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Pleanála

## Inspector's Report PL27. 248642

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<b>Development</b>	Change of use from offices to 5 apartments
<b>Location</b>	Zoe House, Church Road, Greystones, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	17/114
<b>Applicant</b>	O'Connor Whelan Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	First Party vs. contribution
<b>Appellant</b>	O'Connor Whelan Ltd.
<b>Observer</b>	None
<b>Date of Site Inspection</b>	7 <sup>th</sup> September 2017
<b>Inspector</b>	Stephen J. O'Sullivan

## 1.0 Site Location and Description

- 1.1. The site is in the centre of Greystones on the corner of Church Road and Hilside Road. It has a stated area of 0.814 ha. It is occupied by a two-storey building with a stated floor area of 1,994m<sup>2</sup>. The inspector's report on a previous case stated that this building was erected around 2008.

## 2.0 Proposed Development

- 2.1. It is proposed to change the first floor of the building on the site from office and a yoga studio to 5 apartments. There would be 4no. two bedroom apartments between 74m<sup>2</sup> and 89m<sup>2</sup>, and 1no. three bedroom apartment of 128m<sup>2</sup>. Balconies would be provided for each apartment and an internal courtyard of 42m<sup>2</sup> would be provided as shared open space. New openings would be inserted into the southern elevation of the building.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission subject to 5 conditions,

Condition no. 1 refers to the revised proposals submitted to the planning authority on 20<sup>th</sup> April 2017.

Condition no. 2 required a payment of €38,721 under the development contribution scheme for the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planner's report recommending a grant of permission contained a calculation for the development contribution based on a levy of €7,245 for each apartment below 100m<sup>2</sup>, of which there are 4, and a levy of €9,021 for the apartment with a floor area 128m<sup>2</sup> based on a levy of €7,245 plus €57 for every square metre above 100,

yielding a result of €38,721 which is repeated in condition no. 2 of the authority's decision.

## 4.0 Planning History

There is an extensive planning history on the site, as recited in the submission from the appellant and the council planner's report. It included a grant of permission under 06/6315 to demolish a garage and erect a building with retail on the ground floor and offices on the first floor. On the 28<sup>th</sup> January 2013 the board granted permission to change the basement car park to a nightclub under PL27 .240874, Reg. Ref. 12/6350. Condition no. 9 of that permission required an unspecified contribution under the adopted scheme, while condition no. 9 required an unspecified special contribution to reflect the loss of car parking spaces.

## 5.0 Policy Context

### 5.1. Contribution Scheme

Wicklow County Council adopted a contribution scheme under section 48 of the planning act on 5<sup>th</sup> October 2015. Table 4.2 sets a levy of €7,425 for each residential unit in a non-rural area up to 100m<sup>2</sup> with an additional €57 for every square metre above that size.

Section 4.10 of the scheme states –

*There will be no double charging. Credit will be given for previously paid development contributions or previously authorised use or existing floor areas.*

*Development contributions shall not be charged on a change of use permission, where such change of use does not result in a significant intensification of demand on public infrastructure.*

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The appeal is lodged under section 48(10)(b) of the planning act against condition no. 2 of the planning authority's decision requiring a payment of €37,721 under the county's contribution scheme. The terms of the scheme were not properly applied by this condition and it should be omitted
- Paragraph 4.10 of the permission states that there will be no double charging and that credit will be given for previously paid contributions or previously paid contributions or existing floor area. The owner previous paid a contribution of €82,227 on 18<sup>th</sup> August 2008 in relation to previous permissions that referred to this building under Reg. Ref. Nos. 06/6315, 07/2749, 07/2758 Appeal Ref. 27.228366 and 08/562. So financial contributions have been paid in respect of the entire building.
- Paragraph 4.10 of the adopted scheme also states that contributions will not be charged on a change of use permission which does not result in a significant intensification of demand on public infrastructure. The proposed development consists entirely of a change of use of the first floor from offices and a yoga studio to 5 apartments with no new build involved apart from balconies and a roof garden required to comply with residential standards. The apartments would be likely to be occupied by 11 persons, with two people in each of the 4no. two bedroom apartments and three people in the single three bedroom apartment. The authorised office and yoga studio would be likely to be occupied by many more people and so the proposed development would not intensify demands on public infrastructure.
- Several other cases where the planning authority and the board granted permission for changes of use without imposing financial contributions are cited including those granted under the following Reg. Ref. Nos: 08/1620, 09/631, 09/918, 09/919, 09/1317, 10/2639 Appeal No. 237592, 11/4680 Appeal No. 239904, 12/6019. The imposition of a contribution in 12.6350 Appeal No. 240874 reflected the fact that a change of use from basement car park to nightclub would intensify use and so a payment would be reasonable.

- In light of the foregoing, there is no basis for a financial contribution for the proposed development under the adopted scheme and condition no. 2 should be omitted

## 6.2. **Planning Authority Response**

The planning authority did not respond to the appeal within the statutory period. A request was made to them under section 132 of the planning act seeking its comments on the appeal and details of its calculation of the contribution and their basis in the scheme. Its response stated that the development contribution was included in error and would contravene section 4.10 of the scheme.

## 7.0 **Assessment**

7.1. The works involved in the proposed development are minor and incidental to the proposed change to residential use. The proposed development would not result in more people being on the site. It would not introduce any activity or processes that would cause a significantly greater demand on public infrastructure than that arising from its authorised use. Therefore the proposed development would consist of a change of use that would not result in a significant intensification of demand for public infrastructure. Section 4.10 of the adopted scheme is clear that development contributions will not be charged on permissions for such development. The grounds of appeal are therefore accepted. They have also been accepted by the planning authority. The decision of the planning authority did not properly apply the terms of the adopted contribution scheme, and condition no. 2 should be omitted.

7.2. I note the other ground of appeal regarding the planning history of the site, double charging and precedent. Given the clarity with which the adopted scheme addresses changes of use that would not result in a significant intensification of demand on public infrastructure, a conclusion on this ground would alter my advice to the board on the proper determination of the appeal.

## 8.0 **Recommendation**

8.1. Condition no. 2 should be omitted.

## 9.0 Reasons and Considerations

The development consists of a change of use, with only minor incidental works, that would not result in a significant intensification of demand on public infrastructure. Section 4.10 of the contribution scheme adopted by the planning authority under section 48 of the Planning and Development Act, 2000 (as amended) on the 5<sup>th</sup> October 2015 states that contributions will not be charged on permissions for such development. Therefore no development contribution is payable under the scheme in this case.

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Stephen J. O'Sullivan  
Planning Inspector  
25<sup>th</sup> September 2017