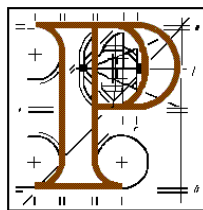


An Bord Pleanála



Inspector's Report

Development: Retention of a) change of use from kitchen and dining room to public house lounge area, b) hard stand yard to the rear, c) change of storage shed to covered smoking area d) new shop front. Permission is sought for 1. Change of use from 5 bedroom bed and breakfast and domestic living areas to 2 no. 2 bedroom apartments and an office unit associated to the Public House 2. Erect a new commercial kitchen and stores to rear of existing kitchen and all associated site works

Site Address: Vintage Inn, Stradbally, Co. Laois.

Planning Application

Planning Authority: Laois County Council

Planning Authority Reg. Ref: 15/31

Applicants: Eugene Conroy

Type of Application: Permission

Planning Authority Decision: Grant

Planning Appeal

Appellant: First Party

Type of Appeal: First Party V Condition 11 and 12 (Financial contribution)

Observers: None

Inspector: Joanna Kelly

1.0 INTRODUCTION

This appeal pertains to a First Party appeal against Condition 11 and 12, financial contributions in respect of the permitted development.

2.0 SITE DESCRIPTION

The appeal site is located in Stradbally on “town centre” zoned lands along the main street. There is a right of way to the north-west boundary of the site which provides access to the rear.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The applicant sought Retention of a) change of use from kitchen and dining room to public house lounge area, b) hard stand yard to the rear, c) change of storage shed to covered smoking area d) new shop front. Permission is sought for 1. Change of use from 5 bedroom bed and breakfast and domestic living areas to 2 no. 2 bedroom apartments and an office unit associated to the Public House 2. Erect a new commercial kitchen and stores to rear of existing kitchen and all associated site works

4.0 TECHNICAL REPORTS

Planning report

The planning report recommended a grant of permission for the proposed change of use subject to conditions.

Condition 11 reads as follows:

“Prior to the commencement of development, a contribution shall be payable to Laois County Council, in accordance with the Council’s Development Contribution Scheme 2013-2017 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 the Council.

The amount for the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction) and penalty interest for late payment, in accordance with the terms of the Council’s Development Contribution Scheme 2013-2017.

This development is inside the Development Boundaries as per the County Development Plan 2011-2017 and the Local Area Plans for Portlaoise, Portarlinton, Mountmellick and Graiguecullen.

Apartments

Residential Units	No. of Units	Inside Dev. Boundaries	Total per contribution
Roads	2	€2,000	€4,000
Amenity	2	€2,000	€4,000
Total			€8,000

Commercial

	Total Sq. metres	€/sqm	Total per contribution
Roads	125	24	€3,000
Amenity	125	12	€1,500
Total			€4,500

Reason: *It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision/improvement of public services/infrastructure benefiting development in the area of the Planning Authority."*

Condition 12 reads as follows:

Prior to commencement of development, a contribution shall be payable to Laois County Council, in accordance with the Council's Development Contribution Scheme 2013-2017, 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 the Council.

The amount for the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction) and penalty interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme:-

Class of Infrastructure	No of Spaces	Amount per Space	Total
Shortfall in parking spaces	10	€500	€5,000

Reason: *It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision/improvement of public services/infrastructure benefiting development in the area of the Planning Authority.*

5.0 PLANNING AUTHORITY DECISION

A notification of a grant of permission was issued on 2nd day of October 2015 subject to 12 no. conditions. Condition 11 and 12 in respect of Section 48 contributions are of particular relevance to this appeal.

6.0 APPEAL GROUNDS

The grounds of appeal are summarised as follows:

- The contributions sought by the Council are not in line with the terms of their development contribution scheme.
- It is submitted that the figures set out in Condition 11 are incorrect. The original use of the building was residential and it is contended that a permitted residential use was already in existence on site and the current application is to convert this B & B into 2 apartments. Thus for the purpose of calculating contributions only one additional unit is being proposed. Therefore the rate of contribution should be €4,000 for this portion of the development.
- Further, section 6.5 of the Scheme details categories for “Exemptions and Reductions” and states that “a 33% reduction shall apply....and in village and town centre zoned areas for each town and village within the county development plan 2011-2017.”
- The site is located in Stradbally town centre thus resulting in a contribution of €2,680.
- With regard to the commercial element it is submitted that permission was already granted for the building on site and contributions previously paid for.
- The extension to the rear 32.34sq.m. and this should have been the basis for calculating the contribution, giving a total of €1164.24

- With regard to Condition 12, contribution in respect of car-parking it is set out that it is not acceptable to now look for contributions for a shortfall of car-parking retrospectively. The use of the current proposal is wholly the same as the previous one, with the exception of the apartments.
- It is submitted that the removal of the 5 bedroom B & B and domestic living area and its replacement with two, 2-bed apartments results in a requirement for less parking.
- No contribution should be required for car parking.

6.0 RESPONSES

No response has been received from the Planning Authority.

7.0 PLANNING HISTORY

The planning history pertaining to the appeal site is as follows:

File Ref. No. 92/155 Permission granted for new shop front to licensed premises

8.0 DEVELOPMENT CONTRIBUTIONS, GUIDELINES ISSUED BY DEPARTMENT OF ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT JANUARY 2013

These Guidelines provide guidance for Planning Authorities in the preparation of development contribution schemes and promote sustainable development patterns, economic activity and to securing investment in capital infrastructure and economic activity.

Chapter 2 sets out specific requirements that planning authorities are required to include in the development contribution schemes.

Under the heading of “double Charging” the Guidelines state:-
 “the practice of ‘double charging’ is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing ‘planning gain’ in an equitable manner. Authorities are minded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development has already made a contribution”.

The Department issued a circular letter to Planning Authorities (PL.15/2013) on 8th August 2013 reminding them of the requirement to commence a review of their existing development contribution schemes to ensure compliance with the Guidelines. The circular

requests those local authorities who have yet to review their development contribution schemes to commence that review as soon as possible. Kildare is not listed as one of the local authorities who have already reviewed their schemes over the past 12 months based on the draft/final guidelines.

9.0 DEVELOPMENT CONTRIBUTION SCHEME

A copy of the adopted Development Contribution Scheme for Laois County Council is attached to the file for reference.

10.0 ASSESSMENT

10.1 Introduction

In accordance with Section 48 (13) (a) the Board will not determine the application as if it had been made to it in the first instance but will only determine the matters under appeal and will issue appropriate directions to the Planning Authority when it has determined the appeal.

It is noted that An Bord Pleanála by letter dated 3rd December 2015 requested the Planning Authority to furnish submissions or observations on the appeal under Section 132 of the Planning and Development Act 2000 not later than 4th January 2016. It was requested that the submission should specifically address, *inter alia*, the alleged improper application of the development contribution scheme to the conditions under appeal. No response has been received from the Planning Authority.

The first party appeal submission contends that the development contributions applied in this case do not take into account that there was an existing residential use on the site, the reduction provided for within the Scheme for residential use on zoned lands and that car-parking shortfall cannot be sought retrospectively.

10.2 Current Application

The application was for both retention and permission. The retention element pertained to a change of use from kitchen and dining room to public house lounge, and change of use of storage shed to covered smoking area. The permission element was for the change of use of a B & B to two no. apartments.

10.3 Provisions of the current Development Contribution Scheme

The current development contribution scheme dated 2013-2017 provides the level of contribution payable in respect of development.

Other relevant sections to this appeal include:

5.1 Conversion of residential units:-

A contribution will be charged in accordance with the scheme in respect of any additional units created. Where an existing unit is extended or converted to create an additional unit, e.g., an apartment or flat, the appropriate rate of contribution will be payable in respect of each additional residential unit erected.

5.2 Change of use from Residential to Commercial

The charges as appropriate in Table 2 shall apply in the case of change of use from residential to commercial use, with an allowance being made for any development contributions already paid in respect of the residential development.

5.3 Change of use (Car Parking)

Where a change of use is proposed the council shall take into account the inherent car parking associated with the existing use when calculating car parking development contributions.

5.8 Mixed development

In the case of a mixed development, the contribution payable will be based on the sum of charges applicable to each development type within the overall development.

10.4 Calculation of Contributions

Condition 11

In the interests of clarity I propose to examine each element of the proposal against the provision of the development contribution scheme and calculate the relevant contribution accordingly.

With regards the commercial element, the application sought to

- a) Change the use of existing kitchen and dining room to public house lounge area
- b) Change the use of store to smokers' area
- c) Erect a new commercial kitchen and stores

The development scheme provides that "Change of use from any one class to another use within another class shall be subject to the provisions of the development contribution scheme. Where development contributions were paid in respect of the former use, the contribution payable on the new proposal will be net of the quantum of development previously paid for. Where the former use is fully authorised and any levies that might have applied to that use have

been paid, credit will be given for the previous use.” Therefore, whilst contributions are applicable to the new floor area the contributions previously paid in respect of this floor area should be off-set.

Rate for Commercial / Industrial Development:	
Category	Levy per m2
Roads	€24
Amenity	€12
Total	€36

The planning report indicates that the total commercial floor area was calculated as follows:

Public house lounge area	63sq.m.
Covered smoking area	17.3sq.m.
Kitchen and stores	32.34sq.m.
Office	12.79sq.m.

Thereby giving a total of 125sq.m. @ €36 = €4,500

I would consider that the commercial floor area has been correctly calculated and also corresponds to the dimensions cited by the applicant. The smoking area and lounge area appears to have been permitted floor area but is subject to a change of use in this application. There does not appear to be any recent planning history where development contributions have been paid and can be off-set against the contributions applicable in this instance.

I note the provision in the Scheme as follows:

“A 33% reduction shall apply in the Retail Core of Portlaoise, Portarlinton, Graiguecullen, and Mountmellick as defined in the Laois County Development Plan 2011 – 2017 and Local Area Plans respectively **and in the village and town centre zoned areas for each town and village within the County Development Plan 2011-2017.**”

I would point out to the Board that the scheme sets out that retention applications, cannot avail of any reductions. However, the office and kitchen extension area is not subject to retention and as such I

consider that a 33% reduction is applicable in this instance for the floor space in this regard.

The commercial calculation is as follows:

Kitchen and office areas 45sq.m.x €36 -33% = €1069
 Smoking area and lounge 80sq.m. x €36 = €2,880
Total €3,949

With regard to the **residential element**, the Planning Authority has sought contributions for 2 residential units in respect of roads and amenities totalling €8,000.

Category	Within Development Boundaries as per CDP* and LAPs*	Outside Development Boundaries as per CDP* and LAPs* &	Outside Development Boundaries as per CDP* and LAPs* &
		Up to 200 m2	> 200 m2
Roads	€2,000	€1,200	€1,200 + €7.00 per m2 every m2 over 200m2
Water	€800	€800	€800 + €5.00 per m2 every m2 over 200m2
Waste-Water	€1,600	€1,600	€1,600 + €10.00 per m2 every m2 over 200m2
Amenity	€2,000	€800	€800 + €5.00 per m2 every m2 over 200m2
Total		€6,400	

The development is located on zoned lands within an identified settlement centre in the County Development Plan. Whilst two units are proposed, there was an existing residential use on the site and it is reasonable that only one additional residential unit should be levied for.

This element of development is not subject to retention and therefore the 33% reduction on town centre lands is considered to be applicable in this instance. The development scheme does not specify whether the reduction is applicable to retail/commercial developments only. In the absence of such, it is reasonable that a reduction would be given to all types of development that occur within the retail core of these locations. Therefore the contribution in respect of the residential element is calculated as follows:

1 no. residential unit

Roads and Amenity €4,000 less 33% = **€3,680**

Condition 11 therefore should be amended to reflect the total contribution of **€7,629**.

Condition 12

The Planning Authority is seeking a contribution in respect of the shortfall of 10 no. car parking spaces. The planning report indicates that 12 no. spaces are required however there is no explanation as to how this figure is calculated. I consider it reasonable that the shortfall in spaces should only apply to the elements of development subject to retention and permission in this application.

The CDP sets out that:

“Parking standards are based on gross floor area. Excluding nursing home
 Units for which one car parking space is to be provided are set out in table below.
 Development Contributions will be required in cases where there is a shortfall in on site car parking.

Development Unit
Offices 1 space per 20 sq m
Hotels Guest Houses (excluding function rooms 1 space per bedroom)
Public Houses / Lounge Bars 1 space per 10 sq m
Restaurants 1 space per table
Function Rooms/Dance Halls/ Clubs 1 space per 3 sq m

The public house use is established on the site and therefore only the increase in gross floor area of public house should be calculated for purposes of establishing car spaces required. Therefore, I consider that the smokers' area, office and the kitchen extension becomes liable for the calculation.

Public house lounge area	63sq.m.	6 spaces
Covered smoking area	17.3sq.m.	1.5 spaces
Kitchen and stores	32.34sq.m.	3 spaces
Office	12.79sq.m.	.5 spaces
Total		11 spaces

The Board should note that the kitchen area/stores whilst not strictly lounge area of the public house is considered to constitute part of the gross floor area associated with the public house. I acknowledge that part of the floor area existed and is subject to a change of use. However, in the absence of any evidence of previous permissions where contributions were previously paid, the full amount is considered payable. Further, the scheme expressly provides that no exemptions/reductions are provided for retention applications. I therefore consider that the above calculation is the most reasonable and fairest interpretation of the current Scheme having regard to the proposal in this application.

With regard to the B & B use, it is considered that 5 no. spaces would have been required however the proposed residential use gives rise to 2 no. spaces thereby resulting in a surplus of 3 spaces.

The total shortfall of car parking spaces is therefore considered to be 8 spaces. The contribution should therefore be amended to €4,000. I have not off-set the 2 no. car parking spaces to the rear as it is considered that parking currently exists to serve the development as it stands. The Board may, if they consider appropriate, consider off-setting these 2 spaces against the shortfall thereby resulting in a total figure of €3,000.

12.0 Conclusion

It is considered that the Planning Authority has incorrectly applied the County Council's adopted Development Contribution Scheme. No regard was given to the exemptions provided for within the scheme in this particular instance.

13.0 RECOMMENDATION

It is recommended that the Board direct Laois County Council under Section 48 (13) of the Planning and Development Act, 2000 to **AMEND** the contribution sought in respect of Condition 11 and 12 as follows:

Condition 11 should be amended from €12,500 to €8,180.

Condition 12 should be amended from €5,000 to €4,000

REASONS AND CONSIDERATIONS

Having regard to

- (a) the general arrangements regarding payment of development contributions and implementation of the scheme,
- (b) the established residential and commercial uses on the site,
- (c) the consequential increase of one residential unit on the site,
- (d) the location of the appeal site on town centre lands within an identified settlement centre,
- (e) the planning history associated with the appeal site and absence of any evidence of previously paid contributions

the Board considered that the terms of the Scheme has not been properly applied in this instance.

Joanna Kelly
Planning Inspector
8th February 2016