



Inspector's Report

Development: Permission for the indefinite retention of the current use of 5 Market Street, Tramore. Co Waterford as a residential use, together with permission for modifications to the rear elevation comprising two new window openings and a dormer window at roof level.

Location: No 5 Market Street, Tramore, Co Waterford.

Planning Application:

Planning Authority:	Waterford City and County Council
Planning Authority Reg. Ref.:	15/420
Applicant:	Ellen Twomey
Type of Application:	Permission
Planning Authority Decision:	Grant Permission with conditions

Planning Appeal:

Appellants:	Ellen Twomey
Type of Appeal:	1 st Party in regard to conditions 3 relating to financial contributions under Section 48 of the Planning and Development Act 2000, as amended.
Date of inspection:	N/A
Inspector:	Bríd Maxwell

1.0 INTRODUCTION

- 1.1 This appeal is by the First Party against a general development contribution (Section 28(2)(a) of the 2000 Act, as amended) for the amount of €5,400 set by the Planning Authority on a permission for retention of a change of use and modifications to rear elevation at a premises located at 5 Market Square, Tramore. Co Waterford.

2.0 SITE LOCATION AND DESCRIPTION

- 2.1 The appeal site comprises the two storey terraced property located at 5 Market Street, Tramore, Co Waterford.

3.0 PROPOSED DEVELOPMENT

- 3.1 The application as described in the submitted public notices is as follows:

“Indefinite retention of the current use of 5 Market Street, Tramore. Co Waterford as residential use, together with permission for modifications to the rear elevation comprising two new window openings and a dormer window at roof level.”

- 3.2 Application cover document indicates that the property was originally used as a dwelling house however permission was granted for use of the ground floor level as a shoe repair shop in 1983. Subsequently the use reverted to residential use in the form of two self-contained uses (without permission). The applicant has recently acquired the property and wishes to restore the use of the property as a single three bedroom dwelling. Application seeks to rectify the current use and gain permission for minor alterations to rear of property.

4.0 PLANNING POLICY CONTEXT

4.1 Development Contributions, Guidelines for Planning Authorities, Department of the Environment, Community and Local Government. January 2013.

The guidelines provide non statutory guidance on the drawing up of development contributions schemes. They require that subject to the overriding principles of proper planning and sustainable development, adopted development contribution schemes should contribute to the promotion of sustainable development patterns, economic activity and to securing investment in capital infrastructure and economic activity. They should reflect the reduced costs of infrastructure provision in recent years relative to when schemes were last revised.

4.2 DEVELOPMENT PLAN

4.2.1 The Waterford County Development Plan 2014-2020 and Tramore Local Area Plan 2014-2020 refer.

4.2.2 The Waterford County Council Development Contribution Scheme 2015-2021, adopted on 12th February 2015 and effective from 12th February 2015 applies. The levels of contributions payable for residential development are set out Section 6(a) Residential Development as follows:

Residential	Rate per unit up to 125sq.m	Rate per unit 125 – 200sq.m	Rate per unit 200 sq. +
Surface water (15%)	€450	€750	€1,350
Recreation and amenity 5%	€150	€250	€450
Community Facilities 40%	€1,200	€2,000	€3,600
Transport 40%	€1,200	€2,000	€3,600
Totals	€3,000	€5,000	€9,000

4.2.3 Exemptions and Reductions are set out at 7 and include a general exemption 3. Permission for change of use in the designated city centre and also the town centre of Dungarvan and Tramore where the change of use does not lead to the need for new or upgraded infrastructure / services or where there is not additional demand on existing infrastructure. At 10 it is stated that applications for retention will be charged at the full rate under the scheme No exemptions or reductions shall apply.

4.2.4 Under Reductions 8 it Residential reductions include
7) Extension to an existing residential unit – The first 40 sq. are exempt from development contributions whilst the remaining floor area, in excess of the first 40sq.m will be charged at 50 per sq,m,

5.0 PLANNING HISTORY

- 83/156 Conditional permission granted to convert to shop repair shop

6.0 DELIBERATIONS AND DECISION OF THE PLANNING AUTHORITY

6.1 Internal Reports

- A request for additional information was recommended in the initial planner's report. The request sought photographic evidence that the proposal will not result in the loss of privacy to neighbouring properties.
- Appropriate Assessment Screening report appended to the Planner's report concludes that there is no potential for significant effects on Natura 2000 sites.

- Planner's final report recommended permission subject to three conditions.

6.2 Decision

6.2.1 By order dated 20/10/2015 Waterford County Council decided to grant permission subject to 3 conditions.

- *Condition 1. Development in accordance with plans and particulars.*
- *Condition 2. Demolition Waste recovery.*
- *Condition 3. "The developer shall pay to the Planning Authority a financial contribution of €5,400 (five thousand four hundred euro) in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000. The relevant Development Contribution Scheme was adopted by Waterford City and County Council on 12th February 2015. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate.*

<i>Surface Water</i>	<i>€810.00</i>
<i>Recreation and Amenity</i>	<i>€270.00</i>
<i>Community facilities</i>	<i>€2,160.00</i>
<i>Transport</i>	<i>€2,160.00</i>
Total Contributions	€5,400.00

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission,"

7.0 GROUNDS OF APPEAL

7.1 First Party Appeal

7.1.1 The First Party Appeal is submitted by Peter Thomson Planning Solutions on behalf of Ellen Twomey. The appeal relates to condition 3 (financial contributions) solely. Grounds of appeal are summarised as follows:

- Pre 1984 the property comprised a single dwelling house.
- Under 83/156 permission was granted for change of use to shoe repair shop. The remainder of the building was residential in use and the property was a single planning unit with two distinct uses retail and residential.
- When the use as shop closed the accommodation was returned to residential use and functioned as a separate apartment to the existing house.
- The change of use of shop unit to residential was unauthorised development and the subdivision to create two dwellings was also an unauthorised change of use.
- Proposal is to convert two unauthorised residential units back to one.
- There is no aspect of retention use or works required under the application in respect of that part of the property which remained in residential use following the creation of the shop.
- The only element of retention relates to the former retail floorspace which extends to only 35m². In which case the level of contribution would have been €1,750.
- Notably one house rather than two will have reduced impact on services.

8.0 APPEAL RESPONSES

8.1 Planning Authority

8.1.1 The Planning Authority response to the appeal is summarised as follows:

- Grounds of appeal noted however the planning authority can only assess the application as submitted. Retention permission was sought for the indefinite retention of the current use, as residential use, together with permission for modifications to the rear elevation comprising two new window openings and a dormer window at roof level. As per Section 10 of the adopted Development Contributions Scheme 2015-2021 application for retention shall be charged at the full rate under the scheme. No exemptions or reductions shall apply. It is the opinion of the Planning Authority that development contributions have been applied in accordance with the adopted development contributions scheme.

9.0 ASSESSMENT

9.1 As this is a first party appeal against a financial contribution condition applied under Waterford County Council Development Contribution Scheme, the provisions of Section 47 of the Planning and Development Act 2000 as amended apply. Therefore the Board cannot consider the proposed development de novo. The Board's remit in appeals against financial contribution conditions is restricted to the proper application of the adopted scheme.

9.2 The Waterford City and County Council Development Contribution Scheme 2015-2021 was adopted on the 12th February 2015, effective from 12th March 2015 and was made under Section 48 of the 2000 Act. The levels of contributions payable for residential development is set out as follows:

Residential	Rate per unit up to 125sq.m	Rate per unit 125 – 200sq.m	Rate per unit 200 sq.m +
Surface water (15%)	€450	€750	€1,350
Recreation and amenity 5%	€150	€250	€450
Community Facilities 40%	€1,200	€2,000	€3,600
Transport 40%	€1,200	€2,000	€3,600
Totals	€3,000	€5,000	€9,000

- 9.3 In relation to Residential extensions it is outlined that the first 40 sq.m are exempt from development contributions whilst the remaining floor area in excess of the first 40 square metres will be charged at €50 per square metre.
- 9.4 Waterford County Council calculated the contributions on the basis that the building has a total floor area of 108 sq.m and at €50 per square metre this gives rise to a contribution of €5,400.
- 9.5 The first party makes the case that the only element of retention of use relates to the former retail floorspace which equates to 35 sq.m. Notably the proposal does not involve the creation of a new residential unit rather it seeks to amalgamate the entire floor area to form one unit rather than two separate dwelling units (which were in any case unauthorised). It is noted that one house rather than two will have a reduced impact on services.
- 9.6 I note that the planning authority did not provide details of the previous permission on the site 85/156 (Permission for shoe

repair shop) and detailed documentation is not provided on the Council's eplan - planning enquiry system. The Council response to the appeal does not dispute the first party assertion that the change of use floor area equates to 35sq.m.

- 9.7 On the basis of the information provided on the appeal file, I consider that the arguments of the first party as set out within the grounds of appeal are entirely reasonable and I consider that the development contribution should apply solely to the 35sq.m. area shop floorspace. I therefore calculate that the contribution which should apply is 35sq.m x €50 = €1,750.

9.8 CONCLUSIONS AND RECOMMENDATION

- 9.8.1 Having reviewed the application documents, the grounds of appeal and the planning authority's development contribution scheme I consider that the terms of the Development Contribution Scheme have been improperly applied in respect of condition 3 regarding contributions payable in relation to the proposed development.

- 9.8.2 In the light of the above assessment, I recommend that the Board should direct the Council to amend condition 3 to reflect the amended amount of €1,750.

DECISION

Having regard to the nature of the condition subject of the appeal, the Board is satisfied that the determination by The Board of the relevant application as if it had been made to it in the first instance would not be warranted. The Board considered that the terms of the Development Contribution Scheme for the area has not been properly

applied in respect of Condition no. 3 and directs the Council under sub-section (10)(b) of section 48 of the Planning and Development Act 2000, amended, to amend condition no. 3 as set out below.

CONDITION 3

The developer shall pay to the planning authority a financial contribution of €1,750 (one thousand, seven hundred and fifty euros) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Bríd Maxwell,
Planning Inspector
2nd March 2016