



An
Bord
Pleanála

Inspector's Report 308862-20

Development	Construction of new workshop building to the side of an existing warehousing building.
Location	Unit 60 Holly Avenue, Stillorgan Business Park, Stillorgan, Co. Dublin
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D20A/0526
Applicant	Hookmill Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	First party vs. s.49 conditions
Appellant	Hookmill Ltd.
Observer	None
Date of Site Inspection	25 th April 2021
Inspector	Suzanne Kehely

1.0 Site Location and Description

1.1. The site of 0.2134 ha. is centrally located on a corner site at the junction of Holly Avenue and Spruce Avenue in Sandyford Business Park. This area is characterised by predominantly industrial warehouse buildings set back from the road with intervening car parking. The site is within 700m walking distance of the Stillorgan Luas stop. There is a semidetached steel framed warehouse premises with two storey offices to the front on site. The premises have a stated floor area of 919 sq.m and are undergoing refurbishment. It has a footprint of 818.12sq.m. (43.049 x 18.865 + permitted 6 sq.m porch). There is a vehicular barrier at the entrance and a totem sign flags this entrance. It includes the names of 6 businesses none of which is the name of the applicant. The structure has multiple entry points and some signs of businesses indicated at the entrances to the side fronting Spruce Avenue. Part of the site between the building and the road is fenced off and this area is used for storage of machinery possibly associated with the landscaping business listed at the entrance.

2.0 Proposed Development

Permission is sought for a 7m high two-storey workshop/warehouse building to the side along side the existing structure where the existing fenced off yard exists. It is stepped back 2m and there is canopy overhang connecting the existing and proposed structures. The proposed layout is for Storage of 187 sq.m.. and an assembly workshop of 187 sq.m with a footprint of 214sq.m.. All finishes to match the refurbished premises as permitted under D20A/0490.

A new entrance is proposed from Spruce Avenue is proposed and is described as allowing for one-way delivery system for trucks and to allow for simpler and safe movement of goods vehicles.

The cover letter with the application to the planning authority states that the proposal is for much needed additional storage and assembly spaces necessary for the continued viability of the business which is not explained . The use of the new building is stated to be ancillary to the use of the existing building and will allow the clients [occupants] expand their operations whilst remaining at this site.

3.0 Planning Authority Decision

3.1. The planning authority sought additional information in respect of flood risk, bicycle/cyclist facilities, road marking and footpath details. Following submission of details to its satisfaction, the planning authority decided to grant permission subject to 13 conditions.

- Condition no. 7 requires a section 48 contribution of **€2457.84** 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 14th December 2015 as updated.
- Condition no. 8 requires a section 48 contribution of **€9,404.08** 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 14th December 2015 as updated.
- Condition no. 9 requires a section 48 contribution of **€909.45** 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 14th December 2015 as updated.
- Condition no. 11 requires a section 48 contribution of **€13,527.92** 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 14th December 2015 as updated.
- Condition no. 12 **requires a section 49 contribution of €178,054.43 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. In this regard I refer to the Development Contributions section of the report. It is stated that the development shall be subject to both section 48 and 49 development contributions applying to the SUFP area. In this regard the gross floor area of 392sq.m. is noted. The site area is assessed to be 0.222 hectares as measured by the DLR planning team.
- 3.2.2. 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 €909.44
 - S.48 Roads €30,250.64
 - S,48 Community and Parks €15,985.76
 - S.49 Luas Line B1 €178,054.43.

4.0 Planning History

- 4.1. PA ref D06/1033 (in pouch at back of file) refers to permission for refurbishment and extension to existing warehouse at 60 Holly avenue. (not activated)
- 4.2. PA ref. D20A/0490 (in pouch at back of file) refers to permission for refurbishment and single storey entrance lobby to front and external alterations at 60 Holly avenue.

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.

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. 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.

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

5.3.1. 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.

5.3.2. The subject site is located within the delineated catchment area to which this scheme applies.

5.3.3. 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.

- 5.3.4. Section 13 as amended in 2013 states that only net additional development (in hectares) in the case of commercial redevelopment projects will be levied.
- 5.3.5. The levels of contribution for commercial development of €570,000 per gross site hectare was increased to €802,047 in 2013.
- 5.3.6. 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.
- 5.3.7. 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.

5.4. The Dún Laoghaire-Rathdown County Council S.48 Development Contribution Scheme 2016-2020

- 5.4.1. 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
- 5.4.2. 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 which comprises countywide and Sandford. The site is located in the Sandyford Urban Framework Plan Area and the following rates apply.
- 5.4.3. **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
Total of Contributions Payable	Office 127.10 Other 99.00

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

5.4.5. 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.

h) Change of use of an existing premises including "Living Over The Shop". For clarification purposes any additional floor area will be levied at the appropriate rate.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The applicant is appealing the section 49 Condition (No.12) on the basis that:

- The rate has been applied to the entire site where there is an existing building which is to be retained. The development relates to an extension/intensification

of an existing warehouse use and the levy should only apply to the proposed extension of 392 sq.m. with a footprint of 214 sq.m.

- The scheme provides for a levy on only net additional development .
- The applicant is aware of the provisions for section 48 and section 49 contributions but it was understood that these were applicable to the gross sq.m. of development and not the entire site.
- It is accepted that the section 48 contribution levy has been correctly applied.
- Other developments in the area have been permitted with a Luas Line B1 contribution calculated on the additional sq.m. of the building area rather than the entire site . For example:
 - PA ref D18A/0109 refers to permission for an extension of 184 sq.m. in addition to refurbishment works – the s.49 levy was €14,597.26
 - PA ref D16A/0189 refers to permission for motor showroom extension of 149 sq.m. change of use and ancillary site works and signage – the s.49 levy was €13,073.37

6.1.2. The total contribution for the site at €225,200.27 must be acknowledged as being unreasonable.

6.2. Planning Authority Response

6.2.1. The planning authority responded in a letter dated 12th January 2021. This letter states:

- The permissions referred to by the appellant relate to extensions and such development is charged on the floor area and not the gross area of the site.
- As the application relates to a separate building and not an extension and as the site has not had Luas charges paid on it in the past it is now charged on the gross site area and not the floor area of the building.
- Should a site have a Luas charge in the past and should that be paid it would not be charge again.
- In case D06A/133 pertaining to the site the permission was subject to a Luas levy however permission was not activated and no charges were received . The site is not charged at gross site area.

6.3. First Party Counter Response

- 6.3.1. The supplementary scheme is attached with the relevant section of part 13 highlighted - 'only net additional development (in hectares) in the case if commercial redevelopment projects will be levied. It is submitted that this has been ignored.
- 6.3.2. It is submitted that the applicant has been advised to resubmit with the footprint of the building rather than the entire site and it is submitted that this an acknowledgement of error.
- 6.3.3. S.48 (1) of the Act is cited: '...when requiring the payment of a contribution in respect of public infrastructure except that any benefit which accrues in respect of existing development may not be included in any such determination'. It is accordingly submitted that the application of terms are not only contrary to the terms of the scheme but also the Act.
- 6.3.4. It is emphasised that the proposed development can be classed as an extension given the canopy roof linking the existing and proposed building, It is described as providing much needed storage and assembly space necessary for the continued viability of the business on this site. The use of the new building will be ancillary to the use of the existing building and will allow clients expand their operations whilst remaining on site.
- 6.3.5. This is not application to redevelop the entire site or subdivide the site.
- 6.3.6. The levy for the previous extension of 220 sq.m incurred a levy of only €12,939.

7.0 Assessment

7.1. Scope of issues

- 7.1.1. This appeal relates solely to a financial contribution under section 49 of the Planning and Development Act as amended. Accordingly the Board is restricted in its consideration of matters to those relating to condition 12.

7.2. Application of Section 49 scheme

- 7.2.1. Condition no. 12 requires a section 49 contribution of €178,054.43 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. There is no dispute that a contribution towards this scheme applies to the site. The amount is however disputed on the basis that the development is extension of premises on site and is not part of redevelopment of the entire site.

- 7.2.2. The planning authority argues that as the premises is effectively a standalone building the entire site area of .222ha as calculated by its planning team is the basis for calculation and not the floor area.
- 7.2.3. The planning authority also makes the case that the lower rates applying to floor area only are based on the class of development being an extension which is not considered applicable in this case.
- 7.2.4. I accept that the proposed building could be reasonably described as a standalone unit in that there is no enclosed interconnection or abutment with the existing premises as compared to the previous extension proposal on site or the other permitted development cites in the grounds of appeal. I also note in this case that there are multiple businesses on the site as indicated by the totem sign and building signage at different entrances. It would appear from the layout that this is shared warehouse unit for some business as well as some office-based business but this is not explained in the application. There is a case to be made that the proposal facilitates the subdivision of the original premises and in this way constitutes a intensification of the entire site and on this basis the application of the rate for the entire site is not unreasonable. I consider the terms intensification is a more appropriate description of the activity. However the applicant specifically confirms that the development is ancillary to the existing business and not for the purpose of subdivision. There is also a level of physical connection by way of the cantilevered canopy.
- 7.2.5. Notwithstanding the status of use from my reading of the supplementary contribution scheme I consider the relevant considerations are the provisions of the Section 48 (1) of the Act in considering existing development and also Section 13 of the supplementary scheme as amended in 2013 which states that only net additional development (in hectares) in the case of commercial redevelopment projects will be levied. While I note the practice by the planning authority of applying sq.m. in the history cases for extension I would question this approach for the subject case by

reference to the per hectare rate and the intended means of applying this. 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.

- 7.2.6. In these circumstances I consider site area is the relevant basis for apportioning the contribution amount. I consider having regard to section 13 and the context of section 48 of the PDA that some allowance should be made for existing development on site.
- 7.2.7. In this case which involves a new entrance beneficial for the entire site it is not a case of simple taking the footprint of the proposed building. I consider taking account of the footprint of the existing building and the footprint of the proposed building and also the pro rata site area. Based on a site area of .222hecatres (over which there is no dispute), an existing footprint of 818.12sq.m. and proposed footprint of 214sq.m., the hectarage base for the purposes of applying the contribution rate of €802,047 per hectare should be .04603hectares . This would reduce the financial contribution rate to €36,918.22. I consider this to be a reasonable approach to applying the terms of the scheme for the nature of the ancillary 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 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 numbers 12 and the said Council should accordingly be directed to AMEND condition number 12.

The developer shall pay to the planning authority a financial contribution of €36,918.22. (thirty-six thousand, nine hundred and eighteen euro and 22 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

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 .046 sq. m. based on a pro rata apportioning of the site and having regard to the existing development on site and the ancillary nature of the proposed development which includes a new entrance. And revisions to traffic circulation. Accordingly, it is considered that condition no. 12 should be amended.

Suzanne Kehely
Senior Planning Inspector

26th April 2021