



An
Bord
Pleanála

Inspector's Report PL 07 247368

Development	Amendment to five residential units previously permitted under P. A. Reg. Ref 15/1001.
Location	Carrowbaun, Loughrea, Co. Galway.
Planning Authority	Galway County Council.
P. A. Reg. Ref.	16/405
Applicant	Pale Horizon Ltd.,
Type of Application	Permission
Decision	Grant Permission.
Type of Appeal	Appeal against Condition No 9. (Section 48)
Appellant(s)	Pale Horizon Ltd.,
Date of Site Inspection	28 th November, 2016
Inspector	Jane Dennehy.

Contents

1.0 Site Location and Description	3
2.0 The Planning Application.....	3
3.0 Planning History.....	4
4.0 The Appeal	4
4.5. Planning Authority Response.....	6
5.0 Assessment.....	6
6.0 Recommendation.....	8
7.0 Reasons and Considerations.....	8
Condition.	

1.0 Site Location and Description

- 1.1. The appeal site is that of a corner site multiple unit vacant two and a half storey block within a residential development in the village of Carrowbaun to the south of Loughrea in south east Galway. The site has a stated area of 2,269 square metres.

2.0 The Planning Application.

- 2.1. The application was for modifications to the previously permitted development of five residential units. (P. A. 15/10001 refers. Details are under Planning history in section 3 below.) The proposed modifications comprise:

Change of dwelling type at ground and first floor levels and single storey extensions (each with a stated floor area of 6.5 square metres) to two, (Nos. 1 and 5);

Change of dwelling type from a two bed townhouse to a three bed townhouse at Unit Nos 1, 4 and 5;

Change of dwelling type from two one bed units at ground and first floor levels to a three bed house.

- 2.2. Additional information was requested in respect of several matters to which a response was submitted to the planning authority on 6th September, 2016.

2.3. Decision.

By order dated, 9th September, 2016, the planning authority decided to grant permission for the development proposed subject to nine conditions of a standard nature. Condition No 9 is a section 48 development contribution condition, details of which provided under The Appeal in section 4.)

3.0 Planning History

3.1. **P. A. Reg. Ref. 15/1001:** According to the planning officer's report on the current proposal, Permission was granted for change of use for a previously permitted development from commercial to residential at ground and first floor, with construction of a second floor providing for 3 no one bed apartments and 3 no 2 bed duplex units within the block along with various modifications and changes. The proposed development entailed an increase in gross floor from 620 square metres to 661.3 square metres.

P. A. Reg. Ref. 07/1558: According to the planning officer's report on the current proposal, Permission was granted for change to elevations of permitted commercial development and omission of commercial units, retention of a semi-detached house type. The gross floor area of residential development is 220.26 square metres and that of commercial development is 284/78 square metres.

P. A. Reg. Ref. 05/2449: According to the planning officer's report on the current proposal, Permission was granted for six commercial units, three town houses, four semi-detached houses, four detached houses, three terraced houses, a village square and associated development works. The total stated gross floor area is 2,237.7 square metres.

4.0 The Appeal

4.1. An appeal under section 48 (10) (b) of the Act was received on 5th October, 2016. The appeal is against Condition No 9, which is reproduced below:

"Prior to the commencement of development proposed the applicant developer shall pay €8,336.95 to the Planning Authority unless a phased payment schedule has been agreed in writing, with the Planning Authority. This charge has been calculate using the Development Contributions Scheme adopted by Galway County Council in accordance with provisions of Section 48 of the Planning and Development Act 2000(as amended): The makeup of this sum is detailed in the list below:

Reason: *So that the developer shall pay an equitable portion of the cost of the facilities that are provided or that is intended will be provided by or on behalf of Galway County Council, which will facilitate the proposed development.”*

The calculations indicated provide for:

Payment of €6,000 euro (€1,000 per dwelling) in respect of Recreational and Amenity infrastructure and facilities and,

Payment of €8,336.95 (€3.50 per square metre gross floor area) in respect of Roads infrastructure and facilities.

4.2. According to the appeal:

- No additional levies are payable and that the condition was imposed without regard to existing and permitted floor space, the previously paid contributions and without regard to the Development Contributions Scheme provisions for development proposals for change of use.
- Payment of €6,061.25 (recreation and amenity) required under Condition No 2 of the grant of permission under P. A. Rg.Ref.05/2449 was paid in January 2006. The permitted commercial building design was not constructed.
- No additional contributions were payable in respect of the development permitted under P. A. Reg. Ref. 07/1558. The building was constructed in accordance with the grant of permission.
- The current application supersedes the grant of permission under P. A. Reg. Ref. 15/1001. As the grant of permission under P. A. Reg. Ref. 15/1001 was not taken up payment of the development contribution required by condition was not made.
- The requirement for payment of €2,336.95 in respect of Roads Infrastructure and facilities is not contested because payment of a roads contribution was not previously required or paid in respect of the prior grants of permission.
- The requirement for payment of €6,000 euro (€1,000 per dwelling) in respect of Recreational and Amenity is not payable because €6,061.25 was paid in

accordance with Condition No 2 of the grant of permission under P. A. Reg. Ref. 05/2449 in January, 2006. Due regard should be had to existing and permitted commercial floor space. The proposed change of use, compared to the permitted development under P. A. Reg. Ref.07/1558 does not represent substantial intensification of use and can be regarded as a 'de-intensification' of use. Credit for this previous payment in respect of existing floor space is requested. Credit for the extensions subject of the current application is not requested.

- 4.3. In the appeal it is stated that the scheme (of which the proposed development forms a part) was vacant and disused between 2008 and 2014 but is now 90 per cent occupied but it has not been possible to procure commercial tenants. As a result, it provides generously proportioned residential units in the block.
- 4.4. Reference is made to the S28 Guidance: Development Contribution: Guidelines for Planning Authorities (DOEC&LG, 2013) according to which:

“The practice of “double charging” is inconsistent with both the primary objective of levying development contribution and with the spirit of capturing “planning gain” in an equitable manner. Authorities are reminded that any development contribution already levied and aid in respect of a given development should be deducted from the subsequent charge so as to reject that this development had already made a contribution. “

4.5. **Planning Authority Response**

There is no submission from the planning authority on file in response to the appeal.

5.0 **Assessment**

- 5.1. There is no dispute between the parties as to the requirement for payment of a contribution in respect the cost of the provision of roads infrastructure and facilities in the area of the planning authority. The matter to be considered are as to whether the requirement for payment of the contribution in respect of the cost of the provision Recreation and Amenity infrastructure and facilities in the area of the planning authority under Condition No 9 comes is in accordance with the terms of the adopted Development Contributions Scheme made under Section 48 of the Planning and

Development Acts 2000-2015 (Condition No 9, the appealed condition is reproduced in full under section 4.1 above.)

- 5.2. The issue central to the determination of the decision is as to whether payment of the contribution is applicable in respect of change of use a development contribution having previously been paid in respect of the originally permitted commercial development. The current application which comprises a proposal for change of use to six residential units from a permitted commercial use and, in addition an increase in total gross floor area comprising additional space previously permitted under P. A. Reg. Ref. 15/1001 and the incorporation in the current application for small extensions to two units.
- 5.3. According to the provisions for 'Change of Use' under 'Exemptions' in Part IV of the current adopted Galway County Council Development Contribution Scheme, 2016, "*....due regard shall be had to any Development Contributions paid previously and any additional levies shall only be applied where there is a substantial increase in output or intensity of use or where additional gross floor space or functional area is created.* This statement is broadly consistent with the recommendations in respect of proposals for change of use in the S28 Guidance: *Development Contributions: Guidelines for Planning Authorities* (DOEC&LG, 2013) (Extract reproduced in s 4.4 above.)
- 5.4. Satisfactory evidence has been provided with the appeal of payment of €6,061.25 in accordance with Condition no 2 of the grant of permission in under P. A. Reg. Ref. 05/2449. It has therefore been demonstrated that that no payment in respect of prior grants of permission that have been taken up is outstanding. It can be concluded the terms of the current development contributions scheme were incorrectly applied by the planning authority by including the requirement in Condition No 9 for payment of the contribution in respect of Recreation and Amenity under Condition No 9 as the provisions in the said scheme in respect of change of use were not taken into consideration in calculating the amount payable.
- 5.5. The adopted development contributions scheme provides for the application of a levy, on a discretionary basis in respect of a change of use if a significant intensification of use is involved and/or additional floor area is included. It is considered that the proposed change of use is a material change in terms of the

nature of use. Although some additional floor area is included in the development permitted under P. A. 15/1001 and the current proposal, the amount does not result in major intensification of use when change to residential from commercial use is taken into consideration. It is therefore agreed that an additional contribution on grounds of intensification of use or significant additional floor within the current proposal is unwarranted. It is of note in this regard that the planning authority has not lodged observations indicating its position on the matter.

5.6. It can be concluded on the basis of the foregoing, that Condition No 9 should be amended to omit the requirement for payment of a contribution in respect of Recreation and Amenity infrastructure and facilities and that the planning authority should be directed accordingly.

5.7. **Appropriate Assessment.**

Having regard to the scale and nature of the proposed development no Appropriate Assessment issues arise and it is not considered that the proposed development has a significant effect individually or in combination with other plans or projects on a European site.

6.0 **Recommendation**

6.1. It is recommended that the planning authority be directed to amend Condition No 9 so that the requirement for payment of a contribution in respect of Recreation and Amenity infrastructure and facilities is amended. Accordingly, a draft amended condition including amendments to the terminology as provided for in the Board's standard condition is available below in addition to draft Reasons and Considerations.

7.0 **Reasons and Considerations.**

7.1. Having regard to the planning history for the site and in particular the grant of permission under P. A. 05/2449 in respect of which payment of a contribution in respect of Recreation and Amenity Infrastructure in accordance with Condition No 2, and to the provisions in the Galway County Council Development Contributions

Scheme 2016 for exemption from payment of a development contribution in respect of change of use of a permitted development unless significant intensification of use and/or additional floor area is also included, the planning authority incorrectly applied the terms of the said scheme by including a requirement for payment of a contribution in respect of Recreation and Amenity infrastructure and facilities in Condition No 9, the appealed condition. Accordingly, the planning authority is directed to amend Condition No 9 by omitting the requirement for payment for payment of the contribution in respect of Recreation and Amenity infrastructure.

Condition 9

The developer shall pay to the planning authority a financial contribution 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, as amended. The contribution shall be paid prior to 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Jane Dennehy
Senior Planning Inspector
14th December, 2016.