



An
Bord
Pleanála

Inspector's Report ABP-303474-19

Development	Change of use from warehouse to new live art studios, gallery and performance space.
Location	21-25 Arran Street East, and 10 & 12 Mary's Abbey, and west side of Meetinghouse Lane, Dublin 7.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3864/18
Applicant(s)	Complex Productions Company Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party – Section 48 Condition
Appellant(s)	Complex Productions Company Ltd.
Observer(s)	None
Date of Site Inspection	10 th April 2019
Inspector	Una O'Neill

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	3
3.3. Prescribed Bodies	4
3.4. Third Party Observations	4
4.0 Planning History.....	4
5.0 Policy and Context.....	4
5.1. National Policy	4
5.2. Dublin City Development Plan 2016-2022	4
5.3. Natural Heritage Designations	5
5.4. EIA Screening	5
6.0 The Appeal	5
6.1. Grounds of Appeal	5
6.2. Planning Authority Response	6
6.3. Observations	6
6.4. Further Responses.....	6
7.0 Assessment.....	6
7.2. Application of Section 48 and 49 Development Contribution Schemes.....	7
8.0 Recommendation.....	7
9.0 Reasons and Considerations.....	7

1.0 Site Location and Description

- 1.1. The subject site is located in Dublin City Centre, on the eastern side of Arran Street East, with frontage also onto Mary's Abbey and Meetinghouse Lane. The Luas Red line passes along the southern aspect of the site.

2.0 Proposed Development

- 2.1. Permission is sought for a change of use from warehouse to new live art studios, gallery, performance spaces and a cafe.

3.0 Planning Authority Decision

3.1. Decision

Permission GRANTED. The following conditions are noted:

C2: The developer shall pay the sum of €21,018.00 to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority as provided for in the approved Section 48 (Planning and Development Act 2000 as amended) Contribution scheme for Dublin City Council.

C3: The developer shall pay the sum of €11,400.00 to the Planning Authority in respect of the LUAS Cross City Scheme. This contribution shall be paid prior to the commencement of development or in such a manner as may otherwise be agreed in writing with the Planning Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority.

3.2.2. Other Technical Reports

Drainage Division: No objections.

Transportation Division: No objections.

3.3. Prescribed Bodies

TII: No objection subject to conditions.

3.4. Third Party Observations

Two observations were received. Issues raised included the heritage of the site, potential noise and type of arts being promoted.

4.0 Planning History

None.

5.0 Policy and Context

5.1. National Policy

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

5.2. Dublin City Development Plan 2016-2022

- **Zoning objective Z5**, ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’.

Dublin City Development Contribution Scheme, 2016-2020

- **Section 12 Exemptions and Reductions** - The following categories of development will be exempted from the requirement to pay development contributions under the Scheme:

...Development to be used for social, recreational or religious purposes and not to be used for profit or gain...

Luas Cross City Supplementary Development Contribution Scheme (under Section 49, Planning & Development Act, 2000 as amended)

- **Section 11 Exemptions** – The following categories of development will be exempted from the requirement to pay development contributions under the Scheme:

.... Development to be used for social, recreational or religious purposes and not to be used for profit or gain;...

5.3. Natural Heritage Designations

The site is not located within or adjacent to a Natura 2000 site.

5.4. EIA Screening

The proposed development is not of a class for the purpose of EIA.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal is against conditions 2 and 3, which requires the payment of a development contribution under section 48 and section 49 respectively. The grounds of appeal is summarised as follows:

- Complex Productions Co. Ltd. by guarantee is a registered charity and a not for profit organisation CHY Number 18775.
- It's purpose is to provide arts to all members of the community, especially those resident in the North West Inner City of Dublin, where it is the only arts facility. It runs a community engagement programme including the High Hopes Choir for the homeless and a Youth Theatre. Salaries and fees for staff are at the minimum rate and focus is on producing good quality arts works.
- The Complex was exempt from planning fees on the grounds that it is a charity. It received a grant of 80,000 euro from DCC towards the start-up

costs. Nearly half of this will be negated if it is required to pay the contributions.

- The lease on the building is for three years and is close to finishing with not enough time to make any surplus to pay these contributions.
- The development of the building is internal refurbishment and minor upgrading of the exterior, involving minimum to no disruption of the Luas or neighbouring streets or traders.

6.2. **Planning Authority Response**

None.

6.3. **Observations**

TII: No objection subject to conditions.

6.4. **Further Responses**

None.

7.0 **Assessment**

- 7.1.1. This is a first party appeal against planning conditions 2 and 3, which require a development contribution in line with section 48 and section 49 of the Planning and Development Act 2000 (as amended) respectively.
- 7.1.2. 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. I note that the Board in considering the appeal is required under the provisions of the legislation to apply the scheme as adopted by the Planning Authority. The Board have no legal jurisdiction to interpret or evaluate the merits of any financial contribution scheme as adopted by the Planning Authority.

7.1.3. 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.

7.2. **Application of Section 48 and 49 Development Contribution Schemes**

7.2.1. The Section 48 Development Contribution Scheme addresses exemptions and reductions to contributions under section 12 of the scheme, whereby it is stated that 'development to be used for social, recreational or religious purposes and not to be used for profit or gain', is exempted from the requirement to pay development contributions under the Scheme. Similarly the Section 49 Supplementary Development Contribution Scheme under section 11 contains an exemption for social, recreational or religious purposes and not to be used for profit or gain.

7.2.2. I note the applicant is a registered charity and a letter from the Revenue was submitted with the original application confirming this. The applicant states that the company runs an arts programme for all members of the community and runs a community engagement programme and is a non-for-profit organisation. I consider the application comes within the exemption for a development to be used for social and recreational purposes, in this case a community arts group, and is not for profit, therefore the exemption and reduction applies to both the section 48 and section 49 schemes and I recommend that condition 2 and 3 be removed.

8.0 **Recommendation**

8.1. It is recommended that condition 2 and condition 3 are REMOVED.

9.0 **Reasons and Considerations**

The Board, in accordance with section 48 and section 49 of the Planning and Development Act, 2000, (as amended) considered that the terms of the Dublin City Council Development Contribution Scheme 2016-2020 and the Luas Cross City Supplementary Development Contribution Scheme had not been properly applied in respect of Condition 2 and 3 and directs the said Council to **REMOVE** said conditions.

Una O'Neill
Senior Planning Inspector

10th April 2019