



An  
Bord  
Pleanála

## Inspector's Report PL16.249129

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<b>Development</b>	Retain and complete works associated with P06/75 providing 3 shop units and 8 residential units incorporating omission of previously granted basement and 1 residential unit
<b>Location</b>	Bridge Street, Westport, Co. Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	17/437
<b>Applicant(s)</b>	Cedar Park Properties
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party Appeal (S48 Condition)
<b>Appellant(s)</b>	Cedar Park Properties
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	2 <sup>nd</sup> November 2017
<b>Inspector</b>	Una O'Neill

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## 1.0 Site Location and Description

- 1.1. The subject site is located on the western side of Bridge Street, southwest of the Carrowbeg River within the commercial core of Westport town, in south County Mayo.
- 1.2. The appeal relates to a Section 48 financial contribution condition attached by the planning authority.

## 2.0 Proposed Development

- 2.1. Permission was sought to:
  - Retain and complete works associated with P06/75, providing 3 shop units and 8 residential units, incorporating omission of previously granted basement and 1 residential unit

## 3.0 Planning Authority Decision

### 3.1. Decision

Grant permission subject to 5 no. conditions.

Condition No. 5 is the subject of this appeal and states the following:

The following contributions shall be paid to Mayo County Council prior to the commencement of 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.

Surface Water: 4,768

Amenities: 2,856

Roads: 12,152

Footpaths: 1,904

Community Open Space and Recreational Facilities: 2,856

Parking (special contribution): 19,056

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

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

- The Planning Officer's report reflects the decision of the Planning Authority to Grant permission.
- As per Section 7.4 of the Westport Town and Environs Development Plan (as amended), 10 car parking spaces are required for 8 apartments. The report states that 1 space is required per 25sqm retail and this results in requirement of 3 spaces to serve the retail area of 505sqm. Applying a discount of 2 parking spaces for previous smaller retail use at ground level and 1.25 spaces for the former residential unit at first floor, the total parking requirement is 9.75 spaces, which is rounded up to 10 parking spaces.
- Condition 5, which is the subject of this appeal, relates to the requirement for a development contribution payment totalling 43,592 euro.

#### 3.2.2. Other Technical Reports

**Road Design Section:** No objection, subject to previous conditions attached to P06/75 and a condition in relation to parking, whereby a contribution is required to facilitate the extra car parking spaces required from this development. No parking is proposed as part of the development. Car parking spaces should be provided as specified in Appendix 3 of the Mayo County Development Plan 2014-2020.

**Mayo National Roads Design Office:** No objection.

**Transport Infrastructure Ireland:** No objection.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

4.1. The following planning history relates to the appeal site:

**P06/75:** Permission GRANTED for mixed use development with gross floor area of 1876 sqm comprising new buildings containing 9 apartments and commercial development over a basement level.

## 5.0 Policy Context

### 5.1. Westport Town and Environs Development Plan 2010-2016 (as amended)

- Westport Town and Environs Development Plan 2010-2016 remains the statutory Plan for this area. The site is zoned B, Town Centre. The objective of the Town Centre land use is to provide for and improve town centre activities and to preserve and enhance the civic and town centre character of the area.
- Objective IO-13: It is an objective of the Council that development 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.
- Objective DCO-01: It is an objective of the Council to apply the Development Contributions Scheme to all new developments or developments requiring retention.
- Section 7.4 relates to Parking Standards.

### 5.2. Mayo Development Contributions Scheme, 2007

This is a two page document which set out charges applicable from February 2007, broken down into residential, commercial, industrial and serviced land initiative. A figure is given per sub category. This figure appears to be the amount in euro, however the unit of measurement against the amount is not given.

### 5.3. **Natural Heritage Designations**

The site is not located within or adjoining a Natura 2000 site.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

6.1.1. A first party appeal has been received. The appeal seeks the amendment of Condition No. 5 which requires the payment of a development contribution. The grounds of appeal can be summarised as follows:

- The development was commenced under P06/75 and was built with the omission of 1 residential unit and the basement level.
- Originally the building operated as three retail outlets and a living accommodation over.
- The levies were not collected under P06/75.
- The levies were applied incorrectly.
- Analysis of the levies as per P06/75 is set out.
- Analysis of the levies under the current development plan for this application is set out.

### 6.2. **Planning Authority Response**

None.

### 6.3. **Observations**

None.

## 7.0 Assessment

- 7.1. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority. I note that the Board in considering the appeal is required under the provisions of the legislation to apply the scheme as adopted by the Planning Authority. The Board have no legal jurisdiction to interpret or evaluate the merits of any financial contribution scheme as adopted by the Planning Authority.
- 7.2. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal, which is whether the terms of the Scheme have been properly applied.
- 7.3. A S48 condition was attached to the original planning permission for this development, ref P06/75. The contribution associated with this application was not paid. The development was commenced but not completed. The current applicant purchased the site and was granted permission (Ref 17/437) to retain and complete the development and associated changes which were made to the original permission (ref P06/75). This appeal is against the S48 condition attached to the permission issued by the Planning Authority under reg ref 17/437.

### **Application of Development Contribution Scheme**

- 7.4. Condition 5 requires the developer to pay a development contribution totalling €43,592, in respect of surface water, amenities, roads, footpaths, community, and parking (special contribution). The applicant is seeking the amendment of this condition on the basis that the Development Contribution Scheme has not been properly applied.
- 7.5. The grounds of appeal set out an analysis and apply the contribution on the basis of 8 apartments and parking based on the level of commercial which existed and the level of commercial that now exists. The applicant contends that credit for the original building has not been applied correctly. The applicant states that the original commercial building had a floor area of 736 sqm (equates to a parking requirement

of 30), compared to the commercial floor area which now exists, which is 516 sqm (parking equivalent of 21 spaces) and seeks credit for the reduction in floor area and also reduction in the required level of parking. The applicant in addition seeks a credit equivalent to one residential unit and also for one parking space should be applied.

- 7.6. The Planning Authority applied the scheme on the basis of a residential equivalent for the retail floor area, which is calculated on the assumption of 1 employee per 15sqm of retail floorspace using 60 litres of water per day, ie  $X\text{sqm}/15\text{sqm} \times 60/600$ . The residential element of the development was calculated per development unit in respect of all categories (surface water etc), except for parking which was calculated on basis of parking requirements as set out in the development plan and charged as per the development contribution scheme.
- 7.7. I note the Planner's Report states the retail floor area of the proposed development is greater than the retail floor area of the previous development on this site.
- 7.8. From the information submitted, I note that the proposed development is for three commercial units of 516 sqm, eight residential units of 698 sqm and services of 39.95 sqm. The gross floor area for application of the contribution scheme as related to the retail component is 516sqm plus services of 24sqm, which gives a total of 540 sqm. The existing building on the site, prior to its redevelopment, comprised three commercial units equating to a gross floor area of 754sqm and 1 residential unit. Therefore the retail floor area of the proposed development is less than the retail floor area of the previous development on this site.
- 7.9. The following table sets out the floor areas involved:

	Retail	Residential
Previous floor area of building	754sqm	1
Proposed new floor area of new building	540sqm	8
New increase in floor space/units	None	7



Net increase in parking spaces	None	7 x 1.25 = 8.75
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7.10. As the total commercial area is less than that which previously existed, (540 sqm now proposed versus previous figures of 754 sqm) the applicant is not liable to contributions in relation to the commercial area and also not liable to a parking contribution for the commercial area given the original development had a higher requirement for parking under the development plan standards. I find no basis in the development contribution scheme for a discount or credit in relation to the overall contribution due to a reduction in the retail floor area.

7.11. The development contribution payable in accordance with the development contribution scheme is for 7 residential units.

Category	Amount 31 <sup>st</sup> Dec 2006	Residential Units	Total
Surface Water	596	7	4172
Amenities	357	7	2499
Roads	1519	7	10633
Footpaths	238	7	1666
Community, open space and recreation	357	7	2499
			<b>€21469</b>
Car parking	2382	8.75	<b>€2084.25</b>
		<b>TOTAL</b>	<b>€23553.25</b>

## 8.0 Recommendation

8.1. It is recommended that Condition 5 should be amended for the following reasons and considerations.

## 9.0 REASONS AND CONSIDERATIONS

The Board, in accordance with section 48 of the Planning and Development Act, 2000, (as amended) considered that the terms of the Mayo County Council Development Contribution Scheme for the area had not been properly applied in respect of Condition 5 and directs the said Council to AMEND said condition to reflect the accurate reckonable floor area following request for further information, and to give full allowance to the former use of the site in calculating the car parking requirements generated by the new development.

The developer shall pay to the planning authority a financial contribution of **€23553.25** (twenty three thousand five hundred and fifty three euro and twenty five cent) 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. 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 Act be applied to the permission.

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Una O'Neill

Senior Planning Inspector

27<sup>th</sup> November 2017