



An
Bord
Pleanála

Inspector's Report ABP.304272-19

Development	Subdivision of a portion of the existing ground floor retail area and existing first floor retail area to form new separate two-storey retail unit
Location	Unit 6, Eastpoint Retail Park, Ballysimon Road Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	18/1271
Applicant(s)	Aviary Estates Ltd.
Type of Application	Planning permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party against condition
Appellant(s)	Aviary Estates Ltd.
Observer(s)	None
Date of Site Inspection	14 th July 2019
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.** The site is located in an existing retail park, Eastpoint Retail Park on Ballysimon Road, c. 800m to the west of the M7. The site forms part six attached retail warehouse units which face Ballysimon Road (R527). There is an entrance to the retail park which is approx. 150m west of the roundabout with Garryglass Road. The retail park also has frontage to the Old Ballysimon Road to the south, from which rear access is available. Five of the units are of a similar size with the sixth unit being substantially larger.
- 1.2.** The five smaller units are arranged in a staggered line fronting onto the car park to the north of the units, which is accessed from Ballysimon Road. The sixth unit is located at the eastern end of the staggered row and is set much further forward with the front elevation being quite close to the main road, and the rear elevation being set back from the main rear building line. The site relates to the rear section of Unit 6. It is accessed from Old Ballysimon Road. The unit is vacant.

2.0 Proposed Development

- 2.1.** The proposed development involves the subdivision of part the ground floor (c.33 sq.m) and the mezzanine floor (1070 sq.m) to create a new retail unit for use as a retail warehouse. The ground floor of the entire unit is about 3,500 sq.m and there is a mezzanine level at the southern end of the building.
- 2.2.** The proposal will include the provision of a new ground floor entrance to the new retail unit at the south-western corner which will facilitate the circulation space and provide access to the mezzanine level. The applicant has stated that the owner is having difficulty letting the main unit due to its large-scale floor area. It is stated that the new unit will not involve the creation of any additional floorspace but will result in a new two-storey retail unit.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 4 no. conditions. The conditions related mainly to restriction of the use to a retail warehouse for the sale of bulky goods and a requirement to submit additional details relating to signage.

Condition 2 required the payment of a development contribution of €95,893.60 in accordance with the General Development Contribution Scheme

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Area Planner's initial report (21/02/19) noted that the proposed development provides for the redevelopment of an existing vacant unit, which has been vacant for a number of years, at an established retail park. The retail park is zoned Industrial. However, it was considered that inadequate information had been submitted in respect of whether the proposed use would be compliant with the parent permission P02/1709 and specifically that the proposed unit would be used as a retail warehouse for the sale of bulky goods, and in respect of the proposed signage. These items were the subject of a FI request on 21st February 2019.

3.2.2. Other Technical Reports

Chief Fire Officer – A Fire Safety Certificate will be required. No objection subject to compliance with Building Regulations; Fire Safety Certificate and Disability Access Certificate.

3.2.3. Further Information Response

Further information was submitted on 1st March 2019. This stated the following

- Proposed use – the applicant is fully aware of the requirements of the parent permission and the use would consist of a bulky goods retail unit such as furniture sales.
- Reason for subdivision – the existing unit is very large, and the applicant is having difficulty letting it due to its excessive size.

- Use of overall unit – the applicant accepts that the use of both of the altered units would be governed by the terms of the parent permission (05/1452).
- Signage – As the applicant has not finalised the letting of the unit to a particular tenant, the details of signage would have to wait until this is secured. In the meantime, it is confirmed that any signage would be backlit to the dimensions shown on the submitted drawing, or alternatively, would be a flat sign illuminated from above as in the other units

3.2.4. Planning authority response to Further Information of 01/03/19

The Area Planner was satisfied with the further information response and permission was recommended.

3.3. Prescribed Bodies

Irish Water - No objection subject to conditions (01/02/19).

TII – No objections raised (24/01/19).

3.4. Third Party Observations

None.

4.0 Planning History

02/1709 – planning permission granted for construction of a mixed retail warehouse building comprising 6 units with loading bays, car park with 2 yards and security booth and associated works with entrance to development off N24 Ballysimon Road. The details of this permission have not been submitted and are not available on the P.A. website. However, this permission was not implemented.

05/1452 – planning permission granted for construction of a retail warehouse building comprising 6 no. units with customer carpark to front, new vehicular access from N24 and associated site works with loading bays, yards, staff parking, security booth barriers to rear. Permission was granted on 6/4/06 subject to 37 conditions. Condition 2 required the payment of €1,094,014.73 as a Development Contribution under the GDCS. The Planning report stated that the contribution was calculated on the basis of a floor area of 7,215.98 sq.m at a rate of €151.61 per square metre.

08/1203 – Unit 6 - planning permission was granted for alterations to Unit 6 relating to glazing, fencing, signage etc. as granted under 05/1452. The description of the development did not include any proposed additional floorspace, but the application stated at Question 11 that the floor area of Unit 6 was as follows:

$$3564\text{m}^2 + 1032\text{m}^2 = 4596\text{m}^2.$$

No development contribution was required.

16/971 – Unit 1 - Change of use from retail warehouse to commercial gym and erection of additional first floor mezzanine floor area of 449sq.m. It was stated in the submissions that the existing floor area of this unit was 1,141m². This permission included a condition requiring payment of a Development Contribution under the GDCS of €44,520, which was based on a total floor area of 1590m² (i.e. a change of use of 1141m² and a new area of 449m²).

17/648 – Unit 4 - planning permission granted (to same applicant as current case) for an extension of the existing mezzanine floor area for retail use and for new external signage. The floor plans indicate that it consisted of a ground floor unit with a small mezzanine level which was proposed to be extended by 392.8m². The planning report noted that the development contribution on the parent permission 05/1452 remained outstanding. A Development contribution was required by condition 2 of €31,424.00, which was based on a rate of €80.00 per sq.m.

5.0 Policy Context

5.1. Development Plan

Limerick City and County Development Plan 2010-2016 (as extended)

Zoned for 'Industrial'.

Castletroy Local Area Plan

Site is zoned for Industrial use.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by Gleeson McSweeney Consultants on behalf of the applicant. The appeal is against **Condition No. 2 only**, which requires the payment of a Development Contribution of €95,893.60 in accordance with the General Development Contribution Scheme. The grounds of appeal may be summarised as follows:

6.1.1. No additional floor space proposed

This planning application is for the subdivision of an existing retail unit, comprising part of the ground floor and the existing mezzanine level. The financial contribution has been calculated on the basis of €80 per square metre for the area of the newly formed retail unit within the existing retail unit which is stated as 1,198.67 sq.m.

The levying of this contribution is in breach of the General Development Contribution Scheme as no new floor area is proposed. The GDCS sets out at Paragraph 8 that “internal layout changes where no additional floor area is proposed” is considered to be exempt from the requirement to pay a development contribution.

6.1.2. Double charging

A Development contribution was previously levied on this existing unit as part of permission 05/1452. This contribution amounted to €1,094,014.74 for the 6 retail units that exist on this site. This equated to a contribution of €150 per square metre. The requirement to pay another levy amounts to double charging.

6.2. Planning Authority Response to grounds of appeal

6.2.1. The planning authority has not responded to the grounds of appeal.

7.0 Assessment

7.1 Legislation and Guidance

7.1.1. Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development

Contribution Scheme have not been properly applied. As the appeal is solely against Condition 2 of the planning permission, relating to a Financial Contribution, Section 48 (10)(c) applies. This requires that the Board shall not determine the relevant application as if it had been made in the first instance, but shall determine only the matters under appeal.

7.1.2. Condition 2 requires the payment of a development contribution of **€95,893.60** in respect of public infrastructure and facilities benefitting development in the area in accordance with the terms of the adopted Limerick City and County General Development Contribution Scheme, made under Section 48(2)(a) of the Act.

7.1.3. Further guidance on the matter is provided in the Development Management Guidelines, 2007 (Section 7.12) and in the Development Contribution Guidelines 2013.

7.2. Compliance with the terms of the General Development Contribution Scheme

7.2.1. Nature and extent of the application

The Limerick City and County Development Contribution Scheme 2017-2022 makes provision for exemptions from development contributions in certain circumstances which are set out in Paragraph 8. One of the categories is as follows: -

Internal layout changes where no additional floor area is proposed.

The current application does not increase the floor area of the unit but does create a new planning unit within Unit 6. However, the GDCS is silent on the creation of new planning units. There is, however, provision for the payment of contributions where there is a change of use in certain circumstances. At paragraph 10 it is stated:

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.

It is noted that the applicant has confirmed that the use of the unit would be as permitted, i.e. as retail warehousing for the sale of bulky goods, and that the

proposed development would be governed by the terms of parent permission (05/1452). It is considered, therefore, that the proposed development is unlikely to result in a significant intensification of demand or for an upgrading of existing infrastructure or services.

7.2.2. Double charging

The applicant has advised that a development contribution of €1,094,014.74 was levied under planning permission Reg. Ref. 05/1452 in respect of the parent permission for the retail warehouse development of 6 units. The GDCS clearly states that where a contribution was paid previously for the existing use, the change of use development or replacement application shall be exempt from paying a contribution. However, it is further stated: -

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

7.2.3. The appellant considers that the requirement to pay a Development Contribution, given that the site was formerly granted planning permission (05/1452) subject to the payment of development contributions, effectively results in double charging. The Development Contribution Guidelines 2013 state in respect of double charging, that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

7.2.4. However, the planning authority has pointed out that the development contribution required in respect of the parent application was never paid and remains outstanding. Although reference is made to the levying of the charge, the appellant has not provided evidence of payment of the levy. It is further noted that the P.A. under ref. 17/648 had also noted that the levy on the parent permission had not been paid at that time, (October 2017) and had proceeded to charge a new levy in respect

of the additional floor area created at mezzanine level as part of that development for Unit 4. In addition, it is noted that in respect of Unit 1, a levy was charged for the change of use of the unit from retail warehouse to a commercial gym and for the additional floor area, but this would have been levied under a previous Scheme.

- 7.2.5.** I would agree that no additional floor area is proposed as part of the current application. It is considered, however, that whilst the imposition of a second levy in respect of the same floor area would amount to double charging, the failure of the appellant to provide any evidence that the original levy was paid in respect of the parent permission (05/1452) means that the planning authority is justified in applying a contribution at the appropriate rate in respect of the current proposal.
- 7.2.6.** It is noted that the current rate under the GDCS 2017-2021 is almost half of the original rate that had been applied. The appropriate rate is €80 per square metre and the floor area of the new unit is given as 1,198.67m². The appropriate contribution is therefore is €95,893.60. This is the amount required by condition 2.

8.0 Recommendation

- 8.1.** Having regard to the information on the file, the grounds of appeal, the planning and technical reports of the planning authority in relation to the development, and to the assessment above, I recommend that the Board directs the planning authority to **ATTACH** Condition 2 and the reason therefor as follows for the reasons and considerations set out below.

9.0 Reasons and Considerations

The current Limerick City and County Development Contribution Scheme at paragraph 10 provides for an exemption from the requirement to pay a development contribution in respect of a change of use where the development would not lead to a need for new/upgraded infrastructure/services or a significant intensification of demand for existing services, or where a development contribution has previously been paid in respect of the existing use. It is considered that the developer has not demonstrated that the contribution previously levied in respect of the parent permission and existing use on the site has been paid, and that in such circumstances, the development

is not exempt from paying a contribution which is required to be paid at the appropriate rate. Therefore, it is considered that the terms of the Planning Authority's Development Contribution Scheme have been properly applied. The condition requiring the payment of the contribution should therefore be attached.

Mary Kennelly
Senior Planning Inspector

25th July 2019