



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304122-19

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<b>Development</b>	Change of use of 1st floor to bar, restaurant and function room with ancillary toilet and kitchen facilities together with all associated site works.
<b>Location</b>	McGeoughs Bar & Restaurant, 'Condil House', Roden Place, Dundalk, Co Louth.
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	1940
<b>Applicant</b>	Andrew McGeough.
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party-Vs-Condition No. 8
<b>Appellant</b>	Andrew McGeough.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	9 <sup>th</sup> July, 2019.
<b>Inspector</b>	Patricia-Marie Young.

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## 1.0 Introduction

- 1.1. This appeal case relates to a First Party appeal against the financial contribution sought under Condition 8 of the Planning Authority's notification to grant permission for the development sought under P.A. Reg. Ref. No. 1940 (See: Section 3.1 of this report below).

## 2.0 Site Location and Description

- 2.1. This appeal case relates to a proposed development at 'Condil House' and to the expansion of McGeough's Bar & Restaurant at the same location into its first-floor level. 'Condil House' is located to the west of Market Square and the Court House in the town centre of Dundalk. Its principal façade fronts onto the heavily trafficked junction of Crowe Street, Roden Place and Francis Street. To the rear of 'Condil House' there is small car parking area containing 11 no. car parking spaces and an area of hardstand that is also used for waste storage. The total site area is stated as 0.105ha. In the immediate vicinity of the site there is publicly provided pay and display car parking. This includes on-street car parking and a public car park on the opposite side of the street. This car park is located in the vicinity of 'Kelly's Monument' and extends along the frontage of St. Patrick's Parish Church. There are also a number of private car parking facilities in the wider area.

## 3.0 Proposed Development

- 3.1. Planning permission is sought for the following:
  - Change of use of the first-floor office development to bar, restaurant and function room with ancillary toilet and kitchen facilities.
  - A new access staircase to the first-floor level. This proposed staircase would be positioned in the ground floor bar/restaurant area.
  - Elevation changes to the north and eastern facades of the building. This includes the provision of an emergency escape staircase along the eastern façade and the provision of an external balcony to the northern façade of the proposed function room.

- Replacement of the existing lean-to roof structure to the keg room and bottle store with a new flat roof construction with perimeter wall and balustrade to the rear of the property which will be used as a roof garden for external dining with access from the first-floor bar/restaurant accommodation and all associated site development works.
- All associated site development works and services.

## 4.0 Planning Authority Decision

### 4.1. Decision

- 4.1.1. The Planning Authority **granted** permission subject to eight number conditions. Of note Condition No. 8 reads as follows:

*“The developer shall pay the sum of €29,160 (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office). To the planning authority as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended and in accordance with Article 10 Special Development Contributions of the Louth County Council Development Contribution Scheme 2016 – 2021, in lieu of the shortfall in the provision of 11 car parking space required by the subject development. This contribution shall be paid in full prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of 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.”* The stated reason for this condition is: *“it is considered reasonable that the developer should contribute towards the specific exceptional costs incurred by the planning authority in the provision of car parking which are not covered in the Louth County Council’s Development Contribution Scheme 2016-2021 and which will benefit the proposed development”*.

### 4.2. Planning Authority Reports

#### 4.2.1. Planning Reports

The Planning Officer's report is the basis of the Planning Authority's decision. Of note to the subject matter of this appeal case is the Planning Officer in their report states that: *"the first floor which effectively relates to the COU area is 451 sq m (gross) would have an established car parking allowance of 9 no. spaces based on 1 per 50 sq. m. The proposed use bar/restaurant/function room would have a total floor area of 402 sq. m. (excluding non-public space) equates to a 'demand' for 20 no. car parking spaces. The deficit would be 11 CPS"*.

It further indicates that the current contribution scheme does not provide a flat rate for deficit in car parking spaces, unlike previous schemes, and the Planning Officer notes that the Senior Engineer for infrastructure has advised a flat rate of €2,560 per CPS should be applied.

They further indicate that this precedent has been established with reference given to a grant of permission under P.A. Reg. Ref. No. 17/624 and a number of others since that grant. As such a sum of €28,160 is equated for the shortfall in car parking spaces.

#### 4.2.2. **Other Technical Reports**

#### 4.2.3. **Infrastructure:**

No objection.

4.2.4. **Other:** There is an unidentified memorandum which appears to be from the County Councils Vet. No objection is raised to the proposed development. However, this memorandum advises compliance with the standards set out in Regulation (EC) No. 852/2004 and is not of relevance to the subject matter of this appeal. Moreover, it appears probable from information on file that this memorandum does not refer to this particular planning application.

#### 4.3. **Prescribed Bodies**

4.3.1. **Irish Water:** No objection.

#### 4.4. **Third Party Observations**

4.4.1. None.

## 5.0 Planning History

5.1. No recent planning history.

## 6.0 Policy Context

### 6.1. Development Plan

#### 6.1.1. Louth County Development Plan, 2015-2021.

Section 2.16.4 of the above stated County Development Plan indicates that the statutory plan for the urban and surrounding environs area of Dundalk is currently the Dundalk & Environs, 2009-2015, and that the County Development Plan will be an overarching plan for the entire county including Dundalk.

Section 5.6.5 of the Dundalk & Environs, Development Plan, 2009-2015, states that *“the provision of car parking facilities in accordance with the appropriate standards is a requirement for all development taking place within the plan area. However, the councils recognise that there can be a conflict between the provision of car parking and urban design considerations and therefore the plan makes provision for the application of variable parking standards within areas including town centre’s”*.

Table 5.4 of the Dundalk & Environs, Development Plan, 2009-2015, sets out the car parking requirement within its administrative area. The appeal site is located within Area 1 as identified in Map 5.3 of the Development Plan. As such the restaurant uses require a car parking provision of 1 space per 20m<sup>2</sup> and office spaces 1 per 50m<sup>2</sup>.

Section 5.6.6 of the Dundalk & Environs, Development Plan, 2009-2015, on the matter of change of use/redevelopment states that: *“additional parking may not be required where evidence indicates that the car parking requirement is less than the existing. Where additional car parking is required, an allowance may be made in respect of the existing use of the site or building”*.

Section 11.3.1 of the Dundalk & Environs, Development Plan, 2009-2015, states that *“all development proposals are required by conditions attached to planning permissions to make a financial contribution towards the costs incurred by the councils, or likely to be incurred, in the provision of public infrastructure”* and that

*“special contributions may also be imposed under Section 48(2) where specific public works not covered under the general scheme and which facilitate development, have been carried out or will be carried out”.*

## **6.2. Development Contribution Scheme**

- 6.2.1. The Louth Development Contribution Scheme 2016 – 2021 was adopted on 19<sup>th</sup> day of September, 2016.

## **6.3. Natural Heritage Designations**

- 6.3.1. None relevant.

## **6.4. EIA Screening**

- 6.4.1. Having regard to the nature and scale of the development sought, the lack of any direct hydrological connectivity from the site to any nearby sensitive receptors, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. Therefore, the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required. Moreover, this appeal case relates to an appeal of a financial contribution condition only.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

- 7.1.1. The appellants grounds of appeal can be summarised as follows:
- This appeal relates to Condition No. 8 attached to the Planning Authority’s notification to grant planning permission for the development sought under P.A. Reg. Ref. No. 1940 only.
  - The total floorspace subject to the proposed development is 430m<sup>2</sup>. This includes 374m<sup>2</sup> which is subject to a change of use, a 42m<sup>2</sup> rear roof terrace and a 13m<sup>2</sup> rear facing balcony.

- The premises are centrally located within the town and the proposed development will allow the business to provide a formal dining room and function room facility that will allow the business to provide such upgrades, extensions and adaptations which are essential for it to remain economically viable.
- The rear parking area is predominantly used by office staff who occupy the first and second floor offices with occasional parking of staff. Most of the staff arrive on foot, by taxi or park elsewhere within the town.
- Reference is made to Policy TC19 of the Development Plan which indicates that shared use of car parking (non-residential) will be considered on a case by case basis particularly in town centre.
- Condition No.8 makes a vague reference to the provision of car parking.
- Condition No.8 should be removed as it is contrary to the Development Management Guidelines which requires conditions attached to planning to be precise and clearly understandable.
- The parking levy appears to set an arbitrary and unjustified amount.
- Reference is made to Article 6.0 subsection 10 of the Development Contribution Scheme. It is noted that the proposed change of use will not result in the need for new or upgraded infrastructural service nor will it give rise to a significant intensification on existing drainage and water supply.
- The existing office has 2 no. unisex toilets and the proposed development includes 3 no. female toilet cubicles; 1 no. wheelchair accessible toilet, 1 no. male toilet cubicle and 2 no. urinals.
- The new kitchen at first floor level will be a holding kitchen and linked to the main kitchen downstairs by a dumb waiter.
- Reference is made to Section 6.3 of the Development Contribution Scheme which allows for reductions or no contribution in certain circumstances. It is argued that the site immediately adjoins Crow Street and Francis Street and is therefore applicable for a reduction of 60%.
- Conditions should be reasonable. The site is adjacent to and in the vicinity of abundance of publicly accessible paid parking spaces. These spaces generate



revenue for the Council and thus makes the necessity of Condition No. 8 questionable.

- There are no vacant sites in the surrounding area in which the Council could provide additional parking.
- This development would strengthen the cultural and recreational potential offering of the area.

## 7.2. Planning Authority Response

7.2.1. The Planning Authority's response can be summarised as follows:

- The Planning Authority note that the first party has referred to exemptions listed in the Contribution Scheme and advises the Board that it was aware of these exemptions at the time it was making its decision. However, the address of the site is Roden Place and not Francis Street or Crowe Street as referred to by the appellant in their appeal submission. As such the exemptions referred to are not applicable.

## 8.0 Assessment

8.1. The current appeal is made under Section 48(10)(b) of the Planning and Development Act, as amended. Consequently, the only question to be addressed is whether the terms of the Development Contribution Scheme have been properly applied by the Planning Authority, Louth County Council, in its imposition of Condition No. 8 (See: Section 4.1.1 of this report above) of their notification to grant planning permission for P.A. Reg. Ref. No. 1940.

8.2. I have read the contents of the file and I have had regard to the financial contribution scheme adopted by Louth County Council and the grounds of this appeal as set out by the appellant in this case alongside the Planning Authority's response. In my view the only question before the Board is whether the terms of the Development Contribution Scheme has been properly applied in this instance.

8.3. The Planning Authority's rationale for applying the said financial contribution scheme under the said Condition No. 8 of the notification to grant planning permission for P.A. Reg. Ref. No. 1940 was on the basis that the proposed development essentially

puts forward a change of use of an existing and permitted office to a bar/restaurant use and that in terms of car parking requirements as set out under the Development Plan, if permitted, this would give rise to deficit in the car parking provisions for the corresponding floor area. This rationale is based on the differing car parking space requirement rates for office use, i.e. 1 car parking space per 50m<sup>2</sup>, as set out in the Development Plan, in comparison to restaurant/bar/function room use which has a requirement of 1 car parking space per 20m<sup>2</sup> as set out in the Development Plan.

- 8.4. The Planning Authority's Planning Officer in their report indicated that the first-floor level of the subject premises where the change of use is proposed effectively relates to 451m<sup>2</sup> (gross) and based on its current office use under the Development Plan would generate a car parking requirement of 9 no. car spaces. Whereas the proposed change of use from office to bar/restaurant/function room would have a total floor area of 402m<sup>2</sup> when the non-public spaces are excluded. Thus, equating a requirement of 20 no. car parking spaces under the requirements of the Development Plan. The Planning Officer, therefore, concluded that the proposed development, if permitted, would give rise to a deficient of 11 car parking spaces under the current Development Plan requirements.
- 8.5. The grounds of appeal however argue that the Planning Authority have incorrectly applied their scheme in this case and they refer to Policy TC19 of the Development Plan which provides for shared use of car parking spaces in non-residential developments on a case-by-case basis. They argue that the condition itself is vague in terms of referring to car parking and on this point, they refer to the Development Management Guidelines for Planning Authorities which requires conditions attached to grants of planning to be precise and clearly understandable. They refer to Section 6.3 of the Development Contribution Scheme which allows for reductions or no contribution in certain circumstances and they contend that as the subject premises immediately adjoins Crow Street and Francis Street that a reduction of 60% of the contribution sum is appropriate. They further argue that there are no sites within the immediate area that the Planning Authority could provide additional car parking.
- 8.6. The Planning Authority in their response to this appeal note that the exemptions referred to by the appellants in their submission to the Board were considered by them and that they were fully aware of them at the time it was making its decision, but these were not applicable. In addition, they note that the address of the site is not

Francis Street or Crowe Street but is Roden Place and as such the reduction referred to is also not an applicable exemption in this circumstance.

8.7. Based on the above considerations and having regard to the following factors:

- 1) The proposed development which consists of the change of use of a gross floor space from office to bar/restaurant area.
- 2) Table 5.4 of the Dundalk & Environs, Development Plan, 2009-2015, sets out the car parking requirement within its administrative area. The appeal site is located within Area 1 as identified in Map 5.3 of the Development Plan. As such the restaurant use requires a car parking provision of 1 space per 20m<sup>2</sup> and office space use 1 per 50m<sup>2</sup>. Based on this requirement and the gross floor space of the proposed change of use which is set out in the documentation as 451m<sup>2</sup> the Planning Authority this results in a deficit of a 11 car parking spaces for the change of use sought. In addition, the existing car parking spaces on site is extremely limited based upon the quantum of existing uses at the subject premises. From site inspection it would appear that none of the existing spaces are in use for the existing bar and restaurant use. It also appears highly probable that a number of spaces are privately leased out for the use of staff from other business premises outside of Condil House based on the labelling of such spaces on site. Moreover, it is not quantified the impact of the expansion of the bar/restaurant use would have on the limited on-site exterior waste storage and whether this would result in a further reduction of car parking spaces. These matters were not brought in to the scope of the car parking space calculation and as such the 11 car parking spaces deficit reasonably reflects the deficit from one change of use to another based on current Development Plan standards.
- 3) The provisions set out in the Development Contribution Scheme which includes Section 2.1. This Section provides for general development contributions stating that: *“these contributions apply in respect of public infrastructure and facilities provided by or on behalf of the Local Authority that benefit development in the Local Authority’s function area”*. It also sets out the types of public infrastructure and facilities that can be funded by this mechanism under Section 2.2 which it includes but is not limited to *“car parks”* and *“car parking places”* under subsection (c) and *“the refurbishment,*

*upgrading, enlargement or replacement of roads, car parks, car parking spaces” under subsection (f).*

- 4) Article 10 of Special Development Contribution of the Development Contribution Scheme states that *“a special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Louth County Council Development Contribution Scheme 2016-2021 are incurred by the Council in the provision of a specific public infrastructure or facility”*. It further goes on to state that *“only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special contribution.”*

The applicant has been unable to demonstrate that they can meet the car parking requirements for the quantum of development proposed. It is therefore reasonable to assume that this deficit and overspill of car parking would have to be absorbed by public (and potentially private) car parking infrastructure.

The public provision of car parking spaces is infrastructure provided in the immediate vicinity of the site which the proposed development would benefit from in the absence of car parking space provision on site that meets the minimum requirements of Table 5.4 of the Development Plan.

- 5) The wording of Condition No. 8 which states that *“a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended and in accordance with Article 10 Special Development Contributions of the Louth County Council Development Contribution Scheme 2016 – 2021, in lieu of the shortfall in the provision of 11 car parking space required by the subject development. This contribution shall be paid in full prior to commencement of development or in such phased payments as the planning authority may facilitate”*.

This wording clearly relates to the change of use and the resultant deficit of car parking spaces that it would result in and relates clearly to Section (ix) of the Planning Authority’s Planning Officers report in relation to this application which states:

*“The subject proposal relates to the change of use of the existing/permitted office to the bar/restaurant use. In terms of car parking requirements there are differing rates for office [1 per 50 sq m] and restaurant/bar/function room [1 per 20 sq m].*

*The first floor which effectively relates to the COU area of 451 sq m (gross) would have an established car parking allowance of 9no. spaces based on 1 per 50 sq m. The proposed use bar/restaurant/function room would have a total floor area of 402 sq m. (excluding non-public spaces) equates to a ‘demand’ for 20 no. car parking spaces. The deficit therefore would be 11 CPS”.*

- 6) Appendix III of the Development Contribution Scheme sets out the schedule of contribution rates for non-residential developments and it states that the *“provision of car parking spaces in lieu of shortfall (except streets identified in Table 4”* that all developments will be subject to the *“special contribution under Section 48(2)(c)”* of the Development Act as amended.

I note that the address of the subject premises as “Roden Place” and with none of the site boundaries adjoining Francis and Crowe Street. As such the exemptions set out under Table 4 of the Development Contribution Scheme is not applicable.

- 7) The Planning Authority’s precedent of a flat rate fee since 2017 of €2,560. This is set out in the Planning Authority’s Planning Officer’s report and while I note that there is no reference within the Development Contribution Scheme to this figure, it appears to be the case that this figure was previously calculated by a Senior Engineer within the Planning Authority, and there is a precedent for this sum to be applied in relation to similar developments where there is a car parking space deficit on Town Centre zoned land etc. This sum does not appear to be unreasonable and has remained unchanged since calculated.
- 8) Policy TC 19 of the Development Plan states that *“shared use car parking (non residential) will be considered on a case by case basis particularly in town centres”*. I consider that having regard to the limited car parking provision on site to meet the existing quantum of uses and in addition to the

additional car parking space requirement that would result from the proposed change of use together with any cogent plan to share any particular dedicated spaces that in this case it would not be reasonable to consider that the proposed development would be consistent with Policy TC 19 of the Development Plan.

8.8. Based on the above considerations I consider that the requirements of Condition No. 8 including the sum of contribution for which payment is required by the First Party for the deficit of car parking for the proposed change of use is reasonable and that its basis for this payment is clear and unambiguous. I therefore recommend that Condition No. 8 be maintained as is without amendments.

## 9.0 Recommendation

9.1. Having read the submissions on file, had due regard to the provisions of the Development Plan, updated Development Contribution Scheme and all other matters arising. I recommend that the Planning Authority be directed to maintain the said condition number 8 as is.

## 10.0 Reasons and Considerations

The Board in accordance with Section 48 of the Planning and Development Act, as amended, based on:

- (a) The provisions set out in the Louth Development Contribution Scheme, 2016-2021, which was adopted on 19<sup>th</sup> day of September, 2016, in relation to development and car parking within the plan area.
- (b) The proposed development sought under P.A. Reg. Ref. 1940 and for which the Planning Authority granted planning permission for change of use of the first-floor level from office use to a bar, restaurant and function room with ancillary toilet and kitchen facilities.
- (c) Section 5.6.5 of the Dundalk & Environs, Development Plan, 2009-2015.
- (d) Table 5.4 of the Louth County Development Plan, 2015 - 2021.
- (e) The address of the subject premises.

The lack of car parking provision on site to meet the change of use sought which in turn would place a burden of this overspill onto the public car parking provision in the vicinity.

The public car parking infrastructure in the vicinity is of direct benefit to the proposed development sought and an infrastructure for which the Planning Authority maintains.

The Board considers in this case that the terms of the Development Contribution Scheme with respect to a contribution in respect of the development granted under P.A. Reg. Ref. No. 1940 was correctly interpreted and applied by the planning authority in respect of a contribution towards public infrastructure and facilities benefiting development in the area of the planning authority, i.e. car parking spaces and car parks.

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Patricia-Marie Young  
Planning Inspector

29<sup>th</sup> August, 2019