



An
Bord
Pleanála

Inspector's Report

ABP-306946-20

Development	Change of use from office to medical/dentist use with revisions to front elevation.
Location	Unit 8, High Street, Tallaght, Dublin 24.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD20A/0010
Applicant(s)	Alex Gheorghe.
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	First Party v. Development Contribution only.
Appellant(s)	Alex Gheorghe.
Observer(s)	None.
Date of Site Inspection	Not applicable.
Inspector	Susan McHugh

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1.0 Site Location and Description

- 1.1. The appeal site is located on the southern side of High Street Tallaght. High Street is located to the south east of The Square Shopping Centre and the Abberley Court Hotel is located to the south-west of High Street.
- 1.2. Unit 8 is located in Block 8 and is an end of terrace two storey unit with commercial use at ground floor and residential use over. A large Smyth's Toystore forms part of the block on the opposite side of the street as well as revenue offices and work placement offices.
- 1.3. The stated site area of the site is 130sqm.

2.0 Proposed Development

- 2.1. The application is for permission for change of use from office to medical/dentist use with revisions to front elevation at ground floor. The stated floor area is 66sqm.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to **grant** planning permission subject to 6 conditions.

Of relevance to this appeal is the following condition;

Condition no. 6

'The developer shall pay to the planning authority a financial contribution of €11,844.30 (eleven thousand eight hundred and forty four euros and thirty 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 200-2011 (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 benefiting 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 Report

The planning report dated 11/03/2020 is the basis for the Planning Authority decision. It includes;

- Site zoned objective TC- 'To protect, improve and provide for the future development of Town Centres', 'Doctor/Dentist' is a permitted use in principle within Town Centre zoning objective.
- A Local Area Plan is in preparation for Tallaght. The draft has been adopted with material amendments and public consultation has commenced. The 2006 LAP has expired.
- Site partially overlaps the Tallaght Town Area of Archaeological Potential and registered monument (RMP Ref.DU-0210-037).
- Proposal would result in the provision of employment opportunities and a local service in a town centre location.
- Proposed use and design of the development would be consistent with the policies and objectives of the current South Dublin County Development Plan 2016-2022.
- Design scale and location of proposed development is in character with the existing environment, no detrimental visual impact is anticipated from the development as proposed. Elevational changes are acceptable.

3.2.2. Other Technical Reports

- **Environment Section:** No objections subject to conditions.
- **Roads Department:** No objections subject to conditions.
- **Public Realm:** No objection.
- **Environmental Health Officer:** No objections subject to conditions.

3.3. Prescribed Bodies

Irish Water: No objection, subject to conditions.

3.4. Third Party Observations

None.

4.0 Planning History

Parent Permission – Block 1 Tallaght Retail Centre

P.A.SD03A/0801 ABP Reg.Ref.PL 06S.206909: Permission **granted**

23/08/2004 to demolish upper level retail units and car park deck, construct four storey apartment block consisting of 106 no. residential units over existing ground floor level retail units, crèche, 3 no. retail units and a multi storey car park.

The First Party appeal to the Board was in respect of a development contribution condition only. The Board determined that the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000 had not been properly applied and directed the Council to **amend** the condition. (see file attached)

Condition no. 22: Section 48 financial contribution of €928,115.67.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan is the South Dublin County Council Development Plan 2016-2022, as well as Tallaght Town Centre Local Area Plan 2006 (renewed in 2011) now expired.

5.1.2. Draft Tallaght Town Centre Local Area Plan 2020-2026.

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

5.2.1. The scheme refers to the basis for determination of contributions, categories of development and rates of charge, and exemptions and reductions.

5.2.2. The development contribution scheme outlines that the following contributions are payable with regard to Industrial/Commercial development, i.e. €91.11 per square metre (updated rate as of 1st January 2020).

Section 10 refers to Exemptions and Reductions

5.2.3. Section 10(v) 'There will be 50% reduction in non-residential rate for developments in Village Centre areas. To be considered for the reduced rate the proposed development must be in an area zoned as a Village Centre in the Council's County Development Plan 2016-2020 and comply with the qualifying conditions specified by the local authority in the application process.'

5.2.4. Section 10(xxvii) 'Change of use: 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 or the original development was carried out before 1963 it shall be treated in its entirety as new development and assessed accordingly.'

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal was lodged by Kane Architecture on behalf of the applicant. It relates to condition no. 6 of the Planning Authority's decision to grant planning permission which includes the payment of a sum of €11,844.30 in accordance with the South Dublin County Council Development Contribution Scheme 2016-2020, (SDCCDCS).

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

- Request that the level of financial contribution be reviewed.

- Refers to *Exemptions and Reductions* outlined in the SDCCDCS, and specifically to section 10.(v) which provides for a 50% reduction in non-residential rate for developments in Village Centre areas.
- Refers to building area of 66.6m² and development contribution rate of €91.11/m², totalling €6,067.93. (66.6m² x €91.11 = €6,067.93).
- Contend that the proposed development is for a change of use from office to dental and that both of these uses come under the umbrella of Commercial Use and that the Development Contribution Scheme is not intended for change of business use. Refers to Section 10.(xxvii) Change of use.
- Contend that this figure of €3,033.97 should be further reduced by the amount of contribution already paid by the original developer.

6.2. Planning Authority Response

6.2.1. The Planning Authority in a response dated 23/04/2020 comments as follows;

- No further details to add regarding the calculation and levying of the Financial Contributions on planning application SD20A/0010.

6.3. Observations

None.

7.0 Assessment

7.1.1. 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 only determine the matters under appeal.

7.1.2. 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.

7.1.3. The current proposal is for permission for;

- (i) Change of use from office to medical/dentist use, with
- (ii) Revisions to front elevation.

- 7.1.4. The stated floor area of the ground floor unit is 66sqm. The stated area of the site as indicated on the application form is 130sqm.
- 7.1.5. The PA assessment and planning report refer to Development Contributions in relation to the proposed change of use from office to medical/dental facility for the existing unit with an area of 130sqm.
- 7.1.6. The calculation sheet on file dated 9/03/2020 indicates that the levy was calculated by the PA having regard to a change of use from office to medical/dentist use with a stated area of 130sqm. It is also indicated that there is 'no proof received of previous payment'.
- 7.1.7. The calculation of the levy of €11,844.30 was based on the area of the site and the charge per sqm of development applicable ($130\text{sqm} \times €91.11/\text{sqm} = €11,844.30$).
- 7.1.8. The applicant submits that an exemption/reduction the South Dublin County Council Development Contribution Scheme 2016-2020;
- (a) provides for a 50% reduction in non-residential rate for developments in Village Centre areas and
 - (b) the contribution should be further reduced by the amount already paid by the original developer.
- 7.1.9. In support of this assertion the applicant presents two alternative calculations of the levy.
- 7.1.10. The first calculation of €6,067.93 is based on the floor area of the proposed development which is 66.6sqm. A development contribution rate of €91.11/sqm, thereby requiring a contribution of €6,067.93 ($66.6\text{sqm} \times €91.11 = €6,067.93$).
- 7.1.11. The second calculation of €3,033.97 ($€6,067.93 \div 2 = €3,033.97$) is based a 50% reduction. The applicant contends that this amount should be further reduced by the amount of contribution already paid by the original developer. In this regard I note that no details have been submitted by the applicant outlining the amount of contribution already paid by the original developer on previous applications.
- 7.1.12. I am satisfied, that the case put forward by the applicant is reasonable, and in the context of the current application which relates to a floor area of 66.6sqm that the

Development Contribution Scheme which relates to Change of Use applications, and 50% reduction in non-residential rate for developments in Village Centre areas applies. However, in the absence of any evidence or details in relation to contributions previously paid, it not possible to provide an offset in this instance.

8.0 Recommendation

8.1. I recommend that South Dublin County Council be directed to **amend** Condition No.6 on the grounds that the terms of the Development Contribution Scheme 2016-2020 have not been properly applied.

9.0 Reasons and Considerations

Having regard to

(a) The provisions of the South Dublin County Council Development Contribution Scheme 2016-2020,

(b) The submissions made in this appeal;

The Board considers that the terms of the South Dublin County Council Development Contribution Scheme 2016-2020 have not been properly applied, and the amendment of Condition number 6 is, therefore, appropriate.

Condition no. 6

The developer shall pay to the planning authority a financial contribution of €3,033.97 (three thousand and thirty three euros and ninety seven 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 200-2011 (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 benefiting 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.'

Susan McHugh
Senior Planning Inspector

15th July 2020