



An  
Bord  
Pleanála

## Inspector's Report ABP-301805-18

### Development

(a) Subdivision of Unit 13 into 3 No. shop units 10, 11 and 12. (b) Construction of mezzanine floors in Units 10 and 11. (c) Change of use from Retail/Warehouse to Retail on Units 10 and 11, and a Family Restaurant/Pizza Restaurant with take away/home delivery use on Unit 12. (d) Modifications to elevations and internal layout,

### Location

Unit 13, Newbridge Retail Park,  
Newbridge, Co. Kildare.

### Planning Authority

Kildare County Council

### Planning Authority Reg. Ref.

18349

### Applicant(s)

Newbridge Arcade Ltd

### Type of Application

Permission

### Planning Authority Decision

Grant

### Type of Appeal

Third Party-v-Grant

First-v-Condition

**Appellant(s)**

(1) Jackie Mi

(2) Newbridge Arcade Ltd

**Date of Site Inspection**

19<sup>th</sup> July 2018

**Inspector**

Colin McBride

## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.038 hectares, is located within Newbridge Retail Park, which is located in the town centre on the northern side of the Athgarvan Road. The site is part of a larger retail warehouse park with a vehicular entrance off Athgarvan Road. Adjoining uses in the immediate vicinity are retail warehousing units similar in design and scale and car parking associated with the retail park. To the east of the site is a discount footsore (Lidl).

## 2.0 Proposed Development

- 2.1. Permission is sought for subdivision of unit 13 into 3 no. shop units (10, 11 and 12). Permission is also sought for construction mezzanine level in units no. 10 and 11 and provision of a family restaurant/pizza restaurant with take away/home delivery use in unit 12. The proposal also entails modifications to elevations and internal layout and all ancillary works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission granted subject to 9 conditions. Of note are the following conditions...

Condition no. 9: Section 48 Development Contribution of €27,589.48 required.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Water Services (30/04/18): Conditions to be attached regarding surface water and water supply.

Environment report (11/05/18): Further information including proposals regarding a grease separator.

Roads & Transportation (16/05/18): No objection.

EHO (21/05/18): No objection subject to condition.

Planning Report (24/05/18): Site is zoned town centre and the proposed uses are acceptable. The unit has been vacant for a considerable period of time and the proposal is for a reduced level of floor space in. A grant of permission was recommended subject to the condition set out above.

### **3.3. Third Party Observations**

Submission from Jackie Mi 16 Rathcurragh, Newbridge, Co. Kildare.

- The appellant notes that there are too many fast food outlets the town and such has been causing traffic issues.

## **4.0 Planning History**

15/819: Permission granted for extension to the retail park including demolition of 2 no. units and construction of 3 no. units.

15/574: Permission refused for reconfiguration of the car parking layout.

13/1041: Permission granted for the demolition of existing structures and construction of a discount food store.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant Development Plan is the Newbridge Local Area Plan 2013-2019. The site is zoned 'Town Centre'-'A' with a stated objective "to provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses'.

### **5.2. Natural Heritage Designations**

None in the vicinity.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Jackie Mi, 16 Rathcurragh, Newbridge, Co. Kildare.

- The appellant notes that there are too many fast food outlets the town and such has been causing bad traffic at night time.

6.1.2 A first party appeal has been lodged by Clarke Engineers Architects on behalf of the applicants Newbridge Arcade Ltd.

- The appeal concerns condition no. 9, which requires a section 48 Development Contribution of €27,589.48.
- It is noted that under the Development Contribution Scheme (Kildare County development Contribution Scheme 2015-2022) Paragraph 12(g) Change of Use a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.
- It is noted that the only levy applicable for this permitted development is the additional; mezzanine floor area of 162sqm. It is noted that permission was granted for the existing unit (ref no. 98/892) and a development levy was paid in respect of such.

### 6.2. Planning Authority Response

6.2.1 Response by Kildare County Council

- In relation to the third party appeal the Local Authority have no further comment to make.

6.2.2 Response by Kildare County Council

- In relation to first party appeal it is noted that contributions were applied to the original permission under ref no. 15/819 which is still live. These contributions remain outstanding, it is noted that while the permission is still live a contribution is required on the total floor area of the development granted under 18/349 until such time as the applicant submits confirmation of the permission to be enacted, as either one may be taken up.
- The Local Authority note that in the calculations for the contribution that to prevent any overcharge, the planning authority will remove the monies due from the permission that is not taken up by the applicant.

### 6.3 Further response by first party appellant

Response by Clarke Engineers Architects on behalf the first party appellant Newbridge Arcade Limited.

- The Local Authority are incorrect when they make reference to permission ref no. 15/819 as this is completely different site as seen from the drawings attached.
- The first party appellant reiterates that the Development Contribution Scheme allows a reduction for development that does not exceed the need for new or upgrade infrastructure/serve. It is noted that the levy should only apply to the mezzanine floors of 162sqm.

## 7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Third party appeal

First party appeal

Appropriate Assessment

7.2. Third party appeal:

7.2.1 The third party appeal is confined to the restaurant/fast food unit that is proposed in one of the three new units created by subdividing the existing unit. The appellant raises two issues, firstly that there is a proliferation of fast food takeaway uses in the town and secondly that such contribute to excessive traffic at night time. I would first note that the proposal is for subdivision of an existing retail warehousing unit and provision 2 no. retail units and 1 no. restaurant unit, which is to have a fast food takeaway and delivery associated (pizza restaurant). The site is zoned 'A'/'Town Centre' with all of the proposed uses permitted uses under the zoning objective (Newbridge Local Area Plan 2015-2022).

7.2.2 I would note that the restaurant use is located in the town centre at a location surrounded by retail uses and is somewhat detached from existing residential development. I can see no argument for precluding the proposed development based on proliferation of similar uses and would also note that the takeaway aspect is ancillary with the proposal being a restaurant use with a sizeable seating area. As noted above the proposal is within the town centre and is a use appropriate in such a setting and is a use that would be acceptable in the context of the amenities of adjoining properties.

7.2.3 The third party appeal refers to such uses causing bad traffic at night time. The proposal and specifically the restaurant use is existing floor space, part of an existing retail park in the town centre. I would consider that the proposal would be unlikely have a significant traffic impact over and above the existing use on site and adjoining uses that make up the existing retail park. I would note that the proposal is a change of use of existing retail floor space and is part of an existing retail park that has a long established vehicular access onto the public road, internal access roads and car parking. I am satisfied that the proposed development including the two retail units and restaurant use would have no significant or adverse traffic impact.

### 7.3 First party appeal:

7.3.1 A first party appeal has been lodged against the application of condition no. which seeks payment of a Section 48 Development Contribution of €27,589.48. The contribution is based on a calculation of €54.31 x 508sqm (€54.31 for retail warehousing to retail development for floor area 101-1,1500sqm). Contributions have been charged on the full extent of the floor space proposed. The first party appellant takes issue with the application of contributions noting that the only the mezzanine level of 162sqm should be subject to a condition as the other floor space is existing, has had contribution paid on it under ref no. PL98/892 and Kildare County Development Contribution Scheme 2015-2022) includes Paragraph 12(g) Change of Use a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.

7.3.2 The existing unit has ground floor and first floor space with a total floor area of 681sqm. The proposed development splits this unit into three, providing two retail units with mezzanine levels and one restaurant unit with ground floor space only. The proposed configuration entails a decrease in floor space to 508sqm. Under Development Contribution Scheme Section 12, Exemptions and Reductions paragraph (g) Change of use it is noted that “this scheme provides for waivers in the case of Change of Use planning permissions. Kildare County Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.

7.3.3 I would consider that the proposal would come under this category as it is subdivision of a large retail unit into two retail units and change of use to a restaurant in a third unit. The proposal does not entail any increase in floor area and is actually decrease in floor area over the existing unit. I would consider that the provisions of Section 12(g) apply and a 100% reduction in contribution charges is justified and in accordance with the terms of Development Contribution Scheme. The first party appellant suggest that a contribution should apply to 162sqm coinciding with the new



mezzanine level in the two retail units. I would question this as there is currently 327sqm of first floor space in the existing retail unit. I would consider that the entire floor area of the proposal would be subject to the reduction in contributions allowed for under Section 12(g) of the Development Contribution Scheme. I would conclude that the Local Authority in applying a Development Contribution has not applied the terms of development Contribution Scheme correctly and I would recommend that condition no. 9 is omitted completely.

7.3.4 The Local Authority in responding to the first party appeal justified the contribution based on the fact that there is an existing permission under ref no. 15/819 and that it is subject to a development contribution that has not been paid. The permission referred to is not on the appeal site (unit no.s 10, 11 and 12, appeal site is no. 13) and relates to 3 no. units adjacent and this permission has not yet been implemented. There is no clear logic for the Local Authority justifying the application of the development contribution under condition no. 9 on this basis as permission reference number 15/819 does not coincide with the appeal site and has yet to be implemented meaning no obligation to pay contributions unless the applicants decide to go ahead with the permitted development. As noted above the terms of the adopted development contribution scheme have been properly applied and I would recommend that condition no. 9 be omitted altogether.

#### 7.4 Appropriate Assessment:

7.4.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### 8.0 **Recommendation**

8.1. I recommend a grant of permission subject to the following conditions.

## 9.0 Reasons and Considerations

Having regard to the zoning objective of the site in the Newbridge Local Area Plan 2013-2019, the nature and scale of the proposed development, and the planning history of the site, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the amenities of the area, would be acceptable in terms of its impact on the vitality and viability of Newbridge town centre, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10. Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

3. Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development].

**Reason:** In the interest of the amenities of the area/visual amenity.

4. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the

building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

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Colin McBride  
Planning Inspector

17<sup>th</sup> September 2018