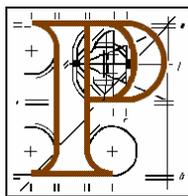


An Bord Pleanála



Inspector's Report

PL09.233845

Proposed Development: Extension to hotel to create new first floor link to No. 39-41 Main Street to accommodate new toilets/lounge bar, retention of 4 No. tent like structures, piano bar & outdoor terrace.

Location of Development: The Courtyard Hotel, Main Street, Leixlip, Co. Kildare.

Planning Application

Planning Authority:	Kildare County Council
Planning Authority Reg. Ref:	P08/1686
Applicant:	Moriarty Investments Limited
Type of Application:	Planning Permission
Planning Authority Decision:	Grant

Planning Appeal

Appellant:	Moriarty Investments Limited
Appeal Type:	1 st Party Vs Condition No. 16
Observer(s):	None

Inspector: P. M. Young

Appendices:
Appendix 1 – Photographs
Appendix 2 – Key Map
Appendix 3 – Extracts from Development Plan

1.0 INTRODUCTION

- 1.1 This 1st Party Appeal relates solely to the requirements of Condition No. 16 of the notification to grant permission for a development involving additions and alterations to 'The Courtyard Hotel', Main Street, Leixlip, Co. Kildare. The appellant in their grounds of appeal submits that the s48 development contribution levy has not been properly applied as it fails to take account of the existing permitted office use and that the car parking standards for lounges/bars are based on public floor area and not gross floor area. The Planning Authority in their response to the grounds of this appeal has indicated that they have wrongly applied the Development Contribution Levy in Condition No. 16 of the grant of permission. Having regard to these facts, I would consider that there is sufficient justification for the Board to examine the application of the Local Authority's Development Contribution Scheme as provided for under Condition No. 16 of the grant of permission P08/1686.

2.0 SITE LOCATION AND DESCRIPTION

- 2.1 The appeal site forms part of the Courtyard Hotel which is located on the southern side of Main Street, in the town centre of Leixlip, in County Kildare.

3.0 PROPOSED DEVELOPMENT

- 3.1 Planning permission is sought for a 1st floor link from the existing hotel to premises at No. 39 – 40 Main Street (Note: 25-sq.m) incorporating 1st floor level of premises at No. 39 – 40 Main Street into the hotel bar known as 'Arthur's Bar' to accommodate new toilets and lounge bar areas (Note: 106-sq.m.) with the ground floor area of the premises remaining in its existing retail/commercial use. In addition, retention and continuation of use is sought for 4 no. tent like structures, an occasional seating area within courtyard of the hotel as well as the retention and continuation of use of an area referred to as Residents Piano Bar at 1st floor level (106-sq.m) and associated outdoor seating area and terrace at 1st floor level.

4.0 PLANNING AUTHORITY – TECHNICAL REPORTS/SUBMISSIONS

4.1 Planning Officer's Report

The final Planning Officer's Report considered that the proposed development and the retention development are acceptable in this town centre location. It does, however, highlight that the development fails to meet the car parking standards set out in the Development Plan for this type of development. Despite this, the Planning Officer, in line with the Technical Reports received, considered that a contribution was an acceptable solution to deal with this matter. The report concludes with a recommendation for a grant of permission.

4.2 Technical Reports

The initial Roads Design Department Report raised no objection to the principle of this development, however, it recommended that the applicant should submit a car parking schedule for the proposed development demonstrating compliance with the Kildare County Development Plan and where any shortfalls are identified that proposal to address the same shall be provided for. I note this formed part of a request for further information. The second Planning Officer's Report makes

reference to further reports from the Roads Design Department on the 6th November, 2008, and on the 26th February, 2009, where it would appear that the Roads Design Department concluded there was a shortfall of 24 car spaces and that this shortfall could be provided for by the imposition of a financial contribution levy of €144,000. These later technical reports have not been provided and the summaries provided in the second and final Planning Officer's Report are taken in good faith.

5.0 PLANNING AUTHORITY'S DECISION

- 5.1 The Planning Authority decided to grant planning permission subject to 17 number conditions. Of particular relevance to the subject of this appeal is Condition No. 16 which states the following:-

“Before development commences the applicant/developer shall pay to Kildare County Council the sum of €144,000 being the appropriate contribution for the shortfall 24 car parking spaces to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 23rd February 2004 in accordance with Section 48 of the Planning and Development Act 2000. The amount payable under this condition shall be fully index-linked from the date of grant of permission”.

The stated reason is *“it is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority”.*

It would appear that in formulating Condition No. 16 the Planning Authority applied a total charge of €144,000; i.e. 106 sq. m. (the gross floor area to which this current application relates) by the Car Parking Standard set out in Table 15.2 of the Development Plan for *“1 car parking space per 4.5-sq.m.”* (Note: resulting in the 24 car spaces stated shortfall) for lounges/bar land use developments. It would appear that this calculation did not take into account the change of use from existing permitted office use to lounge/bar use nor did it take account of the fact that car parking standard for lounge/bar uses relates to *“public floor area”* and not gross floor area.

6.0 RECENT PLANNING HISTORY

6.1 Subject Site:

PL09.227004 [P07/427]

Planning permission was **refused** by the Planning Authority for the change of use from basement storage to staff meeting rooms to hotel function rooms and a number of other ancillary spaces. This decision was appealed to the Board but subsequently withdrawn.

PL09.216075 [P05/2560]

Planning permission was **refused** on appeal to the Board for a development consisting of use of existing rooms at basement level, incorporating areas previously permitted as staff training rooms, with associated toilets, storage, plant rooms. The first reason for refusal relates to the development materially contravening Condition Number 2 of appeal reference number PL09.108919, and, the second reason for refusal relates to the inadequate car parking provision which would tend to create

traffic congestion and lead to obstruction of road users in the central area of the town.

PL09.205116 [P03/190]

Planning permission was **granted** on appeal to the Board for a development consisting of the enlargement of the ground floor shop unit and first floor offices; bedroom block raised roof height and natural slate, manager's office suite at first floor level; resident's lounge at first floor level, revised stairs circulation, revised pub and toilet internal layout; revised hotel reception office, raised eaves; ridge height and natural slate finish to courtyard buildings; enlarged first floor restaurant mezzanine; enlarged windows to restaurant; stonework and slate roofed lounge in place of glazed conservatory; separate entrance and stairs to restaurant; flat roofed balcony above hotel entrance; internal rearrangements of staff accommodation at basement level, ESB substation. Permission is sought for revised site layout, including car parking and for brick cladding and dome feature to lift shaft. Of note Condition No. 13 of this grant requires the developer to pay a contribution levy in respect of public infrastructure and facilities, including car parking, benefiting development in the area.

7.0 PLANNING POLICY PROVISIONS

7.1 Local Planning Policy Provisions

The relevant Development Plan is the Kildare County Development Plan, 2005-2011, and the Leixlip Local Area Plan, 2002 (Note: the Draft Leixlip Local Area Plan, 2009, is not adopted at the time this report was bring prepared). The site is zoned "*Zoning Objective A*" which has a stated objective "*to provide for the development and improvements of appropriate town centre uses including retail, commercial, office and civic use*". The site is also situated within a designated zone of archaeological potential and within the Architectural Conservation Area identified in the Leixlip Local Area Plan.

8.0 GROUNDS OF APPEAL

8.1 The grounds of this appeal were prepared and submitted by Brian Meehan & Associates, Planning Consultants, on behalf of the applicant, Moriarty Investments Limited, and, can be summarised as follows:-

- It is unreasonable for the Planning Authority to levy such a large sum of monies for such a small development which may not justify a requirement of 24 car spaces;
- The applicant has previously paid €150,000 to the Local Authority for parking within the town centre as part of the original development. Yet no parking has been provided to date.
- No account was taken of the change of use from an existing permitted office to a lounge/bar use. It is submitted that in previous permissions an allowance was made for this in the calculation of financial contributions.
- The public floor area of this development is 52.5-sq.m.
- The car parking requirement standards for lounges/bars is based on public floor area.
- It is submitted that the correct shortfall of car spaces per the Development Plan standards is 7 and as such the stated €144,000 contribution in Condition No. 16 should be amended to €42,000.

9.0 RESPONSE

- 9.1 The Planning Authority in their response to the grounds of this appeal indicates that the associated car parking standard for lounge/bar use is 1 car space per 4.5-sq.m. of floor space, thus resulting in a requirement of 24 car spaces. This figure should have been amended to taken into account of the change of use from existing permitted office use to lounge/bar which had a car parking requirement of 4 car spaces. It is therefore concluded that the levy should be amended to reflect the shortfall of 20 car spaces as opposed to 24 car spaces reflected in Condition No. 16.

10.0 ASSESSMENT

- 10.1 The applicant in this appeal has requested the Board to determine the relevant charges applied to this development under the current Kildare County Council Development Contribution Scheme, as amended. This appeal also raises questions in relation to the reasonability of the Planning Authority to levy such a large sum of money particularly when the applicant has previously paid the sum of €150,000 towards car parking within the town centre as part of the original development. These two matters I will comment upon separately below.
- 10.2 From examination of the plans and particulars relating to this current application it is clear that no provision has been made for the car parking requirement associated with the development proposed on site or within the curtilage of the hotel complex by the applicant. The Planning Authority considered it acceptable in this instance to deal with this matter by way of the imposition of a condition financial contribution that would be calculated in accordance with their Development Contribution Scheme, adopted in 2004, and as amended thereafter. The provision of such a condition is in accordance with Section 48 of the Planning and Development Act, 2000, and as such is considered reasonable considering the acceptability of the proposed development when considered against the planning context of the site within the town centre of Leixlip and its compatibility with the larger hotel complex that it forms part of. The imposition of the financial contribution relating to the shortfall in car parking is contained within Condition No. 16 of the grant of permission Planning Reference P08/1686 (See Section 5 above). This condition requires the developer to pay a sum of €144,000, as a monetary contribution towards the provision of public infrastructure and facilities benefiting this development by the Local Authority.
- 10.3 It would appear that the Local Authority's calculation in this case has been based upon the car parking standards set out in Table 15.2 of the Kildare County Council Development Plan, 2005-2011, Volume 1, for lounge/bars which has a requirement of 1 car parking space per 4.5-sq.m. of public area. This calculation considered that as the area specified for the change of use was stated as 106-sq.m. then it was deemed appropriate in this instance to consider the car parking requirement in relation to this specified area. As such a total of 24 car spaces was the shortfall number of car spaces concluded upon. As the applicable Development Contribution Scheme requires a payment of €6,000 per parking space this equates to a sum of €144,000.
- 10.4 The appellant in their grounds of appeal submits that the s48 development contribution levy in this case has not been properly applied. In support of this statement it is argued that no account was taken of the existing permitted office use. According to the car parking standards set out in Table 15.2 of the Development Plan the requirement for office use is 1 space per 25-sq.m. per gross floor area. It is therefore submitted that the existing permitted office use has a car parking requirement of 4 car spaces. This therefore reduces the car parking requirement and as such this should have been reflected in the Local Authority's calculation of the

levy. The Local Authority's response to this appeal acknowledges and agrees with this point in the grounds for appeal and indicates the levy should be amended to reflect the shortfall of 20 car spaces.

- 10.5 It is further submitted that the car parking standard for lounges/bar land uses relates to public floor area and that this proposal contains 52.5-sq.m. of public floor area with the remaining area comprising two separate toilets. It is therefore submitted that the toilet area should not be considered public floor area. As such this would result in a car parking requirement of a maximum of 11 car spaces. When reference is then taken of the existing 4 car space requirement of the office use the actual shortfall of car spaces for this development is 7. On this matter, the Local Authority in relation to this point of the appeal states that *"the change of use part of the development (retail/office to bar) is specified as 106 square metres and the associated car parking standard is 1 space per 4.5 square metres of floor space, consequently the car parking requirement is 24 car parking spaces"*. Therefore, the Local Authority has not taken into account that Table 15.2 of the Development Plan clearly indicates public floor area. There is no definition of public floor area within the Development Plan.
- 10.6 Based on the above, I would recommend that the development levy charge should be based on the following factors:
- The Kildare County Council Development Contribution, 2004, as the applicable scheme;
 - The applicable Development Plan is the Kildare County Development Plan, 2005-2011, which sets out the car parking standard requirements for development under Table 15.2;
 - Table 15.2 sets the following requirement for office use in town centre: *"1 car space per 25 sq.m. of gross floor space"*. This proposal includes existing permitted office use with a stated 106 sq.m., thus, resulting in car space requirement of 4.24 car spaces which can be rounded at 4 car spaces.
 - Table 15.2 sets the following requirement for lounge/bar; *"1 car space per 4.5 sq.m. of public floor space"*. The stated public floor area is 52.5-sq.m. this area corresponds with the documentation provided for this current application. There is no separate car parking requirement standard for toilet areas. Thus the resulting car space requirement is 11.6 car spaces, which can be rounded at 12 car parking spaces.
- 10.7 I would, therefore, recommend that the development levy charge should reflect the above factors and as such it should reflect the existing permitted office use of 4 car spaces and that the shortfall for the lounge/bar use should be based on the public floor area which has a requirement of 12 car spaces. Based on these factors I would conclude that the car parking shortfall is 8 car spaces. Section 6 of the Kildare Development Contribution Scheme, 2004, states that a €6,000 per space car parking contribution payment is payable for developments where there is a car parking shortfall based on the car parking standards set out in the Development Plan. This therefore gives rise to a total contribution payable of €48,000 (Note: 8 car spaces x €6,000 per space car parking contribution levy).
- 10.8 I note the appellant's comments in relation to the reasonability of such a large sum of monies particularly when the applicant has previously paid the sum of €150,000 to the Local Authority for parking within the town centre as part of the original development. It is also noted by the applicant that to date the Local Authority has failed to provide car parking within the period these monies have been paid. Notwithstanding, the appellant does not object to payment of the correct development levy in relation to the shortfall of car parking for this development. The Board in its consideration of this appeal is in this instance confined to the consideration of

whether the Planning Authority have correctly applied the Development Contribution Scheme in Condition No. 16 of the grant of permission P08/1686. All other matters should be directed to the Local Authority for their response.

11.0 RECOMMENDATION & CONCLUSION

11.1 Having reviewed the file documents, I note that the appellant has appealed how the Planning Authority has applied the terms of its Development Contribution Scheme and the reasonability of the payment required. Notwithstanding, this the Planning Authority in its response to the appeal have accepted that they did not properly apply the terms of the scheme. In these circumstances, I consider it reasonable to accept the appeal and deal with the issue of the contribution sought in the manner set out above.

I therefore recommend that Condition No. 16 as imposed by the Planning Authority be amended as follows:-

“Before development commences the applicant/developer shall pay to Kildare County Council the sum of €48,000 being the appropriate contribution for the shortfall 24 car parking spaces to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 23rd February 2004 in accordance with Section 48 of the Planning and Development Act 2000. The amount payable under this condition shall be fully index-linked from the date of grant of permission”.

***Reason:** It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority”.*

12.0 REASONS & CONSIDERATIONS

12.1 It is considered that Condition No. 16 of the notification of the decision of the Planning Authority indicated a contribution that was not properly calculated within the terms of the Development Contribution Scheme.

Patricia Young
Planning Inspector

28th August, 2009