



An
Coimisiún
Pleanála

Inspector's Report

ACP-322924-25

Development	New restaurant building and associated site works
Location	Dublin Zoo, Pheonix Park, Dublin D08AC98
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	WEB1806/25
Applicant	Dr. Christoph Schwitzer
Type of Application	Permission
Planning Authority Decision	Grant permission subject to condtions
Type of Appeal	First Party v. Financial contribution condition only
Appellants	Dr. Christoph Schwitzer
Observers	None
Date of Site Inspection	N/A
Inspector	B. Wyse

1.0 Site Location and Description

- 1.1. The site is located within Dublin Zoo towards the northern end of the campus and beside a lake, also referred to as a fish pond. It currently includes a restaurant/café (Nakuru) with an outdoor seating area, a small first aid building, a gift shop, toilets and a store, and a play area. Otherwise there is substantial tree cover over the area outlined in red for the purposes of the application and which has a stated area of 5452sqm.

2.0 Proposed Development

- 2.1. The proposed development is a new restaurant building and associated structures. The proposal includes the demolition of the existing restaurant/café and the first aid building.
- 2.2. By reference to the Existing Site layout Plan (Drg. No. 101 Rev.A) and the Proposed Site Layout (Drg. No. 100 Rev.A) the floor/structure area details are as follows:

Buildings/structures to be demolished:

Restaurant/Café – 219sqm

First Aid building – area not stated.

Proposed buildings/structures:

Restaurant area – 1145sqm

Toilet facilities – 115sqm

Front plaza – 271sqm

Elevated dining terrace – 415.5sqm

At grade dining terrace – appears to be included in the 415.5sqm above

Plant area – 46sqm

New playground – 306sqm

3.0 Planning Authority Decision

3.1. Decision

The decision is to grant permission subject to conditions.

Condition 2, the condition under appeal, is as follows:

A development contribution in the sum of €167,828.57 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.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for planning authority decision. No reference to calculation for Condition 2 .

3.2.2. Other Technical Reports

Reports noted – references to standard conditions only.

3.3. Prescribed Bodies

Uisce Eireann – no report received.

3.4. Third Party Observations

None received.

4.0 Planning History

PA Ref. 4959/23

This is a previous, September 2024, permission for a similar development on the site.

Note appeal Ref. ABP 320272-24 was withdrawn.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2022-2028.

5.2. Development Contribution Scheme 2023-2026

Article 9 – Level of Contribution

The Section 48 scheme, setting down payments due on foot of planning permissions in respect of public infrastructure and facilities benefiting development, provides for a rate of contribution of E118.60 per sqm of commercial development.

Note 1 to Article 9

The scheme is effective in respect of applications lodged from 1st April 2023.

The scheme indicates that 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 rate of contribution was fixed to 31st December 2024 and the scheme indicates that consideration may be given to applying indexation to the rates of contribution effective thereafter in consideration of the SCSi Construction Price Index.

The Dublin City Council website indicates that further to a monthly meeting held on 3rd of March 2025 Dublin City Council approved the SCSi Tender Price Indexation rate increase of 2.93%. This is to be applied to the commercial levy rate under the 2023-2026 scheme with effect from the 1st April 2025. The new rate of contribution for commercial development is 122 euros per sqm.

Note 2 to Article 9

The scheme indicates that the floor area of proposed 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.

Article 10 – No Contribution

- Change of use from one commercial use to another. Any net additional floorspace will be charged at the commercial rate.
- Not-for-profit, community-run childcare facilities.
- Development to be used for social, recreational or religious purposes and not for profit or gain.
- The non-built elements of recreational facilities (e.g. Playing pitches, golf courses).

Article 11 – Reduced Contribution

- 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.
- Open storage/hard surface commercial space development, other than car parking, shall be liable for development contributions at one third of the commercial rate.

Article 15 – Payment of Contribution

The contributions under the Scheme shall be payable prior to commencement of development or as otherwise agreed by the Council. Contributions shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in the Note 1 to the table at Article 9 above.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds can be summarised as follows:

- The contribution of E167,828.57 was calculated as follows:

Commercial rate of E122 per sqm applied to construction area of 1237.30sqm (E150,950.60) and a reduced rate (one third) applied to 415.10sqm (E16,877.97) for the outdoor dining area.

- The floor area of 1237.30sqm should have been reduced by a demolition allowance of 219sqm for the existing restaurant/café .
- So the floor area levied should be 1018sqm (1237.30 minus 219sqm) giving an amount of E124,232.60 (1018x E122).
- The existing external dining area (150sqm) should also have been allowed against the 415.10sqm resulting in 265sqm at E40.66 (one third rate), totalling E10,778.96 for this element.
- The correct contribution should amount to E124,232.60 plus E10,778.96 equalling E135,011.56.

6.2. Planning Authority Response

Includes:

- Confirmation that the demolition allowance for the floor area of the restaurant was omitted in error and should have been applied.
- The contention that the outdoor seating area should receive a similar allowance should not be considered.
- Details of the planning authority's original calculations include:

Retail Dev. – floor area of 1237.30sqm at E122 per sqm = E150,950.60

Open Storage/hard surface (Outdoor Dining Area)– 415.10sqm at E40.66 = E16,877.97

6.3. Applicant Further Response

Includes:

- The outdoor seating area trade-off should be allowed as previously requested.

- After further consideration, and as explained in the planning application, the existing Meerkat Restaurant will be taken out of service once the new restaurant is complete.
- Thus the new restaurant will take the place of Nakuru (219sqm and 150sqm external seating) and Meerkat restaurant (1035sqm and 315.5sqm external seating). This results in a reduction of restaurant floor area of 16.5sqm and of external seating area of 50.4sqm.
- Therefore, the financial contribution should be zero.
- As a charity the financial contribution would be keenly felt by Dublin Zoo.
- In the original application it was stressed that no intensification of restaurant use was intended and that the new restaurant was intended to be a consolidation of the restaurant facilities on the Zoo campus, an amalgamation of 2 existing restaurants into one new facility.

7.0 Assessment

- 7.1. As indicated (Section 5.2 above) the appropriate development contribution scheme in this case is the Dublin City Development Contribution Scheme 2023-2026 and the appropriate rate of contribution for commercial floorspace is now E122 per sqm, following on the most recent indexation rate increase as provided for in the scheme. The appropriate rate for open storage/hard surface, as applied by the planning authority to the external seating/outdoor dining area, is one third of the commercial rate or E40.66 per sqm. There is no dispute in relation to these matters.
- 7.2. In relation to the commercial (referred to as retail in the planning authority calculation) floor area the planning authority based its calculation on a proposed area of 1237.30sqm. While by reference to Section 2.3 above it is not immediately obvious how this area was calculated I am satisfied that it is of the correct order of magnitude for the purposes of calculating development contributions. I also note that the figure is not in dispute.
- 7.3. In relation to the external seating area the planning authority based its calculation on a proposed area of 415.10sqm which appears to correspond to the 415.50sqm as indicated on the drawings for the combination of the elevated dining terrace and the

at grade dining terrace (see Section 2.3 above). The former figure is not disputed by the appellant and I am satisfied that it is sufficiently accurate for the purposes of this exercise.

- 7.4. The planning authority has conceded that the demolition allowance for the floor area of the existing (Nakuru) restaurant was omitted in error and that it should be applied. By reference to Article 11 of the development contribution scheme I agree that this is the case.
- 7.5. The appellant maintains that a similar allowance should apply to the existing external seating area which is to be replaced by the proposed larger area. The planning authority disagrees but without any further elaboration as to the reasoning.
- 7.6. While the logic of the appellant's position is clear to me, it is the case that the development contribution scheme does not allow for this. Under Article 11 the demolition allowance, as cited, and as applied in relation to commercial floorspace, expressly refers to a building. Separately, the article refers to open storage/hard surface commercial space, corresponding to the external dining area in this case, but with no reference to any allowance for demolition or replacement. As the Commission is limited to assessing the proper implementation of the terms of the scheme I agree with the position of the planning authority on this point.
- 7.7. On this basis the correct initial calculations, therefore, should have been as follows:
- Proposed restaurant floor area of 1237.30sqm minus the 219sqm of the existing restaurant (Nakuru), net area of 1018.30sqm at a rate of E122 per sqm equalling E124,232.60.
 - Proposed external seating area of 415.10sqm at a rate of E40.66 per sqm equalling E16,877.97.
 - Overall total contribution due is E141,110.57.
- 7.8. However, in the appellant's further submission in this case (Section 6.3 above), reference is made to the intention that the proposed new restaurant would also replace another existing restaurant at the zoo, the Meerkat restaurant. It is stated that this was made clear in the original application. It is contended that taking this into account would result in an overall reduction of restaurant floorspace at the zoo and that, therefore, the financial contribution should actually be reduced to zero.

- 7.9. The cover letter submitted with the application does refer to the proposed restaurant effectively replacing both the existing restaurant on the application site, the Nakuru restaurant, and the Meerkat restaurant, located in the southern part of the zoo campus. It indicates that the latter will be repurposed as an aquarium display, subject to a future, separate application. The entire zoo campus is outlined blue on the relevant application drawing.
- 7.10. Again, while I understand the logic of the appellant's argument, the development contribution scheme does not appear to allow for this. Under Article 11 the allowance expressly and solely refers to the demolition of a building. It does not refer to repurposing and any references to change of use are in different contexts. The application of an allowance as suggested by the appellants, therefore, is not included in the terms of the scheme.
- 7.11. There is one further alternative approach that needs to be considered in this case. And that is to consider if the proposed development might properly fall under Article 10 of the scheme which identifies development types that do not attract any development contribution. The category to consider is *development to be used for social, recreational or religious purposes and not for profit or gain* (see Section 5.2 above).
- 7.12. The applicant indicates that Dublin Zoo is a charity and the Dublin Zoo website confirms this and also indicates that it is a non-profit organisation. The latest annual report, for 2024 and available on the website, confirms the charitable status (No.20003715 on the register of the Charities Regulator). On the face of it there would seem to be reason to consider that it might fall under this category of development as a recreational facility.
- 7.13. Reviewing the planning history cases for Dublin Zoo back to 1999 as recorded in the planning authority planner's report on the application indicates that generally the planning authority have levied development (or financial) contributions on development proposals at the zoo. Of the eight cases examined (via the planning authority website) just two had no development contribution condition [PA Ref. 3822/18 (wolf habitat, including holding building) and PA Ref. 3824/09 (city farm buildings etc.)] while one [PA Ref. 4014/09 (gorilla enclosure, including holding

building)) had such a condition but the amount was set at zero. None of the cases appear to have been appealed to the Commission.

- 7.14. It would seem, therefore, that if the Commission was to take the view that the zoo does properly fall into the said category of development, and that no development contribution was due for the proposed development, such a decision would mark a significant departure in the treatment of the zoo in terms of development contributions. As this would be the case, and noting that the appellant has not challenged the contributions on this basis, the Commission might want to seek the views of the parties on the matter before reaching a final decision. This could be done under Section 137 of the Act (new issue).
- 7.15. It is my conclusion that there is a very strong case to say that the zoo does fall to be considered in line with this latter alternative approach and, therefore, that the proper application of the terms of the development contribution scheme would result in no development contributions in this case. I also consider that prior consultation with the parties should be undertaken before any final decision is issued.

8.0 Recommendation

- 8.1. I recommend that the development contribution condition (Condition 2) be removed.

9.0 Reasons and Considerations

Having regard to the terms of the Dublin City Council Development Contribution Scheme 2023-2026 it is considered that Dublin Zoo, being a facility that is used for recreational purposes and that is a charity and is not-for-profit, falls within the Article 10 category 'Development to be used for social, recreational or religious purposes and not to be used for profit or gain' and that, therefore, the proposed development is a development that is not required to pay development contributions under the scheme.

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

B. Wyse
Planning Inspector

26 September 2025

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