgamation of the existing pharmacy unit to the adjoining retail unit (Retail Unit 3) with an overall existing floor area was 117sqm, no levy was applied.
- 7.8. Based on the information on the file I do not consider that the terms of the Development Contribution Scheme have been properly applied. No additional floor area is proposed and the planning authority have not offered documentation to indicate the basis of why further payment of a contribution is warranted having regard to the provisions as set out in particular in section 10 Subsection (xxvii).
- 7.9. I am satisfied that the case put forward by the applicant is reasonable in the context of the exemptions, as no evidence has been provided to demonstrate that previous levies have not been paid and as such, in the current case the applicant is entitled to avail of the exemption in respect of change of use.

8.0 Recommendation

- 8.1. I recommend that condition no. 11 be omitted.

9.0 Reasons and Considerations

Having regard to

- (a) The submissions made in this appeal
- (b) The planning history

(c) The South Dublin County Council Development Contribution Scheme and in particular sections 9 and 10 of the scheme.

The Board considers that the payment of a further contribution would not therefore be appropriate having regard to the provisions as set out in the 'Development Contributions Guidelines for Planning Authorities' published by the Department of the Environment, Community and Local Government in January 2013 in particular section 2 of the said guidance and also section 10 of the South Dublin County Council Development Contribution Scheme 2016-2020. Relating to change of use and to deduction for any contributions paid on any previously permitted development.

It is therefore considered that the terms of the South Dublin County Council Development Contribution Scheme 2016-2020 have not been properly applied in this case and condition no. 11 should be removed.

Susan McHugh
Planning Inspectorate

13th February 2019