



An
Bord
Pleanála

Inspector's Report ABP-300181-17

Development	Change of use from retail to licensed restaurant use, signage and ancillary site works
Location	No. 130 O' Connell Street, Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	17/552
Applicant(s)	Dunnes Stores (Limerick) Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Dunnes Stores (Limerick) Ltd.
Observer(s)	None
Date of Site Inspection	1 st February, 2018
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The site of the proposed development is located at No. 130 O'Connell Street on the west side of the city centre street in Limerick. The existing building comprises a vacant terraced three-storey over-basement retail outlet. O'Connell Street is a principal retail/services street in Limerick's commercial core. The appeal site is flanked by two banks.

2.0 Proposed Development

- 2.1. The proposed development comprises a change of use from a vacant Dunnes Stores textile unit to a licensed restaurant. The basement level is proposed to be retained in storage use, with ground and first floor levels developed into restaurant space. The second floor of the existing building is proposed to be retained as an office, staff and storage area. External replacement signage is also proposed as part of the development.
- 2.2. The floor areas of the ground and first floors the subject of the change of use are stated to total 614 square metres. The site has a stated area of 0.03 hectares.

3.0 Planning Authority Decision

3.1. Decision

On 12th December, 2017, Limerick City & County Council decided to grant permission for the development subject to 7 conditions. Condition no. 2 of the decision was as follows:

- "2. *The developer shall pay to Limerick City & County Council a financial contribution of €46,050.00 (forty six thousand and fifty euro) 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 the 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.

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.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted development plan provisions and technical submissions made. It was considered that further information was required on signage, on details of the intended occupier of the premises, number of staff, hours of operation, etc.

3.2.2. Other Technical Reports

The Environmental Services Engineer requested further information relating to effluent treatment and discharge.

3.3. Prescribed Bodies

Irish Water had no objection to the proposal subject to conditions.

The Health Service Executive sought further details relating to food safety requirements.

On 3rd August 2017, the planning authority sought further information in accordance with the Planner’s recommendation. A response to this request was received by the planning authority on 24th August 2017. Further to this response, clarification was sought by the planning authority on 13th September 2017 on each of the matters raised in the further information request. Clarification was submitted to the planning authority on 21st September 2017.

Further to the above, the Planner recommended that permission be granted subject to conditions. In calculating the development contribution, the planning authority’s

Development Contribution Scheme 2017-2021 rate of €75 per sq m was applied to the floor area of 614 sq m, resulting in the contribution of €46,050.

4.0 Planning History

The site's planning history includes:

P.A. Ref. 01770172

Permission was granted for alterations to the existing shop front.

5.0 Policy Context

5.1. Limerick City Development Plan 2010-2016

Zoning

The site is zoned City Centre Area. Restaurant/café uses are permitted in this area.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal relates to Condition 2 of the planning authority's decision, namely the development contribution. The grounds of the appeal may be synthesised as follows:

- The proposed development does not create any new commercial floor space. It will not introduce any activity or processes that would cause a greater demand on public infrastructure arising from its authorised use. Therefore, it would consist of a change of use that would not result in a significant intensification of demand for public infrastructure. Thus, the development qualifies for a waiver as set out under the Development Contributions Guidelines for Planning Authorities 2013.
- The Council's Development Contribution Scheme change of use waiver states:

"Where a proposed change of use does not lead to the need for new or upgraded infrastructure/services or a significant intensification of demand

placed on existing infrastructure and where a contribution was paid previously for the existing use, the development shall be exempt from paying a contribution.”

It would seem inequitable to expect the applicant to pay a development contribution for a property which predates the Planning Acts when the change of use does not place a greater demand on public infrastructure over and above the existing use. Further to this, it is inequitable to place the onus on the applicant to provide evidence that a development contribution has been paid on the site previously when the Council itself does not have all the available planning history relating to the site.

- The building is currently vacant and the change of use will make a positive contribution to the city centre economy. The Development Contributions Guidelines for Planning Authorities, through reduced rates and waivers, encourages economic activity and sustainable development to stimulate job creation. The development contribution attached to the Council’s decision goes against the ethos of the Guidelines.

In conclusion, it is submitted that the terms of the Council’s scheme have not been applied correctly and are not in accordance with national guidelines. Condition 2 of the planning authority’s decision is requested to be omitted.

6.2. Planning Authority Response

I have no record of a response to the appeal from the planning authority.

7.0 Assessment

- 7.1. The appeal relates solely to the proper application by the planning authority of the terms of its development contribution scheme adopted under section 48 of the Planning and Development Act. It is considered appropriate that the Board determines the appeal in relation to the disputed condition only (Condition 2 of the planning authority’s decision) which relates to the financial contribution of €46,050 being sought by the planning authority. The provisions of section 48(10)(b) and (c) apply in this instance.

7.2. I note the following from the Limerick City & County Council “Development Contribution Scheme 2017-2021”:

“10. Change of Use

Where a proposed change of use does not lead to the need for new or upgraded infrastructure/services or a significant intensification of demand placed on existing infrastructure and where a contribution was paid previously for the existing use, the development shall be exempt from paying a contribution. In all other circumstances the change of use shall be charged at the rate appropriate to the new use, subject to a reduction in respect of the contribution rate already paid for the existing use.

Change of use applications where the contributions have not been paid previously will be subject to contributions at the appropriate rate. Applicant’s agent shall provide evidence of proof of payment at application stage in order to expedite assessment and avail of this provision ...

Appendix A

Commercial Development (Charge per sq.m.)

Location	Retail/Restaurant/ Takeaway & other Commercial not included in any other class
City Centre	€75

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7.3 Further to the above, I note the following from the *Development Contributions Guidelines for Planning Authorities* issued by the Department of the Environment, Community and Local Government in January 2013:

In Chapter 2 entitled “Supporting Economic Development”, it is stated:

*“... planning authorities **are required** to include the following in their development contribution schemes:*

- reduced rates of development contributions or waivers for development in town centres to support town centre development; ...*
- 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); ...”*

7.4 Having regard to the above, the Board will note the significant difference between what the existing Development Contribution Scheme in Limerick requires in relation to waivers and that recommended by the current Guidelines, namely the former includes a requirement to demonstrate that a previous development contribution was made for the existing use in order to avail of a waiver for a proposed change of use.

7.5 It is apparent that the appellant has not been able to demonstrate that any development contribution was previously sought or paid to the planning authority for development at this site. The planning authority itself has not demonstrated that any such contribution was previously sought and received. However, it is clear from the Development Contribution Scheme that the onus of proof is on the applicant. Thus, in accordance with the requirements of the current Development Contribution Scheme, the planning authority would appear to be justified in seeking the development contribution.

7.6 A particular concern arises where this requirement of the waiver provisions of the Scheme is an extraneous provision not required by national guidance. It is, thus, a reasonable submission made by the appellant on this difference. It would appear reasonable to contend that the Guidelines should be followed, resulting in the proposed change of use not requiring any development contribution when the development does not lead to any need for new and/or upgraded infrastructure.

7.7 Notwithstanding any non-compliance with the existing Development Contribution Scheme and non-compliance of the Scheme itself with national guidelines, I submit to the Board that one of the principal issues of relevance in determining this appeal relates to the long established use at this site. The appellant has submitted that the existing structure on the site has been in retail use since 1953 and that it has been occupied by Dunnes Stores since 1967. The site has been subject to a range of planning permissions since 1969, as evidenced by the appellant's planning history search. It is worthy of note that all, with the exception of one application in 1968, related to shop front alterations. There has been no submission from the planning authority that counters the position that the existing structure has been in retail use since prior to the enactment of the Local Government (Planning and Development) Act 1963. In addition, there has been no information provided by the planning authority that has demonstrated that the proposed change of use would result in any significant intensification of demand for public infrastructure.

7.8 While the proposed change of use would be material, resulting in different functioning of the building, differing clientele, likely change in hours of operation, etc., one cannot reasonably determine that the change of use would lead to the need for new or upgraded infrastructure / services and/or significant intensification of demand placed on existing infrastructure, notably where the planning authority itself, who makes provisions for such services, has not demonstrated how the change of use impacts on public infrastructure.

7.9 In conclusion, it is my opinion that the additional caveat attached to the waiver set out in the existing Limerick City & County Development Contribution Scheme that relates to a change of use in this instance is in excess of the guidance set out in the *Development Contributions Guidelines for Planning Authorities* issued by the Department of the Environment, Community and Local Government in 2013. Furthermore, I consider that it is reasonable to determine that the existing structure on this site has been in retail use since before the enactment of the Local Government (Planning and Development) Act, 1963. While I acknowledge that the

building has been in use as a Dunnes Stores retail outlet since 1967 and has been subject to planning permissions, there is no information provided that determines the development has been subject to non-compliance with any permission issued, inclusive of any information determining that there was any failure to pay development contributions. Thus, one cannot reasonably determine that to permit a waiver in this instance would be contrary to the provisions of the existing Development Contribution Scheme. Finally, I note that the proposed change of use seeks to utilise two floors within the building in the town centre commercial core and that it cannot reasonably be determined that the change of use would lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure over and above the existing use of the structure as a retail outlet.

8.0 Recommendation

8.1. I recommend that Condition No. 2 of the planning authority's decision is removed as follows:

Having regard to the nature of condition number 2 the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to REMOVE the said condition number 2 and the reason therefor.

9.0 Reasons and Considerations

Having regard to:

- the nature and extent of the proposed development, comprising a change of use of a retail outlet that is in existence since prior to the enactment of the Local Government (Planning and Development) Act, 1963 to a restaurant use within the commercial core of Limerick City Centre,
- to the lack of any information demonstrating that the proposed change of use would lead to the need for new or upgraded infrastructure / services or

significant intensification of demand placed on existing infrastructure over and above the existing use of the structure as a retail outlet, and

- to the *Development Contributions Guidelines for Planning Authorities* issued by the Department on 2013, which requires planning authorities to include waivers in Development Contribution Schemes 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,

it is considered that the development comes within the scope of waivers provided for in the Limerick City & County Council Development Contribution Scheme 2017-2021 and as provided for in the *Development Contributions Guidelines for Planning Authorities* issued by the Department of the Environment, Community and Local Government in January 2013. Therefore, the terms of the development contribution scheme have not been properly applied and a development contribution condition should not be included in this instance.

Kevin Moore
Senior Planning Inspector

19th February 2018