



An  
Bord  
Pleanála

## Inspector's Report ABP-307783-20

### Development

Internal and external alterations to first floor office, change of use of ground floor retail units at rear into a restaurant, new signage and shopfront, use of external paved area as restaurant seating following approved development granted under SD19A/0013.

### Location

Coric House, Old Bawn Road,  
Tallaght, Dublin 24.

### Planning Authority

South Dublin County Council

### Planning Authority Reg. Ref.

SD19A/0348

### Applicant(s)

Mark Fitzgerald

### Type of Application

Permission

### Planning Authority Decision

Grant

### Type of Appeal

First Party -v-Condition

### Appellant(s)

Mark Fitzgerald

**Observer(s)**

None

**Date of Site Inspection**

9th December 2020

**Inspector**

Fergal Ó Bric.

## 1.0 Site Location and Description

1.1 The appeal site is centrally located in Tallaght Village, adjacent to the junction of the Old Bawn Road and Main Street. The site comprises a two-storey commercial building, currently vacant, located between other commercial/residential buildings, a public house to the north and a mobile phone/technology sales/repair shop to the south. There is a pedestrian pathway located further south of the appeal site, linking the Old Bawn Road to the front (east) of the site with Courthouse Square to the rear (west) of the appeal site. The building is red bricked to the front at ground floor level with a dashed render finish at first floor level.

## 2.0 Proposed Development.

2.1. Permission is sought for alterations to an existing two-storey commercial building and for a partial change of use as follows:

- Internal alterations to existing office space at first-floor level,
- Change of use of ground floor retail units at the rear, into a single licensed restaurant premises,
- External alterations to the rear elevation including new restaurant and office signage and shop frontage,
- Replacement of all opes,
- Three proposed restaurant entrances, one at Old Bawn Road, and two at Courthouse Square,
- Use of external paved area onto Courtyard Square as restaurant seating,
- Bicycle parking facilities,
- Internal alterations including removal of internal stairways, removal of existing retail unit dividing wall, removal of internal partitions to first floor offices, and new internal partitions,
- Construction of a new fire safety stairway to first floor office space,

- Provision of restaurant, customer and staff sanitary facilities and services, at first floor level,
- Provision of office sanitary facilities and services, at first floor level,
- This application follows a recently approved planning application for alterations to the Old Bawn Road elevation including a new shopfront and provision of a single office premises at ground floor level, permitted under planning authority reference number SD19A/0013.

2.2. The planning application was accompanied by a Transportation, Accessibility and Parking Assessment Report, a Drainage Inspection Report and a Planning Statement.

2.3. Further information was submitted in relation to: Opening hours, including specific days and times for the premises and outdoor seating area: Management of kitchen fumes and ventilation and a sound proofing report prepared by Consultant Engineers.

### **3.0 Planning Authority Decision**

3.1. A grant of planning permission was issued subject to ten conditions. The following conditions are of relevance:

Condition number 1: Development shall be carried out in accordance with the documentation and particulars lodged with the application, as amended by further information received by the Planning Authority on the 11<sup>th</sup> day of June 2020.

Condition number 10: Development contribution of €25,285.80.

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

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

Environmental Health Officer: No objections, subject to conditions.

Planning report: The proposed development was considered acceptable in the context of the proper planning and sustainable development of the area. A grant of

permission was recommended subject to conditions, a number of which are set out in Section 3.1 above.

### **3.3. Prescribed Bodies**

No comments received.

## **4.0 Planning History**

Planning Authority reference number, SD19A/0013, In 2019, planning permission was granted for internal alterations to existing ground floor office premises and external alterations to the Old Bawn Road elevation, removal of existing shopfront and fascia, installation of new projecting ground floor shopfront, fascia signage and lighting, installation of new window frames into existing first floor opes, forming new entrance door to right hand side of office shopfront, replacement of existing pebble dash with coloured render finish, internal alterations to existing ground floor office layout including new sanitary facilities and services.

Planning Authority reference number, SD03A/0447, In 2004, planning permission was granted for the demolition of a prefabricated building and the construction of a two- storey extension towards Courtyard Square and two shops on the ground floor and offices on the first floor, first floor office extension facing onto Old Bawn Road.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant Development Plan is the South County Development Plan 2016-2022. The site is zoned VC-Village Centre where the objective is: To protect, improve and provide for the future development of Village Centres.

Chapter 5 pertains to Urban Centres and Retailing. Policy UC 3 pertains to Village Centres which: Seeks to encourage the provision of a range of uses and maintain and enhance the retailing function of Village Centres.

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

Section 10-Definitions, Exemptions and Reductions

## **5.3. Natural Heritage Designations**

None Relevant.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A first party appeal has been lodged by Doyle Kent Planning Partnership Ltd on behalf of the first party, Mr. Mark Fitzgerald. The grounds of appeal are as follows:

- In respect of the South Dublin County Council Development Contributions Scheme (DCS) 2016-2020, there are three pertinent sections set out within Section 10 of the document, relevant to the current appeal, which can be summarised as follows: (i) that a 50% reduction applies to non-residential development within Village Centres (ii) that internal layout changes, where no additional floor area is created, shall be exempt from development contributions and (iii) In respect of a permission for a 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.
- This appeal pertains to a development with a floor area of 464.5 square metres (sq., m.), the Planning Authority has incorrectly based its development contributions on a floor area of 555 square metres (sq. m.).
- The Planning Authority has correctly applied the 50% reduction applicable to designated village centres.

- Section 10 (xx) of the DCS which pertains to internal layout changes where no additional floor area is planned. Given that 234.7 sq. m. of first floor area will remain as office space, no change of use is proposed within this element of the building, nor for an additional 8.2 sq. m. of office at ground floor level. The development contributions payable on the new proposals should be net of the quantum of development previously paid for.
- There are two areas of the building that have not previously been subjected to development contributions, and these are: The ground floor area of the restaurant within the walls of the original premises and containing the entrance area and stairs, which equates to 42.5 sq. m. and the first-floor area of the restaurant within the walls of the original premises and containing ancillary facilities (toilets etc.) and measuring 37.5 sq. m. In total these areas amount to 78.25 sqm. These should be levied at the reduced Village centre rate, of 45.56 per sq. m. This would amount to a contribution of €3,565, as per the provisions of the current South Dublin County Council (SDCC) DCS 2016-2020.
- A sum of €30865 was previously paid in respect of condition numbers 14-17 inclusive, under Planning Authority reference number SD03A/0447, as confirmed by the Planning Authority in writing in 2017 (included as part of first party appeal submission). As per the planning documentation submitted, internal alterations will occur within the office area, and they are not liable to contributions as per Section 10(xx) of the DCS.
- Section 10(xxvii) of the DCS allows for no contributions being liable to a change of use application, where development contributions were paid in respect of the former use.

## 6.2. Planning Authority Response

Response by South Dublin County Council

- The response states that the Planning Authority has no further details to add regarding the calculation and levying of the financial contributions. They

repeat the same calculation formula used within the planner's report., based on a floor area of 555 sq. m.

## 7.0 Assessment

- 7.1. Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. Therefore, the Board, is restricted to considering the merits of condition number ten only and cannot consider the proposed development *de novo*
- 7.2. Condition number ten entails the payment of a development contribution of €25,285.80 in respect of public infrastructure and facilities benefitting 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 SDCC DCS 2016-2020. I have noted the content of the planning report in relation to Development Contributions, where it is stated that the proposals relate to: A change of use from a retail and office use to a restaurant and office use over a floor area of 555 sq. m. The terms of applying Development Contributions is set out within the SDCC DCS 2016-2020. Rudimentary calculations are provided in the planners report and in the appeal submission received from the Planning Authority. However, no precise detail in terms of how the calculations were calculated are apparent from the planner's report.
- 7.3. Section 10 (v) of the DCS provides for a 50% reduction for non-residential development within Village Centres. This 50% reduction seems to have been applied by the Planning Officer in this instance, given that a rate of €45.56 seems to have been applied within the calculations (although not specifically referenced), which is 50% of the village centre rate of €91.11, that would normally apply to commercial developments in urban areas.
- 7.4. Section 10 (xxvii) of the DCS provides that where an application is received for a change of use of a commercial premises, and where development contributions were



paid in respect of the former use, the contributions payable on the new proposal will be net of the quantum of development previously paid for. The appellant states that development contributions were previously paid in respect of planning conditions, 14-17 inclusive under planning authority reference number SD03A/0447. These contributions amounted to €30,865 and payment of these contributions was confirmed by the planning authority in writing in 2017 (copy of documentation submitted as part of first party appeal submission). These works pertained to a floor area of 373 sq. m, at a rate of €82.75 per sq. m.

- 7.5. Section 10 (xx) provides for internal layout changes, where no additional floor area is created, shall be exempt. In this instance, the first-floor area is to remain in office use, along with a small portion, 8.2 sq. m of office use at ground floor. The office elements are not subject to a change of use, as the office use is already permitted on foot of a previous planning permission, under planning authority reference number SD03A/0447. A total of 234.7 sq. m. of office floor area is not affected by any change of use and will only be subject to internal layout alterations, which I would consider to be exempt from development contributions, under Section 10(xx) of the DCS. In this particular proposal, no additional floor area is to be created. The change of use pertains to the two retail units at the rear of the ground floor of the premises to a restaurant use. The development contributions should only apply to the floor area not previously subjected to development contributions, as per Section 10(xx) of the DCS.
- 7.6. I agree with the applicants that the current proposal pertains to a floor area of 464.5 sq. m, and not 555 sq. m. as referenced by the Planning Authority. Development contributions, as indicated above have previously been paid on 373 sq. m. Therefore, it is apparent that development contributions have not been paid on the net differential quantum of floor area amounting to (464.5sq. m. minus 373 sq. m = 91.5 sq. m., rounded off to 92 sq. m, and not 78.25 sq. m as referenced by the applicant. The 92 sq. m differential would be levied at the rate of 45.56 sq. m. for Village Centres, (50% of the non-residential rate), due to the village centre status as per Section 10(v) of the DCS. This would amount to a revised Development Contribution of €4,191.52.

7.7. I would accept the point made by the appellants, that the current contribution of €25,285.80, would result in a partial double levying, given that contributions have previously been paid in respect of all but 91.5 sq. m. of the development on site. Therefore, this is the extent of floor area which is liable to contributions as per the provisions of the South Dublin County Council DCS 2016-20, and not the 555 sq. m as referenced by the Planning Authority within their planning report and appeal submission. I consider that the levy as proposed is not warranted or justified and should be amended.

## 8.0 Recommendation

8.1. Having regard to the above and based on the reasons and considerations set out below, it is recommended that the Planning Authority be directed that Condition number 10 be amended.

## 9.0 Reasons and Considerations

9.1.1. Having regard to the nature of the proposed and previously permitted uses of the floor area, the subject of the permitted change of use, to the lack of any material intensification of demand on existing infrastructure or requirement for new or upgraded infrastructure arising from the permitted change of use, and to the provisions of Section 10(xxvii) of the adopted South Dublin County Council Development Contribution Scheme, 2016-2020, (as updated on the 1/1/2020), which states the contributions payable on the new proposal will be net of the quantum of development previously paid for, it is considered that the provisions of the adopted contribution scheme have not been properly applied such that Condition Number 10, attached to Planning Reference number SD19A/0348 should be amended, and limited to the floor area not included within the previous permissions on site, which amounts to 92 sq. m. in floor area, which would amount to a revised Development Contribution of €4,191.52.

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Fergal O'Bric  
Planning Inspectorate

18th January 2021