



An
Bord
Pleanála

Inspector's Report

ABP-309060-20

Development	Retention of the change of use from retail/commercial use to residential use at first floor level consisting of a two-bedroom apartment.
Location	51 Lower Dorset Street, Dublin 1
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3518/20
Applicant(s)	Margaret Kennedy
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party vs. condition
Appellant(s)	Margaret Kennedy
Observer(s)	None
Date of Site Inspection	3rd March 2021
Inspector	Stephen Ward

1.0 Site Location and Description

- 1.1. The site is located along the eastern side of Lower Dorset Street, close to its junction with Belvidere Road to the north. It contains a two-storey mid-terrace building, the ground floor of which is occupied by a butcher shop with complete site coverage. A separate ground floor door provides access to the subject apartment at first-floor level. A narrow service laneway runs off Belvidere Road to the rear of the site.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of the change of use of the first-floor level from retail/commercial use to residential use. The first-floor level contains a two-bedroom (3 person) apartment. Although the 'Floor Plans' drawing indicates a 'total gross floor area' of 65.9m², the application documents state that the area is 73m².
- 2.2. The application states that the first-floor area was originally used as a self-contained residential unit. It was then connected to an adjoining retail premises (No. 52) by means of an opening in the party wall and was changed to commercial use. It has recently been disconnected from No. 52 and converted back to residential use.

3.0 Planning Authority Decision

3.1. Decision

By order dated 30th November 2020, Dublin City Council (DCC) issued notification of the decision to grant permission, subject to conditions.

Condition no. 2 of the decision states as follows:

Within two weeks from the date of the Final Grant being issued, a development contribution in the sum of €6,741.72 shall be paid immediately to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority as provided for in the approved Section 48 (Planning and Development Act 2000 as amended) Contribution scheme for Dublin City Council.

The amount shall be subject to any applicable indexation provisions of the Scheme at time of payment or will be increased if prior to payment an indexation increase is applied to the current Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly.

Reason: *It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report can be summarised as follows:

- The site is zoned as 'Z4' and the proposed residential use within the existing commercial unit is considered acceptable in principle.
- The unit provides a good standard of accommodation and is acceptable.
- There would be no impact on the privacy of adjoining properties.
- The absence of parking is acceptable given the central site location.
- A grant of permission is recommended, which forms the basis of the DCC decision.

3.2.2. Other Technical Reports

- Drainage Division: No objections subject to standard conditions.

3.3. Prescribed Bodies

- TII: Unless otherwise exempted, a section 49 Development Contribution may apply in relation to the LUAS Cross City project.

3.4. Third Party Observations

None.

4.0 Planning History

There would not appear to be any relevant planning history for the subject site.

5.0 Policy Context

5.1. National Guidance

Development Contributions - Guidelines for Planning Authorities (January 2013)

- 5.1.1. These Guidelines aim to assist planning authorities in achieving a balance between the costs of services provided and the need to support economic activity via Development Contribution Schemes. Planning authorities are required to include specific exemptions and waivers in their Development Contribution Schemes, which should not apply to applications for the retention of development.

Development Management – Guidelines for Planning Authorities (2007)

- 5.1.2. Section 7.12 of the Guidelines provides guidance on planning conditions relating to development contributions. Section 8.12 of these Guidelines refers to appeals regarding development contribution conditions.

5.2. Development Plan

- 5.2.1 The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The site is zoned as 'Z4', the objective for which is '*To provide for and improve mixed-services facilities*'.
- 5.2.2 Section 4.5.1.1 outlines the 'Approach to the Inner City' and states that the 'living city initiative' will assist in renovation by incentivising residential occupation of vacant upper floors. Policy SC30 aims to 'promote residential use on upper floors of existing and new buildings and to support the Government's Living City Initiative.'
- 5.2.3 Chapter 5 outlines the Council's approach to the provision of quality housing and encourages a good mix of house types and sizes with a satisfactory level of residential amenity. Policy QH24 aims to support proposals that bring upper floor above ground floor premises into residential use in order to revitalise the city through measures such as the Living City Initiative.

5.2.4 Section 13.3.6 states that Dublin City Council may, when granting planning permission, attach conditions requiring the payment of contribution(s) in respect of public infrastructure and facilities, benefiting development in its area. Details of such contributions will be set out in the Council's Development Contribution Scheme.

5.2.5 Chapter 16 sets out detailed policies and standards in respect of development proposals within the city. Section 16.10.1 outlines residential quality standards for apartments.

5.3 **DCC Development Contribution Scheme 2020 – 2023**

5.3.1. This scheme was adopted in accordance with the provisions of Section 48 of the Planning and Development Act 2000 (as amended) and was applicable from 1st April 2020. The scheme sets out the level of financial contributions payable for 'residential' and 'industrial/commercial' development in respect of different classes of public infrastructure and facilities. Section 11 provides that no contribution will be payable in certain circumstances. Section 12 outlines that a reduced contribution will be payable in certain other circumstances.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1 This first party appeal relates solely to Condition no. 2 of the DCC decision, which requires the payment of a Section 48 Development Contribution of €6,741.72.

6.1.2 The appeal contends that the imposition of the condition is unreasonable and should be completely eliminated on the following grounds:

- The development relates to the reversion of the property to its original and long-established residential use.
- It is an impediment to the development and is contrary to Development Plan policies QH24 and SC30 and the Living City Initiative, which seek to promote and incentivise proposals of this nature.
- No additional floor area is proposed.

- No new infrastructural services are required to facilitate the development.

6.2. Planning Authority Response

The Planning Authority confirms that a development contribution is applicable on the basis of a change of use from established commercial use to residential use. The Living City Initiative (LCI) is a separate process and a development issued under the LCI is not liable for a contribution. The Planning Authority outlines the eligibility criteria to apply for the LCI, which includes compliance with statutory planning requirements. It contends that the applicant's only recourse was to apply for retention permission. In doing so, the development must be considered in line with the 2016-2023 s.48 scheme and it is requested that the contribution amount of €6,741.72 be applied in full.

6.3. Applicant Response

The applicant's response to the Planning Authority submission reiterates the grounds of appeal that the imposition of the contribution runs contrary to the policies of the Development Plan. The submission also details contentions of full compliance with the eligibility criteria for the LCI, which can be summarised as follows:

- Construction of the building pre-dates 1915.
- Works commenced within the appropriate period.
- Planning permission has issued, and the works are in accordance with Building Regulations.
- The works were for the conversion back to residential use and did not involve any additional floor area.
- The cost of the works exceeded the relevant threshold.

6.4. Observations

None.

7.0 Assessment

- 7.1. The appeal relates to condition no. 2 only, which imposes a Development Contribution in accordance with the provisions of Section 48 of the Planning and Development Act 2000 (as amended).
- 7.2. Section 48 (10) (b) of the Act makes provision for an appeal to be brought to the Board where an applicant considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority. In that context I consider that the Board is required to apply the scheme as adopted by the Planning Authority and not to evaluate the merits or otherwise of the scheme itself. Furthermore, as this appeal relates to a development contribution only, the Board cannot determine the application as if it was made to it in the first instance and is confined solely to the consideration of whether the terms of the scheme have been properly applied.
- 7.3. The relevant S.48 scheme is the DCC Development Contribution Scheme 2020-2023. Section 9 of the scheme outlines the 'level of contribution' payable in respect of different classes of public infrastructure and facilities (except where no contribution or a reduced contribution applies). For residential development, a rate of €92.10 per m² applies.
- 7.4. Sections 11 and 12 of the scheme outline circumstances where no contribution or a reduced contribution will apply. Having reviewed the range of circumstances included, I consider that the only provision that would normally apply to an application of this nature is included in section 12 (reduced rate) as follows:
- In the case of a change of use from residential use to commercial and vice versa, development contributions will be calculated at 50% of the applicable rate.*
- 7.5. This would appear to somewhat conflict with the Planning Authority's rationale for applying the contribution as outlined in their appeal response i.e. that a contribution simply applies for change of use from commercial to residential. If that was the basis for its application, then the 50% reduction should have been applied in accordance with the provisions of section 12 outlined above, which did not happen in this case. While I would agree with the Planning Authority's position that a full contribution does apply for the change of use, I would differ slightly in the rationale for its application.

To that end, I note that the current case is an application for retention of the change of use, and that the allowance for any such reduced rate is superseded by section 13 of the scheme, which states that:

No reductions in whole or in part shall apply to permissions for retention of development.

- 7.6. I note the contentions of the applicant regarding compliance with the eligibility criteria for the LCI, but I do not consider that these criteria are relevant to the current appeal case. And while it would appear that the applicant has not yet been eligible to make an LCI application, I note that, even in the event of an LCI application being successful, the DCC Development Contribution Scheme does not provide any exemptions or reductions in relation to this initiative.
- 7.7. Having regard to the above, I consider that the terms of the scheme clearly provide for the full application of the residential rate of €92.10 per m² for applications for the retention of change of use from commercial to residential, irrespective of whether there is additional floor area or infrastructural requirements.
- 7.8. The reports provided by the planning authority do not include detailed evidence of the calculation methods used for condition no. 2. However, I note that the total figure of €6,741.72, divided by the applicable rate of €92.10, equals 73.20, which is the 'gross floor area' as stated in the application form. I note that the drawings refer to a 'gross floor area' of 65.9m² but my measurements would indicate that this is an error and that the figure of 73.20m² is correct. Accordingly, I consider that, whatever about the differences in the rationale applied, the planning authority has arrived at the correct contribution amount in accordance with the terms of the scheme in this case.

8.0 Recommendation

I recommend that the Planning Authority be directed to ATTACH Condition No. 2 for the reasons and considerations set out hereunder.

9.0 Reasons and Considerations

Having regard to the nature of the proposed development, involving the retention of the change of use of the subject area from commercial/retail use to residential use, and the terms of the Dublin City Council Development Contribution Scheme 2020 – 2023, section 13 of which provides that no reduced contribution rates, in whole or in part, shall apply to permissions for retention of development, the Board considers that condition no. 2 of the decision properly reflects the terms of the development contribution scheme and that condition no. 2 should remain attached.

Stephen Ward
Senior Planning Inspector

22nd April 2021