



An
Bord
Pleanála

Inspector's Report

ABP-321675-25

Development

Alterations to permission DCC ref. 5059/23. 2nd floor extension, increase from 13 to 15 guest bedrooms, with internal and external associated works.

Location

The Headline Bar, 57 Clanbrassil Street Lower and South Circular Road, Dublin 8, D08 HC79.

Planning Authority

Dublin City Council South.

Planning Authority Reg. Ref.

WEB2313/24.

Applicant

Karl Kinsella.

Type of Application

Permission.

Planning Authority Decision

Grant Permission.

Type of Appeal

First Party against condition.

Appellant(s)

Kinnua Limited.

Observer(s)

None.

Date of Site Inspection

Not applicable.

Inspector

Ciarán Daly

1.0 Site Location and Description

- 1.1. The subject site of area 0.0245ha. consists of a three storey above basement corner building with direct street frontage on two sides at the junction of Clanbrassil Street Lower and South Circular Road. There is an existing pub on the ground floor called The Headline Bar.

2.0 Proposed Development

- 2.1. The proposed development, in summary, consists of the following:
- Alterations to previous permission (reg. ref. 5059/23) including flat roof rear extension at second floor level, alterations to second floor layout to provide two additional ensuite guest bedrooms, for a total of 15 bedrooms in building.

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council decided to grant permission subject to 5 no. conditions. Notable conditions include:

- Condition no. 2: A development contribution under Section 48 in the sum of €17,422.34 shall be paid.
- Condition no. 3 provides for the omission of Bedroom 08 at second floor level and a minimum setback distance of 3.3m between the extension and the southern elevation facing South Circular Road.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report assessed the development as largely acceptable subject to a requirement to omit Bedroom 08 to facilitate a suitable setback of 3.3m of the extension from the southern elevation to reduce the massing and visual impact. The report does not set out the basis of the calculation of the applicable floor area for the development contribution.

3.2.2. Other Technical Reports

- Drainage Division: No objection.
- Transportation Planning: No objection.

3.3. Prescribed Bodies

- Uisce Éireann: no report received.

3.4. Third Party Observations

None.

4.0 Planning History

5059/23: Permission granted by the P.A. for a change of use of first and second floors of existing licenced premises from existing bar/lounge area (at first floor) and existing storage rooms & ancillary accommodation (at second floor) to new guest accommodation (total floor area subject to change of use is 302.25sqm) to provide 7 no. guest bedrooms with ensuite bathrooms at first floor & 6 no. guest bedrooms with ensuite bathrooms at second floor (total 13 guest bedrooms) & ancillary storage accommodation.

There was no development contribution condition attached to this permission.

5.0 Policy Context

5.1. Planning and Development Act, 2000 (as amended)

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.

5.2. Development Contributions – Guidelines for Planning Authorities 2013

- 5.2.1. These guidelines state that the primary function of such schemes is to contribute towards the funding of essential public infrastructure required for development. The guidelines provide guidance on how to address the economic changes since 2007 when drafting development contribution schemes.

5.3. Dublin City Development Plan 2022-2028 (the CDP)

The subject site is zoned under Objective Z3 (Neighbourhood Centres) which is “*to provide for and improve neighbourhood facilities*”.

Chapter 6 – City Economy and Enterprise

- Policy CEE28 Visitor Accommodation (includes a range of criteria)

Chapter 15 – Development Standards

- Section 15.2.5 – Development Contributions
- Section 15.14.2 – Bed and Breakfast / Guesthouses
- Section 15.14.3 – Short Term Tourist Rental Accommodation

Appendix 15 – Land use definitions

A building, or part thereof, where sleeping accommodation, meals and other refreshments are available generally to residents only and which has a minimum of five rooms and no more than nineteen rooms.

5.4. Dublin City Council Development Contribution Scheme

The applicable scheme is the Dublin City Council Development Contribution Scheme 2023 – 2026 (under Section 48 of the Planning and Development Act, 2000 as amended).

Note 1 states that this scheme is effective in respect of Planning Applications lodged with Dublin City Council from 1st April 2023, where a development contribution is applicable under this Scheme.

In the case of existing permissions granted before the 1st April 2023 which have not yet commenced and in the case of applications lodged but not yet decided the applicable scheme is the scheme in place at the time of lodgement of the relevant application. The applicable rates stated in the scheme area:

| | |
|-------------------------|--------------------------|
| Residential | €113.82 per square metre |
| Industrial / commercial | €118.60 per square metre |

These rates are subject to indexation from 1st January 2025 in line with the SCSl Construction Tender Price Index.

Note 2 provides that the floor area of proposed development in a single dwelling unit or commercial development shall be calculated as the gross floor area. This means the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions) and including mezzanine floors.

Note 3 provides that new extensions to existing developments, including domestic extensions, will be charged at the above rates, other than in circumstances where no contribution or a reduced contribution applies.

Section 10 provides various exemptions where contributions will not be charged including in relation to a change of use from one commercial use to another. Any net additional floor space will be charged at the commercial rate.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against Condition no. 2 only of the grant of permission has been submitted on behalf of the applicant per Section 48(10) of the 2000 Act. It is noted that Condition no. 3 has the effect of reducing the floor area of the overall proposed development. The appeal included the DCC basis of calculation and the schedule of accommodation and floor areas submitted in the previous application.

The grounds of appeal can be summarised as follows:

- The Council have mis-calculated the appropriate floor area applicable to the scheme and have over-charged the development levy.
- In the previous application under reg. ref. 5059/23, the area of the new extension was stated at 59.5sqm with the existing floor area subject to alterations noted to be 102.9sqm. The P.A. used the total of these two figures, 162.4sqm as the basis for their calculation.
- The P.A. should have used 59.5sq.m as the starting point for their calculation.
- The correct calculation should be 59.5sqm less 15.5sqm (deduction arising from omission of Bedroom 08 per Condition no. 3) equals 44sqm. At €118.60 per square metre, the total due is €5,218.40.

6.2. Planning Authority Response

The P.A. response can be summarised as follows:

- The contribution is based on the floor area figure submitted by the applicant and the Council's contribution calculation is correct and should be upheld.

6.3. Further Responses

The appellant has responded to the P.A. response to the appeal. This response can be summarised as follows:

- The P.A. have failed to recognise that the application included a detailed breakdown of the scope of works and the floor areas of each.

- They refer the Board to the Schedule of Accommodation and drawing no. PL02-01 appended to the appeal.
- Section 10 of the Contribution Scheme excludes changes of use from one commercial use to another with any net additional floor space chargeable.
- The P.A.'s application of the scheme remains incorrect.

7.0 **Assessment**

7.1. This is a first party appeal against a financial contribution condition that was included as part of the decision of the Planning Authority to grant permission for the proposed development. 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 as amended 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 conditions in question. 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. The appeal seeks the removal of condition no. 2 and its replacement by a condition with the correct contribution due. The P.A. reject this and request their decision be upheld as it relates to the relevant condition.

7.2. Condition No. 2 requires the payment of a development contribution under Section 48 in the sum of €17,422.34. Condition no. 3 provides for the omission of Bedroom 08 at second floor level and a minimum setback distance of 3.3m between the extension and the southern elevation facing South Circular Road. I note the submitted floor area schedule in the appeal and I have reviewed and measured the applicable floor areas on the proposed floor plans. Having examined this against the application details and against the details in the parent permission, I am satisfied that the parent application (reg. ref. 5059/23) provided for a change of use from bar and storage use to guest bedroom and related uses of 302.25sqm. I note such change

of use was not chargeable under the development contribution scheme per section 10 of same (change of use from one commercial use to another).

- 7.3. I note that the stated area of the new second floor extension granted permission in the subject application is 59.5sqm and the area of the existing floor area subject to alterations is stated to be 102.9sqm. It appears that the P.A.'s development contribution was based on the sum of these two figures as its starting point, i.e. 162.4sqm. I agree with the appellant's case that the starting point for the calculation is to take the new extension floor area subject to the development contribution scheme, 59.5sqm, and deduct the area omitted by condition no. 3, 15.5sqm, which gives 44sqm. This is the floor area subject to the development contribution scheme as it constitutes the extension permitted by the grant of permission and the 102.9sqm area for alteration should not be included as I consider it to be a change of use not subject to the development contribution scheme.
- 7.4. Accordingly, I consider the P.A.'s case not to be consistent with the development contribution scheme and I concur with the appeal case that the correct development contribution calculation basis, consistent with the development contribution scheme, is 59.5sqm less 15.5sqm (deduction arising from omission of Bedroom 08 per Condition no. 3) equals 44sqm. At €118.60 per square metre, the total due is €5,218.40. I recommend that the sum due of €17,422.34 referred to in Condition no. 2 of the P.A.'s grant of permission be replaced with the revised sum of €5,218.40. I note that the wording of the condition allows for future indexation as applicable.

8.0 Recommendation

I recommend that the Planning Authority be directed to amend the sum due in Condition no. 2 of the grant of permission from €17,422.34 to €5,218.40.

It is considered that Condition no. 2 should be amended to read as follows:

A development contribution in the sum of €5,218.40 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.

9.0 Reasons and Considerations

The applicable scheme is the Dublin City Council Development Contribution Scheme 2023 – 2026 (under Section 48 of the Planning and Development Act, 2000 as amended). The adopted scheme includes, in Note 3, that new extensions to existing developments will be charged at the applicable rates. Section 10 provides various exemptions where contributions will not be charged including in relation to change of use from one commercial use to another and any net additional floor space will be charged at the commercial rate. The financial contribution required under Condition no. 2 is calculated based on the rates contained in the Contribution Scheme. In these circumstances, the Board considers that Condition no. 2 falls within the terms of the Scheme except in relation to the calculation of the amount due which should be amended to reflect the terms of the scheme in relation to the proposed development where only the additional new floor area is applicable and the change of use is not applicable for a financial contribution.

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.

Ciarán Daly

Planning Inspector

8th April 2025