



Development	Change of use from card club to offices.
Location	First Floor, Block 1, Village Green, Tallaght, Dublin 24
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD18A/0437
Applicant	Westpark Investments Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	First – V- Condition (F. Contribution)
Appellant	Westpark Investments Ltd.
Date of Site Inspection	None
Inspector	Paddy Keogh

1.0 Site Location and Description

- 1.1. The site of the proposed development is located at 'Village Green' in Tallaght Village. The site forms part of the first floor of the 'West Park' building, a two storey mixed use retail/office/leisure development. The floor space that is the subject of the current appeal is located above a Bowling Alley.
- 1.2. The appeal relates to the matter of a financial contribution only. I have not inspected or photographed the site.

2.0 Proposed Development

- 2.1. The proposed development involves the change of use of use of a first floor unit within the existing building from card club (betting office/casino) to office use. The subject unit has a stated floor area of 428 sq. m.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of a decision to grant planning permission for the proposed development subject to 3 conditions was issued by the planning authority per Order dated 15th, February 2019.
- 3.1.2. Condition No. 3 of the planning authority decision required payment of a financial contribution in the sum of €18,288.44 pursuant to Section 48 of the *Planning and Development Act, 2000 - 2011*, as amended ("the Act") 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 planning authority, in accordance with the terms of the Development Contribution Scheme 2016-2020.

3.2. Planning Authority Reports

3.2.1. Planning Reports

A report from the planning authority Senior Executive Planner dated 14th, February 2019 includes:

- The assessable area in terms of Development Contributions is 428 sq. m.

The decision is in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

Roads Department – Report dated 20th, January 2019 indicates no objection to the proposed development.

Water Services Department – Report dated 28th, January 2019 indicates no objection to the proposed development subject to conditions.

Irish Water – Report dated 5th, February 2019 indicates no objection to the proposed development subject to conditions.

4.0 Relevant Planning History

Reg. Ref. SD11A/0263 – Planning permission for change of use from fitness centre to office use at Tallaght Retail Park (Block No. 1) Village Green, Tallaght was granted by the planning authority per Order dated 21st, February 2011.

Reg. Ref. SD06A/0626 – Planning permission for change of use from existing first floor gym to office area with associated external signage at Tallaght Superbowl, (Block No. 1), Village Green was granted by the planning authority per Order dated 23rd, October 2006.

5.0 Policy Context

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

Section 9 of the Development Contribution Scheme sets out the Level of Contribution payable under the scheme. For non-residential (i.e. industrial/commercial class of development) a financial contribution in the sum of €85.47 per sq. m. is leviable.

Section 10 of the Scheme provides for exemptions and reductions under the scheme.

Section 10(v) states:

There will be a 50% reduction in non-residential rate for developments in Village Centre areas. To be considered for the reduced rate the proposed development must be an area zoned as a Village centre in the Council's County Development Plan 2016-2022 and comply with the qualifying conditions specified by the local authority in the application process.

Section 10 (xxvii) states:

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.

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 is against Condition No. 3 (S. 48 financial contribution) only of the planning authority notification of decision to grant planning permission.

The grounds of appeal include:

- The subject premises forms part of a mixed-use building comprising recreation, retail and offices and was constructed in the early 1990s.
- No works requiring planning permission and no increase in floor area are proposed as part of the proposed development.
- Two previous planning applications for change of use of floor space from indoor recreational use to offices in the same building (Block No. 1) as the current proposal were granted planning permission (by the local authority) without having a condition attached requiring the payment of any financial levy. These are **Reg. Ref. SD11A/0263** and **SD06A/0626**. The current proposal relates to Block No. 1. Both of the latter mentioned decisions related to Block No. 1.
- The terms of the Development Contribution have not been properly applied in the current instance. In the circumstances, it is unjust that the current application should be burdened with a financial levy.

6.2. Planning Authority Response

- A letter from the planning authority dated 26th, March 2018 indicates that the planning authority have no further details to add regarding the calculation and levying of financial contributions on this application/appeal.
- The Board wrote to the planning authority (letter dated 24th, April 2019) pursuant to Section 132 of the Act, requesting any further observations of the planning authority specifically addressing the grounds of appeal relating to the alleged improper application of the development contribution scheme to the conditions under appeal. This letter requested a response by 14th, May 2019. No response was received from the planning authority.

7.0 Assessment

- 7.1.1. The appeal relates solely to Condition No. 3 of the planning authority notification of decision to grant planning permission. This condition levied a financial contribution in the sum of €18,288.44 pursuant to Section 48 of the Act. (50% of 428 X €85.47).
- 7.1.2. The Applicant alleges that the planning authority have improperly applied the terms of the South Dublin County Council Development Contribution Scheme 2016-2020 in failing to allow the development the benefit of Section 10 (xxvii) of the scheme which stipulates that an exemption from the payment of a financial levy will be given in circumstances where a planning application is for a change of use and a financial levy has previously been paid in respect of the former use.
- 7.1.3. I note that the Section 10 (xxvii) of the Development Contribution Scheme 2016-2020 includes specific advice to Agents/Applicants that they should provide evidence of *'prior payment (of a financial contribution) at application stage.....in order to avail of this exemption'*.
- 7.1.4. On the basis of the documentation on file, evidence of prior payment of a financial contribution in respect of the floor space that is the subject matter of the current application for change of use has not been submitted. On a strict interpretation of the wording of the 2016 – 2020 Development Contribution Scheme, the applicant has not complied with the requirements of the scheme in order to avail of the exemption provided for under Section 10 (xxvii).
- 7.1.5. The applicant seeks to rely on the precedent value of two previous planning authority decisions (Reg. Ref. SD11A/0263 and Reg. Ref. SD06A/0626). In these cases the

planning authority granted planning permissions for change of use from gym to office use and from fitness centre to office use. Both cases related to the same Block (Block No. 1) in the Tallaght Village Centre as the current proposal. No financial levy was imposed by the planning authority in either case.

- 7.1.6. It should be noted that Reg. Ref. SD06A/0626 was decided at a time when South Dublin Development County Council Contribution Scheme 2003 was operative and Reg. Ref. SD11A/0263 was decided at a time when the South Dublin County Council Development Contribution Scheme 2010-2107 was operative. Neither of these Development Contribution Schemes included an explicit exemption similar to that provided under Section 10 (xxvii) of the 2016-2020 scheme. (Nonetheless, it would appear that the Developers in both of these cases were given the benefit of an exemption of a similar nature).
- 7.1.7. The onus of proof of payment of any previous financial contributions rest with the applicant (as reflected in the wording of Section 10 (xxvii) of the scheme). Strictly speaking and on a strict application of the wording of the scheme evidence of previous payment of a financial contribution in respect of the floor area that is the subject of this appeal has not been provided. The precedent cases quoted by the applicant do not amount to evidence of previous payment of a financial contribution in respect of the relevant floor space.
- 7.1.8. It would seem equitable to follow the precedent set by the previous decisions of the planning authority in the case of Reg. Ref. SD06A/0626 and SD11A/0263. Nonetheless, the role of the Board in this matter is strictly confined under statute to determining whether or not the terms of a Development Contribution Scheme have been properly applied. On the basis of the documentation submitted with the current application and appeal the Applicant has not complied with the requirement of Section 10(xxvii) of the Development Contribution Scheme.
- 7.1.9. On balance, in the circumstances outlined, I consider that the threshold required of the Applicant to avail of any derogation from the payment of relevant financial contribution has not been met. The calculation of the quantum of the financial contribution levied by the planning authority appears to be correct.

8.0 Recommendation

I recommend (for the reasons and considerations set out below) that the planning authority be directed to:

Attach Condition No. 3 and the reason thereto.

9.0 Reasons & Considerations

Section 10(xxvii) of the South Dublin County Council Development Contribution Scheme 2016-2020 stipulates that an exemption from the payment of a financial levy will be given in circumstances where a planning application is for a change of use and a financial levy has previously been paid in respect of the former use. The section explicitly states that Agents/Applicants should provide evidence of *'prior payment (of a financial contribution) at application stage....in order to avail of this exemption'*. On the basis of the documentation submitted with the application and appeal, the Applicant has not demonstrated compliance with the requirements of Section 10(xxvii). In these circumstances, it is considered that the terms of the Development Contribution Scheme have been properly applied and that there are no other exemptions or discounts available to the Applicant.

Paddy Keogh
Planning Inspector

2nd, July 2019.