



An
Bord
Pleanála

Inspector's Report PL.09.246923

Development

Change of use from banking hall to retail unit and all ancillary development.

Planning Authority Kildare County Council

Planning Authority 16/443

Reg. Ref.

Applicant(s) Michael Purcell

Type of Application First Party v Condition 8

Planning Authority Grant permission

Decision

Appellant(s) Michael Purcell

Observer(s) None

Date of Site Not applicable

Inspection

Inspector Joanna Kelly

1.0 Site Location and Description

1.1 The appeal site is located in the town of Athy along St. John's Lane with a car-park to the front of the property that is currently vacant. The river barrow is located west of the appeal site.

2.0 Proposed Development

The applicant is seeking permission to change a banking hall to retail unit and all ancillary development works.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission subject to 8 conditions:

Of relevance to this appeal is condition 8 cited as follows:

The applicant/developer to pay to Kildare County Council the sum of €8,821.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare county Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

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

3.2. **Planning Authority Report**

The planning report indicated the proposal was acceptable and recommended a grant of permission. The calculation is based on a floor area of 202sq.m.

4.0 **Planning History**

File Ref. No. 46/95 The Planning authority refer to this as being the permission that permitted the retail use. No details have been submitted and are unavailable to this Inspector. It would appear that this permission pertains to a site in Naas.

File ref. No. 96/500049 The planner notes that permission was granted for an ATM machine and exterior signage to proposed Ulster bank premises. No details are available on-line.

5.0 **Policy Context**

The Kildare County Development Plan 2011-2017 is the statutory development plan for the area.

Athy Town Development Plan 2012-2018

The appeal site is zoned “town centre” where the objective is “to protect and enhance the special physical, historical and social character of the existing town centre and to provide for the development and improvement of appropriate town centre facilities and uses including retail, residential, commercial, cultural and civic uses”.

6.0 The Appeal

6.1 Grounds of Appeal

The grounds of appeal can be summarised as follows:

- It is submitted that the financial contribution has not been applied in accordance with the Development Contribution Scheme 2015-2022 and that the condition should be removed in its entirety or the contribution reduced to nil.
- The current scheme allows for a waiver in the case of change of use permissions and further states that the scheme provides for a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.
- It is only a change of use that is proposed, there is no increase in floor area.
- The retail banking hall use was previously permitted by planning permission TP/46/95 as part of a mixed use development.
- It is requested that the condition be removed so that potential tenants can be secured for the currently vacant property.

6.2 Planning Authority Response

The response is summarised as follows:

- The calculation of the contribution was based on the floor area of the permitted development i.e. 202sq.m. at a rate of €43.46.
- The scheme provides for waivers in the case of change of use planning permission under paragraph g.

- It is set out that as there was no previous planning history provided with the application the levy was applied in full for the purposes of issuing the notification of grant of permission.
- Having reviewed file ref. no. TP46/95 it is noted that the floor area permitted in this application is significantly larger than that permitted previously. It is also noted that a levy of £4,660 was required to be paid under File Ref. No. TP46/95.
- There is no record of payment of the levy applied to the previous permission and the Planning Authority confirms that contributions were correctly applied in this instance.

6.3 First Party response to Planning Authority submission

The new points in this submission are noted as follows:

- The Council has mistakenly referred to the wrong application in assessment of the contribution.
- The planning file examined pertains to a development at 33A North Main Street, Naas.
- The floor area of the permitted banking hall is exactly the same as the floor area of the change of use application. The development levy was paid in full and there is no receipt to hand as it was paid 21 years ago.

7.0 **Assessment**

7.1 Introduction - I consider the key issue for determination in this instance pertains to the development contribution. 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. The reason for appeal pertains to the exemption provision within the scheme for changes of use.

7.2 Provisions of the Contribution Scheme - The Kildare Development Contribution Scheme provides for the payment of a contribution in respect of commercial developments at a rate of €43.46 per square metre. Section 12 of the said scheme provides that “Exemptions and Reduced Contributions” in particular instances apply. With regard to changes of use it is set out that *“this scheme provides for waivers in the case of change of use planning permissions. Kildare County Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure”*.

I also note that there are provisions for reductions in the development contributions which may be applied to development within town centres as designated in Athy Town Development Plan 2012-2018, Chapter, Core retail Area – map 6.1. The appeal site is located just outside this core retail area.

7.2 Proposal - The planning application sought permission for a change of use from banking hall to a retail unit. Whilst there are internal modifications, there is no increase in floor area from that which exists currently.

7.3 Assessment of condition 8 – There is some ambiguity regarding the parent permission pertaining to this appeal site. Reference is made in the response from the planning authority to the grounds of appeal to File Ref. No. TP46/95 however this would appear to refer to a site in Naas. I have been unable to secure details of the parent permission pertaining to the site. However, I am satisfied that the appeal can be determined in its absence having regard to the provisions of the scheme.

7.4 It is clear that the scheme provides for a 100% reduction where the proposal does not lead to the need for new or upgraded infrastructure/services or significant infrastructure of demand place on existing infrastructure. The proposed change of use is from a previous bank (Ulster Bank) to a retail use. Therefore, I am satisfied that no contribution is payable in this instance.

8.0 Recommendation

I recommend that the planning authority is directed to **REMOVE** Condition 8.

9.0 REASONS AND CONSIDERATIONS

The Board considered that Condition 8 has not been correctly determined in accordance with the current Kildare County Council Development contribution scheme 2015-2022.

REASONS AND CONSIDERATIONS

Having regard to

- (a) The established use on the appeal site as a banking hall;
- (b) the general arrangements regarding payment of development contributions and implementation of the scheme; and the
- (c) the provisions of the Kildare County Development Contributions Scheme, in particular section 12, paragraph g,

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

Joanna Kelly

Planning Inspector

30 September 2016