



An
Bord
Pleanála

Inspector's Report

ABP-305816-19

Development

New university building with plaza, greenhouse, terrace & alterations & demolition of annexe building & extensions.

Location

Site, c 0.47 ha within the campus of Trinity College Dublin, Dublin 2

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

3718/19

Applicant(s)

Provost, Fellows, Foundation Scholars and other Members,

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

First Party v. Condition

Appellant(s)

Provost, Fellows, Foundation Scholars and other Members,

Observer(s)

None

Inspector

Gillian Kane

1.0 Site Location and Description

This is a first party appeal against a financial contribution condition which was attached to the Planning Authority's notification of intention to grant permission for development (to be known as the E3 Learning Foundry) within the campus of Trinity College Dublin. As this is an appeal in respect of conditions requiring a financial contribution, the provisions of section 48 of the Planning and Development Act 2000 apply and the Board is restricted to considering this matter alone and cannot consider the matter de novo. I have therefore confined my assessment to the condition in question.

- 1.1.1. Having regard to the nature of the appeal before the Board (i.e. first party against conditions) and the information available on file, a site inspection was not deemed necessary in this instance.

2.0 Planning Authority Decision

2.1. Development

- 2.1.1. Permission was sought for development (to be known as the E3 Learning Foundry) at this site, c0.47 ha within the campus of Trinity College Dublin, Dublin 2, consisting substantially of the area of the four-storey Biochemistry building fronting Parade Ground, two storey portacabin single storey Roberts Laboratory, glasshouses and ancillary single storey structures which has permission for the demolition and removal of structures pursuant to Planning Ref. 3884/18. The development site will also include the Anatomy Annexe building, parts of the Zoology/Physiology and Anatomy/Chemistry buildings and part of Parade Ground. The development consists of: 1. New university building c. 7,256 sqm, fronting Parade Ground, ranging from 4 to 6 storeys over basement (c. 26m above ground level at the central lantern element of the building). The new building will connect to the rear of the Zoology/Physiology building at ground floor level. 2. Demolition of 2 storey Anatomy Annexe building c. 270 sqm and extensions to that building c. 135 sqm located adjacent to the Zoology and Anatomy / Chemistry buildings, creating a new landscaped plaza and providing a pedestrian connection between Parade Ground and College Park over part basement. 3. Demolition of accretions (additions) to rear of Zoology/Physiology building c. 270 sqm and consequent alterations to rear elevations with minor reconfiguration works at the interface between the existing

building and proposed new development. 4. Creation of an external access to the north elevation of the Anatomy building and alterations to that elevation. 5. All ancillary works, including: bicycle provision (c. 360 spaces); attenuation tank; basement and rooftop plant; rooftop pv panels, greenhouse and terrace on roof of 4 storey element; landscaping and public realm works; drainage; signage; all related site development and excavation works above and below ground.

2.2. Decision

2.2.1. On the 3rd of October 2019, the Planning Authority issued a notification of their intention to grant permission subject to 13 no. conditions. Relevant to the subject appeal are:

- 2: The developer shall pay the sum of €494,233.10 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.
3. The developer shall pay the sum of €250,078.00 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. 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).

2.3. Planning Authority Reports

- 2.3.1. **Planning Report:** The planners report assessed the proposed demolition of 135sq.m. at the Anatomy annexe building and 270sq.m. to the rear of the Zoology / Physiology building. The planner notes the conservation report and concludes that the removal of the Anatomy Annex building is acceptable.

3.0 Policy Context

3.1. Planning and Development Act 2000, as amended

- 3.1.1. Section 48 of the Planning and Development Act 2000, as amended provides as follows:

48.—(1) A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

(2) (a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

Section 48(10) provides:

(10) (a) Subject to paragraph (b), no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

(b) An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

(c) Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal. provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

3.2. **Section 49 of the Planning and Development Act 2000**, as amended provides as follows:

49. (1)A planning authority may, when granting a permission under section 34, include conditions requiring the payment of a contribution in respect of any public infrastructure service or project—

(a) specified in a scheme made by the planning authority (in this section referred to as a 'supplementary development contribution scheme'),

(b) provided or carried out or proposed to be provided or carried out— (i) by a planning authority,

(ii) where the provision of the infrastructure concerned is an objective in the development plan of a planning authority, or of a planning scheme of the Dublin Docklands Development Authority under section 25 of the Dublin Docklands Development Act 1997, by a public authority, or, pursuant to an agreement entered into by a public authority with any other person, by that person, or

(iii) pursuant to an agreement entered into by a local authority with any other person, by that person, and

(c) that will benefit the development to which the permission relates when carried out.

(1A) In this section, 'public authority' means any body established by or under statute which is for the time being declared, by regulations made by the Minister, to be a public authority for the purposes of this section.

(2) (a) The amount, and manner of payment, of a contribution under subsection (1) shall be determined in accordance with a supplementary development contribution scheme.

3.3. DCC Section 48 Development Contribution Scheme

3.3.1. The Dublin City Council Development Contribution Scheme 2016 – 2020, (under Section 48, Planning & Development Act, 2000 as amended) provides for

1 section (1) of Section 48 of the Planning and Development Act 2000 as amended, enables a planning authority, when granting a planning permission under Section 34 of the Act, to include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority, and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

3 (c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provision of the scheme.

3.3.2. The amount of contribution as of 01.01.2019 for industrial / commercial development is €75.10.

3.3.3. Under Exemptions and Reductions, section 14 provides: The following categories of development will be liable for a reduced rate of development contributions under the Scheme: Where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be charged on the net additional floorspace created

3.4. **DCC Section 49 Development Contribution Scheme**

3.4.1. Dublin city council Supplementary development contribution scheme Luas Cross City (St. Stephens Green to Broombridge Line) provides for the following:

- The following rates of supplementary development contributions are proposed for the specified land uses; **Commercial: €38 per square metre**

3.4.2. Section 11 provides for exemptions and section 12 provides for reductions. Section 12 states:

The following categories of development will be liable for a reduced rate of development contributions under the Scheme: Where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be charged on the net additional floorspace created

4.0 **The Appeal**

4.1. **Grounds of Appeal**

4.1.1. An agent for the applicant has submitted a first party appeal against the decision of the Planning Authority to apply condition no.s 2 and 3 to the grant of permission. The appeal refers to the legislative provisions of Section 48 and 49 of the Planning and Development Act 2000, as amended, National Policy and guidance, Circular Letter 4/2003, the Development Contribution Guidelines of 2013, the Development

Management Guidelines and the Dublin City Development Plan 2016-2022. They refer to the decision of the Planning Authority and the planning history of the site.

4.1.2. The grounds of the appeal can be summarised as follows:

Section 48 Scheme Improperly Applied

- It is submitted that the terms of the scheme have not been properly applied in relation to the subject development.
- The scheme provides for a payment of €75.10 per sq.m.
- The scheme states that a reduced rate of development contribution will be levied “where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be charged on the net additional floorspace created”.
- DCC calculated a 7,256sq.m. build minus the listed demolition works of 675sq.m. resulting in 6,81sq.m net additional floorspace. $6,81\text{sq.m.} \times €75.10 = €494,233.10$.
- It is submitted that this calculation did not take account of the demolition 2,960sq.m. of the biochemistry building that the proposed E3 building will replace.
- Point 14 of the development contribution scheme allows the contribution to be payable on the net additional floorspace. The scheme does not require that the demolition and the rebuild be in the same application. The normal intention of the wording is that the reduced payment applies to the site and two connected applications within a short time frame. It is the same applicant, the same site and the same inter-related development.
- It is submitted that the proper levy is 7,256sq.m. minus listed demolition of 675, minus previously permitted demolition of 2,960sq.m resulting in 3,621sq.m. net additional floorspace. $3,621\text{sq.m.} \times €75.10 = €271,937.10$.

Section 49 Scheme Improperly Applied

- The supplementary development contribution scheme for Luas Cross City (St. Stephens Green to Broombridge Line) provide for the following rates: €38 per sq.m. commercial / retail.
- Section 11 provides for exemptions section 12 provides for reductions. Section 12 states that “where an applicant is granted permission to demolish in part or in full

an existing building and replace with another, than the development contribution payable is to be charged on the net additional floorspace created”.

- The calculation sheet is silent but appears to be 7,256sq.m. build minus the listed demolition works of 675sq.m. resulting in 6,81sq.m net additional floorspace. $6,581\text{sq.m.} \times \text{€}38 = \text{€}250,078$.
- It is submitted that this calculation did not take account of the demolition 2,960sq.m. of the biochemistry building that the proposed E3 building will replace.
- It is submitted that the proper levy is 7,256sq.m. minus listed demolition of 675sq.m, minus previously permitted demolition of 2,960sq.m resulting in 3,621sq.m. net additional floorspace. $3621\text{sq.m.} \times \text{€}38 = \text{€}137,598$.
- As stated in the appeal against the s48 contribution, the applicant notes that the demolition and rebuild are the same notwithstanding that they occur over two applications. They occur on the same site and will be carried out by the same applicant.

Summary

- In summary, it is submitted that the application to demolish the structures was made before the application to replace them, in order to facilitate students being in the building by 2022.
- Seeking the demolition of the building before the application to replace it, allowed a full design scheme with further consultation with the planning and conservation sections of the council. The Planning Authority agreed with this 2-step approach. The two applications were lodged within an 11-month time frame.
- The existing biochemistry building has not yet been demolished and is the same site as the permitted E3 building. The public notices for the planning application for the E3 building referenced the demolition of the biochemistry building.
- The application for the demolition of the Biochemistry building involved a stated area of 2,960sq.m. to be demolished with an addition 330sq.m. to be removed.
- There is no limitation in the wording of the development contribution scheme to restrict reduction to one application. The two applications are intrinsically linked to each other.

- To disallow the permitted demolition area against the new build seriously disadvantages Trinity College and is an unfair and improper application of the contribution scheme.
- The Board is requested to amend conditions as follows:
 - 2: €271,937.10 for a section 48 contribution
 - 3: €137,598 for a section 49 contribution.

4.2. Planning Authority Response

- 4.2.1. The revenue generated under a Section 48 development contribution scheme is specifically used for works listed in the development contribution. The Planning Authority are not the position to comment on when these works will be carried out, the cost of the works or if any additional funding will be provided by the EU.
- 4.2.2. The applicant lodged two applications for a development on the same footprint, in 2018 and 2019. They were assessed as separate apps and exemptions / reductions under the scheme were applied. It is the opinion of the Planning Authority that if the applicant wanted to avail of the demolition allowance, one application should have been lodged. The Board is requested to uphold the decision of the Planning Authority.

5.0 Assessment

- 5.1.1. Having regard to the provisions of section 48(13)(a) of the Planning and Development Act 2000 as amended, this assessment and recommendation will only relate to the conditions that are subject of the appeal.
- 5.1.2. The grounds of appeal for both condition no. 2 and 3 are the same: that in applying the scheme, the Planning Authority did not take account of the permitted demolition and apply the scheme to the net additional floorspace only.
- 5.1.3. In 2018, the subject applicant received planning permission (3884/18) for a development that was described in the public notices as the demolition of the four-storey Biochemistry building and link pedestrian bridge to Watts building, Roberts Laboratory, and ancillary single storey structures, removal of glasshouses and two storey portacabin. The permission was subject to 7 no. conditions, none of which required the payment of a financial contribution.

- 5.1.4. It is the submission of the applicant that the subject application is the second stage of this two-step development. They submit that in calculating the financial contributions payable for the proposed development, the demolition permitted under the 2018 application should have been considered.
- 5.1.5. In response, the Planning Authority state that the two applications were assessed as entirely separate and had the applicant wanted the demolition to be considered in the second application, they should have made one single application.
- 5.1.6. Section 14 of the development contribution scheme refers to the net additional space resulting from demolition and replacement. The section states “*when an applicant is granted permission*”. It does not state “a” permission, which would lead one to infer that the demolition and replacement must be within the same permission. In this instance, the applicant clearly has permission both to demolish and to replace – albeit across two applications. They are not within the same development consent application but they are clearly by the same applicant, refer to the same structures, are on the same site and clearly have the same end goal – namely Building E3. The net additional floorspace created arises from two applications but it is nonetheless the net result of a demolition and replacement procedure.
- 5.1.7. The Board will note that the public notices for the second / subject application refer to the fact that the development will be pursuant to the demolition permission. I note that the subject application includes demolition drawings, a conservation report on the proposed demolition and that the planners report assesses the demolition. It is clear that the subject and previous application are integral to each other.
- 5.1.8. I am satisfied that in applying the development contribution scheme, the levy is payable on the net additional floorspace *only*. Therefore the calculation of development levies payable is as follows:
- New Build Floorspace 7,256sq.m. minus listed demolition of 675sq.m,
minus previously permitted demolition of 2,960sq.m resulting in
3,621sq.m. net additional floorspace.
- 5.1.9. The Section 48 development contribution scheme provides for a levy of €75.10 per sq.m., therefore the correct levy payable is €271,937.10. (Two hundred and seventy one thousand, nine hundred and thirty seven euro and ten cent).

5.1.10. The section 49 development contribution scheme provides for a levy of €38 per sq.m., therefore the correct level payable is €137,598 (One hundred and thirty seven thousand, five hundred and ninety eight euro).

6.0 Reasons and Considerations

6.1.1. Having regard to:

- The nature and scale of the proposed development,
- The planning history on the subject site, namely Planning Authority reg. ref. 3884/18,
- The provisions of the Dublin City Council Development Contribution Scheme 2016-2020 made under Section 48 of the Planning and Development Act 2000, as amended, and the
- Supplementary Development Contribution Scheme (under Section 49, Planning & Development Act, 2000 as amended) for Luas Cross City (St. Stephen's Green To Broombridge Line)

It is considered that the levies imposed under condition no.s 2 and 3 failed to take account of the demolition permitted under Planning Authority reg. ref. 3884/18, being an integral part of the subject proposed development and therefore the floorspaces used in the calculation of the levy were incorrect. It is considered, that the Scheme has been incorrectly applied, failing to consider the reduced floor space as per section 14 of the made under Section 48 of the Planning and Development Act 2000 Dublin City Council Development Contribution Scheme 2016-2020 and Section 12 of the Supplementary Development Contributions Scheme Luas Cross City (St. Stephen's Green to Broombridge Line).

7.0 Recommendation

7.1. I recommend that Conditions no.s 2 and 3 be amended to read as follows:

2. The developer shall pay the sum of €271,937.10 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.

3. The developer shall pay the sum of €137,598.00 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. 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).

Gillian Kane
Senior Planning Inspector

31 January 2020