



An
Bord
Pleanála

Inspector's Report ABP-304146-19

Development	Mixed Use development including Office and Commercial Uses.
Location	Site at Chancery Lane and Ship Street Great, Dublin 8.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	4223/18.
Applicant(s)	Luxor Investments Limited.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	First Party V Development Contributions
Appellant(s)	Luxor Investments Limited.
Observer(s)	Transport Infrastructure Ireland.
Date of Site Inspection	28 th June 2019.
Inspector	Irené McCormack.

1.0 Site Location and Description

- 1.1. The site is located between Ship Street Great and Chancery Lane in the south inner city to the south and west of Dublin Castle. The site is 3,848sqm in area and forms part of a larger landholding of approximately 1.1ha.
- 1.2. The surrounding area is mixed use in character comprising of commercial, residential and institutional uses. The site forms part of a large rectangular shaped urban block that is defined by Ship Street Little to the North, Ship Street Great to the East, Golden Lane to the South and Chancery Lane to the West. The site is bounded by the Chief State Solicitors Office building to the north and the Radisson Blu Hotel to the east and south.
- 1.3. The site has a multi-layered history which dates back to the 7th Century, it lies within 1.4.a Zone of Archaeological Interest, St. Michael Le Pole Church, round tower and graveyard are Recorded Monuments, and the Dublin Castle Complex to the north and east contains several Protected Structures.

2.0 Proposed Development

- 2.1.1. Permission is sought for a mixed-use development including office and commercial uses. The development will consist of:
 1. Amendments to the previously granted permission DCC Reg. Ref. 4280/16; ABP Reg. Ref. PL29S.248136, including a change of use from residential to office use; and alterations to the commercial development including office and convention centre uses, with a total gross floor area of 21,654 sq.m.
 2. A new pedestrian street running west to east between Chancery Lane and Ship Street Great and the creation of a heritage open space at Le Pole Square which will be open to the public during designated hours.
 3. A convention centre over two storeys with associated back up servicing, break-out spaces, and preconference facilities of 4,092. The main conference hall which extends to 762 sq.m is supported by a pre-conference lobby which extends to 936 sq.m including circulation, reception, bar area, cloaks, toilet facilities, kitchens and storage spaces. The upper floor of the convention centre comprises of meeting rooms and break-out spaces of 770 sq.m area and includes circulation, toilet facilities and reception area.

4. An exhibition gallery which extends to 146 sq.m accessed from Le Pole Square.
5. A café/ retail unit extending to 150 sq.m at ground floor level with dual access from the proposed pedestrian link off Chancery Lane.
6. A café of 39 sq.m located on Ship Street Great.
7. An office development of 12,849 sq.m over 7 floors accessed from Ship Street Great.
8. A double basement of 4,711 sq.m is proposed to accommodate the provision of boiler/ ancillary plant facilities; kitchen preparation area/ office and storage, staff changing room; 50 parking bays, 170 cycle racks; cyclist shower room, and refuse storage. Vehicular access is proposed via a ramped entrance from Ship Street Great. Cyclist access is proposed via a dedicated lift from Ship Street Great, 18 cycle racks will be provided in the proposed Le Pole Square on upper ground floor.
9. The provision of an ESB substation accessed from Chancery Lane and all other associate ancillary works.
10. All associated site development, servicing and landscaping works.

3.0 Planning Authority Decision

3.1. Decision

The decision to grant permission was subject to 10 no. conditions. Condition no. 2 and Condition no. 3 are of relevance.

Condition no. 2.

The developer shall pay the sum of **€1,460,197.41** 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.

The amount due is payable on commencement of development. Phased payment of the contribution will be considered only with the agreement of Dublin City Council

Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.

Condition no.3.

The developer shall pay the sum of **€791,999.80** 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. The amount due is payable on commencement of development. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution in respect of the public infrastructure and facilities benefitting development in the Luas Cross City area as provided for on the Supplementary Development Contribution Scheme made for the area of the proposed under Section 49 of the Planning & Development Act 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further Information was requested on the 14th December 2018 requiring a reduction in the height and bulk of the building, A Visual Impact Assessment and minimum floor to ceiling heights of 4.0metres throughout.

3.2.2. The Area Planners report (12th March 2019) reflects the decision to grant permission and includes a breakdown of the proposed development and fee calculation for the Section 48 Contribution.

3.2.3. Other Technical Reports

Internal Reports

The Roads & Traffic Planning Division (report of 6th December 2018) - No objection subject to conditions.

City Archaeologist (report of 26th November 2018) - No objection subject to conditions

Conservation Officer - In her report dated 12th December 2018 recommends the removal of the additional floor proposed under this permission.

3.2.4. **Prescribed Bodies**

The **TII** in their report dated 16th November 2018 recommends a Section 49 Development Contribution (Luas Cross CITY) be imposed on any grant of permission.

3.3. **Third Party Observations**

An Taisce in their report dated 28th November 2018 raised concerns with respect to the change of use from residential to office and on the location of the East/ West pedestrian route.

The **OPW** in their report dated 26th November 2018 raised concerns with respect to the impact of the development on the CSSO and on Dublin Castle.

4.0 **Planning History**

Site

DCC 4280/16 & ABP PL.29S.248136 – Permission grant for a 6-storey mixed use residential/commercial development, including new pedestrian street and construction of apartments, convention centre, gallery, cafe, basement, ESB substation and associated works.

DCC 2279/15 & PL29S.244868: Temporary retention permission refused for the temporary retention of car park and associated signage.

4.1. **Site to South: Chancery Lane, Ship Street Great & Golden Lane** 4.2.

DCC 2962/16 & ABP 29S.24719: Permission granted to demolish existing warehouses and to construct two 8-storey extensions to the rear of the existing Radisson Blu Hotel.

5.0 Policy and Context

5.1. Dublin City Council Development Contributions Scheme 2016-2020

A table of comparison rates for various uses are set out on page 9 of the scheme.

The uses of relevance are noted below.

Use	Amount of Contribution 2016, 2017, 2018-	Amount of Contribution 2019
Industrial/Commercial Development	€70.06 per square metre	€75.10
Residential	€86.40 per square metre	€86.40 per square metre

EXEMPTIONS AND REDUCTIONS

14. The following categories of development will be liable for a reduced rate of development contributions under the Scheme

- Open storage/hard surface commercial space development, other than car parking, shall be liable for development contributions at one third of the commercial rate.
- Ancillary non-surface, non-residential car parking will be calculated at 50% of the applicable rate of contribution.
- *Ancillary undercroft car parking will be calculated at 50% of the applicable rate of contribution.*

- 5.1.1. Supplementary Development Contribution Scheme (Section 49, Planning & Development Act, 2000 as amended). Luas Cross City (St. Stephen's Green to Broombridge Line). Developments within the catchment area of the Scheme will be subject to a Supplementary Development Contribution at the following rates:

Development Description	Amount of Contribution
Commercial/Retail	€38 per square metre
Residential	€2000 per unit

12. Reductions

The following categories of development will be liable for a reduced rate of development contributions under the Scheme

- Open storage/hard surface commercial space development, other than car parking, shall be liable for development contributions at one third of the commercial rate.
- Ancillary non-surface, non-residential car parking will be calculated at 50% of the applicable rate of contribution.
- *Ancillary undercroft car parking will be calculated at 50% of the applicable rate of contribution.*

5.2. **Development Plan**

5.3. **Zoning objective:**

The site is located within an area zoned with the objective Z5 in the Dublin City Development Plan, 2016-2021 which seeks “To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.” The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development and the proposed uses are permissible within the Z5 zone.

Built Heritage

Historic Core: Located within the Medieval City & to S of the Walled City

Archaeology: Located within a Zone of Archaeological Interest

Recorded Monuments: Dublin City (DU018-02020); Church of St. Michael Le Pole Church & Graveyard (DU-018-02082) & Round Tower site (DU-018:02083)

5.3.1. **Policies and objectives**

Policy CHC1: seeks the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

Policy CHC2/4/5: seeks to ensure the protection of the special interest, character and setting of Protected Structures and all Conservation Areas.

Policy CHC9: seeks to protect and preserve National Monuments:

5.3.2. **Ship Street Werburgh Street Framework Plan 2005**

This is a non-statutory plan which sets out a vision for the future development of the area which takes account of the historical and heritage setting.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first party appeal was made under the provisions of Section 48(10)(b) of the Planning and Development Act, 2000 against Condition No. 2 which related to a development contribution of €1,479,730.25 for public infrastructure and facilities benefiting the development and Condition no. 3 which related to a contribution of €802,594.20 for Luas Cross City – St. Stephen’s Green to Broombridge Line Supplementary Development Contribution under Section 49 of the Planning and Development Act, 2000
- 6.1.2. The grounds of the appeal contest the calculation method applied by the Planning Authority in determining the amount of gross floor space allocated as categories ‘Commercial/Retail Development’ and Parking Ancillary/Undercroft’.
- 6.1.3. The overall gross floor area of the development is 21,375.1sqm, in accordance with amended plans submitted on 13th February 2019 in response to a request for further information. The convention centre and office scheme extend to 16,663.7sqm and the double basement extends to 4,711.4sqm. For clarity, it is set out that ancillary parking areas in the basement extend to 2,276.7sqm.
- 6.1.4. The planning authority contributions breakdown indicates that the levy category ‘Commercial/retail’ was applied to 20,865.9sqm and the category ‘Parking Ancillary/Undercroft’ was applied to 510sqm based on 50 car parking spaces at 10.2sqm per space.
- 6.1.5. It is set out that the Development Contribution Scheme does not provide any basis for limiting car parking to 10.2sqm per parking space. The use of this method means that developers are required to pay a higher rate for all vehicular circulation and ramp areas etc.
- 6.1.6. The appeal contends that the ‘Commercial/retail/ category should be applied to 19,098.4sqm and the ‘Parking Ancillary/Undercroft’ category be applied to 2,276.7sqm. In relation to condition no. 2 this relates to an overcharge of €61,945.55 and in relation to condition no. 3 an overcharge of €33,597.7.

6.2. Planning Authority Response

None

6.3. Observations

A submission was received from TII on 18th April 2019 recommending the inclusion of a Section 49 Luas Cross City Contribution Scheme Levy be included in the schedule of conditions.

7.0 Assessment

- 7.1. This is an appeal made under the provisions of Section 48(10) (b) of the Planning and Development Act, 2000 (as amended), and therefore the Board is restricted to considered Condition No. 2 and Condition No. 3 only and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the terms of the Dublin City Council Development Contribution Scheme, 2016-2020 and the Luas Cross City (St. Stephen's Green to Broombridge Line) Supplementary Development Contribution Scheme.
- 7.2. Condition No. 2 required the applicant pay a contribution of **€1,460,197.41** to the Planning Authority towards expenditure in respect of public infrastructure and facilities as provided for in the approved Dublin City Council Development Contribution Scheme 2016-2020 in accordance with Section 48 of the Planning and Development Act, 2000 (as amended).
- 7.3. Condition no. 3 required the applicant to pay a contribution of **€802,594.20** for Luas Cross City – St. Stephen's Green to Broombridge Line Supplementary Development Contribution under Section 49 of the Planning and Development Act, 2000 and a set out in the approved Dublin City Council Development Contribution Scheme 2016-2020.
- 7.4. The table below provides a breakdown of the proposed development:

Use	Stated Gross Floor Area
Lower Ground Floor – Convention Hall	2,557.6 sqm
Ground Floor - Conference Centre, Exhibition Space and Café/Restaurant/retail Space	1,554.3 sqm
First Floor -office	2,399.3 sqm
Second Floor -office	2,412.2 sqm
Third Floor -office	2,412.2 sqm

Fourth Floor -office	2,382.1 sqm
Fifth Floor -office	1,828.2 sqm
Sixth Floor -office	1,117.8sqm
Total Gross Floor Area (Excluding Basement)	16,663.7sqm
-2 Basement	2,355.7 sqm
-1 Basement	2,355.7 sqm
Total Basement	4,711.40 sqm
Overall Development 21,375.10 sqm	

Basement – Car Parking		
	Car Park Area	All ancillary Areas, Storage Rooms, Plant, Lift Cores etc.
-2 Basement	1,514.10 sqm	841.6 sqm
-1 Basement	762.6 sqm	1,593.1 sqm
Total	2,276.70 sqm	2,434.7 sqm

Floor Area Breakdown	
Gross Commercial/Retail Area	19,098.4sqm
Gross Car Park Area	2,276.70 sqm
Overall Development	21,375.10 sqm

7.5. The development contribution of €1,460,197.41 was calculated by applying a commercial/retail levy of €70.06 per sqm to the proposed conference centre, office and cafe/retail uses at a floor area of 20,865.9sqm and by applying a levy of €35.03 based on 50 car parking spaces at 10.2sqm per space with a total floor area 510sqm.

- 7.5.1. The Section 49 Supplementary Development Contribution of €802,594.20 for Luas Cross City – St. Stephen’s Green to Broombridge Line was calculated by applying a commercial/retail levy of €38.00 per sqm to the proposed conference centre, office and cafe/retail uses at a floor area of 20,865.9sqm and by applying a levy of €19.00 based on 50 car parking spaces at 10.2sqm per space with a total floor area 510sqm.
- 7.5.2. The applicant argues that the Development Contribution Scheme does not provide any basis for limiting car parking to 10.2sqm per parking space and the use of this method means that developers are required to pay a higher rate for all vehicular circulation and ramp areas etc. I would agree. The scheme sets out that Ancillary non-surface, non-residential car parking will be calculated at 50% of the applicable rate of contribution. The scheme does not refer to the calculation of individual car parking spaces at a rate of 10.2sqm per space. Similarly, Section 12 of the Section 49 Supplementary Development Contribution of €802,594.20 for Luas Cross City – St. Stephen’s Green to Broombridge Line also states that ancillary undercroft car parking will be calculated at 50% of the applicable rate of the contribution.
- 7.6. Vehicular circulation areas and access ramps etc. are an intrinsic part of the provision of undercroft car parking. The car park cannot function in the absence of such ancillary infrastructure, and as such these cannot be disassociated from the overall car parking floor area. Accordingly, I consider it appropriate that the associated vehicular circulation areas and access ramps etc. be included in the floor area calculation for the car parking and be calculated at 50% of the applicable rate of contribution applicable to both the Development Contribution (Condition no. 2) and the Supplementary Development Contribution (Condition no. 3) in accordance with the provisions of the Dublin City Council Development Contribution Scheme, 2016-2020 and the Luas Cross City (St. Stephen’s Green to Broombridge Line) Supplementary Development Contribution Scheme.
- 7.7. The development is spread over 10 levels with a stated gross floor area of 21,375.10sqm. The applicant has argued that the ‘Commercial/retail/ category should be applied to 19,098.4sqm and the ‘Parking Ancillary/Undercroft’ category be applied to 2,276.7sqm. Following review of the Development Contribution Scheme, the Section 49 Supplementary Development Contribution and the floor plans associated with the development, I would agree and consider that the contributions have been incorrectly applied by the Planning Authority.

7.8. In relation to condition no. 2, I consider that a commercial/retail levy of €70.06 per sqm should apply to the conference centre, office and cafe/retail uses at a floor area of 19,098.4sqm and a levy of €35.03 per sqm applied to the car parking area of 2,276.70 sqm. The Section 48 Development Contribution should be calculated as follows:

Condition No. 2 - The Section 48 Development Contribution	
Stated Gross Commercial/Retail Area	19,098.4sqm x €70.06 = €1,338,033.90
Stated Gross Car Park Area	2,276.70 sqm x €35.03 = €79,752.80
Total	€1,417,786.70

7.9. In relation to condition no. 3, I consider that a commercial/retail levy of €38.00 per sqm should apply to the conference centre, office and cafe/retail uses at a floor area of 20,865.9sqm and a levy of €19.00 per sqm applied to the car parking area of 2,276.70 sqm. The Section 49 Supplementary Development Contribution for Luas Cross City – St. Stephen’s Green to Broombridge Line should be calculated as follows

Condition No. 3 - The Section 49 Supplementary Development Contribution	
Stated Gross Commercial/Retail Area	19,098.4sqm x €38.00 = €725,739.20
Stated Gross Car Park Area	2,276.70 sqm x €19.00 = €43,257.30
Total	€768,996.50

8.0 Recommendation

It is considered that the planning authority incorrectly applied the terms of the Dublin City Council Development Contributions Scheme, 2016-2020 and the Supplementary Development Contribution Scheme (Section 49, Planning & Development Act, 2000 as amended), 2017 (Luas Cross City St. Stephen’s Green to Broombridge Line), in the calculation of the amounts payable under Condition No 2 and Condition no. 3 attached to the grant of permission. It is therefore recommended that the planning authority be directed to amend the amount payable under Condition No. 2 by deleting

the amount of €1,460,197.41 and substituting the amount of €1,417,786.70. The amount payable under Condition No. 3 shall be amended by deleting the amount of €802,594.20 and substituting the amount of €768,996.50

9.0 Reasons and Considerations

1. Having regard to the terms of the Dublin City Council Development Contributions Scheme, 2016-2020 the contributions were incorrectly applied by the planning authority in the calculation of the amount payable based on reckonable gross floor area for commercial/retail development and the car parking and ancillary infrastructure. It is therefore concluded that the amount payable with respect to condition no. 2 , in accordance with the terms of the said scheme is €1,417,786.70
2. Having regard to the terms of the Dublin City Council Supplementary Development Contribution Scheme (Section 49, Planning & Development Act, 2000 as amended), 2017 (Luas Cross City St. Stephen's Green to Broombridge Line), Development Contributions Scheme, 2016-2020 the contributions were incorrectly applied by the planning authority in the calculation of the amount payable based on reckonable gross floor area for commercial/retail development and the car parking and ancillary infrastructure. It is therefore concluded that the amount payable with respect to condition no.3, in accordance with the terms of the said scheme is €768,996.50.

Irené McCormack
Planning Inspector

2nd July 2019