



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306857-20

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<b>Development</b>	Change of use from office to 2 apartments.
<b>Location</b>	7, Fairview, Leixlip Road, Lucan, Co. Dublin, K78 Y792
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD19A/0337
<b>Applicant(s)</b>	Clive Foley.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission.
<b>Type of Appeal</b>	First Party V. Development Contribution only.
<b>Appellant</b>	Clive Foley.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	Not applicable.
<b>Inspector</b>	Susan McHugh

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	3
3.1. Decision .....	3
3.2. Planning Authority Reports .....	4
3.3. Prescribed Bodies .....	7
3.4. Third Party Observations .....	7
4.0 Planning History.....	8
5.0 Policy Context.....	8
5.1. Development Plan.....	8
5.2. South Dublin County Council Development Contribution Scheme 2016-2020	8
6.0 The Appeal .....	9
6.1. Grounds of Appeal .....	9
6.2. Planning Authority Response .....	11
6.3. Observations .....	11
7.0 Assessment .....	11
8.0 Recommendation.....	13
9.0 Reasons and Considerations.....	13

## 1.0 Site Location and Description

- 1.1. The appeal site is located at 7 Fairview, Leixlip Road, Lucan.
- 1.2. It comprises a semi-detached, end of terrace two-storey structure with parking to the front and open yard area to the rear.
- 1.3. The property is currently vacant.

## 2.0 Proposed Development

- 2.1. The proposed development comprises a change of use from office to residential at ground and first floor levels.
- 2.2. The application was accompanied by the following;
  - A covering letter, and
  - Letter confirming the property has been vacant for a period in excess of 10 years.
- 2.3. A request for further information was sought by the planning authority dated 11/12/2019.
- 2.4. A response to the request for further information was submitted 23/01/2020, and was accompanied by the following;
  - Revised drawing no. 2658-01 Rev B indicating two parking spaces to the rear.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The decision of the planning authority was to **grant** planning permission subject to 8 conditions.

Of relevance to this appeal is the following condition;

#### **Condition no. 8**

*'The developer shall pay to the planning authority a financial contribution of €9,157.05 (nine thousand one hundred and fifty seven euros and five cents), 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 authority, in accordance with the terms of the Development Contribution Scheme 2016-2020, made under Section 48 of the Planning and Development Acts 2000-2011 (as amended). The contribution shall be paid prior to commencement of development, or in such phased payments as the planning authority may facilitate. Contributions shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced as outlined in the South Dublin County Council Development Contribution Scheme 2016-2020.*

**Reason:** *The provision of such facilities will facilitate the proposed development. It is considered reasonable that the payment of a contribution be required, in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority’.*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The 1<sup>st</sup> planning report dated 11/12/2019 is the basis for the Planning Authority decision. Includes:

- A right of way runs to the side (east) of the property providing shared access to the rear and to a barriered parking area for the neighbouring property. Property is currently vacant.
- The site is subject to zoning objective ‘VC’ – ‘To protect, improve and provide for the future development of Village Centres’ in the SDCDP 2016-2022. Proposed change of use from office to residential use is permitted in principle.
- The site is located within the designated Architectural Conservation Area (ACA) of Lucan Village and is within an Area of Archaeological Potential. The site is part of recorded monument DU017-019-Lucan Town. Protected Structures are located in the immediate vicinity of the subject site to the east and west.

- Having regard to the nature of the development proposed which includes no external alterations, considers that it would not negatively impact on the ACA or on the Protected Structures in the vicinity.
- *Residential Amenity* - Drawings submitted indicate that it is proposed to create two residential units within the subject property, one at ground floor and one at first floor.
  - The ground floor unit will measure approx. 56sqm and will comprise a kitchen/living area, bedroom, wc and store.
  - The first floor unit will measure approx. 37.60sqm and will comprise same excluding store.
- Cover letter submitted states that the property is for the applicant's father and carer. Internal floor area of the proposed first floor one-bedroom unit would not comply with the provisions of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (DoHPLG 2018) which requires a minimum floor area of 45sqm for a 1 bedroom apartment. The floor area of the proposed bedroom at c. 8.8sqm does not meet the minimum requirements, and there is no dedicated storage indicated for the first floor unit.
- Recommends further information in relation to a revised floor plan for the proposed first floor residential unit.
- The quantum of private amenity space to the rear (c.80sqm) to serve the two proposed one-bed units would comply with the minimum private amenity space standards as set out in Section 11.3.1(iv) of the CDP. Recommends further information in relation to proposed landscaping and boundary treatment to the front and rear.
- *Access and Parking* – The CDP specifies that village centre sites are in 'Zone 2' for the purposes of car parking and as such specifies the provision of 0.75 space for a 1 bedroom apartment.
- Considers the demarcation of spaces to the front of the property would lead to inappropriate use which would not be in-keeping with the historic character and visual setting of the ACA. Recommends further information in relation to

the provision of two car parking spaces to the rear of the property and to indicate that sufficient amenity space to the rear for future occupants will remain. The front area should be closed to vehicles, and would benefit from improvements to the public realm to support the active conservation of the village centre.

3.2.2. The 2<sup>nd</sup> planning report dated 19/02/2020 includes;

- *Residential unit* - Details submitted indicate that the proposed development comprises a first floor one bedroom apartment, with separate access provided to the bedroom. The application does not state that a studio apartment is proposed and has therefore been assessed on this basis.
- Submitted Drawing No. 2658-01 indicates a floor area of c.37.60sqm and not 40.91sqm as indicated on the drawing and in the cover letter submitted. The bedroom as proposed provides a measurement of c.3.01m x 2.93m giving a total floor area of 8.8sqm and not 10.97sqm as indicated.
- Considers the development as proposed does not meet the minimum standards required for a one bedroom apartment under the New Apartment Guidelines for Planning Authorities (DOHPLG 2018) which require a minimum floor area of 45sqm for a 1 bedroom apartment. Proposal does however, meet the minimum floor area requirement of 37sqm for a studio type apartment. However, the separate bedroom does not meet the minimum floor area requirement of 11.4sqm for a double bedroom.
- Considers having regard to Section 6.9 of the 'Apartment Guidelines' which allows some flexibility 'in relation to refurbishment schemes....' the proposed first floor studio type apartment is generally in accordance with the Guidelines and is acceptable in this instance.
- *Boundary Treatment* – Applicant should be requested by way of condition to erect a suitable boundary treatment to the rear amenity space to enhance the quality and functionality of the private amenity space.
- *Amenity Space* – Acknowledges that in providing 2 car parking spaces to the rear would reduce the quantum of amenity space, but that no private amenity space is proposed. Considers that the remaining quantum of available

communal open space to the rear would exceed the minimum communal space standards as set out in Section 1.3.1(iv) 'Dwelling Standards' and Table 12.21 of the CDP and is acceptable in this instance having regard to the existing building fabric and proposed refurbishment.

- *Parking* – Provision of one parking space to the rear and one space to the front is appropriate in this instance, applicant to submit revised layout accordingly, and restrictions on the demarcation of car parking space to front given location within ACA.
- *Development Contributions* – Change of use – commercial to residential at ground and first floor to provide two 1-bedroom units measuring c.37.60sqm and c.57.40sqm.

### 3.2.3. Other Technical Reports

**Roads Department:** Initial report no objection subject to requirements. 2<sup>nd</sup> report recommends no objection.

**Water Services:** No objection.

**Conservation Officer:** No report received.

### 3.3. Prescribed Bodies

**Irish Water:** No objection.

**An Taisce:** No objection.

### 3.4. Third Party Observations

There was one objection lodged with the planning application from SSA Architects and the issues can be summarised as follows;

- Traffic and access
- Amenity of future residents
- Validity of application – site notices

## 4.0 Planning History

**PA Reg.Ref.S99A/0827:** Permission **granted** 05/07/2000 to convert offices to retail unit and for alterations to front elevation.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative plan is the South Dublin County Council Development Plan 2016-2022.

### 5.2. South Dublin County Council Development Contribution Scheme 2016-2020

- 5.2.1. The scheme refers to the basis for determination of contribution, level of contribution, categories of development and rates of charge, and exemptions and reductions.
- 5.2.2. The development contribution scheme outlines that total contributions payable with regard to residential development is €96.39 per square metre . (updated rate as of 1<sup>st</sup> January 2020).
- 5.2.3. In relation to 'Change of Use', it states

*'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 of 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

6.1.1. The appeal relates to condition no.8 of the Planning Authority's decision to grant planning permission which includes the payment of a sum of €9,157.05 in accordance with the Development Contribution Scheme. The appeal was lodged by Architectural Construction Technology on behalf of the appellant.

6.1.2. The grounds of the appeal can be summarised as follows;

- The decision by SDCC to impose such a financial contribution condition is flawed and incorrect, and the Board have removed conditions in similar circumstances.
- The Local Authority (LA) has already received considerable sums in contributions when the original permissions were granted.
- The application sought no increase in the building size or footprint and, requires no additional traffic movements above those originally permitted.
- The proposal requires single phase electrical power which is on site and is not provided by the LA.
- There will be no increase in water consumption or waste water over and above the previous use and are no longer under the control of the Local Authority and any increase will be payable to Irish Water.
- No justification for monetary conditions.
- The LA must be mindful in attaching conditions that are so onerous and expensive to render a positive decision useless.
- Contend that the LA will not be able to justify the contributions sought. That public bodies are removed from making decisions that make good financial sense and fail to see the implications of decisions in terms of the cost to the community in jobs and housing and loss of rates due to vacancy.
- Applicant is not unwilling to contribute some additional monies in addition to those already paid but asserts that there are no additional facilities that

remain under the control of the LA, or that the proposed development constitutes an intensification of use.

- There is no increase in the collection of rainwater, or additional hard surfaces.
- There are no additional vehicle movements, notes improved public transport and proximity to the Village, that the use of a vehicle is unnecessary, but yet parking must be provided.
- Applicant proposed 2 car parking spaces in the location of the existing approved spaces, willing to comply with the condition to relocate parking to the rear of the property but this should not entail a financial condition of €9,157.05.
- Applicant has paid considerable sums towards the LA expenditure over the years by way of development contributions and business rates. The imposition of a development contribution for this amount is double charging and vastly inflated so as to jeopardise the implementation of the permission.
- Applicant is willing to consider paying additional sums over and above those already paid to assist the LA in providing community facilities and or parks in the area.
- The contribution levy applied is set far too high and has failed to take account of previous contributions paid.
- Additional and ongoing LA expenditure should be funded from rates levied by the LA and not by double charging applicants for planning levies.
- Request the Board to remove the financial condition attached or at the very least take into account contributions previously paid.
- Cites a similar case in Dun Laoghaire Rathdown Council Area under ABP Reg.Ref. PL06D 244129, where the Board removed the financial condition in its entirety. Notes that Dun Laoghaire Rathdown County Council no longer applies planning levies where there has been no increase in the building or any intensification of use.
- Proposal would return the building to a constructive use that has been vacant to over a decade.

## 6.2. **Planning Authority Response**

The Planning Authority in a response dated 19/03/2020 refers to;

The development may be within the area for which supplementary Development Contributions are applicable.

The Planning Authority in a response dated 09/04/2020 refers to;

- Having reviewed the planning file, South Dublin County Council has no further details to add, regarding the calculation and levying of the Financial Contributions on planning application SD19A/0337.

## 6.3. **Observations**

None.

## 7.0 **Assessment**

- 7.1. This is an appeal in relation to the application of a development contribution only. The Board will not determine the application as if it was made to it in the first instance and will in this instance only determine the matters under appeal.
- 7.2. An appeal may be brought to the Board where an applicant for permission under section 34 considers the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the planning authority. In this appeal, the issue to be considered is whether the terms of the Scheme have been properly applied.
- 7.3. The current proposal is for a change of use from office to residential at ground and first floor levels, to provide two 1-bedroom units. The planning application form gives the area of the proposed development as 95.6sqm.
- 7.4. Drawing No. 2658-01 Revision A lodged with the application dated 29/10/2019 indicates the area of existing office area at ground floor as 56sqm and at first floor as 37.60sqm (total 93.6sqm). The proposed ground floor and first floor plans for the residential units are dimensioned but the overall area of each is not annotated.

- 7.5. Drawing No. 2658-01 Revision B submitted by way of further information on 23/01/2020 indicates a proposed floor area of 57.40sqm for the ground floor unit residential unit, and 40.91sqm for the first floor unit (total 98.31sqm).
- 7.6. The PA however, calculated the area of the proposed first floor residential unit as 37.60sqm and not 40.91sqm as indicated, which gives a total area of (57.40sqm + 37.60sqm = 95sqm).
- 7.7. I have examined Drawing No. 2658-01 Revision A and Revision B date stamped 23/01/2020 and 23/01/2020 respectively and am satisfied that the total floor area of the proposed development at ground and first floor is 95sqm.
- 7.8. The Development Contribution Scheme applies a levy of €96.39 per sqm for residential development. The calculation of the levy of €9,157.05 is based on the total floor area of both residential units which combined gives a total floor area of 95sqm. (95sqm x €96.39 = €9,157.05).
- 7.9. I note a previous application on the subject site under P.A.Reg.Ref.S99A/0827 was to convert offices to retail unit and for alterations to front elevation. The notification of decision to grant permission was issued in July 2000, and therefore, predates the DCS 2004-2009. I can find no information in respect of any other permission.
- 7.10. The applicant submits that in the case of a planning application for a change of use where there is no intensification of use that development contributions should not apply. The DCS is clear however that for change of use applications from commercial to residential DC apply.
- 7.11. The applicant also submits that the PA should have taken account of development charges paid in respect of the previously permitted use, which will be available for offset against the development charges payable on the new use.
- 7.12. I note however that the applicant has not provided any evidence of contributions previously paid to avail of this exemption under the scheme.
- 7.13. In support of the appeal the applicant refers to a similar application under ABP Reg.Ref. PL06D 244129, in the Dun Laoghaire Rathdown Council Area, where the Board removed development contribution conditions. Firstly, I would note that this change of use application was from office to restaurant and did not include a residential element. Secondly the application was assessed having regard to the

Development Contribution Scheme adopted in a different administrative area and is not therefore relevant to the current appeal.

7.14. While I also note the applicants willingness to pay a development contribution in relation to parks/open space, the DCS scheme does not make provision for this.

7.15. I am satisfied that the Development Contribution Scheme **has** been correctly applied.

## 8.0 Recommendation

8.1. I recommend that condition no. 8 should remain as stated by the planning authority.

## 9.0 Reasons and Considerations

Having regard to

- a) The submissions made in this appeal
- b) The provisions of the South Dublin County Council Development Contribution Scheme 2016-2020.

The Board considers that condition no. 8 has been correctly applied and determined in accordance with South Dublin County Council Development Contribution Scheme 2016-2020.

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Susan McHugh  
Senior Planning Inspector

13<sup>th</sup> July 2020