



An  
Bord  
Pleanála

## Inspector's Report 308273-20

<b>Development</b>	Demolition of 2 storey over basement commercial building and construction of 6 storey office building plus roof plant with ancillary café and retail uses, car parking and new civic plaza.
<b>Location</b>	17 Corrig Road/junction of Carmanhall Road, Sandyford, Dublin 18.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D19A/0946
<b>Applicant</b>	Property Rentals Property Management Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	First party vs. s.48 condition
<b>Appellant</b>	Property Rentals Property Management Ltd.
<b>Observer</b>	None
<b>Date of Site Inspection</b>	14 <sup>th</sup> April 2021
<b>Inspector</b>	Suzanne Kehely

## **1.0 Site Location and Description**

- 1.1. The site of 0.2 hectares is centrally located on a corner site at the junction of Corrig Road and Carmenhall Road in Sandyford Business Park. This area is characterised by a predominance of commercial office buildings in mix of low rise and more recent higher rise detached buildings. It is just east of the mixed-use Beacon Quarter .
- 1.2. The existing premises comprise two storey over basement offices set back from the road. Vehicular access is off Corrig road and also there is ramped access off Carmenhall Road. The premises have a stated floor area of 1,507 sq.m.

## **2.0 Proposed Development**

- 2.1. Permission is sought for 7353.01sq.m. of development in a 6 storey office over basement building with ancillary café and retail uses at ground level. The commercial gross floor area is 6186.96sq.m. (ground to 5<sup>th</sup> floor inclusive) and was stated to be 5982.5 sqm in the original submitted details. The basement is 1,652.7 sq.m. and the parking area within this area is 1,185.50 as in the FI drg. 1253-19-07.
- 2.2. The proposed design has an angled corner in response to the objectives of the Sandyford Urban Framework Plan and this provides for a civic plaza linking into adjacent development . In initial plans this plaza is 375sq.m. and further open space is proposed by way of a ground floor courtyard of 91.5 sq.m. and a 4<sup>th</sup> floor roof garden of 493.5sq.m..
- 2.3. In revised plans drawing no. 1253-19-03-Rev A omits steps and seating and provides a more open interface with the public realm.

The drawings specify the gross floor area for each floor level and also include a breakdown of net areas and uses.

Drawing 1253-19-08 states a gross ground floor of 1127.05sq.m. (previously 1110.98sq.m.) of this the ESB and switch room is 25.48sq.m. bin/bike 26.5sq.m. a café is 147.5sq.m. and retail is 110.4sq.m.

Drawing 1253-19-09 states a gross first floor of 1127.05 sq.m. . (previously 1110.98)

Drawing 1253-19-10 states a gross second floor of 1235.75 sq.m. . (previously 1219.67)

Drawing 1253-19-11 states a gross third floor of 1235.75 sq.m. . (previously 1219.67)

Drawing 1253-19-12 states a gross fourth floor of 730.68. (previously 714.60)

Drawing 1253-19-13 states a gross fifth floor of 730.68 sq.m. (previously 714.60)

Drawing 1253-19-14 states a gross sixth floor (service area) of 460 sq.m. . (previously 440sq.m.)

Drawing 1253-19-15 is of the roof with solar panels.

- 2.4. Clarification of further information refers to drainage issues and does not appear to reduce floor area.

### 3.0 Planning Authority Decision

- 3.1. The planning authority sought further information and clarification of same.

Following submission of details to its satisfaction, the planning authority decided to grant permission subject to 22 conditions.

- Condition no. 16 requires a section 48 contribution of **€38,792.24** in respect of **community and parks** public infrastructure facilities and amenities benefitting the **Sandyford Urban Framework Plan Area** as provided for in the Development Contribution Scheme made by the county council on 14<sup>th</sup> December 2015 as updated.
- Condition no. 17 requires a section 48 contribution of **€148,425.17** in respect of **roads public infrastructure** and facilities benefitting the **Sandyford Urban Framework Plan Area** as provided for in the Development Contribution Scheme made by the county council on 14<sup>th</sup> December 2015 as updated.
- Condition no. 18 requires a section 48 contribution of **€14,353.75** in respect of **surface water** public infrastructure and facilities benefitting development in the area of the authority as provided for in the Development Contribution Scheme made by the county council on 14<sup>th</sup> December 2015 as updated.
- Condition no. 19 requires a section 48 contribution of **€329,022.53** in respect of **roads public infrastructure** and facilities benefitting the area as provided for in the Development Contribution Scheme made by the county council on 14<sup>th</sup> December 2015 as updated.

- Condition no. 20 requires a section 48 contribution of **€213,511.99** in respect of **community and parks** public infrastructure facilities and amenities benefitting development in the area of the authority as provided for in the Development Contribution Scheme made by the county council on 14<sup>th</sup> December 2015 as updated.
- Condition 21 requires that the development shall not be carried out without prior written agreement in writing between the applicant and the planning authority relating to the payment of the development contributions.
- Condition no. 22 **requires a section 49 contribution of €166023.73 towards the cost of the extension of Luas Line B from Sandyford Depot to Cherrywood – Luas Line B1** in line with the provisions of the Supplementary Development Contribution Scheme. This amount is payable in year of commencement of development and is subject to a 5% compound interest per annum

### 3.2. Planning Authority Reports

- 3.2.1. 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. Pages 56-57 of the final planning report sets out the basis for development contributions. This takes account of the revised drawings and reductions allowable for the basement and plant floor areas. The total floor area is 6186.96 sq.m. for the purposes of applying contribution rates of the section 48 contribution Scheme.
- 3.2.2. For the purpose of the section 49 Supplementary scheme, the site area is calculated by the Drawing office to be .207 sq.m. which is net of the publicly owned areas.
- 3.2.3. As the appeal relates to levies in the context of provision civic plaza I refer to the following issues raised in the assessment.
  - It is noted that the ground level difference between the public footpaths and the proposed civic plaza is interconnected with steps and that the ground floor café and gym would be accessible from the plaza. The design is comparable to a forecourt rather than a publicly accessible civic plaza as envisaged in the SUFP. The Architects Department refers specifically to barrier landscaping, dominance

of wall and bike parking along eastern boundary, limited visual interconnection between road and plaza, limited animation at ground level.

- The applicant was requested to address these requirements in addition to the requirements of the Transportation Planning section regarding footpath design and layout issues.
- The revised design omits steps and seating and provides a more open interface with the public realm and is considered to address. Details of screening of the roof garden were also submitted to the satisfaction of the planning authority.
- However, specifically, the applicant was requested to submit a revised site layout plan drawing showing the footpath along Corrig Road within the overall application site to be taken in charge by the council. This was not addressed. It is stated that 'The existing footpath is shown subsumed within a wider grass verge and the footpath would be relocated into privately owned land . The applicant has not provided any justification for not ceding the proposed footpath along Corrig Road to the County Council. This is unacceptable and should be addressed by a compliance condition requiring the applicant to comply with the CFI request unless otherwise agreed with the planning authority'.
- It is further stated 'the applicant was requested to submit a revised site layout plan showing the proposed footpath on Corrig Road built out to the edge of the carriageway where the existing vehicular entrance onto Corrig Road is to be extinguished so that it aligns with the footpath to the front of the adjoining property to the south in the interest of the quality of the public realm . This has not been addressed.'

3.2.4. The Parks Department considers the proposed landscaping to be inappropriate.

3.2.5. The cover page of the Chief Executive's Order is stamped with a contribution schedule which has amounts completed in handwritten format. The information is

S.48 Surface water €14,353.75

S.48 Roads €477,447.7

S,48 Community and Parks €252,304.23

S.49 Luas Line B1 €166,023.73

Section 48 contributions amount to €744,105.68

## 4.0 Planning History

- 4.1. None relevant on the subject site.
- 4.2. An Bord Pleanála 308826 (May 2021) the Board recently decided a case in respect of a S.49 contribution at 60 Holly Avenue, Stillorgan Business Park. The amount was reduced to reflect the pro rata site area of a proposed extension.

## 5.0 Policy Context

### 5.1. Planning and Development Act 2000 as amended

#### 5.1.1. 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.

(12) Where payment of a special contribution is required in accordance with *subsection (2) (c)*, the following provisions shall apply—

( a) the condition shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates,

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.

- 5.1.2. 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.]

## 5.2. **Development Management Guidelines**

- 5.2.1. 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. There are three categories of conditions under which the payment of financial contributions may be required and are 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.
- ‘special’ contribution requirements in respect of a particular development may be imposed under section 48(2)(c) of the Planning Act where specific exceptional costs not covered by a scheme are incurred by a local authority in the provision of public infrastructure and facilities which benefit the proposed development. It is essential that the basis for the calculation of the contribution should be explained in the planning decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.

5.2.2. 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.

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

### **5.3. The Dún Laoghaire-Rathdown County Council S.48 Development Contribution Scheme 2016-2020**

5.3.1. The Dún Laoghaire-Rathdown County Council Development Contribution Scheme 2016-2020 as provided for in Section 48, Planning & Development Act, 2000, (as amended). Was adopted by Dún Laoghaire-Rathdown County Council on 14 December, 2015

5.3.2. This sets out the basis for determination of the scheme. There are two rates - one rate for the entire county excluding the Sandyford Urban Framework Plan Area and one for sites in the Sandyford Urban Framework Plan Area Only for which both comprises countywide and Sandyford are applicable. The site is located in the Sandyford Urban Framework Plan Area and the following rates apply.



### 5.3.3. Sandyford Urban Framework Plan Area.

Class of public infrastructural development	€ per sq.m. of industrial/commercial class of development
Class 1 Community and Parks facilities and amenities	Office 39.38 (28.41 + 10.97) Other 33.56 (28.41 + 5.15)
Class 2: Roads infrastructure & facilities	Office 85.81 (43.78 + 42.03) Other 63.53 (43.78 + 19.75)
Class 3: Surface Water Infrastructure	1.91
<b>Total of Contributions Payable</b>	Office 127.10 <b>Other 99.00</b>

5.3.4. The remainder of the county has a contribution rate of €74.10 towards the provision of such infrastructure.

5.3.5. Section 10 sets out categories of development that qualify for exemption or reduction . Such classes include

g) Replacement dwellings or replacement commercial developments will be charged 50% on a like for like basis. In the case of demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy.

n) ii. car parking integrated within a structure is exempt when ancillary to the commercial use of the structure When not exempt i.e. when use non ancillary it will be measured on the basis of the gross floor area Ancillary car parking is car parking that accord with the County development Plan car parking standards

r) substations/switch room

s) ancillary plant rooms.

Section 17 provides for special development contribution for exceptional costs not covered by the scheme and that are incurred in respect of a specific public infrastructure or facility. The particular works will be specified in the condition. Only developments that will benefit from such works will be liable.

**5.4. S.49 Supplementary Development Contribution Scheme for extension of Luas Line B1 – Sandyford to Cherrywood**

- 5.4.1. This scheme was adopted by Dun Laoghaire Rathdown County Council on 13 January 2003 as amended incorporates amendments to clause 13 and Level of contribution in 2013.
- 5.4.2. The subject site is located within the delineated catchment area to which this scheme applies.
- 5.4.3. The development rates are considered reasonable given the benefits the Luas B1 will bring to the area. The B1 extension will improve the area's attractiveness and marketability for both residential and commercial developments and will add significant added value to property and land.
- 5.4.4. Section 13 as amended in 2013 states that only net additional development (in hectares) in the case of commercial redevelopment projects will be levied.
- 5.4.5. The levels of contribution for commercial development of €570,000 per gross site hectare was increased to €802,047 in 2013.
- 5.4.6. While not part of the scheme the content of the record of county council meeting of 13 May 2013 pertaining to the s. 49 scheme item c/430 is informative. During this meeting in which the amendments were adopted it was stated that it should be noted that the methodology for calculating costs under the section 49 scheme differs from the section 48 scheme, i.e. basis for the levy under section 49 scheme is hectares while under the section 48 scheme it is sq. metres/units.
- 5.4.7. It was also stated that the council will enter into discussions with the Railway Procurement Agency and the NTA to see if there is scope to reduce these rates. There is no record of any subsequent change.

**5.5. Dun Laoghaire Rathdown County Development plan 2016-2022**

Specific local objective 121 – to ensure the provision of pocket parks and civic spaces in accordance with the locations specified on Map 1 and Drawing no.10 of the Sandyford Urban Framework Plan. (SUFP)

Car parking 1 per 100sq.m. for offices close to public transport corridor. Otherwise 1 to 50. 1 per 15 sq.m. of café.

## 5.6. SUFP

- Drawing no. 12 The site is Zone 2 Zone 2 : Mixed Use Core Area -Outer Core.
- Drawing no.10 the site is partly zoned civic space
- Objective MC7 requires 10-15% of the site as outdoor amenity area for employees. Relaxation permissible in zones 1 and 2 to allow higher plot ratios and creation of streets. 200-300sq.m. of open space should be provided.
  - Site 2: Corner site at the junction of Corrig Road and Carmanhall Road shall: Reinforce the corner by providing a high-quality building creating in plan a wedge-shaped built form. This 'diagonal set back' building line would both provide a connection with the Beacon South Quarter / Rockbrook sites and also a sense of presence by setting the building within its own hard landscaped civic plaza.
  - Screen the existing Beacon South Quarter decked car parking without restricting daylight to the apartments over.
  - Provide ground floor uses which would animate and provide extended life to the plaza.
- TAM16 It is an objective of the Council that the maximum car parking standards for the entire Sandymount Business District will not exceed the Dún Laoghaire-Rathdown County Development Plan car parking standards for designated areas along public transport corridors and more restrictive standards may apply at appropriate locations

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The applicant is appealing the financial contribution conditions on the basis that the council did not consider provision and cost of infrastructure (civic plaza) by the applicant. The following points are made:
- The plaza construction cost extending to the public road edge and incorporating pathways etc are conditions of permission fully at the applicant's expense. This should have been reflected in the development levies imposed for parks and community facilities i.e. Conditions 16 and 20.

- The applicant is effectively contributing twice by a condition in keeping with the development plan and by also having to construct, operate and main the public plaza area.
- The council did not reduce the area of the existing buildings to be demolished and apply this to the level of contributions.
- The levy for the basement should be omitted on the basis that the basement was not considered as replacement ancillary parking – a similar area of surface parking is being demolished (similar to the plaza area and is now to be replaced with the basement parking. This is provided for in ‘exemptions and reductions’ paragraph n(ii) as parking is ancillary to the commercial use and only underground due to the plaza.

The Board is also asked to consider the quantity of area calculated to be levied to reflect the loss of the site area given to the plaza and the basement to be used as parking.

## **6.2. Planning Authority Response**

6.2.1. The planning authority responded in a letter dated 23<sup>rd</sup> October 2020. Further documentation pertaining to technical reports was submitted on 2<sup>nd</sup> November 2020.

6.2.2. It acknowledges the case that a significant portion of the site is subject to provide a civic plaza as set out in the SUFP and that the applicant will be required to provide this plaza and carry out works to the public areas adjoining the site under this planning permission. It is noted that applicant is seeking a dispensation from the county wide and SUFP development contribution relating to the community and parks facilities and amenities in this regard. In response it is pointed out that :

- The county wide levy is based on a list of community and parks facilities as listed in Appendix II of the current Development Plan. It is submitted that these facilities and amenities will benefit the wider county area including the Sandyford Area.
- Community and parks facilities within the SUFP area include Benildus Park and the Town Centre Civic Park.

- The pocket parks as provided for in objective 121 are not included in Appendix II and that the objective as it applies to the site in the course of its redevelopment is burden on the site. The provision of Civic Plaza should not therefore be offset against the requirement to pay development contributions in respect of community and park facilities and amenities to be delivered by the council within the county and the SUFP area.
- The works in the public realm such as widening the grass verge, extending the footpath, upgrading the footpath surface and modification to provide for vehicular access area all necessary to facilitate the proposed development and to ensure a suitable high-quality public realm in accordance with objectives and specifically Objective PR1 “It is an objective of the council to ensure the provision of a high quality, safe, attractive public realm. This shall be achieved through the appropriate and planned use of space and structure, building interface, continuous street frontages and enclosure, hard and soft surface, high quality materials, textures, planting, street furniture, lighting and signage and be encouraging a positive relationship between the buildings and the surrounding environment.” It is reasonable that such works are undertaken at the developer’s expense.

6.2.3. In response to exemptions it is explained the total floor area of 6186.96sq.m. was used in calculating the contributions and that ancillary basement car park and sixth floor plant were omitted from the calculation.

Floor level	Stated Gross Floor Area sq.m.
Ground	1127.05
First	1127.05
Second	1235.75
Third	1235.75
Fourth	730.68
Fifth	730.68
<b>Total</b>	<b>6,186.96</b>

6.2.4. It is acknowledged that in the calculations there was no discount of 50% of the gross floor area of the existing building to be demolished in accordance with 10(g) of the Scheme. In response it acknowledges the existing gross floor area of 1507 sq.m. and a reduction of 753.5sq.m. should apply to the gross floor area.

### **6.3. First Party Counter Response**

6.3.1. The appellant made further submissions on 13<sup>th</sup> November 2020 stating:

- The design evolved entirely to follow a specific zoning objective for open space as illustrated in an appended architectural Design Statement.
- The development site has been reduced by 25%
- The provision of pocket parks is not disputed and there is no issue with construction of plaza – the case is however emphasised that the provision of planned open space should be off set against contributions towards the provision of same in the county.
- As the plaza will be designed to council standards as public open space but must be privately owned and managed due to the basement this incurs an ongoing maintenance and insurance costs. Financial relief could be in a number of ways and the Board is requested to consider
- Assessment by arbitration to cost of the plaza and deduct from levies in conditions 16 and 20.
- Make a percentage deduction from the levies as imposed . A figure of 50% is suggested to reflect costs in perpetuity whilst recognising the applicant's obligation in principle to the objectives of the Development Plan.
- The latter option is recommended and it is clarified that the design process is not being revisited in this appeal.
- The proposal for discounting the existing building is appreciated which is estimated to equate to a deduction of €110,839.85

## **7.0 Assessment**

### **7.1. Scope of issues**

7.1.1. This appeal relates to financial contributions under section 48 of the Planning and Development Act as amended. While the appellant does not use the term section 48 in the appeal it is clear from the nature and scope of the appeal grounds which acknowledge that the design process is not being re-visited. Accordingly in considering the appeal under section 48 provisions which I consider reasonable, the Board is restricted to consideration of these conditions only. The question is whether

or not the planning authority has correctly applied the terms of the development contribution scheme and supplementary scheme.

## 7.2. Application of Section 48 scheme

### 7.2.1. Sandyford Urban Framework Plan Area Only (Comprising Countywide + Sandyford)

Class of public infrastructural development	Scheme€ per sq.m. of industrial/commercial class of development <b>Bold is SUFP rate</b>	Applied by Planning authority	Proposed by PA applying 50% allowance of existing
Class 1 Community and Parks facilities and amenities	Office 39.38 (28.41 + <b>10.97</b> ) Other 33.56 (28.41 + <b>5.15</b> )	€213,511.99 <b>€38,792.24 (SUFP)</b> Total 252,304.23	
Class 2: Roads infrastructure & facilities	Office 85.81 (43.78 + 42.03) Other 63.53 (43.78 + <b>19.75</b> )	€329,022.53 <b>€148,425.17(SUFP)</b>	
Class 3: Surface Water Infrastructure	1.91	€14,353.75	
Floor area <b>6,186.96 sq.m. (0-5 elvels – as per revised drawings)</b>		<b>No breakdown provided</b>	4679.96 sq.m.(reduced from 5433.46sq.m. for county wide rate and 6186.96sq.m. for the SUFP rate
<b>Total of Contributions Payable</b>	Office 127.10 (74.1+ <b>53</b> ) Other 99.00	€744,105.68	€346,785.04 €327,908,88 =€674,693.92

7.2.2. In the first instance the dispute centres on the element of the financial contribution that is toward Class 1 Community and Parks facilities and amenities and which amounts to Total €252,304.23. The applicant makes the case that the provision of effective public space as required by design and in accordance with a specific objective should be offset against the level of contribution. The planning authority's position is that the provision of a civic plaza and carrying out of necessary works and upgrades to the public realm in accordance with the Sandyford Urban Framework

Plan does not warrant an exemption for development contributions towards the delivery of parks and community facilities and amenities as set out in the Appendix II of the county development plan. It is explained that the subject civic plaza is not included in these specified works and is a burden on the site. I note that there is no provision for exemption for such work and consider the full rate of €127.10 as amended is therefore generally applicable. In this regard I note footnote 1 to the table which states:

‘These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index (See Article 12 of the Scheme below) commencing from 1st January, 2018. The above rates are effective from 1 January 2016.’ No updated unit figure is provided.

- 7.2.3. I also note that the ground floor although ancillary is classed as restaurant and retail uses which incur a lower contribution of € 99 per sq.m. While these uses are ancillary to offices they are extensive at 257.9 sqm. net and this could be factored in and would reduce the contribution by €7,246.99 assuming a €127.1 rate.
- 7.2.4. The only provision for reducing the level of s.48 contribution is by reducing the extent of floor area on which the calculation is based. There is essentially little dispute in the floor area and it is a matter of record. I do however note some anomalies in the calculable floor area.
- 7.2.5. In the appellant’s counter response the overall contributions are proposed to be based on a floor area of 6,186.96sq.m. which is the base floor area used by the planning authority. This is broadly consistent with the upper floor levels – and excludes the basement level and plant area at 6<sup>th</sup> level. However by using the €127.1/sq.m. the contribution total of €744,105.68 suggests that the floor area used is 5854sq.m. Although it is latterly indicated by the planning authority that different rates have been applied to different amounts of floor levels. An area of 5433.46sq.m. is confirmed to have been subject to a county wide rate and 6186.96sq.m. has been subject to the SUFP.
- 7.2.6. Working backwards from the individual rates in the conditions the base floor area appears in some calculations to be 7551 sq.m. (e.g. €14353.75/€1.91 = 7551sq.m. and €329,022.53/€43.78 = 7515sq.m.) and in other calculations it is 3531 sq.m. There are a number of possible explanations for this.



Ultimately the planning authority is conceding to the exemption oversight and recommending that 50% of the floor level of the existing building to be demolished be off set in applying the county wide rate . It is explained that the recalculated gross floor area subject to county wide rates is 4679sq.m. whereas the gross floor area of 6186.96sq.m. applies for the purposes of calculating the SUFP rates. The exact basis for reducing this to the calculable area used is not specified. There is however no dispute in the appeal submissions on this calculation. However when applying the rate of €127.10 to the 6186.96 sq.m. floor area this gives a total section 48 contribution of €786,362.62. which is even greater. By using the reduced floor areas put forward by the planning authority and its apportioning of contribution rates I calculate the contribution to amount to €674,693.92 which is made of €327,908,88 for the countywide rate and €346,785.04 using the SUFP rate. Further discounting may be applied to the exact uses. For example the net ground floor café and retail uses would reduce this to €667,446.93

- 7.2.7. While the Board may consider either seeking further clarification or revising the amount as per the planning authority reduction, I consider the key issue essentially is to determine that the €127.10 rate subject to indexing is the correct rate to apply and that there is no basis within the scheme to off-set the civic plaza. The exact extent to which this rate applies remains unclear. However given the agreement on the outstanding issues, a condition with an unspecified amount is I consider the best approach.

### **7.3. Application of Section 49 scheme**

- 7.3.1. Condition no. 22 requires a section 49 contribution of €166,023.73 towards the cost of the extension of Luas Line B from Sandyford Depot to Cherrywood – Luas Line B1 in line with the provisions of the Supplementary Development Contribution Scheme. This amount is payable in year of commencement of development and is subject to a 5% compound interest per annum
- 7.3.2. There is no dispute that a contribution towards this scheme applies to the site. However, while the appellant does not elaborate specifically on this condition, the request to review the financial contributions in the context of the requirement to provide a public civic plaza is within the scope of the appeal.

- 7.3.3. In this case the residual development site is clearly restricted by the site specific objectives of the Sandford Urban Planning Framework Plan. The appellant suggests a 25% reduction in site area. I note actual the plaza area is 375 sq.m. This I accept is additional to the requirement for offices to provide of open space at a rate of 10-15% (lower in zone 2) which amounts to around 500 sq.m. of space. This is provided in the courtyard of 90sq.m. and the roof terrace of almost 500 sq.m. In such circumstances I consider the site area for the purposes of applying supplementary contribution rate should be net of the plaza. This amounts to a residential site area of 0.1695ha. This is based on the site of 2070sq.m. less 0.0375ha.
- 7.3.4. There is further provision for allowing a discount of existing development. In view of the foregoing and the extent of development proposed and change of use and intensification and essentially a wholesale site redevelopment I consider there is no basis for a further reduction.
- 7.3.5. Accordingly the hectareage base for the purposes of applying the contribution rate of €802,047 per hectare should be 0.1695ha. This would reduce the financial contribution rate to €135,946.97. I consider this to be a reasonable approach to applying the terms of the scheme for the nature of the site constraints and proposed development.

## **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
- a) the terms of The Dún Laoghaire-Rathdown County Council Development Contribution Scheme 2016-2020 as provided for in Section 48, Planning & Development Act, 2000, (as amended) AND adopted by Dún Laoghaire-Rathdown County Council on 14 December, 2015 as amended for the area has not been properly applied in respect of condition numbers 16, 17, 18 19 and 20 and the said Council should accordingly be directed to AMEND condition number 16 and OMIT condition numbers 17, 18, 19 and 20.

16. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in 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 made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

And

- b) the terms of Supplementary Development Contribution Scheme for the extension of Luas Line B1 – Sandyford to Cherrywood adopted by Dun Laoghaire Rathdown County Council on 13 January 2003 as amended for the area has not been properly applied in respect of condition number 22 and the said Council should accordingly be directed to AMEND condition number 22.

22. The developer shall pay to the planning authority a financial contribution of €135,946.97 (one hundred and thirty-five thousand, nine hundred and forty-six euro and 96 cent) in respect of the extension of Luas Line B1 – Sandyford to Cherrywood in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation

provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

## **Reasons and Considerations**

- 1) Having regard to the terms of The Dún Laoghaire-Rathdown County Council Development Contribution Scheme 2016-2020 and adopted by Dún Laoghaire-Rathdown County Council on 14 December, 2015 as amended under Section 48 of the Planning and Development Act 2000 as amended it is considered that the terms of the scheme have been incorrectly applied in this instance. The nature of the proposed development which include non-office uses is considered to qualify for a reductions in accordance with section 10 g) and n)ii, r) and s) of the said scheme. Accordingly, it is considered that condition numbers 16, 17, 18 19 and 20 shall be replaced by a single condition providing for a reduction in the total contribution as calculated in these conditions to correct an oversight by the planning authority .
- 2) Having regard to the terms of Supplementary Development Contribution Scheme for extension of Luas Line B1 – Sandyford to Cherrywood adopted by Dun Laoghaire Rathdown County Council on 13 January 2003 as amended under Section 49 of the Planning and Development Act 2000 as amended it is considered that the terms of the scheme have been incorrectly applied in this instance. The relevant site area for liable for assessment in accordance with the terms of the said scheme is 0.1695hectares based on gross development area and having regard to the requirement to further set back the development for the provision of a civic plaza in accordance with a specific objective as indicated in Drawing No.10 in the Sandyford Urban Framework Plan. Accordingly, it is considered that condition no.22 should be amended.

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Suzanne Kehely  
Senior Planning Inspector

18<sup>th</sup> May 2021