



An  
Bord  
Pleanála

## Inspector's Report ABP.304429-19

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<b>Development</b>	Retention of part demolition of buildings, and as constructed front, rear and side elevations, site works and services including rear boundary wall to Pound Lane and as constructed alterations and extensions
<b>Location</b>	Twohig's Supervalu, Bridge Street, Abbeyfeale  Co. Limerick
<b>Planning Authority</b>	Limerick City & County Council
<b>Planning Authority Reg. Ref.</b>	18/819
<b>Applicant(s)</b>	Moquette Ltd.
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	First Party against condition
<b>Appellant(s)</b>	Moquette Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	14 <sup>th</sup> July 2019
<b>Inspector</b>	Mary Kennelly

## **1.0 Site Location and Description**

- 1.1. The site is located on Bridge Street, which is the main street (N21) running through Abbeyfeale town. The site is located on the eastern side of the road and has frontage to Pound Lane, which runs parallel to the main street. The site is in use as a supermarket and is known locally as Twohig's Supervalu. The parking area for the supermarket is located to the rear and is accessed from Bridge Street.
- 1.2. The site includes the façade of Maloney's Garage, which is a Protected Structure. This façade comprises a small section of the overall façade of the premises

## **2.0 Proposed Development**

- 2.1. The proposed development involves retention of works which deviate from that permitted under P.A. Reg. Ref. 10/1151, which was for the phased demolition of the existing store and buildings and the construction of a supermarket (2070m<sup>2</sup>), provision of parking and a new vehicular and pedestrian thoroughfare with associated junctions. The submissions on file indicate that the existing Supervalu store has a floor area of 1,746m<sup>2</sup>. The proposal seeks retention of the following works:

- Demolition of building to rear of building facing Bridge Street
- Demolition of section of building facing Bridge Street, where entrance to car park exists and part of building facing onto car park
- Construction of an additional section to the supermarket off Bridge Street and accessed from the car park.
- Protected Structure was altered to facilitate the insertion of advertising and glass automatic doors.
- New shopfront was constructed along front façade of building facing onto Bridge Street with removal of door and new window openings in keeping with openings on the first-floor level to building to the north of the protected structure.
- Modifications to rear of supermarket.

- 2.2.** The proposal will include the construction of a new boundary wall along the boundary with Pound Lane to the rear (800mm).

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant permission subject to 10 no. conditions.

Condition 2 required the payment of a development contribution of €71,500.00 in accordance with the General Development Contribution Scheme

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Area Planner's initial report (04/10/18) noted that the existing supermarket GFA is 1,746m<sup>2</sup>, of which 715m<sup>2</sup> is to be retained and 155m<sup>2</sup> was demolished. The proposed development seeks retention of the demolished structures (155m<sup>2</sup>), the as constructed alterations and extensions to the front, rear and side elevations (715m<sup>2</sup>), and the as constructed site works (including wall to Pound Lane). The Area Planner noted that the submitted plans did not match the development to be retained on the ground. The anomalies related mainly to the car park layout, the wall to Pound Lane, sightlines at the exit to Pound Lane, lighting and landscaping. These items were the subject of a FI request on 5<sup>th</sup> October 2018.

#### **3.2.2. Other Technical Reports**

**Chief Fire Officer** – No objection subject to compliance with Building Regulations; Fire Safety Certificate and Disability Access Certificate.

**Roads Report** – concerns re parking layout, sight lines, lighting, boundary wall. FI requested.

**Conservation report** – no objection subject to conditions.

#### **3.2.3. Further Information Response**

Further information was submitted on 25<sup>th</sup> March 2019 and on 12<sup>th</sup> April 2019.

The Area Planner was satisfied with the further information responses and permission was recommended. It was stated that commercial development levies are charged at a rate of €100 per square metre in accordance with the General Development Contribution Scheme 2017-2021. It was considered that this should be applied to the retention of as constructed extensions and alterations the floor area for which is given as 715 sq.m. This amounts to a levy of €71,500.

### **3.3. Prescribed Bodies**

**Irish Water** - No objection subject to conditions.

**TII** – No objections raised.

**HSE** – no objections.

### **3.4. Third Party Observations**

None.

## **4.0 Planning History**

**10/1151** – planning permission granted by P.A. for demolition of store and buildings, construction of a supermarket (2,070m<sup>2</sup>), provision of parking at ground and first floor deck levels, provision of a new vehicular and pedestrian thoroughfare between Bridge Street and Pound Lane, the provision of two new vehicular junctions at the intersection of the thoroughfare and Bridge St/Pound Lane and modification of the existing footpath and road layout. This included a condition requiring payment of a Development Contribution under the GDCS of €32,282.17. A third-party appeal against the decision had been lodged (PL13.238832) but was withdrawn prior to determination by the Board.

## **5.0 Policy Context**

**Limerick County Development Plan 2010-2016 (as extended)**

**Abbeyfeale Local Area Plan 2014-2020**

Site is zoned for Town Centre.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The first party appeal was submitted by Meitheal Design Partners on behalf of the applicant. The appeal is against **Condition No. 2 only**, which requires the payment of a Development Contribution of €71,500.00 in accordance with the General Development Contribution Scheme. The appeal referred to this as a Special Contribution, but the wording of Condition 2 relates only to a contribution under the GDCS. The grounds of appeal may be summarised as follows:

#### **6.1.1. Contribution previously paid under 10/1151**

Works commenced on site on foot of planning permission Ref. 10/1151. This permission was to be delivered on a phased basis, to an agreed phasing plan. The completed works relate to Phase 1 of that phasing plan. The full extent of the permission was not completed due to financial constraints. The current application/appeal seeks to retain the part-completion of the development.

Notwithstanding the non-completion of the later phases, the full contribution as set out in Condition 2 was paid. The planning authority, in seeking to apply a second charge, effectively amounts to double charging.

#### **6.1.2. The levy has been overpaid**

Given the significantly reduced area of the as-built development compared with the floor area permitted under 10/1151, it is contended that the levy has been overpaid relative to the area of development to be retained that is currently before the Board. Under 10/1151, permission was granted for 2070m<sup>2</sup> floor area but only 476m<sup>2</sup> of this was additional floor area, the remainder relating to alterations to existing buildings. The area referred to as 715m<sup>2</sup> to be retained includes alterations to existing buildings and the nett reduction between the permitted and 'as-built' store is 324m<sup>2</sup>. It is claimed that the current application relates to the legitimisation of the as-built elements of the store, which is 324sq.m, and that the levy should be based on this and not the entire retained area.

## **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 **€71,500.00** 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. Double charging**

The applicant's agent has advised that a development contribution of €32,282.17 was paid in full as required by planning permission Reg. Ref. 10/1151, and that the requirement of Condition 2 of the current application/appeal effectively results in double charging. The appellant has not, however, provided any evidence of payment of the levy, as required by the General Development Contribution Scheme. I have reviewed the documentation relating to 10/1151 on the P.A.'s website and have been unable to find any documentation confirming payment of the full financial contribution. There is a letter from the agents (PLM Architects) who had represented the applicant at the time, which was received by the planning authority on 8<sup>th</sup> May 2012. This letter included a statement that the planning authority had agreed to the payment of the contribution over 5 annual instalments of €6,456.43 and had enclosed the first of these instalments. However, I could find no further

correspondence/documentation relating to the payment of any later instalments. Later correspondence also indicated that the developer and the planning authority had failed to agree a phasing plan. Importantly, however, neither the planning authority nor the developer has referred to this correspondence and its status is uncertain.

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. However, as stated above, no evidence of the payment of the levy has been submitted to the Board. I would not agree, therefore, that the imposition of another levy in respect of the same floor area would amount to double charging in this instance.

### **7.2.2. Overpayment of the levy**

The proposed development seeks the retention of as-built structures which are composed of some new-build and some renovated buildings. However, it is not clear whether the buildings to be retained included floor areas that had not previously been part of the supermarket. The previous application (10/1151) had been appealed to the Board and an Inspector had visited the site, which was described as comprising the existing store, Maloney's Garage and four residential properties. Thus, it would appear that much of the altered buildings have undergone a change of use as part of the renovations. As the works have already been completed, it is difficult to ascertain which areas might have reasonably been considered to form part of the original store. The area to be retained under the current application is given as 715sq.m, (which includes both extensions and altered structures) whereas the 'as-built' area under the same application is given as 1746sq.m. It is assumed, therefore, that the original supermarket floor area has been excluded from the retained floor area figure.

The Limerick City and County General Development Contribution Scheme 2017-2021 required the payment of contributions in respect of a change of use, except where it is considered that there would be no significant intensification of demand for existing services or need for upgrade of services, and where contributions have not been paid previously. It is considered that on the basis of the information provided

with the application and appeal, the application of the contribution to the retained floor area is reasonable in this instance.

## **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 proposed change of use would result in the need for new or upgraded infrastructure/services, or a significant increase in the demand for existing infrastructure/services, or that it has paid the contributions previously levied in respect of the previous permission or in respect of the existing uses on the site. 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.

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Mary Kennelly  
Senior Planning Inspector

25<sup>th</sup> July 2019