



An  
Bord  
Pleanála

## Inspector's Report ABP-315336-22

<b>Development</b>	Extension, Change of Use, Alterations to Kilnamanagh Shopping Centre and all associated site works.
<b>Location</b>	Kilnamanagh Shopping Centre, Treepark Road / Mayberry Road, Kilnamanagh, Dublin 24
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD22A/0316
<b>Applicant(s)</b>	Better Value Unlimited Company
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party against Condition 7
<b>Appellant(s)</b>	Better Value Unlimited Company
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	None
<b>Inspector</b>	Elaine Power

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## **1.0 Site Location and Description**

- 1.1. The subject site is located within the Kilnamanagh Shopping Centre in Kilnamanagh, Dublin 24. The shopping centre is located within an established residential area. The site is bound to the front (south) by Mayberry Road and to the east and west by Treepark Road. To the rear (north) the site is bound by the rear and side gardens of dwellings within the Treepark residential estate and to the north east by St. Kevins Church.
- 1.2. The site has a stated area of 2.58ha. It is anchored by Dunnes Stores with a number of smaller retail and commercial units accessed via an internal mall. The building is located in the centre of the site with surface level car parking surrounding the building.
- 1.3. General vehicular access is to the east of shopping centre building and service access to the site is from the west of the shopping centre building. There is a pedestrian access to the site from Mayberry Road. The site is generally open with a low wall along the sites southern, eastern and western boundaries.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the extension, change of use and alterations to Kilnamanagh Shopping Centre. The works comprise:
  - A 2-storey (2,336sqm) extension at the shopping centres eastern elevation;
  - Change of use of the first floor retail area, previously used by Dunnes Stores as a textile retail space. This existing space would be extended and subdivided to provide 2 no. new non-retail, service units. Unit 1 would have a total floor area of c. 1,411sqm for use as a health centre. Unit 1 would have a total floor area of c. 790sqm for use as a gym;
  - Removal of condition no. 3 of Reg. Ref. SD06a/0095 to allow for an increase in the net sales area of comparison sales space at the ground floor level;
  - New entrance ramp and steps at the northern elevation of the extension;
  - The southern lobby to Dunnes Store would be demolished and replaced with a new glazed lobby entrance;

- New walkway canopy generally on the north and south elevations;
- New ramped access next to existing pedestrian steps on Mayberry Road;
- Reconfigure existing entrance to Treepark Road, including revised parking layout generally around the east side of the building to allow for an adjusted one-way system around the centre;
- Car parking, as a result of the extension, would be reduced;
- 4 no. EV parking spaces;
- Covered cycle parking;
- New enclosed service yard wall and gates to existing service area on the west side of the centre;
- New signage, including illumination, and 2 no. totem signs;
- Recladding on elevations;
- Additional landscaping treatments generally around the east side of the centre arising from the amendments to the car park;
- Landscaping works and all drainage works including SUDS measures; and
- All ancillary works to facilitate the development.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Grant Permission subject to 7 no. conditions. Condition no. 7 is considered relevant:

7. *The developer shall pay to the Planning Authority a financial contribution of €448,074.12 (four hundred and forty eight thousand, seventy four euros and twelve cents), in respect of public infrastructure and facilities benefiting development within the area of the Planning Authority, that is provided, or intended to provide 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 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 initial planners report raised some concerns regarding the proposed development and recommended that 10 no. items of further information be submitted. These items related to (1) design approach, (2) additional uses, (3) pedestrian and cycle facilities, (4) car parking, (5) motor cycle and scooter parking, (6) landscape design proposals, (7) SUDS, (8) Open Space, (9) Energy and (10) Signage.

Following receipt of further information the planners report recommended that permission be granted subject to 7 no. conditions.

### **3.2.2. Other Technical Reports**

*Water Services:* Reports dated 5<sup>th</sup> September 2022 and the 14<sup>th</sup> November 2022 raised no objection.

*Public Realm Planning:* Report dated 30<sup>th</sup> August 2022 recommended that further information be sought regarding (1) landscape design proposals, (2) SUDS and (3) open space. Report dated 14<sup>th</sup> November 2022 raised no objection subject to conditions.

*Environmental Health Officer:* Report dated 16<sup>th</sup> August 2022 recommended that further information be sought regarding potential noise nuisance from the gym.

*Public Lighting Section:* Email dated 14<sup>th</sup> November 2022 - No comment.

### 3.3. Prescribed Bodies

**Department of Defence:** Given the proximity to Casement Aerodrome, operation of cranes should be co-ordinated with Air Corps Air Traffic Services and the developer should implement adequate bird control measures during the construction phase to mitigate the effects of birds on Air Corps flight operations.

**Uisce Eireann:** No objection subject to conditions.

### 3.4. Third Party Observations

None

## 4.0 Planning History

**Reg. Ref. S00a/0873:** Permission was granted in 2000 for (a) the demolition of part of the existing shopping centre, (b) the construction of 2 no. new retail units at first floor level, new configuration of the shopping centre and new first floor offices (c) elevational alterations and (d) reconfiguration of car parking.

**Reg. Ref. 06A/0095:** Permission was granted in 2006 to (1) change the use of the existing first floor offices (1,528sqm) and ground floor entrance (118sqm) to retail use, (2) minor alterations to existing elevations and (3) 28 no. car parking spaces.

## 5.0 Policy Context

### 5.1. South Dublin County Development Contribution Scheme 2021 2025

Section 9 of the Scheme, states that the contributions to be paid (except where an exemption or reduction applies, see Article 10 below) in respect of the different classes of public infrastructure and facilities are as follows:-

<b>Class of Public Infrastructural Development</b>	<b>€ per square metre of Residential Development</b>	<b>€ per square metre of Industrial/Commercial class of Development</b>
Class 1: Transport infrastructure & facilities	25.40	24.26
Class 2: Surface water & environment infrastructure & facilities	10.66	10.18
Class 3: Community facilities & amenities	21.20	20.25
Class 4: Parks and open space facilities and amenities	21.05	19.15
Class 5: Economic, Enterprise and Tourism Development, including Libraries	18.08	17.27
<b>Total of Contributions Payable</b>	<b>96.39</b>	<b>91.11</b>

Note 3: Extensions permitted to existing developments will be charged at the above rates, subject to circumstances where an exemption or reduction applies, as per below.

Section 11 of the scheme sets out circumstances where no contribution or a reduced contribution apply.

Section 11 (xxv) Revisions / Modification to a permitted development: An application for permission for modification / revision to a permitted development, including a change of house type or amendment to a site layout will, where material, be treated as an independent/separate permission for development, and will be assessed on the full proposal for the floor area permitted in such a permission, at the rate of development contributions in operation on the date of the decision to grant permission. The contribution payable at commencement will be based on the permission implemented, i.e. the original permission or the revised proposal (updated in accordance with the relevant index).

Section 11 (xxvi) Change of use: In respect of a permission for change of use, 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.

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. The Development Contribution Scheme does not provide for any rebate or refund in this regard. Agents/applicants should provide evidence of prior payment at application stage to expedite assessment and avail of this exemption.

## **5.2. South Dublin County Development Plan 2022-2008**

Section 8.4.2 Social / Community Infrastructure Delivery notes that a Development Contribution Scheme (DCS) is prepared under section 48 of the Planning and Development Act, 2000 (as amended). Where a planning permission is granted (with certain exceptions), the DCS allows the Council to require by planning condition, a financial contribution by the applicant towards projects as set out in the Scheme.

The Development Contribution Scheme (2021-2025) identifies a broad range of County-wide community infrastructure and open space projects for funding including community centres, parks upgrades, disability accessibility works and sports facilities.

## **5.3. *Development Contributions Guidelines for Planning Authorities, 2013***

Development contribution schemes are a central instrument in improving the quality and therefore the competitiveness of local authority areas, thereby establishing an environment in which enterprise can thrive and communities progress. Development contributions provide critical resources to facilitate the funding of essential physical and social infrastructure that support the implementation of development plans of local authorities.

Development contributions provide the only statutory mechanism for capturing planning gain as part of the development management process.

General Development Contribution Schemes: Under section 48 of the Planning and Development Acts, planning authorities must draw up a development contribution scheme in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority.



#### **5.4. Natural Heritage Designations**

Not relevant in this instance.

#### **5.5. EIA Screening**

Not relevant in this instance.

### **6.0 The Appeal**

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

The first party appeal against condition 7 is summarised below: -

- The financial contribution is based on €98.76per sqm applying to a commercial extension of 2,336sqm and a change of use of 2,201sqm.
- The contribution relating to the extension (1,639sqm at ground floor level and 697sqm at first floor level) is accepted. This contribution element generates a fee of €230,730.36 (2.336sqm x €98.76)
- However, a contribution for the change of use (2,201sqm) includes the new floor area (697sqm) at first floor level. Therefore, this area has been charged twice.
- The change of use at first floor level should have excluded the proposed first floor extension (687sqm). Resulting in a total change of use of 1,504sqm. This floor area results in a change of use contribution of €148,535.04 (1,504sqm x 98.76).
- The figure of €148,535.04 should also be subject to a deduction for fees previously paid on existing first floor area.
- The existing first floor area has already been subject to fully paid development contributions under Reg. Ref. S00a/0873 and SD06a/0095, details of which are submitted with the appeal.
- Under Reg. Ref. S00a/0873 a development contribution of €72,204 was paid in 2000. €63,059 was attributed to the first floor area that is subject to the appeal. Allowing for inflation this is equivalent to c. €100,870.80.

- Under Reg. Ref. SD06a/0095, a development contribution of €80,810.49 in 2007. This application did not relate to the area currently under appeal.
- The development contribution for change of use is offset by the historic payments of €176,236.81 (adjusted for inflation).

## 6.2. **Planning Authority Response**

None

## 6.3. **Observations**

None

## 6.4. **Further Responses**

None

## 7.0 **Assessment**

7.1. This appeal is made under the provisions of Section 48(10)(b) of the Planning and Development Act, 2000 (as amended), and relates to the consideration of Condition No. 7 only. I have, therefore, confined my assessment to the terms of the financial contribution (Condition 7) and I am satisfied that no other substantial planning issues arise.

7.2. Condition No. 7 required the applicant pay a financial contribution of €448,074.12 to the Planning Authority towards expenditure in respect of public infrastructure and facilities benefiting development within the area of the Planning Authority, that is provided, or intended to provide by or on behalf of the authority In accordance with the terms of the South Dublin County Development Contribution Scheme 2021-2025, made under Section 48 of the Planning and Development Acts 2000-2011 (as amended).

### 7.3. ***Calculation of Development Contribution***

- 7.3.1. The proposed development to which the financial contribution applies comprises of a 2-storey commercial extension of 2,336sqm (1,639sqm at ground floor level and 697sqm at first floor level) at Kilnamanagh Shopping Centre and the change of use of the first floor retail area, previously used by Dunnes Stores as a textile retail space. This existing first floor space (c.1,504sqm) would be extended (697sqm) and subdivided to provide 2 no. new non-retail, service units, in this regard a health centre (c. 1,411sqm) and a gym (c. 790sqm). This results in a total first floor area of 1,504sqm to accommodate the proposed health centre and gym.
- 7.3.2. The planning authority applied a rate of €98.76 per sqm to the 2-storey commercial extension (2,336sqm). This resulted in a contribution of €230,703.36 (2336sqm x €98.76). The applicant raised no objection to this contribution. I agree that this contribution was correctly applied. However, it is noted that the planning authority's website ([DCS 2021-2025 - SDCC](#)) states that the South Dublin Section 48 Development Contribution Schemes rates increased with effect from 1<sup>st</sup> January 2023 in accordance with the Tender Price Index. Consequently, a 13.98% increase in development levies applies. The current rate for commercial development is €112.57 per sqm. Therefore, the revised rate results in a development contribution of €262,963.52 (2,336sqm x €112.57) for the 2-storey commercial development. I am satisfied that this is the correct rate to be applied, as Note 1 of the South Dublin County Development Contribution Scheme 2021-2025 states that indexation in accordance with the Chartered Surveyors of Ireland Construction Tender Price Index will apply annually on 1st January.
- 7.3.3. The planning authority also applied a rate of €98.76 per sqm to change of use the first floor level (2,201sqm). The first floor level comprises the proposed health centre (c. 1,411sqm) and a gym (c. 790sqm). Concerns are raised by the applicant that the planning authority miscalculated the financial contribution relating to the change of use area at first floor level, as they included the extension. Therefore, double charging for 697sqm. It is noted that the 2,201sqm total floor area charged by the planning authority includes first floor level extension. Therefore, I agree with the applicant that the 697sqm has been included twice in the calculation. The change of use area, which excludes the extension, has floor area of c. 1,504sqm. As noted above the rate per

sqm for commercial uses increased to €112.57 on the 1<sup>st</sup> January 2023. Therefore, the correct development contribution for the change of use area is €169,305.28 (1,504sqm x €112.57).

#### **7.4. Reduction in Contribution**

- 7.4.1. The applicant considers that the development contribution for the change of use area (1,504sqm) should also be subject to a deduction for fees previously paid on the existing first floor area.
- 7.4.2. Section 11 of the South Dublin County Development Contribution Scheme 2022-2028 sets out circumstances where a reduced contribution may apply. Section 11 (xxvi) relates to change of use applications. It states that *'in respect of a permission for change of use, 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'*.
- 7.4.3. Appendix 2 submitted with the appeal includes information relating to previous permission Reg. Ref. S00A/0873. It is noted that permission was granted in 2000 for (a) the demolition of part of the existing shopping centre, (b) the construction of 2 no. new retail units, new configuration of the shopping centre and new first floor offices (c) elevational alterations and (d) reconfiguration of car parking. The planners report (included in Appendix 2) states that the net increase in retail floor area was 248sqm and the first floor office development was c. 1,708sqm. It is noted that the first floor office development (c. 1,708sqm) relates to the area of change of use subject to this appeal.
- 7.4.4. Under Reg. Ref. S00A/0873 Condition 12 required that a financial contribution of €20,049 be paid in respect of public services in the area, and Condition 13 required that €52,155 be paid towards the cost of roads improvements and traffic management in the area. This results in a total contribution of 72,204. A letter from SDCC confirming the payment of development contributions for Reg. Ref. S00A/0873 is attached in Appendix 2.
- 7.4.5. This financial contribution related to the total floor area of the development works (1,956sqm) approved under Reg. Ref. S00A/0873. I agree with the applicant that a

standard rate of €36.92 per sqm can be assumed, based on the total financial contribution (€72,204) divided by the total floor area approved (1,956sqm). Therefore, the financial contribution relating to the first floor level, which is the subject of this appeal, can be assumed as €63,059 (1,708sqm x €36.92).

- 7.4.6. Appendix 3 submitted with the appeal includes information relating to previous permission Reg. Ref. Reg. Ref. 06A/0095. Permission was granted in 2006 to (1) change the use of the existing first floor offices (1,528sqm) and ground floor entrance (118sqm) to retail use, (2) minor alterations to existing elevations and (3) 28 no. car parking spaces. It is noted that the first floor office development (c. 1,528sqm) relates to the area of change of use subject to this appeal.
- 7.4.7. Condition 6 of Reg. Ref. 06A/0095 required that a financial contribution of €66,208.14 be paid in accordance with the Development Contribution Scheme. A copy of a bank transfer and a letter from SDCC confirming the payment of development contributions for Reg. Ref. S06A/0095 is included in Appendix 3.
- 7.4.8. Again, the financial contribution related to the overall development works approved (1,646sqm). A standard rate of €40.22 per sqm can be assumed, based on the total financial contribution (€66,208.14) divided by the total floor area approved (1,646sqm). Therefore, the financial contribution relating to the first floor level, which is the subject of this appeal, can be assumed as €61,461.74 (1,528sqm x €40.22).
- 7.4.9. The applicant also submitted details in Appendix 4 of a financial contribution of €80,810.49 that was paid in relation to Reg. Ref. SD06A/0850. However, it is noted that this development does not relate to the floor area of the current application and, therefore, in my view is not relevant in this instance.
- 7.4.10. Having regard to the above, it is my opinion that a total of €124,520.74 (€63,059 under Reg. Ref. S00A/0873 and €61,461.74 under Reg. Ref. 06A/0095) has been paid in development contributions relating to the existing first floor area that is subject to this appeal. The applicant considers that inflation should be applied to the financial contributions paid. Using the CSO inflation calculator the applicant considers that a total of €176,236.81 was already paid in relation to the first floor element of the current appeal. As noted above, Section 11 (xxvi) of the Scheme 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. I am satisfied that an exemption under Section 11 (xxvi) is appropriate in this instance, however, having regard to the provisions of the Scheme I do not agree that a further reduction should be applied to account for inflation.

7.4.11. In my view the relevant development contribution for the change of use at first floor level is €44,784.54 (€169,305.28 - €124,520.74).

## 7.5. **Conclusion**

7.5.1. In conclusion, it is my view that the proposed development results in a total development contribution of €307,748.06. In the interest of clarity this contribution is broken down as follows

Description	Rate	Contribution
2-storey extension (2,336sqm)	€112.57 per sqm	€262,963.52
Change of Use – first floor (1,504sqm)	€112.57 per sqm	€169,305.28.
<b>Total</b>		<b>€432,268.80</b>
<b>Reduction in Contribution</b>		
Development Contributions previously paid in relation to first floor area	-	- €124,520.74
<b>Total</b>		<b>€307,748.06</b>

## 8.0 **Recommendation**

8.1. It is considered that the planning authority incorrectly applied the terms of the South Dublin County Council Development Contributions Scheme 2021-2025 in the calculation of the amount payable under Condition 7. It is, therefore, recommended that the planning authority be directed to Amend the amount payable under Condition No. by deleting €448,074.12 and substituting the amount of €307,748.06.

## 9.0 **Reasons and Considerations**

9.1. The planning authority assessed the development contribution on the rates set out in the South Dublin County Development Contribution Scheme 2021-2025, these rates were in place when the application was decided and the appeal was lodged. However, on the 1<sup>st</sup> January 2023, Section 48 Development Contribution Schemes rates

increased in accordance with the Tender Price Index. Therefore, the calculation of the appropriate development contribution is based on the current rates in place.

- 9.2. Having regard to Section 48 of the Planning and Development Act, 2000 (as amended), the provisions of the Development Contributions Guidelines for Planning Authorities (2013) and the South Dublin County Council Development Contributions Scheme 2023 – 2029, it is concluded that the amount payable is € 307,748.06.

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.

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Elaine Power

Senior Planning Inspector

11<sup>th</sup> September 2023