



An  
Bord  
Pleanála

## Inspector's Report

### ABP-320780-24

#### Development

Demolition of the existing clubhouse and the construction of a new two-storey clubhouse building comprising changing rooms, bar/lounge, kitchen, offices, storage, toilets and staff accommodation.

#### Location

65A Merrion Road, Ballsbridge, Dublin  
4

#### Planning Authority

Dublin City Council South

#### Planning Authority Reg. Ref.

3886/24

#### Applicant(s)

Wanderers FC Rugby Club

#### Type of Application

Permission

#### Planning Authority Decision

Grant

#### Type of Appeal

First Party v Condition

#### Appellant(s)

Wanderers FC Rugby Club

#### Observer(s)

None

#### Date of Site Inspection

09/01/2025

#### Inspector

Gillian Kane

## **1.0 Site Location and Description**

- 1.1.1. This is a first party appeal against a financial contribution condition which was attached to the Planning Authority's notification of intention to grant permission. As this is an appeal in respect of conditions requiring a financial contribution, the provisions of section 48 of the Planning and Development Act 2000 apply and the Board is restricted to considering this matter alone and cannot consider the matter de novo. I have therefore confined my assessment to the condition in question.
- 1.1.2. Having regard to the nature of the appeal before the Board (i.e. first party against conditions) and the information available on file, a site inspection was not deemed necessary in this instance.

## **2.0 Proposed Development**

- 2.1. On the 21<sup>st</sup> June 2024, planning permission was sought for a development comprising the demolition of an existing clubhouse (1000sq.m,) and the construction of a new two-storey clubhouse (2520sq.m.)

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. On the 14<sup>th</sup> August 2024, the Planning Authority issued a notification of their intention to GRANT permission subject to 11 no. conditions. Condition no. 2 states:
2. A development contribution in the sum of €180,272.00 shall be paid 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 in accordance with Dublin City Council's Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development 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. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the

commencement of development. 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.

## **4.0 Policy Context**

4.1.1. Section 48 of the Planning and Development Act 2000, as amended provides as follows:

**48.—(1)** A planning authority may, when granting a permission under section 34, include conditions for requiring 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 (regardless of other sources of funding for the infrastructure and facilities).

(2) (a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the

actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

**Section 48(10) provides:**

(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.

**4.2. Dublin City Development s48 Development Contribution Scheme 2023-2026**

4.2.1. The Dublin City Council Development Contribution Scheme 2023 – 2026, (under Section 48, Planning & Development Act, 2000 as amended) provides for

1. Sub-section (1) of Section 48 of the Planning and Development Act 2000 as amended, enables a planning authority, when granting a planning permission under Section 34 of the Act, to include conditions for requiring 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 (regardless of other sources of funding for the infrastructure and facilities).

2 (a) Subsection (2) of Section 48 requires that the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

4.2.2. Section 9 of the scheme provides the level of contribution payable.

<b>Class of Public Infrastructural Development</b>	<b>€ per square metre of Residential Development</b>	<b>€ per square metre of Industrial/ Commercial Development</b>
Class 1: Roads infrastructure & facilities	€34.40	€35.85
Class 2: Drainage (surface water/flooding) infrastructure & facilities	€5.70	€5.93
Class 3: Parks and open space facilities	€19.01	€19.81
Class 4: Community facilities & amenities	€25.00	€26.05
Class 5: Urban regeneration facilities & amenities	€29.71	€30.96
<b>Total of Contributions Payable</b>	<b>€113.82</b>	<b>€118.60</b>

4.2.3. Section 10 of the scheme provides for exemptions, of relevance to the subject development is

- Development to be used for social, recreational or religious purposes and not to be used for profit or gain;

4.2.4. Section 11 of the scheme provides that a reduced rate of development contributions will be payable where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be charged on the net additional floor space created;

## **5.0 The Appeal**

### **5.1. Grounds of Appeal**

5.1.1. An agent for the applicant has submitted an appeal against condition no. 2 of the Planning Authority decision to grant. The grounds of the appeal can be summarised as follows:

- Welcome the decision of the City Council to grant permission but request the Board to direct them to omit condition no. 2.
- The purpose of the development is to provide adequate facilities for current members and players of the club, to attract new members and players and to extend the sporting and associated activities for the future.
- The club is a not-for-profit voluntary organisation. The proposed development will be used by members of the club and the inhabitants of the locality for recreational purposes.
- The club has satisfied Revenue that its sole purpose is the promotion of athletic or amateur games / sports and accordingly is exempt from Income Tax or Corporation Tax on income. Under article 157(1) no application fee was payable.
- It is noted that the current development contribution scheme does not differentiate between commercial development types.
- Section 10 of the scheme provides for an exemption where the development is to be used for social, recreational or religious purposes and not to be used for profit or gain.
- As the applicant is a not-for-profit or gain organisation and the development is for the purposes of recreation, no contribution should apply.

### **5.2. Planning Authority Response**

5.2.1. The Planning Authority agreed the exemption under article 157 was applicable in this case, however an exemption from the requirement to submit a fee with a planning application does not automatically follow that a development contribution is not payable.

- 5.2.2. The Planning Authority are of the opinion that the clubhouse is a commercial development, that the playing of rugby at an amateur level with associated clubhouse is not a recreational pursuit. Therefore, a contribution is applicable.
- 5.2.3. The Board is requested to consider the multi-purpose room, bar, kitchen, gym, physiotherapy suite, bar /lounge, kitchen have the potential to be made available for activities and therefore represent a commercial activity. The Board is requested to uphold the condition.

## 6.0 Assessment

- 6.1.1. Having regard to the provisions of section 48(13)(a) of the Planning and Development Act 2000 as amended, this assessment and recommendation will only relate to the conditions that are subject of the appeal.
- 6.1.2. The appellant requests the Board to consider the not-for profit / gain status of the organisation as qualification under section 10 of the development contribution scheme. The Board will note that the development contribution scheme clearly states that a *development* (not an organisation) must be not for profit / gain. That the applicants *organisation* is not for profit or gain does not mean that the use of its development is not for profit or gain. I note that the information submitted with the planning application refers to the use of the facilities by local schools and residents. It is not unreasonable to assume that this will not be provided for free and that some 'gain' will arise to the organisation.
- 6.1.3. The development is clearly for recreational and social use, however it has not been demonstrated that the use of the development will not accrue some profit or gain. Therefore the exemption provided for under section 10 of the scheme does not apply.
- 6.1.4. I note that the calculation of the development contrition levy applicable accounts for the 1000sq.m. of demolition in the proposed development.
- 6.1.5. I am satisfied that the 2023-2026 Dublin City Council development contribution scheme has been correctly applied that that the Board should attach condition no. 2 to the permission.

## 7.0 Recommendation

### 7.1.1. Attach condition no. 2 as follows:

- 2 A development contribution in the sum of €180,272.00 shall be paid 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 in accordance with Dublin City Council's Section 48 Development Contribution Scheme. The contribution is payable on commencement of development. If prior to commencement of development 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. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

**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.

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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Gillian Kane  
Senior Planning Inspector