



An
Bord
Pleanála

Inspector's Report PL.09.246956

Development

Permission for minor modifications to existing building including (a) extension to kitchen, (area of 20.5sq.m.) to north east elevation; (b) removal of existing entrance doors to south west elevation and formation of new window in place of existing entrance doors. (c) Formation of new double doors formation and draft lobby (area of 1.4sq.m.) to corner of south west elevation; (d) the reduction of the permitted area of the existing shop to accommodate the new entrance and an extension of the existing bar (proposed floor area 30.2sq.m.); (e)all associated site development works at The Brown Bear Public House, The Village Centre, Stephenstown, North Two Mile House, Naas

Planning Authority Kildare County Council

Planning Authority 16/513

Reg. Ref.

Applicant(s) Eugene Brennan

Type of Application First Party v Condition 13

Planning Authority Grant permission

Decision

Appellant(s) Eugene Brennan

Observer(s)	None
Date of Site Inspection	Not applicable
Inspector	Joanna Kelly

1.0 Site Location and Description

1.1 The appeal site is located in the rural settlement of Twomilehouse approximately 6 kms south of Naas, Co. Kildare.

2.0 Proposed Development

The applicant is seeking permission for alterations to an existing public house. The main elements of the proposal are as follows:

- extension to kitchen, (area of 20.5sq.m.) to north east elevation;
- removal of existing entrance doors to south west elevation and formation of new window in place of existing entrance doors.
- formation of new double doors formation and draft lobby (area of 1.4sq.m.) to corner of south west elevation
- the reduction of the permitted area of the existing shop to accommodate the new entrance and an extension of the existing bar (proposed floor area 30.2sq.m.)

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission subject to 13 conditions:

Of relevance to this appeal is condition 13 cited as follows:

The applicant/developer to pay to Kildare County Council the sum of €2,264.00 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 52.1sq.m.

4.0 **Planning History**

File Ref. No. 04/1209 Permission granted to demolish existing dwelling on site.

File ref. No. 04/1288/PL.211505 Permission granted for village centre with two-storey, one and a half storey and single storey building comprising the following uses: (a) bar, restaurant, public lounge and ancillary ground floor uses (b) meeting room with toilets on first floor (c) three shop units with ancillary uses on ground floor (d) four apartments. Construction of car-park, access roads, new site entrance, associated site development works.

File Ref. No. 08/1032 Permission granted for retention and completion of minor modifications to previously approved permission.

5.0 Policy Context

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

6.0 The Appeal

6.1 Grounds of Appeal

The grounds of appeal can be summarised as follows:

- The appeal relates solely to the contribution required under condition 13 of the notification of grant of permission pertaining to the payment of a contribution.
- It is submitted that the condition is outside the ambit of the Kildare Contribution Scheme.
- The appeal relates to the proportion of the overall charge which relates to the change from permitted shop space to additional bar area.
- This overall development was originally permitted by the Board under ref. no. PL.09.211505 and this 30.2sq.m. area, which is now to be used for bar purposes, was shown on the permitted drawings as part of a retail outlet.
- Condition 20 of that permission stipulated that the appellant pay a financial contribution of €62,897.90 and a compliance letter issued to the applicant stating the condition has been complied with in full.
- The applicant also secured a separate permission during the intervening period under File ref. no. 08/1032 and although condition 21 thereof had sought an extra payment of €9,771 the council issued a letter confirming the condition had been complied with in full.
- Therefore, all contributions which were ever sought in respect of the development have been paid in full.

- It is asked that An Bord Pleanála acknowledge that such previous payments to the Council extend to cover the 30.2sq.m. of permitted retail floorspace which is proposed to be converted into additional bar area.
- The Council seem to have assumed that this particular element of the proposal is new floorspace; this is not so. Instead it should be determined whether or not the planned change of use from shop to bar area would need new or upgraded infrastructure/service in this particular area.
- It is considered this element of the overall proposal would not place any demands on the public purse in terms of infrastructure provision.
- The Council has applied a rate of €43.46sq.m. which suggests that €1,312 of this overall €2,264 levy relates to 30.2sq.m. of existing space, on which a contribution has already been paid. As the use of this area for bar purposes would not have infrastructure implications, relative to its permitted uses as a shop unit, this element of the total contribution due should be deducted from the amount required.
- It is requested that the Council be directed to reduce the sum sought in condition 13 of its decision from €2,264 to €952.

6.2 Planning Authority Response

No response has been received from the planning authority.

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 changes of use floor area for which a contribution has already been paid.

- 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”*.
- 7.3 Proposal - The planning application sought permission for a change of use and new floor space. Internal modifications are also proposed which mainly incorporate the provision of a window in lieu of a permitted door. The new floor space is approx. 20sq.m.
- 7.4 Assessment of condition 13 – A review of the previous history file pertaining to the appeal site confirms that the proposal in this instance is to provide new floor space and also to incorporate previously permitted retail space within the floor space of the lounge area i.e. change of use.
- 7.5 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 retail use to bar use. Therefore, I am satisfied that no contribution is payable in this instance given that the applicant has paid in full previous contributions in respect of the permitted uses. Therefore, the floor area of 30.2sq.m. can be discounted. The remaining floor space (20sq.m.) is however subject to the commercial rate which the applicant accepts.

7.6

8.0 Recommendation

I recommend that the planning authority is directed to **AMEND** Condition 13 to provide for a contribution figure of €869.2 (20sq.m. x €43.46).

9.0 REASONS AND CONSIDERATIONS

The Board considered that Condition 13 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 commercial premises;
- (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,
- (d) the payment of previous contributions by the applicant sought in respect of the existing commercial floor space

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

Joanna Kelly

Planning Inspector

12th October 2016