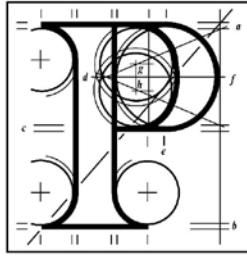


An Bord Pleanála



Inspector's Report

Development: Change of use of existing basement from office use to residential use as 2 two bed apartments and the demolition of existing rear toilet blocks to facilitate new external stairs to open space area at Atlantic house, 39 Prospect Hill, Galway.

Application

Planning authority: Galway City Council
Planning application reg. no. 15/214
Applicant: The PAS Fund
Type of application: Permission
Planning authority's decision: Grant, subject to 8 conditions

Appeal

Appellant: The PAS Fund
Type of appeal: Section 48
Observers: None
Date of site inspection: 29th April 2016
Inspector: Hugh D. Morrison

Introduction

Atlantic House is a three storey over basement mid-row office building on the north western side of Prospect Hill, a street on Galway city centre that connects with the northern side of Eyre Square to the south west.

The proposal for Atlantic House is to change the use of the basement from offices to 2 two-bed apartments. Following receipt of further information, the planning authority granted permission subject to 8 conditions, the sixth of which requires that a development contribution of €13,898 be paid. The applicant has only appealed this condition. It therefore falls to be assessed under Section 48(10) of the Planning and Development Act, 2000 – 2015, and so the relevant test is whether or not the planning authority properly applied its development contribution scheme in attaching the aforementioned condition.

Grounds of appeal

- The Planning and Development Act, 2000 – 2015, requires that planning authorities set out the basis for the levies that they seek to impose, i.e. its capital expenditure programme and the proportion of this programmed that would be funded by means of levies. Attention in this respect is drawn to, in particular, Sections 48(2) and (3) of the Act.
- The planning authority's Development Contribution Scheme 2008 – 2012 set out the aforementioned basis. However, this Scheme has now lapsed. Under a Manager's Order dated 11th April 2014, the levies cited under it have been revised and yet the said basis for the same has not been stated. This omission renders the planning authority non-compliant with the said Act and so condition 6 is invalid.
- The applicant is willing to pay a levy, but only one that is derived from an explicit capital expenditure basis.

Planning authority's response

- Attention is drawn to the statement in the Manager's Order dated 11th April 2014, which reads "I hereby order that the following development contribution levies will remain in place until the Development Contribution Scheme currently being reviewed is finalised." The planning authority strongly contends that these levies are therefore valid until such times as they are replaced by a new Development Contribution Scheme.
- Attention is also drawn to the case planner's report, within which the calculation of the levy cited in condition 6 is set out. Thus, as the floorspace of one apartment would be 60 sq m and the other would be 80 sq m, they

attract levies of €8,639 and €9,739, respectfully. However, the resulting aggregate figure of €18,378 was reduced to allow for the existing office floorspace of 160 sq m. The latter floorspace attracts a levy of €28 per sq m and so once a reduction of €4,480 is applied the relevant levy is €13,898 as stated in condition 6.

Applicant's response to planning authority's response

- The applicant reiterates their central contention that the Manager's Order is not compliant with the Planning and Development Act, 2000 – 2015, for the reasons previously elucidated.
- The applicant sets out some background information to their proposal to the effect that they have been unable to let the basement offices in Atlantic House and yet, even though vacant, the floorspace in question has been the subject of commercial rates and water charges. Furthermore, once the basement is converted into two apartments, local property taxes will ensue. Thus, the levy required under condition 6 is unfair, as the proposal would not increase the call upon City Council services and yet it would amount to double charging for those services.
- An equitable outcome to this appeal would be the omission of condition 6 without the prospect of any future "back-dating" of a levy under a new development contribution scheme, as such "back-dating" is not contemplated by the Act.

Assessment

1. The applicant has appealed condition 6 attached to the permission granted by the planning authority to application reg. no. 15/214, principally, on the basis that the levy cited is not linked to a current development contribution scheme within which the capital expenditure programme of Galway County Council is set out. Under Section 48(3) of the Planning and Development Act, 2000 – 2015, this link is stated as being required.
2. The applicant also sets out their contention that condition 6 is unfair, as the proposal would not increase the call upon City Council services, and these services are already paid for and would continue to be paid for by other rates/charges/taxes. Thus, the required levy amounts to double charging.
3. The planning authority has responded to the applicant's principal ground of appeal by drawing attention to the statement in the Manager's Order dated 11th April 2014, which reads "I hereby order that the following development contribution levies will remain in place until the Development Contribution Scheme currently being reviewed is finalised." It is thus strongly contended that these levies are

valid until such times as they are replaced by levies set out in a new Development Contribution Scheme, which will replace the one dated 2008 – 2012.

4. Under Section 48(10) of the aforementioned Act, the Board is empowered to review whether in attaching a condition a planning authority has properly applied the terms of its own development contribution scheme. Thus, questions pertaining to the validity of a development contribution scheme and the fairness or otherwise of its provisions lie beyond the remit of the Board.
5. From the evidence before me, the relevant development contribution scheme is Galway City Council's Development Contribution Scheme 2008 – 2012 (DCS), as extended in time and revised by the Manager's Order dated 11th April 2014. This Scheme sets out the amount of contribution that runs with different types and sizes of new build development. In the case of the conversion of existing floorspace, the planning authority has adopted the convention of deducting the amount of contribution that the existing/last use would attract from the amount that the proposed use would attract. This convention, although not explicitly set out in the DCS, appears to be reasonable. Thus, in the case of the current proposal, the following calculations have ensued in arriving at the levy cited in condition 6:
 - The proposed apartments would have floorspaces of 60 and 80 sq m each. The former would be under 73 sq m and the latter would be between 73 and under 125 sq m. Thus, if they were new build apartments, then they would attract levies of €8,639 and €9,739, respectfully, yielding a total of €18,378.
 - The existing office floorspace is 160 sq m. Each sq m attracts a levy of €28, thereby yielding a total of €4,480.
 - As the proposal is for the partial conversion of an existing building rather than a new build development, the latter total is deducted from the former one to give a total payable levy of €13,898.

The payable levy is the one cited in condition 6 and so I conclude that the planning authority has properly applied its DCS to the current proposal.

Recommendation

In the light of my assessment, I recommend that the planning authority be directed to confirm the attachment of condition 6, as drafted, to the permission granted to application reg. no. 15/214.

Reasons and considerations

It is considered that condition 6, as drafted, results from the proper application of the planning authority's development contribution scheme to the proposal and so the confirmation of this condition accords with the proper planning and sustainable development of the area.

Hugh D. Morrison

Inspector

9th May 2016