



An
Bord
Pleanála

Inspector's Report 306628-19

Development	Alterations to previously approved permission (PL29N.247314) for hotel
Location	28-31 Benburb Street, Dublin 1
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3655/19
Applicant	Easyhotel Ireland Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	First party vs. s.48 and s.49 conditions
Appellant	Easyhotel Ireland Ltd.
Observer	TII
Date of Site Inspection	25 th May 2020
Inspector	Suzanne Kehely

1.0 Site Location and Description

1.1. The site is centrally located in the north inner city of Dublin at the corner of Benburb Street and Wood Lane. It has a stated area of 964m² and while it is described in the submitted documentation as containing six vacant houses and other derelict structures. The site was cleared at time of inspection. It is fenced off from the street frontages and otherwise bounded by high walls. The Luas runs along Benburb Street in front of the site.

2.0 Proposed Development

2.1. Permission was previously granted for demolition and site clearance and the building of a hotel with 96 bedrooms. A condition attached by the planning authority requiring the reduction from six to five storeys was omitted on appeal. This proposal seeks the following alterations to this approved hotel and the development is described as comprising the following:

- An additional floor by way of increasing the overall maximum height for 20.6 to 21.8m and reduction floor to ceiling height.
- Rooftop screen plant enclosure
- Omission of basement 730 sq.m.
- Revised internal layout with 64 additional bedrooms.
- Omission of restaurant and kitchen and revised public areas.
- Relocation of public entrance to hotel to Benburb Street and provision of a separate café/restaurant unit of 292sq.m. with associated revision to elevations.
- Omission of 3 car park spaces.
- Increase in bicycle parking from 10 to 20.
- Revision to landscaping.
- Revision to location of ancillary plant, stormwater attenuation and ESB. substation and revision to site development and excavation works.
- Overall reduction in gross floor area of 3904 sq.m. to 3655 sq.m.

3.0 Planning Authority Decision

3.1. The planning authority decided to grant permission subject to 15 conditions.

- Condition no. 2 requires a section 48 contribution of €292,400.00
- Condition no. 3 requires a section 49 contribution of €138,890.00 Luas Cross City (St. Stephen's Green to Broombridge)

3.2. Prescribed Bodies

Transport Infrastructure Ireland responded to an invitation by DCC to make a submission. It recommended conditions concerning the following issues:

- 1 Accordance with conditions of parent permission.
- 2 Accordance with construction management plan
- 3 Deliveries to construction site including during construction phase shall be made to limit interference with Luas operations.
- 4 Ensure works including landscaping, planting and signage do not impede tram driver's visibility of road junctions, associated signals or affect the footpath to the extent that pedestrians may walk into the swept path of oncoming trams.
- 5 No adverse impact on Luas operation and safety. Compliance with TII's Code of engineering practice for works on, near or adjacent the Luas light rail system sought details of works to ensure that the Luas line was not affected.
- 6 Details for prior written agreement in relation to construction traffic management plan, demolition and/or construction method statement (resolving all Luas interface issues, risk and mitigation), monitoring regime for vibration and settlement.
- 7 Protection of Luas Overhead Conductor system
- 8 Impact on Luas services
- 9 Loss of revenue and any other costs associated with a suspension of services

- 10 The proposed development falls within the area for an adopted Supplementary Development Contribution Scheme – Luas Cross City (St. Stephen's Green to Broombridge Line)

4.0 Planning History

- 4.1. An Bord Pleanála ref: PL29N.247314 refers to permission for a six-storey hotel to a height of 20.6m. The stated floor area was 3,904m². The approved development includes a basement, a delivery bay with 3 car parking and 10 bicycle spaces at ground floor level to the rear of the site with an access off Wood Lane.
- 4.2. An Bord Pleanála ref 300472 (DCC ref. VS-0020) refers to confirmation of Notice of proposed entry on the Vacant Sites Register. (s.9 appeal)

5.0 Policy Context

5.1. Planning Authority Reports

- 5.1.1. Planning Reports: As this appeal relates to development contributions and the principle or form of development is not at issue, the pertinent aspects of the planning reports refer to levies and infrastructure. In this regard I refer to the Section 48 and 49 Levy record form. This was prepared by the Acting Staff Officer and checked and approved by the Administrative Officer on 16th January 2020.
- The Section 48 Development Contribution rate of €80/sq.m is applied to a floor area of 3655 sq.m. as the proposal is classed as Commercial/retail development.
 - The Section 49 Supplementary Contribution rate of €38/sq.m is applied to a floor area of 3655 sq.m. as the proposal is classed Commercial/retail development.

5.1.2. Other Technical Reports

The Roads and Streets Division stated no objection subject to condition.

5.2. Planning and Development Act 2000 as amended

5.2.1. Section 48 subsections apply:

(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.

S.48 (13) states where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under **section 37** of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.

5.2.2. Section 49 provides for supplementary development contributions. Subsection 49 (3) states that:

*Subsections (3), (4), (5), (6), (7), (8), (9), (10), (11) and (15) of **section 48** shall apply to a scheme subject to—*

(a) the modification that references in those subsections to a scheme shall be construed as references to a supplementary development contribution scheme,

(b) any other necessary modifications, and

(c) the provisions of this section.

Amendment F195 refers: [(3A) Notwithstanding subsection (3) and section 48(10), the Board shall consider an appeal brought to it by an applicant for permission under section 34, in relation to a condition requiring the payment of a contribution in respect of a public infrastructure service or project specified in a supplementary development contribution scheme, where the applicant considers that the service or project will not benefit the development to which the permission relates and section 48(13) shall apply to such an appeal.]

5.3. Development Management Guidelines

5.3.1. Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act). Development contribution conditions may only be attached if they accord with the provisions of either section 48 or section 49 of the Planning Act and these are based on the application of the terms of one or more development contribution schemes which have been formulated and adopted in accordance with those sections of the Act, or on the need for a special financial contribution. Two of the three categories of conditions under which the payment of financial contributions may be required are stated described as:

- **Section 48 (general) schemes** relate to the existing or proposed provision of public infrastructure and facilities benefiting development within the area of the planning authority and are applied as a general levy on development.
- Section 49 (supplementary) schemes relate to separately specified infrastructural services or projects – such as roads, rail or other public transport infrastructure – which benefit the proposed development.

5.3.2. Although there is no entitlement to appeal against the principle of attaching a condition formulated in accordance with a general or supplementary scheme, the contribution requirements of any such scheme may be the subject of a valid appeal where the applicant considers that the terms of the scheme in question were not properly applied. The planning decision should clearly set out how the relevant terms were interpreted and applied to the proposed development; as well as being best practice this will help to minimise unnecessary appeals.

5.3.3. Section 8.11 confirms the restriction of matters under consideration in an appeal of conditions attached pursuant to sections 48 and 49.

5.4. Dublin City Development Plan 2016-2022

5.4.1. The site is governed by the objective 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity', (Z5) and the strategy for such lands is to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city by day and by night.

5.5. **S.48 Development Contribution Scheme 2018-2020**

- 5.5.1. This sets out the basis for determination of the scheme. A rate of €70.96 /sqm was the level of contribution for commercial class of development during 2016-2018. Section 14 provides for a reduced rate where an applicant is granted permission to demolish in part or in full an existing building.
- 5.5.2. Effective 1st Jan 2019: €75.10 /sqm industrial commercial development.
- 5.5.3. Effective from 1st January 2020: €80/sqm industrial commercial development.

5.6. **S.48 Development Contribution Scheme 2020-2023**

- 5.6.1. This was adopted on 2nd March 2020 and applicable from 1st April 2020 and set a rate of €96/sqm for commercial development. Section 12 provides for a reduced rate.
- 5.6.2. The scheme states that ‘the above rates shall be fixed from 1st April 2020 to 31st December 2021. Consideration may be given to applying indexation to the rates of contribution effective from 1st January 2022 in consideration of the SCSI Construction Tender Price Index. **The Scheme is effective in respect of Planning Applications lodged with Dublin City Council from the 1st of April 2020, where a development contribution is applicable under this Scheme. This Scheme is also effective in respect of existing permissions granted before this date which have not yet commenced.**’

5.7. **S.49 Supplementary Development Contribution Scheme 2018-2020**

Section 6: Extent of Scheme

The extent of scheme is described as ‘an area extending 1km either side of the LCC line is identified as the transportation corridor within which benefit will accrue to development. A line has been drawn defining the corridor that rationalises the 1km distance to nearby features such as roads and other boundaries including following the natural boundary of the Grand Canal at southern boundary. The catchment area is considered to represent a reasonable walking distance to stations along the proposed line. The project benefits the scheme area, enables its development in a sustainable manner with higher densities in accordance with the City Development Plan and the Residential Density Guidelines. The project improves the attractiveness and marketability of the scheme area for residential, commercial and

retail development. The area of the scheme is identified on the accompanying scheme map.'

Section 7. Discounting of Benefit to Existing Development

The total area of land within the scheme area which is zoned for development is 312.05 hectares. This excludes any land within the overlap with the Line C1. Section 49 scheme. It is estimated that the land with potential for development or redevelopment is 57.05 hectares. The balance of 255 hectares is considered to be existing development. Under a Section 49 Scheme benefit that accrues to existing development must not be included in the determination of the contributions. The Planning Authority, in making this scheme, has had regard to the benefit estimated to accrue to property likely to be developed or redeveloped in the Scheme Area and not to existing development.

11. Exemptions

The following categories of development will be exempted from the requirement to pay development contributions under the Scheme:

- Permissions for a change of use from one commercial / retail use to another are exempt. Any net additional floorspace will be charged at the commercial rate.

12. Reduced rate liable for a reduced rate 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The applicant is appealing both conditions attached in respect of development contributions:

- Condition 2 which applies a Section 48 Development Contribution Commercial/retail rate of €80/sq.m to the gross floor area of 3655 sq.m, is appealed. This is appealed on the basis that the terms of section 48 scheme

have been incorrectly applied in that the total amount is based on the total gross floor area of the entire new build and does not take account of 437sq.m. of existing buildings which it is submitted should qualify for an section 12 reduced rate.

- Condition 3 which applies a Section 49 Supplementary Development Contribution rate of €38/sq.m. to a commercial floor area of 3655 sq.m. is appealed similarly on the basis of a reduction in accordance with section 12 of that scheme and also on the basis that the s.49 scheme came into force after the permission for the parent permission. The levy should, it is argued, only apply in respect of additional qualifying floor area of 511sq.m consequent on the variations.

6.2. Observers

- 6.2.1. TII: In a letter to the Board, the observations to the planning authority are reiterated and the conditions in this regard are requested to be attached.

6.3. Planning Authority Response

- 6.3.1. The planning authority has made no specific comment on the grounds of appeal.

7.0 Assessment

7.1. Scope of issues

- 7.1.1. This appeal is under the provisions of section 48 as amended as it relates to financial contributions under sections 48 and 49 of the Planning and Development Act. Accordingly the Board is restricted in its consideration of matters outside the scope of conditions 2 and 3.

7.2. Application of Section 48 scheme – (Condition 2)

Does it apply?

- 7.2.1. Section 48 states that 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.

Which version of the adopted scheme should apply?

- 7.2.2. The planning application was lodged in August 2019 and the decision order to grant permission was signed on 16th January 2020. The planning authority applied the S.48 Development Contribution Scheme 2016-2020 as varied calculating the contribution based on a rate of €80 per square metre which was the effective rate in line with the application of SCSi tender Price Indexation rate of 6.6% since 1st January 2020. This use of this scheme was reasonable and is not disputed.
- 7.2.3. However the Board may wish to note that since that date, the Section 48 Development Contribution Scheme 2020-2023 is now in force since 1st April 2020. In the written notice of the making of this scheme it is clarified that the Scheme is effective in respect of planning applications lodged with Dublin City Council from the 1st of April 2020, where a development contribution is applicable under this Scheme. This Scheme is also effective in respect of existing permissions granted before this date which have not yet commenced.
- 7.2.4. However my understanding of the provisions of section 48 is that the application of the terms of a scheme is the matter under consideration (in an appeal under section 48) and not the principle of applying a particular scheme. This is supported by the provision in s.48 that an applicant may commence work following a grant of permission by the planning authority notwithstanding a s.48 appeal, subject to providing security for the total amount under appeal. The logic being it would seem that the applicant has reasonable knowledge of the costs at commencement stage. It is only in the case of a refusal that the Board may apply the scheme in force during the appeal stage such as the subsequent scheme in this case. (s.48(11) – ‘Where an appeal is brought to the Board in respect of a refusal to grant permission under this Part, and where the Board decides to grant permission, it shall, where appropriate apply as a condition to the permission the provisions of the contribution scheme for the time being in force in the area of the proposed development.’)
- 7.2.5. Accordingly I consider it reasonable to apply the scheme in force at the time of the decision by the planning authority.

What floor area qualifies for reduction?

- 7.2.6. The Section 48 Development Contribution rate (of €80/sq.m) has been applied by the planning authority to a floor area of 3655 sq.m. as the proposal is classed as

Commercial/retail development. The amount is appealed on the basis that the terms of section 48 scheme have been incorrectly applied in that the total amount is based incorrectly on the entire gross floor area of the new build and does not take account of existing buildings as provided for in the scheme. It is submitted that the existing development on site should qualify for an exemption. Accordingly it is argued that the floor area on which the undisputed rate/sq.m. is applied should be reduced by 437 sq.m.

7.2.7. Section 14 of the 2016-2020 scheme (section 12 of the most recent Scheme 2020-2023) applied by the Planning authority I note does provide for a reduced rate where an applicant is granted permission to demolish in part or in full an existing building. In this case the buildings have been demolished but such works are not specified in the notices. There are no details precisely setting out the statutory basis for the demolition works to date. Notwithstanding the exact framework within which the demolition works were carried out I note that site was included in the DCC Vacant Sites Register (VS-0020) and that at the time of the subject application the site was described as being occupied by 'a number of derelict and dilapidated red brick structures, remnants of townhouses as well as partly demolished structures'. I also note from the attached previous application before the Board (file attached) that the buildings in 2016 were described as derelict. At this point it is I consider salient to highlight that in this case, while the application is described as alterations, from my examination of the drawings and contents of file including the application fee, it is essentially an entirely new scheme. Demolition has taken place at date of inspection and this would appear to be either on foot of the permission for demolition or pursuant to the derelict status of the site.

7.2.8. I consider this application amounts to a new proposal that is materially different in terms of height, layout and design and that that planning authority is reasonable in assessing this proposal as it had been in the first instance rather than within the framework of the previous application from which it has significantly changed. It is therefore not unreasonable to apply the s.49 to the development on the basis that it is not unreasonable to conclude that the proposal amounts to an intensification of use of the entire site and associated demand for services where there is presently no demand for such on this vacant site. The entire site will benefit from the services provided and to be provided for the area. It is therefore reasonable to apply the

relevant operational scheme to the proposed development in its entirety. I do not consider the applicant has made a sufficient case to demonstrate that the demolished structures qualify for a reduction in rates.

- 7.2.9. Accordingly the rate of €80 per square foot is applicable in line with the stated level of contribution for commercial development and in these circumstance condition 2 should be attached . Should the Board determine that the 2020-2023 applies then this would increase to €96 per square metre.

7.3. Application of Section 49 scheme – (Condition 3)

Basis for application of scheme to site

- 7.3.1. Section 49.—F362[(1) states that 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. As the site falls within the area delineated in the map for the Cross City Luas scheme, the application of this scheme is in accordance with principle of applying the scheme in conditions of permission for the area.
- 7.3.2. Condition 3 which applies a Section 49 Supplementary Development Contribution rate of €38/sq.m to the Commercial/retail floor area of 3655 sq.m. has accordingly been applied but is appealed on the basis that the s.49 supplementary scheme only came into force after the permission for the parent permission. The levy should it is argued only apply in respect of additional qualifying floor area consequent on the variations which it is suggested should be 511sq.m.
- 7.3.3. The application to the planning authority was made in accordance with section 34 for alterations to an approved scheme. The revisions are however significant in that an additional floor level has been added and each floor level has modified both internally and externally in addition to the creation of an independent unit. As already stated I consider this application amounts to a new proposal that is materially different in terms of height, layout and design and that the planning authority is not unreasonable in assessing this proposal as it had been in the first instance rather than within the framework of the previous application from which it has significantly changed. The adoption of the s.49 Luas Cross City is also a material change in

circumstances. It is not unreasonable therefore to apply the s.49 scheme to the entire site. Qualification for a reduced rate is a separate matter.

- 7.3.4. I consider the planning authority decision to attach a section 49 scheme in force at the time of the application to be in accordance with the provisions of the PDA 2000 as amended in respect of attaching such conditions.

What floor area qualifies for reduction?

- 7.3.5. It is further argued as in the case against the amount in condition 2 that there is a case for a reduced rate if applying the scheme to the whole proposal. With respect to qualifying for a reduced rate under this scheme the same reasoning in the application of the s.48 scheme applies. The proposal amounts to an intensification of use of the entire site and associated demand for services where there is presently no demand for such on this vacant site. The entire site will benefit from the Cross City Luas services provided in the area. It is therefore reasonable to apply the operational S.49 supplementary development contribution scheme to the proposed development in its entirety. I do not consider the applicant has made a sufficient case to demonstrate that the demolished structures qualify for a reduction in rates.

8.0 Recommendation

- 8.1. In view of the foregoing it is my recommendation that in accordance with sections 48 and 49 of the Planning and Development Act, 2000, as amended, and based on the reasons and considerations set out below, that the terms of both the Development Contribution Scheme 2016-2020 and the Supplementary Development Contribution Scheme (Luas Cross City St. Stephen's Green to Broombridge) for the area have been properly applied in respect of condition numbers 2 and 3 and the said Council should accordingly be directed to ATTACH condition numbers 2 and 3.

9.0 Reasons and Considerations

- 9.1.1. In respect of condition 3 having regard to the nature and scale of proposed development on site and the material changes in circumstances such as the adoption of the supplementary development contribution in accordance with the

provisions of section 49 that the application of the scheme to gross floor area of the entire proposed development is reasonable.

- 9.1.2. In respect of conditions 2 and 3, having regard to the derelict nature of structures on site and significant intensification of demand for existing services, the provisions for a reduced rate in The Dublin City Development Contribution Scheme 2016-2020 do not apply in this instance.

Suzanne Kehely
Senior Planning Inspector

25th May 2020