



An
Bord
Pleanála

Inspector's Report ABP315210-22

Development	Change of use of 2 existing ground floor retail units to Day Service Centre
Location	Coric House, Courthouse Square, Tallaght Co. Dublin
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD22A/0307
Applicant(s)	Walkinstown Association for People with an Intellectual Disability (WALK)
Type of Application	Permission
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	Applicant vs Financial Contribution
Appellant(s)	WALK
Observer(s)	N/A
Date of Site Inspection	18 th May 2023
Inspector	Andrew Hersey

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1.0 Site Location and Description

1.1. The subject site is located in Courthouse Square, Tallaght Village. The proposed development comprises of two ground floor commercial units of Coric House. The said units are currently vacant. The said units face onto a car park.

2.0 Proposed Development

2.1. The proposed development is for the change of use of 2 existing ground floor retail unit to a Day Care Centre, ancillary internal works and modifications to the existing shopfront. The use of the premises for which a change of use is sought is for open plan learning spaces, meeting rooms and toilet facilities.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted permission subject to conditions on the 26th October 2022. Condition No. 6 as follows:

The developer shall pay to the Planning Authority a financial contribution of €15,149.78 (fifteen thousand one hundred and forty nine euro and seventy eight cent), in respect of public infrastructure and facilities benefiting development within the area of the Planning Authority, that is provided, or intended to be provided by or on behalf of the authority, in accordance with the terms of the Development Contribution Scheme 2021 - 2025, made under Section 48 of the Planning and Development Acts 2000-2011 (as amended).

The contributions under the Scheme shall be payable prior to commencement of development or as otherwise agreed in writing by the Council. Contributions due in respect of permission for retention will become payable immediately on issue of the final grant of permission. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced.

REASON: The provision of such facilities will facilitate the proposed development. It is considered reasonable that the payment of a contribution be required, in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report of the Planning Officer (dated 26th October 2022) reflects the decision of the Planning Authority. The following is noted from the report;
- Details regarding the contribution are set out in page 18 of the case planners report. Contributions are based on a floorspace of 153.4sq.m. There is not sufficient detail in the report to illustrate as to how a contribution of €15,149.78 was calculated and imposed.
- The proposed use as a Day Care Centre has been accepted in principle by the case planner.

3.2.2. Other Technical Reports

- Not relevant

3.3. Submissions/Observations

- None received

4.0 Planning History

4.1. The said site has been subject to a number of planning applications as follows:

- SD19A/0348 permission for Internal alterations to the existing office at first floor level and a change of use of the 2 existing ground floor retail units at the rear of the property into a single licensed restaurant premises – granted permission. First Part Appeal against contribution (ABP307783-20 also applies)
- SD19A/0013, permission 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 – granted permission

- SD03A/0447, permission 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 - Granted Permission

5.0 Policy and Context

5.1. Development Plan

5.2. South Dublin County Development Plan 2022-2028

- The proposed site is subject to zoning objective VC – ‘To protect, improve and provide for the future development of Village Centres’
- South Dublin County Council Development Contribution Scheme 2021-2025 is the relevant Section 48 Development Contribution Scheme.

5.3. Natural Heritage Designations

The site is not located within or adjacent to any Natural Heritage Designations nor is there any hydrological link to the same

5.4. EIA Screening

- 5.4.1. Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 **The Appeal**

6.1. An appeal against Condition No 6 (Section 48 Contributions) has been lodged by the first party

6.2. **Grounds of Appeal**

- That the applicant, WALK is a registered charity
- The site is located in the centre of Tallaght Village where a 50% reduction in contributions applies
- That contributions were previously paid in respect of these premises (ABP307783 applies)

6.3. **Planning Authority Response**

6.4. None

6.5. **Observations**

- None

6.6. **Further Responses**

- None

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 six only and cannot consider the proposed development de novo.

7.2. Condition number six requires the payment of a development contribution of €15,149.78 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 2021-2025.

- 7.3. The terms of applying Development Contributions is set out within the South Dublin County Council Development Contribution Scheme 2021-2025 (hereunder referred to as SDCC DCS) Calculations are provided on page 18 of the case planners report. However, it is not clear as to where the figure of €15, 149.78 was calculated.
- 7.4. I note that Section 11 of the SDCC DCS sets out categories of development will be exempted from the requirement to pay development contributions or may pay a reduced rate, as stated, under the Scheme:
- 7.5. Section 11 (v) allows for a 50% reduction in village centre areas i.e. on lands zoned Village Centre in the county development plan. I note that the said development subject of this appeal is located on lands zoned as Village Centre in the South Dublin County Council Development Plan 2022-2028. This reduction therefore applies.
- 7.6. Section 11 (xii) states that *'Development by a registered charity for non-profitable development shall be exempt from the requirement to pay a planning application fee, in accordance with Article 157 of the Planning and Development Regulations 2000 (as amended), shall be exempt'*
- 7.7. Section 11 (xii) further states *Development proposed to be carried out by or on behalf of a voluntary organisation, and which in the opinion of the planning authority—*
- *is designed or intended to be used for social, recreational, educational or religious purposes by the inhabitants of a locality, or by people of a particular group or religious denomination, and is not to be used mainly for profit or gain,*
 - *is designed or intended to be used as a workshop, training facility, hostel or other accommodation for persons with disabilities and is not to be used mainly for profit or gain.*
- 7.8. I note that a planning application fee of €522.24 was paid to the local authority which may have been an error on the applicants/local authorities part as it would not have been required if the planning authority were aware that the applicant was a registered charity. I note that there is no mention within any of the documentation submitted with the application that the said applicant WALK is a registered charity. The fact that WALK is a registered charity is revealed in the appeal documents. The appeal references a Charity Number - CHY10777 and

a Registered Charity Number CRA 20028008. I have consulted with the Charities Regulator Website and I note that the applicants, WALK, are a registered charity

- 7.9. With respect of the above, I consider that the exemption under Section 11 (xii) applies to the proposed development which exempts the applicant from paying a development contribution.
- 7.10. Section 11 (xxvi) sets out exemptions with respect of change of use applications. I note that the proposed development is for permission for a change of use of two retail units into a Day Care Centre. The section states that where *'development contributions were paid in respect of the former use, the contribution payable on the new use will be net of the quantum of development previously paid for'*. The section further states; *'Where a contribution was not previously paid or the original development was carried out before 1963 it shall be treated in its entirety as new development and assessed accordingly'*.
- 7.11. I note that the previous application on site SD19A/0348 comprised of the change of use of the two retail units subject of this appeal to a licensed restaurant. This was granted permission but according to a planning report submitted with the application, the permission was never enacted. It is not clear as to whether development contributions pertaining to that development were paid by the applicant.
- 7.12. On this basis, I consider that Section 11 (xxvi) does not apply.
- 7.13. With respect of the foregoing and having regard to the charitable status of the applicant I consider that the contribution of €15, 149.78 was incorrectly applied and is not in accordance with the SDCC DCS 2021-2025. I do note however, that the planning authority were not aware of the applicants charitable status. In any respect I consider that in accordance with SDCC DCS 2021-2025 that no contributions are applicable to this development.
- 7.14. **Appropriate Assessment Screening**
- 7.15. Having regard to the nature and scale of the proposed development, the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

- 8.1.1. I recommend that the Board removes condition 6 for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Section 48 of the Planning and Development Act 2000, as amended, requires planning authorities to make development contribution schemes which provide for the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority. The South Dublin County Council Development Contribution Scheme 2021 – 2025 sets out, under Section 11, categories of development will be exempted from the requirement to pay development contributions or may pay a reduced rate, as stated, under the Scheme. Section 11 (xii) states that development carried out by a registered charity shall be exempt from contributions. The appeal submitted, states that the applicant, WALK is a registered charity and therefore is exempt from contributions. The Development Contribution Scheme therefore does not apply and the planning authority has not correctly applied the scheme. The Board directs that condition 6 be removed.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way

Andrew Hersey
Planning Inspector

9th June 2023