



An  
Bord  
Pleanála

## Inspector's Report

### ABP-321532-24

<b>Development</b>	Change of use from commercial office to domestic dwelling with all associated site works.
<b>Location</b>	264, Merrion Road, Dublin 4, D04 VE27
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	WEB2317/24
<b>Applicant</b>	Marie Ange Zakrzewska
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party v. Condition no.2
<b>Appellant</b>	Marie Ange Zakrzewska
<b>Observer</b>	None
<b>Date of Site Inspection</b>	3 <sup>rd</sup> February 2025
<b>Inspector</b>	Rachel Gleave O'Connor

## **1.0 Site Location and Description**

- 1.1. The site is located on the north eastern side of Merrion Road. Located on the site is a red brick Georgian terrace dwelling, comprised of a 2 storey, ground over basement level. The street is residential in character and situated close to Merrion Strand.

## **2.0 Proposed Development**

- 2.1. The appeal relates to condition no.2 of planning permission 2317/24 regarding an application for the change of use of a commercial office to a residential dwelling. Condition no.2 of permission 2317/24 states the following:

“2. A development contribution in the sum of €5,149.79 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.”

- 2.2. The appellant is seeking the removal of this condition.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.2. The planning authority issued a Notification to Grant Permission on 3<sup>rd</sup> December 2024, subject to 9 no. conditions. This appeal concerns condition no.2, a financial contribution in accordance with the council's Section 48 Development Contribution Scheme. The wording of the condition is set out above.

#### **3.3. Planning Authority Reports**

##### **3.3.1. Planning Reports**

The following comments are included in the planner's report:

- The existing basement plan contains 3 no. office rooms, a hall and a small w.c. At ground floor the property contains a further 3 no. office rooms, a small entrance hall and w.c.
- The proposal is for 2 no. bedrooms at basement level with a living room and a shower room, with the ground floor containing a combined living/kitchen/dining room and family bathroom. No extensions proposed.
- The change of use from office (a non-conforming Z2 zoning use) to residential is welcomed.

##### **3.3.2. Other Technical Reports**

- Drainage and Transportation Divisions: No objections subject to conditions.

#### **3.4. Prescribed Bodies**

- Uisce Éireann: No response.
- Iarnród Éireann: Suggest conditions should permission be approved.

#### **3.5. Third Party Observations**

- None received.

## 4.0 Planning History

4.1. Subject site:

4.2. None.

4.3. Of relevance in the adjacent area:

4.4. Web1518/22 – 260 Merrion Road – Permission granted 6<sup>th</sup> September 2022 for change of use from offices to residential unit and part single and part two storey extension to the rear.

4.5. 3708/20 – 258 Merrion Road - Permission granted 24<sup>th</sup> February 2021 for the construction of two-storey extension to the rear of the property, internal alterations to the existing house and all associated site works and services.

## 5.0 Policy Context

5.1. Local Planning Policy is set out in the Dublin City Development Plan 2022-2028. The site is zoned Z2 'Residential Neighbourhoods – Conservation Areas'.

5.2. Section 15.2.5 of the Development Plan states in relation to Development Contributions, 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 are set out in the Council's Development Contribution Scheme, and in Supplementary Development Contribution Schemes, where relevant, which are available to view on [www.dublincity.ie](http://www.dublincity.ie).

5.3. Dublin City Council at its Monthly Meeting of Council held on 6th March 2023 made a Development Contribution Scheme in accordance with the provisions of Section 48 of the Planning and Development Act 2000 as amended.

5.4. The rates of contribution under the Development Contribution Scheme 2023-2026 as made for the administrative area of Dublin City Council are as follows:

Description of Development	Amount of Contribution
Industrial/Commercial Development	€118.60 per square metre
Residential	€113.82 per square metre

- 5.5. The above rates were fixed from 1st April 2023 to 31st December 2024. Consideration is given to applying indexation to the rates of contribution effective thereafter in consideration of the SCSl Construction Tender Price Index.
- 5.6. Section 10 of the Approved Section 48 Development Contributions Scheme 2023-2026 states the circumstances where no contribution will apply, including the change of use from one commercial use to another. Section 11 outlines the development that will be liable for a reduced rate of development contributions under the scheme, including in the case of a change of use from residential use to commercial, or vice versa, where the contribution will be calculated at 50% of the applicable rate.
- 5.7. **Natural Heritage Designations**
- 5.8. The subject site is located less than 100m to the west of the European site at South Dublin Bay SAC. There is no pathways arising from the proposed development to these or any other European (Natura 2000) sites.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

The main points of the grounds of appeal are as follows:

- The property was originally a residential house, with a period of commercial use (1940s-2024) and is reverting to its original use.
- No alterations to connections with public infrastructure proposed.
- The appellant is 82yrs old and sold her house with the intention of making no.264 her primary residence. Given the appellants age and that this is not an investment property, request that the contribution condition be removed.
- Note the recent adoption of S.I. No.75/2022 Planning and Development Act (Exempted Development) Regulations 2022 allowing for the exemption (of certain properties) from the change of use planning process and resulting development contributions.

## **6.2. Planning Authority Response**

6.3. A response from the Planning Authority was received on 24<sup>th</sup> January 2024 and is summarised below:

- The appellant states that the premises has been in commercial use for a substantial period of time. The established use is commercial. On this basis an application was required for permission to reinstate to a residence. The appellant reference to S175/2002 is not relevant. If the development met the requirement of said legislation a planning application would not be required. Request the Board uphold the Planning Departments Decision.
- Enclosed: Schedule of the Section 48 Development Contribution to be applied to the application, totalling €5,149.79.

## **6.4. Observations**

- None received.

## **7.0 Assessment**

- 7.1. The sole planning consideration relevant to the appeal is whether the Applicant should be required to pay a development contribution in respect of DCC planning permission reg. ref. WEB2317/24 for a change of use from commercial to residential.
- 7.2. The proposed development is in accordance with the relevant Development Plan policy, and particularly the zoning Z2 'Residential Neighbourhoods – Conservation Areas'. The appeal is therefore confined to the matters related to the specific condition that are appealed, namely, the application of a condition under Section 48 of the Planning and Development Act 2000 (as amended).
- 7.3. Section 48(10)(b) of the Act states that an appeal may be brought to the Board where an applicant considers that the terms of the scheme have not been properly applied.
- 7.4. The grounds of appeal relate to the circumstances of the appellant and the property. There is no assertion in the grounds relating to any erroneous application of the particulars of the adopted Development Contribution Scheme 2023-2026.

- 7.5. Section 5 of this report above outlines the particulars of the scheme. The Development Contribution Scheme applies to applications for change of use such as that relevant to the current appeal. I note that the scheme includes in section 11 a reduced rate for the change of use of residential to commercial or vice versa, which would apply to the current case, with a 50% reduction applied, and I am satisfied that this has been applied by the Local Authority.
- 7.6. I note that the grounds of appeal refer to S.I. No.75/2022 Planning and Development Act (Exempted Development) Regulations 2022. This relates to special provisions for the change of use to residential during a period from 8<sup>th</sup> February 2018 to 31<sup>st</sup> December 2025. An exemption is outlined with respect to the change of use of certain premises to residential during this period subject to certain restrictions.
- 7.7. The current appeal concerns a premises most recently in office use, which would fall under either Class 2 or 3 in Part 4 to Schedule 2, in Article 10 of the Planning and Development Regulations 2001 (as amended), depending upon the services carried out therein. S.I. No.75/2022 amends Article 10 with respect to Class 1, 2, 3, 6 and 12 of Part 4 to Schedule 2. Section 3 states that a proposed development during the relevant period for a change of use to residential, from the aforementioned classes, will be exempted development subject to the following under section 3(c):
- (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
  - (ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and
  - (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development.
- 7.8. The Applicant did not apply for exempted development, presumably because the above criteria could not be satisfied. Regardless, the application submitted to the Local Authority was for planning permission and as such, provisions with respect to development contributions apply. I also note the Local Authority response with respect to this, and concur with the view outlined, that the Development Contribution should be applied.

7.9. I am satisfied that the Local Authority have correctly applied the provisions of the Dublin City Council Development Contribution Scheme 2023-2026 to the application, and therefore that condition no.2 should remain attached to planning consent reg. ref. WEB2317/24.

## 8.0 Recommendation

9.0 I recommend, based on the reasons and considerations below, that the terms of the Council's Development Contribution Scheme for the area have been properly applied in respect of condition no. 2.

## 10.0 Reasons and Considerations

1. Having regard to the provisions of the Dublin City County Council Development Contribution Scheme 2023-2026, the Guidelines for Planning Authorities on Development Contributions (2013), and Section 48(10)(b) of the Planning and Development Act, 2000 (as amended), it is considered that the terms of the Council's Development Contribution Scheme for the area have been properly applied by the Planning Authority in respect of Condition No. 2.

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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Rachel Gleave O'Connor  
Senior Planning Inspector

4<sup>th</sup> February 2025



# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>			
<b>Proposed Development Summary</b>	Change of use from commercial office to domestic dwelling with all associated site works. Appeal First Party v. Condition no.2 concerning financial contributions.		
<b>Development Address</b>	264, Merrion Road, Dublin 4, D04 VE27		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	 No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>			
<b>No</b>			
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			

<b>No</b>			
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>			

<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>	Tick/or leave blank	<b>Pre-screening determination conclusion remains as above (Q1 to Q4)</b>
<b>Yes</b>	Tick/or leave blank	<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_