



An
Bord
Pleanála

Inspector's Report PL11.248725.

Development	Retention of change of use from squash courts on ground floor to gym, change of use of squash club gym to gym, retention of 4 windows and signage.
Location	Manor Street, Mountmellick, County Laois.
Planning Authority	Laois County Council.
Planning Authority Reg. Ref.	16/473.
Applicant	Peter Watchorne.
Type of Application	Permission.
Planning Authority Decision	Permission with conditions.
Type of Appeal	First Party
Appellant(s)	Peter Watchorne.
Observer(s)	
Date of Site Inspection	
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The proposed site is located in the centre of the town of Mountmellick County Laois.
- 1.2. The site is currently in use as a fitness centre and gymnasium.
- 1.3. The stated area of the site is 0.03 hectares.

2.0 Proposed Development

- 2.1. The proposal as submitted to the planning authority on the 20th of September 2016 was for the following;
 - The retention of change of use from squash courts on the ground floor to a commercial gym,
 - The retention of the change of use of squash club gym at first floor level to a commercial gym,
 - The retention of 4 windows, 3 on the side elevation and 1 on the front elevation and
 - The retention of signage on the front elevation.
 - No additional floor area is proposed and the stated existing floor area is 269m².
- 2.2. Further information was submitted on the 10th of April 2017.
 - 2.2.1. Matters addressed include;
 - Revised works to comply with fire regulations.
 - The applicant contends that parking was addressed in his original planning permission with no knowledge of the reference number but a fire certificate was issued at the time in 1995 which would indicate planning permission was also obtained at that time.
- 2.3. Further information was submitted in relation to compliance with fire regulations.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to grant planning permission subject to 9 conditions.

Condition no 6 refers to a contribution of €9,684.

Condition no 7 refers to a contribution of €11,000 in relation to a shortfall of 11 parking spaces.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report dated the 8th of November 2016 refers to;

- Planning history.
- Reference is made to issues in relation to fire safety and parking and requirements in relation to parking.
- Further information was recommended.

The planning report dated the 2nd of May 2017 refers to the further information submitted and requests further clarification on the issue of fire safety and indicates that no permission on the site in 1995 can be identified.

The planning report dated the 31st of May 2017 refers to the further clarification submitted by the applicant and to the shortfall on parking and it was considered reasonable to levy on the basis of the shortfall on parking. The report recommends permission.

4.0 Planning History

P.A. Ref 83/352

Permission granted for an extension to a squash centre.

5.0 Policy Context

5.1. The “Development Contributions Guidelines for Planning Authorities” published by the Department of the Environment, Community and Local Government in January 2013.

The Guidelines outline guidance in relation to the preparation of development contribution schemes and methodology to be applied in setting out the scheme including provision for exemptions and waivers in relation to assessing development. The guidance states in section 2 under the heading double charging that *“the practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution”*.

5.2. Development Plans

5.2.1. The operative plans are the Laois County Development Plan 2011-2017 and the Mountmellick Local Area Plan 2012-2018.

5.2.2. The site is zoned town centre in the local area plan.

5.3. Laois County Council Development Contribution Scheme 2013 – 2017. Adopted effective from 1st November 2013.

5.4. Section 5.3 refers to Change of use (Car Parking) and indicates *“where a change of use is proposed the council shall take into account the inherent car parking associated with the existing use when calculating car parking development contributions”*.

5.5. Section 5.7 refers to Revisions/Modification to a permitted development and indicates *“an application for permission for modification/revision to a permitted development, including a change of house type or amendment to a site layout will, where material, be treated as an independent/separate permission for development, and will be assessed on the full proposal for the floor area permitted in such a permission, at the rate of development contributions in operation on the date of issue*

of the decision to grant permission. The contribution payable at commencement will be based on the permission implemented i.e. the original permission or the revised proposal (updated in accordance with the relevant index)".

Section 6.0 refers to payment of contributions section 6.5 refers to exemptions and reductions. In this regard there is reference to Change of use permissions where it is stated that

- 5.6. *"Changes of use between the uses described in Class 1, 2 and 3 of the Planning and Development Regulations 2001 (as amended) (Schedule 2, Part 4, Article 10) shall be exempted from the development contribution scheme when the use being changed to, is also within these classes. Ordinarily, changes of use from one use to another use contained within the one class is considered Exempted Development as per Part 4 of the Regulations and therefore no Development Contributions apply as no application needs to be made. Where an application is made however, an exemption shall be given in respect of the development contribution scheme. Change of use from any one class to another use within another class shall be subject to the provisions of the development contribution scheme. Where development contributions were paid in respect of the former use, the contribution payable on the new proposal will be net of the quantum of development previously paid for. Where the former use is fully authorised and any levies that might have applied to that use have been paid, credit will be given for the previous use".*
- 5.7. Table 1 outlines the rate for Commercial / Industrial Development which in respect of roads is €24/m² and in respect of amenities is €12/m². In table 2 the levy where a shortfall of parking occurs is indicated as €1,000 per parking space.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appellant in the grounds of appeal refers to;
- The premises have always operated as primarily as a commercial gym and in 1995 received permission for a commercial gym.

- The squash courts were used for fitness classes and were always part of the gym and with the demise of squash the courts have been used primarily for gym classes and activities.
- In the original permission and previous permissions, the matter of parking spaces has been addressed and does not believe the €11,000 quoted for additional parking is fair.
- The signage on the building is there since 1995
- The appellant does not believe that parking is needed again.
- A contribution of €2,905 has already been paid.
- Newspaper cuttings and other material are submitted in support of the appeal.

6.2. Planning Authority Response

No response to the grounds of appeal.

There was also no response to a section 132 request in relation to the matters raised in the grounds of appeal and the basis of the calculation of the contributions as outlined in the decision to grant planning permission.

7.0 Assessment

- 7.1. This is a first party appeal against condition nos.6 and 7 of the planning authority's decision to grant planning permission and which in condition no 6 requires payment of €9,684 in accordance with the terms of the Laois County Council Development Contribution Scheme 2013 – 2017 and in relation to condition no 7 refers to a contribution of €11,000 in relation to a shortfall of 11 parking spaces.
- 7.2. The development is located in the centre of the town and the development as applied for relates to changes of squash courts to a commercial use as a gymnasium. The grounds of appeal refer to the facility being used as a gym and for fitness classes from the initial use and with the decline in use of a squash court the gymnasium use has become more prevalent. A permission dating back to 1983 P.A. ref. no 352/83 does refer to a squash court on the site. The historic and established use as a squash court is not therefore at issue.

- 7.3. The change of use as referred to in the current application is, I consider, not at issue and the alterations to the exterior of the building are not at issue.
- 7.4. The issue in this appeal relates to whether the terms of the current Laois County Council Development Contribution Scheme 2013 – 2017. Adopted effective from 1st November 2013 have been properly applied.
- 7.5. The appellant has contended that contribution of €2,905 has already been paid in previous permissions and that no additional parking demand arises from the development. The premises have always operated as primarily as a commercial gym and in 1995 received permission for a commercial gym though no record of this permission is referred to in the planning authority reports. In previous permissions, the matter of parking spaces has been addressed and does not believe the €11,000 quoted for additional parking is fair.
- 7.6. A question arises as to whether planning permission arises in the context of Part 4 Article 10 Exempted development- Classes of Use where in this provision Class 11 Use as—(e) a skating rink or gymnasium or for other indoor sports or recreation not involving the use of motor vehicles or firearms are uses within the same use class. As squash is an indoor sport the use of a squash court for fitness and a gymnasium or its conversion to gymnasium use would be uses within class 11(e) and there would appear in documentation submitted information to indicate that the squash court was used for fitness class and activities associated with a gymnasium.
- 7.7. I would note that in section 6.5 of the current DCS there is specific reference to change of use and it is indicated that *“ordinarily, changes of use from one use to another use contained within the one class is considered Exempted Development as per Part 4 of the Regulations and therefore no Development Contributions apply as no application needs to be made. Where an application is made however, an exemption shall be given in respect of the development contribution scheme”*. It is clearly stated that *“change of use from any one class to another use within another class shall be subject to the provisions of the development contribution scheme”*. In relation to the current proposal the nature of the development would appear to be within one use class order and not to be a change of use from one class to another.
- 7.8. I would also note that section 6.5 also indicates that *“where development contributions were paid in respect of the former use, the contribution payable on the*

new proposal will be net of the quantum of development previously paid for. Where the former use is fully authorised and any levies that might have applied to that use have been paid, credit will be given for the previous use". This provision would be in accordance with department guidance on the avoidance of double charging. The appellant has stated that in respect of previous permissions on the site contribution payments were made in relation to the appeal site.

- 7.9. The planning authority has offered no details in relation to the calculation of the additional parking as outlined in condition no 7 and no detailed clarification in relation to the calculation of the contribution in condition no 6. I note that in relation to condition no 6 the basis of the amount of the contribution is set out in the wording of the condition and is based on a floor area of 269m² and a €/m² amount in respect of roads based on €24/m² and amenities based on €12/m².
- 7.10. In relation to floor area the only additional floor area would appear to be the provision of an external fire exit required arising from a request of additional information by the planning authority. The floor area of 269m² would appear to relate to the existing premises the floor area stated in the application form.
- 7.11. Based on the information on the file I do not consider that the terms of the Development Contribution Scheme have been properly applied. The appellant has stated that a contribution was paid in previous permissions including in relation to parking. No additional floor area is proposed and the planning authority have not offered documentation to refute this contention or to indicate the basis of why further payment of a contribution is warranted having regard to the provisions as set out in particular in section 6.5 of the scheme.

8.0 Recommendation

- 8.1. Having considered the submissions received in relation to this appeal and the documentation submitted I consider that the appeal can be addressed under section 139 of the Planning and Development Act 2000 as amended. I recommend that condition nos. 6 and 7 be omitted.

9.0 Reasons and Considerations

Having regard to the planning history on the appeal site where payment of a development contribution to the planning authority in accordance with the statutory provisions pertaining with the grant of permission was required and which was subsequently complied with and the nature of the change of use from a squash club to a gymnasium and the provision as stated in Part 4 Article 10 Exempted development- Classes of Use Class 11 (e) of the Planning and Development Regulations 2001 as amended;

it is considered that the payment of a further contribution would not therefore be appropriate having regard to the provisions as set out in the “Development Contributions Guidelines for Planning Authorities” published by the Department of the Environment, Community and Local Government in January 2013 in particular section 2 of the said guidance and also to section 6.5 of the Laois Development Contribution Scheme 2013 relating to change of use and to deduction for any contributions paid on any previously permitted development.

It is therefore considered that the terms of the Laois County Development Contribution Scheme 2013 – 2017 have not been properly applied in this case and condition nos 6 and 7 should be removed.

Derek Daly
Planning Inspector

25th October 2017