



An
Bord
Pleanála

Inspector's Report ABP 301831-18.

Development	Construction of a three-storey block four a mixed-use retail/leisure development, signage, landscaping and site development works.
Location	Galway Retail Park, Headford Road, Galway.
Planning Authority	Galway City Council
P. A. Reg. Ref.	17/143
Applicant(s)	Clevedon Ltd.
Type of Application	Permission
Decision	Grant Permission
Type of Appeal	Section 48 Appeal – Condition No 3.
Appellant(s)	Clevedon Ltd.
Date of Site Inspection	26 th August, 2018
Inspector	Jane Dennehy

1.0 Background and Context

The site of the proposed development is adjacent to the Omniplex Cinema within the Galway Retail Park and is vacant waste lands some of which is in use for overspill carparking within the Retail Park. The site is subject to the zoning objective: “CC: *To provide for city centre activities, and particularly those which preserve the city centre as the dominant commercial area for the City*”, according to the Galway City Development Plan, 2017-2023. There is also a specific objective for the preparation of a Local Area Plan for the “Headford Road Area, south of the Bodkin Junction.

- 1.1. The application was for permission for construction of a three-storey mixed use development (retail on ground and part first floors, gym use of part first and second floors, associated signage and site works. The total stated floor area is 2,532 square metres. The ground floor element is 1,037 square metres. The first-floor retail area is 745 square metres (Total 1,782 square metres in retail use.) The gym on the first floor is 114 square metres and 636 square metres on the second floor. (Total 750 square metres.)
- 1.2. There has been a prior grant of permission, under P. A. Reg. Ref. 10/339, the duration of which is now expired, for a four-storey mixed use development the total stated floor area of which is 2,355 square metres. (Ground floor retail use - 839 square metres, first floor office use - 810 square metres, duplex appts - 706 square metres), and fourteen carparking spaces. According to Condition No 4 a transportation contribution of €205,163 euro was required towards the cost of providing public transportation facilities in the area. The reason provide was that the change of use proposed would necessitate the provision of an additional seventy nine parking spaces within the curtilage of the site or within a reasonable distance and that it was reasonable that a contribution be made towards the cost of providing public transportation facilities facilitating the development, in accordance with section 48 of the Planning and Development Act, 2000. The Appeal

2.0 Grounds of Appeal

- 2.1. An appeal which was received from the applicant’s agent on 13th June, 2018. Attached to it is a copy of an affidavit of Peter Keane, Solicitor for the applicant which

was initially submitted to the planning authority at application stage in response to a request for further information. According to the appeal, Condition No 3 should be deleted because the terms of the adopted Galway City Council Development Contributions Scheme, were incorrectly applied by the planning authority in attaching the condition. Condition No 3 is reproduced below:

“Before the commencement of the development hereby granted, the developer shall pay to the Planning Authority a transportation contribution of €262,000.00 towards the cost of the provision for in Section 48 of the Planning and Development Act, 2000, as amended.

Reason: As the development would necessitate the provision of additional parking spaces within the curtilage of the site or within a reasonable distance therefrom, and as the development does not provide for such standard carparking spaces, it is considered reasonable that public transportation contribution be made towards the cost of providing public transportation facilities which would facilitate the development. The use or return of this contribution shall be carried out as provided for in the Section 48 of the Planning and Development, Act 200 as amended”.

- 2.1.1. It is stated that the development will be served by the existing Galway Retail Park, carpark According to the affidavit, the applicant is a Successor in Title to Almaine Investments Ltd. It is acknowledged in Clause No 7 of the Purchase Contract that the property is sold subject to and with the benefit of the Deed of Grant of Easements dated, 25th May, 2000
- 2.1.2. The Purchase Contract has the benefit of a Deed with a Grant of Easements. The First Schedule grants necessary rights and easements, inter alia to the common areas of the Retail Park and it includes use of the carparking immediately adjacent to or servicing the applicant’s property.
- 2.1.3. The applicant Covenants to become a member of the Galway Retail Park (Management) Limited so the applicant has sufficient legal interest for use of the parking spaces for the purposes of the operation of the permitted development. The applicant enjoys the legal easement and rights of way provided for in the Title documents pertaining to the property. The applicant has made several written requests to be management company to full membership requirements.

- 2.1.4. the First Schedule grants the applicant the necessary right and easements with regard to inter alia the common areas of Galway Retail Park
- 2.1.5. The rights and easements are definitive and include use of the carparking spaces at Galway Retail Park immediately adjacent to and servicing the applicant's property which is subject of the planning application.

2.2. Planning Authority Response

2.2.1. A submission was received from the planning authority on 17th July 2018 according to which it is claimed that the terms of the adopted development contribution scheme were correctly applied. It is submitted that:

- there are provisions for a transportation contribution to be levied in lieu of carparking, within the Galway City Development Plan, 2017-2023 (GDP) in the Inner City Residential Area and the Salthill area. Full compliance with the GDP parking standards normally apply (113 spaces)
- A transportation contribution was levied under the previous grant of permission for the site (P. A. Reg. Ref. 10/39) for a parking requirement for 79 spaces. Therefore, a levy can be applied to the current application for any shortfall because application of a levy was previously accepted. The applicant was afforded some leverage given the short fall for the mixed-use development and, no parking was proposed in the application.
- According to the Development Contributions Scheme, "*where no parking space is provided..... An additional transportation charge of €2,500.00 will apply per unit normally generated.*" This would generate a parking requirement of €327,5600.00 (131 spaces x 2.500.00.) A twenty per cent reduction was given to the applicant because the Headford Road is designated under the Galway Transportation Strategy. (GTS) for a "strategic public transport corridor and "*given that the existing carpark serving the Galway Retail Park will facilitate multiple trip/dual use carparking.*" The is the view of the planning authority is the 20 percent reduction which adds up in value to €65,000 is very generous.
- The figure, "67 spaces" identified in the submitted parking assessment is incorrect. The correct figure is 131 spaces because the location is not within

the city centre. according to Table 11.5 of the GDP, parking requirements for retail use are: one space per 15 square metres and, for leisure use: one space per 50 square metres

3.0 Assessment

- 3.1. The Galway City Council Development Contributions Scheme for the period 2008-2012, according to section 8 therein was subject to review after a period of four years which would suggest that a review would take place in 2012. It is understood that to date no review has taken place. The statutory basis for this scheme is questionable in that there is no evidence of confirmation that it has the benefit of adoption by the Members rendering it extant and applicable at present. Furthermore, no reference to the matter can be located within the current adopted Galway City Development Plan, 2017-2023.
- 3.2. There is a supplementary Manager's Order, dated 11th April, 2014 indicating revised levies to, "*remain place until the development contribution scheme currently being reviewed is finalised.*" If, as it appears that at present, there is no extant, Development Contributions Scheme, with a statutory basis, (due to adoption by the Members) in place, the planning authority is not in a position to refer to an adopted scheme for the purposes of calculation and application of a development contribution condition.
- 3.3. There is a note within the Manager's Order of 11th April, 2014 that, "*Where no parking space is provided in conjunction with above Development in the City Centre an additional transportation charge of €2,500 will apply per unit normally generated. This will only apply to any additional areas specified in the Galway City Development Plan, 2011-2017.*" This development plan was superseded in 2017 by the Galway City Development Plan, 2017-2023. Within the current development plan there is a specific objective for the preparation of a Local Area Plan for the Headford, (south of the Bodkin Junction) It is unclear if an associated development contributions scheme would become available if/when an LAP has been prepared and adopted.
- 3.4. The contents of the various sections and tables within the current Galway City Development Plan, referred to in the planning authority's response to the appeal do not provide sufficient guidance that would support application of a charge for under

provision of parking by condition. It is indicative in the response to the appeal that planning authority in its assessment of the current proposal was guided by the assessment and prior grant of permission for development on the application site. A condition was attached with a requirement for payment of a contribution in lieu of a shortfall of seventy-nine spaces in provision on site. (P. A. Reg. Ref. 10/339 refers.)

3.5. On the basis of the foregoing it has been concluded that the planning authority acted *ultra vires* its powers in attaching a development contribution with a requirement for payment in respect of under provision of carparking to serve the development.

3.6. Separately, the claim in the appeal, supported by the affidavit by the applicant's Solicitor as to the entitlement of the developer to use of the communal carparking facilities within the Galway Retail Park with reference to the Deed with a Grant of Easements which the Purchase Order would have transferred to the applicant from the prior owner is noted. However, the appeal submission does not include any evidence of the documentation referred to in the Affidavit. In the event that it is determined that a statutory framework is in place that allows for the application of a charge in lieu of a shortfall in parking provision, it would be beneficial if documents, including mapping details as to the extent of the lands covered by the Deed and Grant of Easements were to be made available for review assessment prior to determination of a decision. It is also noted that the applicant, according to the application is the owner, but it is understood that membership of the Galway Retail Park, (Management) Ltd., which will enable the applicant to benefit from the grant of easements, had not been obtained at the time Affidavit was sworn on 27th March, 2018.

3.7. **Environmental Impact Assessment – Screening.**

3.7.1. Having regard to the minor nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

3.8. **Appropriate Assessment**

3.8.1. Having regard to the scale and nature of the proposed development and to the serviced central business district location, no Appropriate Assessment issues arise.

The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

4.0 Recommendation

- 4.1. In view of the foregoing it is recommended that the planning authority be directed to delete Condition No 3 in that, on the basis of the documentation available in connection with the application and appeal, the Board is not satisfied that the planning authority was entitled to attach Condition No 3 in the absence of evidence of a current Development Contributions Scheme, Made by the Members of Galway City Council, in accordance with the provisions of section 48 of the Planning and Development Acts, 2000 as amended. attaching a condition with a requirement for payment of a development contribution in lieu of a shortfall in on site carparking provision.

Jane Dennehy
Senior Planning Inspector.
27th September, 2018.