



An
Bord
Pleanála

Inspector's Report PL16.249050

Development	Subdivision of vacant shop and change of use to a retail unit and a restaurant with revised shopfronts
Location	James Street, Westport, County Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	P17/64
Applicant(s)	Claudio Monti
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First-Party against condition
Appellant(s)	Claudio Monti
Observer(s)	None
Date of Site Inspection	3 rd November 2017
Inspector	Colm McLoughlin

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.018ha and is located on the northeast end of James Street in Westport town centre, close to the Mall. The site comprises a part-two, part-three storey mid-terrace building, which appears to have been recently subdivided at ground floor level to create separate commercial units with new shopfronts. The ground floor of the existing mid-terrace building on site is stated as having a gross floor area (GFA) of 176.6sq.m. The ground floor of the property is understood to have been most recently used as a convenience shop. First and second floors of the property are stated to be used for residential accommodation. To the rear of the site at first-floor level there is a store accessed via an internal stairwell.
- 1.2. An entrance door to the north side of the retail premises at street level provides access to the upper floors. The site backs onto a residential / office courtyard area, but does not feature rear service access. Adjacent to the south of the site is a pharmacy and adjacent to the north is a dwelling.

2.0 Proposed Development

- 2.1. Planning permission is sought for the following works:
- Subdivision of shop unit to create two separate units, each with new shopfronts and access from the front street;
 - Internal alterations including installation of a block partition wall and provision of replacement stairs to first-floor store area;
 - Creation of one retail unit (c. 42sq.m net floor area [NFA] / c. 52sq.m GFA);
 - Change of use to create one restaurant unit (c. 67sq.m NFA / c.125sq.m GFA) excluding take-away use.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Mayo County Council issued a notification of a decision to grant permission for the proposed development subject to six conditions, the following of which is pertinent to the appeal:

- Condition No. 6

“The following contribution shall be paid to Mayo County Council prior to commencement of the development. The development contributions shall increase in accordance with the Wholesale Price Index for Building and Construction in January of each year from the date of grant of permission up to the date that payment is made to Mayo County Council:

<i>Surface Water</i>	€596
<i>Amenities</i>	€357
<i>Roads</i>	€1,519
<i>Footpaths</i>	€238
<i>Community open space and recreational facilities</i>	€357
<i>Car parking</i>	€14,292

Reason: To comply with Mayo County Council's Development Contribution Scheme.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (July 2017) reflects the decision of the Planning Authority and noted the following:

- An additional requirement for six parking spaces would arise based on Development Plan standards;

- Further Information was submitted in relation to the opening hours, waste storage, noise analysis and ventilation for the restaurant and confirming that the restaurant would not include a take-away element;
- Change of use should be levied as equivalent to one dwellinghouse, with a special contribution attached for the provision of off-street parking that would benefit the development.

3.2.2. Other Technical Reports

- Regional Design Office - no objection;
- Mayo National Roads Design Office – no comment;

3.3. Prescribed Bodies

- Transport Infrastructure Ireland (TII) - no comment;
- Environmental Health Officer (HSE) – detailed specifications for the restaurant provided.

3.4. Third-Party Submissions

3.4.1. A submission was received from James Street Residence Association, which can be summarised as follows:

- No objection to the development in principle and the third-party encourages new businesses along the street;
- Queries in relation to restaurant opening hours, whether or not the restaurant would include a takeaway element and proposals for services associated with the restaurant, including refrigeration and ventilation;
- Queries regarding residential proposals at first-floor level and associated services;
- First-floor residential proposals would have an adverse effect on parking along James Street.

4.0 Planning History

4.1. Subject Site

4.2. None.

4.3. Adjoining Sites

4.3.1. None

5.0 Policy Context

5.1. Local Plans

Westport Town & Environs Development Plan 2010-2016

5.1.1. The appeal site is located within zone 'B' where the objective is to 'provide for and improve commercial and other town centre activities and to preserve and enhance the civic and town centre character of the town'. The uses generally permitted within this area include shops and restaurants. The Plan includes the following relevant retail policy and retail objective:

- RP-01: It is the policy of the Council to stimulate business and commercial activity in the town centre.
- RO-04: It is an objective of the Council to promote the efficient operation of commercial undertakings in the town by facilitating access and car parking to them and consolidating the town centre.

5.1.2. The appeal site is located within Westport Town Centre Architectural Conservation Area (ACA), which comprises the 18th-century planned urban core of Westport.

5.1.3. The Development Plan includes policies and objectives generally supporting the provision of additional parking and links to this parking within the town. The following car parking objective is of relevance to the appeal:

- IO-13: It is an objective of the Council that developments will provide adequate on-site car parking to the standards laid out in this Development Plan. Where the developer is unable to provide such car parking spaces, the

developer shall pay a contribution to the Council towards the provision of car parking for the area.

- 5.1.4. Section 7.4.1 of the Plan provides vehicle parking standards and outlines that on-site parking facilities will generally be required for all developments. If developers cannot provide the number of required car spaces on site, the Council may consider parking off-site provided as group or dual parking, or may seek a financial contribution towards the cost of car parks provided in the town.
- 5.1.5. In the town centre a car parking standard of one space per 25sq.m of shop floorspace is required and one space per 10sq.m of restaurant floorspace is required.
- 5.1.6. Other relevant objectives of the Development Plan include Development Objective DCO-01, which states that:
- It is an objective of the Council to apply the Development Contributions Scheme too all new developments or developments requiring retention.

Mayo County Development Plan 2014-2020

- 5.1.7. Objective E-07 of the County Development Plan states that 'it is an objective of the Council to review the Development Contribution Scheme'. Car parking standards are outlined in Appendix 3 (Table 12) to Volume 2 of the County Development Plan.

Mayo County Council Development Contribution Scheme 2004

- 5.1.8. The terms of the Mayo County Council Development Contribution Scheme are applicable to the proposed development. The Scheme was adopted in March 2004 and current levy rates were last updated in February 2007. In calculating the majority of levies for categories of commercial development, the Contribution Scheme uses a conversion to dwelling equivalent.

5.2. **National Guidelines**

Development Contributions - Guidelines for Planning Authorities (January 2013)

- 5.2.1. These Guidelines are intended to assist Planning Authorities to achieve through their Development Contribution Schemes, a balance between the costs of the services provided and the need to support economic activity. All Planning Authorities should

commence a review of their existing Development Contribution Schemes by 31st March 2013, to ensure compliance with the content of this guidance. Among the items Planning Authorities are required to include in their Development Contribution Schemes are:

- reduced rates of development contributions or waivers for development in town centres to support town centre development; and
- waivers in the case of change-of-use permissions, where change-of-use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure (including, for example, transport infrastructure).

5.2.2. Planning Authorities are advised 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.

Development Management – Guidelines for Planning Authorities, 2007

5.2.3. Section 7.12 of the Development Management Guidelines refers to conditions requiring development contributions (sections 48 and 49 of the Planning & Development Act 2000, as amended). Section 8.12 of the Guidelines refers to appeals regarding contributions conditions.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A first-party appeal was submitted on behalf of the applicant solely in relation to the levies applied under Condition 6 of the Council’s notification of a decision to grant permission. The grounds of appeal can be summarised as follows:

- Subsequent to pre-planning meetings with Mayo County Council and based on other comparable premises in the town, the applicant did not expect the levies to be as high as that requested in the condition;

- Based on the Development Plan car parking space requirements, the net floor areas for the proposed development would result in a requirement for 3 additional car parking spaces;
- Calculations undertaken by the Planning Authority standards utilised gross floor area figures in arriving at a requirement for 6 additional car parking spaces;
- The Development Contribution Scheme does not specify that the car parking levy is based on a 'per space' unit of measurement;
- There is a lack of consistency and transparency in relation to the calculation of car parking levies and reference is made to a comparable development under Planning Reg. Ref. P15/803, where a lower car parking levy was attached by condition to the decision of Mayo County Council. A copy of the Council's decision and Planner's Report under Ref. P15/803 is included with the appeal.

6.2. **Planning Authority Response**

6.2.1. The Planning Authority did not respond to the grounds of appeal.

6.3. **Observations**

6.3.1. None.

7.0 **Assessment**

7.1. **Introduction**

7.1.1. This is an appeal only against a financial contribution condition, attached to Mayo County Council's decision to grant permission for the subdivision of a retail unit at ground floor only on James Street, Westport, to provide a retail unit and a restaurant each with new shopfronts.

7.1.2. Under Section 48 10(b) of the Planning & Development Act 2000, as amended (the Act), an appeal may be brought to the Board where an applicant for planning permission considers that the terms of the Development Contribution Scheme have

not been properly applied in respect of any condition laid down by the Planning Authority.

- 7.1.3. Condition 6 requires the developer to pay contributions totalling €17,359 in respect of surface water, footpaths, amenities, community open space and recreational facilities, roads and car parking to comply with Mayo County Council's Development Contribution Scheme (the Scheme). The grounds of appeal primarily contest that element of the contribution condition relating to 'car parking', which amounts to €14,292. I am satisfied that the appeal can be confined to the matters concerning the specific condition, which the first party has appealed and that this case can be treated under Section 48 13(a) of the Act.

7.2. Contribution – Dwelling Equivalent Levy

- 7.2.1. The Planning Authority has used a figure of one housing equivalent to calculate the contributions for surface water, footpaths, amenities, community open space and recreational facilities and roads. The amount and basis for the categories of contribution and types of development, including commercial development, are listed within Schedule 1 the Scheme. No parties to the appeal have advised that contributions have already been paid for the appeal property.

Roads and Footpaths

- 7.2.2. The cost per dwelling equivalent does not apply to 'roads' and 'footpaths' categories of contribution in the Scheme. The Scheme states that 'roads' contributions are calculated based on an 'actual cost of road works apportioned pro rata to the development', while 'footpaths' contributions are calculated based on a 'cost per linear metre'. The Planning Authority has not outlined how the contribution levy for works to roads or footpaths would be calculated and having inspected the area and application drawings, I note that no works to roads or footpaths are required to facilitate the proposed development.
- 7.2.3. Under An Bord Pleanála contribution appeals relating to retention of a public house with apartments above at Lecanvy, Westport (ABP Ref. PL16.241349 - March 2013) and industrial extensions at Moneen Road, Castlebar (ABP Ref. PL16.241209 - April 2013), the Board previously omitted the roads and footpath contributions attached to the decisions for these developments. The Board's Direction under Ref.

PL16.241349 outlines that 'arising from the absence of any stated necessity for road works in respect of the development to be retained, the Board considered that a nil amount applies in respect of roads, and that this element of the contribution should be omitted' and that 'arising from the absence of a stated necessity for any linear quantity of footpaths in respect of the development to be retained, the Board considered that a nil amount applies in respect of footpaths, and that this element of the contribution should be omitted'. Accordingly, I consider that the terms of the Contribution Scheme have not been properly applied by the Planning Authority in respect of the element of condition 6 relating to footpaths and roads, and that the contributions in respect of footpaths and roads should be omitted from Condition 6.

Surface Water, Amenities, Community Open Space and Recreational Facilities

- 7.2.4. Within their Direction (November 2009) on Planning Appeal Ref. PL16.233639 (MCC Ref. 09/61) relating to change of use of first-floor area from restaurant bar to function room licensed area in Crossmolina, County Mayo, the Board noted that the use of a dwelling house equivalent is the standard method of calculation employed by Mayo County Council to assess development contributions and the development contribution scheme does not provide for an exemption for change of use permissions. However, I note recent guidance on this matter in a decision dating from September 2013 to Planning Appeal Ref. PL16.241963 (MCC Ref. P13/81) relating to a change of use and extension of existing shop to restaurant dining area in Foxford, County Mayo. For the proposed change of use contributions appeal in Foxford, development contributions were only applied to the new build element in terms of the commercial floorspace calculations and the net increase in notional parking requirements arising from the change of use. No contribution was applied to the aspect of the proposed development relating to the change of use.
- 7.2.5. I note that since adjudicating on Planning Appeal Ref. PL16.233639 for the change of use from restaurant bar area to function room licensed area in November 2009, the Government provided non-statutory guidance titled 'Development Contributions – Guidelines for Planning Authorities' (January 2013). These Guidelines outlined that all Planning Authorities should commence a review of their existing Development Contribution Schemes by 31st March 2013, to ensure compliance with the content of this guidance and such Schemes are required to include, inter alia, reduced rates of development contributions or waivers for development in town centres to support

town centre development, as well as waivers in the case of change-of-use permissions. The current Contribution Scheme for Mayo was adopted in 2004 with revised levy rates adopted in 2007. Objective E-07 of the Mayo County Development Plan 2014-2020 states that is an objective of the Council to review the Development Contribution Scheme.

- 7.2.6. When adjudicating on appeals made under Section 48 of the Act, the Board is limited solely to considering whether or not the Development Contribution Scheme has been properly applied. Having read the Scheme, I can find no reference to a policy that all commercial developments, irrespective of area, pay a minimum contribution, equivalent to one dwellinghouse. The overarching purpose of Section 48 is to provide a consistent clear and transparent method of levying development contributions on particular development proposals. As a result, the developer should be able to anticipate any development contribution levy when applying for planning permission at the outset. It is incumbent upon the Planning Authority therefore to include specific statements with regard to levies to be imposed including for planning applications for changes of use. As no specific statement requiring payment of a minimum contribution is included in the Development Contribution Scheme, I would consider that any such levy to be contrary to the principles of Section 48 of the Act and would constitute an inappropriate application of a levy under the Development Contribution Scheme. Accordingly, and in light of recent decisions and guidance on this matter, I consider that the terms of the Contribution Scheme have not been properly applied by the Planning Authority in respect of those elements of condition 6 that were calculated using a housing equivalent calculation of one dwellinghouse, and, therefore, that the contributions in respect of surface water, amenities and community open space and recreational facilities should also be omitted from Condition 6.

7.3. **Contribution – Car Parking Levy**

- 7.3.1. On-site parking is not available to serve the proposed development and I note that under Objective IO-13 of the Development Plan 'it is an objective of the Council that developments will provide adequate on-site car parking to the standards laid out in this Development Plan. Where the developer is unable to provide such car parking spaces, the developer shall pay a contribution to the Council towards the provision of

car parking for the area'. The appellant has not outlined that an alternative off site location for parking to serve the proposed development would be available.

7.3.2. The Planning Authority has levied €14,292 (€2,382 per car parking space) for a shortfall of six car parking spaces to serve the proposed development. Car parking standards are set out in Section 7.4.1 of the Westport Town & Environs Development Plan and with respect to these standards the site is located within a 'town' area, as opposed to 'suburb/rural' area. In the case of shops, one car parking space per 25sq.m is to be provided and in the case of restaurants, one car parking space per 10sq.m is to be provided. The Development Plan does not specify whether or not these standards relate to net or gross floor areas. The grounds of appeal assert that the net floorspace of the proposed uses relative to the existing uses should have been applied in calculating the quantum of car parking to serve the proposed development. The Planning Authority has not responded to the grounds of appeal. I note that the car park standards applied within the Westport Town & Environs Development Plan are similar to car parking standards outlined in Mayo County Development Plan 2014-2020 (Appendix 3, Table 12 of Volume 2) and this table includes a footnote stating that 'all measurements refer to Gross Floor Area'. On this basis, I consider it reasonable to interpret the applicable car parking standards for this appeal as relating to gross floor area (GFA).

7.3.3. The existing ground floor to the property has a GFA of 188.6sq.m and based on the previous use as a shop and current car parking standards, 7.5 car parking spaces are required. The Planning Authority rounded this figure up and considered that the building would have credit for eight car parking spaces. The proposed GFA of the restaurant is 125.1sq m, therefore it would require 12.5 car parking spaces and the proposed GFA of the shop is 50.6sq m, therefore it would require 2 car parking spaces. The Planning Authority considered that the proposed development would require 14 no. car parking spaces and, consequently, a shortfall of six car spaces to serve the proposed development would arise. The Planning Authority's calculations, which indicate that there is a shortfall of six car parking spaces resulting from the change of use is reasonable in my view and, therefore, I consider that in calculating the levy this figure should be used.

7.4. Based on the provisions of the Westport Town & Environs Development Development Plan and the Scheme, a proposed development involving a change of

use should be accompanied by a commensurate increase in car parking provisions and this should be levied at an appropriate rate. I note that the Scheme makes provision for reduced contributions where the Council, at its own and absolute discretion, considers that the payment of the contribution would not be just and reasonable having regard to any of the following:

- The limited extent of the development;
- The limited cost of the development;
- Other exceptional circumstances.

7.5. It is stated that the amount payable for any reduced contribution shall not be less than one quarter the amount indicated opposite the relevant category of development, and a decision to allow a reduced contribution must be accompanied by a statement specifying the reasons for the decision.

7.5.1. The grounds of appeal assert that rate used by the Planning Authority (€2,382) in lieu of each car parking space to be provided, is inconsistent with the rate (€1,143) used in a neighbouring permission issued by Mayo County Council in April 2016 under Ref. P15/803. A copy of the Council's decision and Planner's Report is included with the grounds of appeal. This neighbouring permission related to a change of use from retail to a licensed premises at Bridge Street, Westport. The Planner's Report noted that the neighbouring premises is a Protected Structure and is located within an Architectural Consideration Area. The Planner's rationale for reducing the contribution, as provided for under Section 4.3 of the Scheme, is based on the following; 'consideration might be given in this instance to the desirability of the continued use of this architecturally significant town centre building and ability of the existing premises to continue to function as a viable retail outlet'. While the appeal site does not contain a Protected Structure, it does contain a former retail outlet and is located within the same Architectural Consideration Area and town centre. Furthermore, I would be of the opinion that there would be a certain overlap in terms of demand for parking associated with the proposed retail and restaurant unit on site and I also note the provisions of the Development Contributions – Guidelines for Planning Authorities, as referred to in section 7.2.5 above.

7.5.2. In conclusion, I consider that, as provided for in the Scheme, there are exceptional circumstances that would warrant a reduction in the rate payable and that for

consistency the same rate used in a neighbouring 'change of use' application under P15/803 would be just and reasonable to use in this case. Therefore, the car parking element of the development contribution condition should be amended, and the amount applied should be based on a shortfall in car parking spaces of six spaces, at a cost per space of €1,143, which would result in a total car parking contribution of €6,858.

8.0 Appropriate Assessment

- 8.1.1. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. It is recommended that Condition 6 should be amended for the following reasons and considerations.

10.0 Reasons and Considerations

- 10.1.1. Having regard to the provisions of the Mayo County Council Contribution Scheme 2004 made under Section 48 of the Planning & Development Act 2000, as amended; and the revised rates of contribution adopted on 5th February 2007, to the nature of the proposed development involving the subdivision and change of use of a vacant former shop to a restaurant and a shop, and in the absence of any stated necessity for road works or provision of footpath in respect of the proposed development or of any specific statement requiring payment of a minimum contribution in the Mayo County Council Development Contribution Scheme, it is appropriate to omit those elements of the contribution relating to surface water, footpaths, amenities, community open space and recreational facilities and roads. Furthermore, having regard to the exceptional circumstances of the proposed development in providing for reuse of a former retail outlet, located within an Architectural Consideration Area and within Westport town centre, and proposing daytime and nighttime uses in the

form of a retail and restaurant units, it is appropriate to reduce the rate of contribution to be applied in lieu of the shortfall in car parking provision. In accordance with Section 48 of the Planning & Development Act 2000, as amended, the Board considered that the terms of the Mayo County Council Development Contribution Scheme for the area had not been properly applied in respect of Condition 6 and directs the Council to AMEND condition 6 of Mayo County Council Planning Ref. P17/64, to reflect the nature, scale and location of the proposed development, the terms of the Mayo County Council Development Contribution Scheme and the absence of works required to facilitate the development.

11.0 Conditions

6. The developer shall pay to the planning authority a financial contribution of **€6,858** (six thousand, eight hundred and fifty-eight euros) in respect of public infrastructure and facilities (car parking) 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 & 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. The application of any indexation required by this condition 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.

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 Planning & Development Act 2000, as amended, be applied to the permission.

Colm McLoughlin
Planning Inspector

6th November 2017