



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305425-19

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<b>Development</b>	Conversion and change of use of basement and ground floors to new yoga facility, demolition of storage sheds to the rear, construction of single-storey yoga studio structure.
<b>Location</b>	7, Seapoint Terrace, Strand Street, Irishtown, Dublin 4
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	2791/19
<b>Applicant(s)</b>	Anne Parsons.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission subject to conditions
<b>Type of Appeal</b>	First Party v Condition 2
<b>Appellant(s)</b>	Anne Parsons
<b>Observer(s)</b>	None
<b>Inspector</b>	Bríd Maxwell

## **1.0 Site Location and Description**

- 1.1. The appeal site 440m<sup>2</sup> comprises a two storey over basement end of terrace dwelling located in a residential area 7 Seapoint Terrace, Strand Street in Irishtown Dublin 4. To the rear of the dwelling within the site are a number of corrugated steel sheds used as builders storage. The site is surrounded by residential properties and to the rear northeast is Ringsend Park. The main house was most recently used as a publishing house at basement and ground floor level with residential apartment use overhead.

## **2.0 Proposed Development**

- 2.1. The proposal as set out involves works to the existing building to include conversion and change of use of the basement and ground floors to a new yoga facility while maintaining the existing residential one bedroom apartment at first floor level together with the demolition of existing single storey builders material storage sheds to the rear and construction of a new single storey yoga studio structure and courtyard garden to the rear with a single storey link to existing building and construction of a new single storey extension to the eastern side of the main structure to give a total new built area of 254sq.m all with associated services.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated 19<sup>th</sup> August 2019 Dublin City Council issued notification of the decision to grant permission for the development subject to 8 conditions which included Condition 2 under appeal requiring payment of a Development Contribution €9,835.46 in accordance with the development contribution scheme.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- 3.2.1.1 Initial planner's report considers the principle of yoga facility to be acceptable and the removal of builder's sheds and provision of a garden is deemed to be a welcome

development. Further information required to clarify precise detail of the proposed extension, external finish, bin and bicycle storage and open space arrangements.

3.2.1.2 Following submission of additional information the planner's report recommended permission subject to conditions. In relation to condition 2 the calculation of the development contribution is set out as follows:

Commercial / Retail Development @ €75.10 per sq.m	Proposed 254sq.m	Granted 254sq.m	Contribution Area 55.45sq.m	Total <b>€4,164.29</b>
Commercial / Retail COU @ €37.55	Proposed 151.03sq.m	Granted 151.03sq.m	Contribution Area 151.03sq.m	<b>€5,671.17</b>
Development Contribution Due				<b>€9,835.46</b>

### Section 48 Contribution Breakdown

Commercial / Retail            254sq.m  
Demolition allowance        198.55sq.m

### 3.2.2. Other Technical Reports

3.2.2.1 City Archaeologist report notes location within the Zone of Archaeological constraint of recorded monument DU018-04 settlement listed on the record of monuments and places (RMP) and subject to statutory protection under Section 112 of the National Monuments Amendment Act 1994. The site is within the zone of archaeological interest in Dublin City Development Plan 2016-2022. Recommend that a notification condition to attach to a permission.

### 3.3. Prescribed Bodies

3.3.1 No submissions

### 3.4. Third Party Observations

3.4.1 None

## 4.0 Planning History

**2720/98** Permission granted to reinstate the front garden lightwell and two basement windows.

**1792/75 PL29S33490** Permission granted on appeal for continuance of use as offices on ground floor with basement storage.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The Dublin City Development Plan 2016-2022 refers. The site is zoned Z2 “To provide and/or improve the amenities of residential conservation areas.”

Section 16.10.12 Extensions and Alterations to Dwellings.

Conservation Areas. Policy CHC4 “To protect the special interest and Character of Dublin’s Conservation Areas.”

The Dublin City Council Development Contribution Scheme 2016-2020 sets out the basis for determination of contributions. Section 12 sets out exemptions and reductions and includes “*Permission for a change of use from one commercial use to another are exempt. Any net additional floorspace will be charged at the commercial rate.*”

### 5.2. Natural Heritage Designations

None

### 5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the proposed development and to the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for

environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Doyle Kent Planning Partnership on behalf of the first party. The grounds of appeal relate to condition 2, financial contribution only. The grounds of appeal assert that the terms of the development contribution scheme have been improperly applied and are summarised as follows:

- The entire premises save for residential use at first floor level has been in commercial use for many years. (Publishers offices on the ground floor with ancillary storage in the basement and the sheds have also been used for commercial storage.
- In review of the Planning Authority's calculation of the financial contribution the new floor area for yoga studio 254sq.m is offset by the building to be demolished (198.55 sq.m) as provided at section 14 of the Development Contribution Scheme. The net area of the new build 55.45sq.m is charged at the full rate of €75.10 / sq.m thereby giving a liability of €4,164.29. It is accepted that this is the proper application of the scheme.
- As regards the change of use of the ground floor and basement of the original house this is 151.03 sq.m and was charged at the rate of €37.55/sq.m giving an amount of €5,671.17. This is not a proper application of the scheme. Section 12 of the scheme states in part "*Permissions for change of use from one commercial use to another are exempt. Any net additional floor space will be charged at the commercial rate.*" The Planning Authority has not taken account of this exemption provided in the Development Contribution scheme.
- Request the Board to remedy the incorrect application of the terms of the scheme and remove the amount of €5,671.17 leaving a reduced amount of €4,164.29. Note a similar issue arose in the case of ABP302389-18.

- The terms of the Dublin City Development Contribution Scheme has not been properly applied in respect of the change of use of the existing ground floor and basement floor. The permitted change of use from one type of commercial use (office and ancillary) to another (Yoga studio and ancillary). Having regard to the detailed terms of the scheme it is not appropriate to apply a requirement to pay a financial contribution in respect of the said change of use.

## 6.2. Planning Authority Response

6.2.1 The Planning Authority did not respond to the grounds of appeal.

## 7.0 Assessment

- 7.1. As the appeal is solely against the contribution condition, the Act provides Section 48(10)(c) that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal, in effect the condition being appealed against and to considering the proper implementation of the Dublin City Council's adopted scheme.
- 7.2. The Dublin City Development Contribution Scheme 2016-2020 is the operative Section 48 Scheme. The said scheme applies levies in respect of commercial development at €70.06 m per sq.m. Section 12 of the Dublin City Development Contribution Scheme provides that *'permissions for a change of use from one commercial use to another use are exempt; any net additional floorspace will be charged at the commercial rate'*.
- 7.3. The first party asserts that the terms of the scheme have not been properly applied in respect of the change of use of the existing ground floor and basement floor. It is appropriate that contributions apply only to the additional commercial floorspace as the existing floorspace proposed for change of use is exempt. Application details indicate that the ground floor and basement has been in use for commercial offices and ancillary storage for many years as permitted for continuance under 1792/75 (PL29/S/33490). Therefore, the application of the exemption is appropriate. Having

considered the details it is evident that the planning authority did not correctly apply the terms of the scheme and it is appropriate that condition 2 should be amended to the correct sum as follows:

## **8.0 Recommendation**

8.1. Having reviewed the application documents and grounds of appeal and the Planning Authority's Development Contribution Scheme, I consider that the Planning Authority improperly applied the scheme in attaching a requirement for a contribution in respect of the change of use, and therefore I consider it appropriate the Board direct Dublin City Council under Section (1) of section 139 of the Planning and Development Act, 2000 (as amended) to amend the condition as follows:

## **9.0 Reasons and Considerations**

Having regard to the provisions of the Dublin City Development Contribution Scheme 2016-2020 which provides an exemption from levies for a change of use from one commercial use to another, the planning authority erred in applying the levy under conditions no 2 to the 151.05sq.m area proposed for change of use, in addition to the 254sq.m area of new floor space.

## **10 Amended Condition 2**

The developer shall pay to the planning authority a financial contribution of €4,164 (four thousand one hundred and sixty four euro) in respect of public in respect of public infrastructure and facilities benefiting development in 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 made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the scheme at the time of payment. Details of the application of the terms of the scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contributions Scheme made under section 48 if the Act be applied to the permission.

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Bríd Maxwell  
Planning Inspector

30<sup>th</sup> December 2019