



An
Bord
Pleanála

Inspector's Report ABP-305019

Development	Change of use, offices to apartments
Location	Lannagh Court, Old Westport Road, Castlebar, Co. Mayo.
Planning Authority	Mayo County Council.
Planning Authority Reg. Ref.	1984
Applicant(s)	Burren Rock Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	First Party.
Appellant(s)	Burren Rock Ltd.
Observer(s)	None.
Date of Site Inspection	23 rd October 2019.
Inspector	Suzanne Kehely.

1.0 Site Location and Description

1.1. The appeal site lies at the southern end of the town on the Old Westport Road opposite the Castlebar General Hospital. It is separated by a laneway from commercial development to the north (Hotel and theatre) and housing development to the south. There is a multi-storey mixed development in three blocks containing student accommodation in 16 apartments (1 x one bed and 15 x two bed).

2.0 Proposed Development

2.1. The proposal involves the change of use of 77.6sq.m. of ground floor space from ancillary offices and large laundrette to 2 x one bed apartments (72.3 sq.) and a small laundrette (5.3sq.m.) in Block B.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 9th July 2019, the planning authority decided to grant permission for the development subject to 3 no. conditions. Condition 2 restricts use for student accommodation and tourist let only.

3.1.2. Conditions 3 states

The following contribution shall be paid to Mayo County Council prior to commencement of the development. The development contributions shall increase in accordance with Wholesale Price Index for building and Construction in January of each year from the date of grant of permission up to the date that payment is made to Mayo County Council.

- €714 for amenities
- €476 for footpaths
- €714 for community open space and recreational facilities
- €3038 for roads
- €1192 for surface water services

Reason: To comply with Mayo County Council's Development Contribution Scheme.

3.2. Planning Authority Reports

Planning Reports

- 3.2.1. The site is zoned residential in the Castlebar and Environs Development Plan 2008-2014 as amended.
- 3.2.2. The contribution amounts to €6134 for two dwelling equivalents
- 3.2.3. The planning authority raised concerns about the substandard nature by reference to ministerial guidance for new apartments. Further information was sought in respect of minimum standards and private open space.
- 3.2.4. In further information it was clarified that the accommodation is intended for student accommodation and tourist letting only - in keeping with the entire complex. Revised notices were submitted in accordance with the requirements of the planning authority and to its satisfaction.
- 3.2.5. No Appropriate Assessment issues.

3.3. Other Technical Reports

- 3.3.1. None

3.4. Prescribed Bodies

- 3.4.1. None.

3.5. Third Party Observations

- 3.5.1. None.

4.0 Planning History

- 4.1. On file reference is made to the following planning application previously made in respect of the site:

- PA ref. 3112 – Permission granted on the appeal site for a mixed-use development. Among the 41 conditions,
 - Condition 2 required €53,742.00 contribution towards sanitary services.
 - Condition 3 required €25,000.00 security to ensure satisfactory completion

5.0 Policy Context

5.1. Castlebar Town Council Development Contribution Scheme 2011

- 5.1.1. The adopted development contribution scheme for Castlebar was adopted in 2011.
- 5.1.2. A copy of this appended to the grounds of appeal but it is not available on the Council's website.
- 5.1.3. Schedule 1 sets out the development contribution amounts.
- 5.1.4. Section 2.2 states that in determining the amount of contribution, Castlebar Town council has had regard to the actual estimated cost of providing the classes of specific infrastructure.
- 5.1.5. Section 4 states that the council at its own discretion may allow the payment of a reduced rate where the payment of the contribution would not be just and reasonable having regard to the limited extent of development, the limited cost of eh development and other exceptional considerations. The amount payable for any reduced contribution under this scheme shall not be not be less that one quarter of the amount indicated in column 2 of schedule 1
- 5.1.6. Section 7 states that no later than 5 years from the adoption of the scheme, Castlebar Town Council shall review the said Development Contribution Scheme.

5.2. Mayo County Council Development Contribution Scheme 2007

- 5.2.1. This scheme sets out charges applicable from 5th February 2007 updated from 2004. There is no detailed written guidance in the application of rates.

5.3. **Natural Heritage Designations**

- 5.3.1. Due to the nature of the appeal made, natural heritage designations and the need for appropriate assessment, fall outside the scope of this report.

5.4. **Nature of development**

- 5.4.1. Dwelling under the Residential tenancies act 2004 means subject to subsection (2), a property let for rent or valuable consideration as a self-contained residential unit and includes any building or part of a building used as a dwelling and any out office, yard, garden or other land appurtenant to it or usually enjoyed with it...

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The first party appeal is made on the following grounds:
- The development contribution levied should be based on the Castlebar Town Council Development contribution Scheme and should be reduced to €2610 by applying the Castlebar rates to the same categories of infrastructure deemed appropriate for levying. This approach is supported by reference to the Boards decision in the case of 302292 wherein it was concluded that the planning authority did not properly apply the terms of the development contribution scheme adopted under section 48 of the Act being the Castlebar Town Council Development contribution Scheme 2011 and it is necessary therefore to amend the contribution figure applied.
 - The validity of this scheme is supported by section 25(1) (a) of the Local Government Reform Act 2014 which states that All acts done, and decisions duly made whether by resolution or managers order or otherwise before the transfer date in respect of a town council shall subject to this Act continues to have all such force and effect as they had immediately before that date.

- While it is acknowledged the former town council now lies within the County council function area it is understood that the Town council scheme has not repealed or otherwise superseded by a new contemporary Contribution scheme.
- Imposition of the county council rates would be a significant financial burden on the proposed development

6.2. Planning Authority Response

- 6.2.1. No specific response to the grounds of appeal have been submitted by the planning authority.

6.3. Observations/Further Responses

- 6.3.1. None.

7.0 EIA Screening

- 7.1. The site is in an urban environment and is not adjacent or within close vicinity of a sensitive environment, including a European site, pNHA, and etc. Therefore, having regard to the nature and scale of the development and its environment, I am satisfied there is no real likelihood of significant effects on the environment and the submission of an EIAR is not warranted for the nature and extent of residential accommodation proposed.

8.0 Assessment

- 8.1. This is a first party appeal against a planning condition 3 which requires a development contribution in line with section 48 of the Planning and Development Act 2000 (as amended) .
- 8.2. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority. Having regard to the nature of the appeal being in relation to the

application of a development contribution only, the Board is not required to determine the application as if it was made to it in the first instance and needs only determine the matters under appeal, which in this case is:

- which Council scheme shall apply, and
- whether the terms of the Scheme have been properly applied.

8.3. Which Contribution Scheme

8.3.1. The appellant makes the case that the Mayo County Development Contribution Scheme 2004 (updated 2007) (herein after MC DCS) has been incorrectly applied to the subject development given that the Castlebar Town Development Contribution Scheme 2011 (herein after CT DCS) remains applicable and it is the rates within this scheme that should be applied. In this regard I particularly note the Board's recent decision in the case of 302292 wherein it was determined that the CT DCS remained applicable to development in Castlebar Town rather than the MC DCS. In support of this I also note that section 48(2)(a) allows the planning authority to make one or more schemes in respect of its functional area and that the operation of separate development contribution schemes for the county and former town council area is not incompatible with the legislation.

8.3.2. I further note that by reference to Section 25 of the Local Government Reform Act 2014 provision is made for the continuance of all acts done such as the DCS notwithstanding the dissolution of the Town Council. The Planning authority has not replied to the grounds of appeal and there is no evidence to suggest that the CT DCS has been replaced or has ceased to have effect and ultimately there is no change from the circumstances of 302292, accordingly I am satisfied that the CT DCS is the applicable scheme in this instance.

8.4. Application of scheme

8.4.1. The applicant has simply taken the categories of infrastructure selected as the basis of calculating applicable rates. In this case not all categories have been applied to the development e.g. sewerage rates. As can be seen in the following table.

Categories of infrastructure for residential	Mayo County DCS Rate	Application of DCS in full to proposed	Condition 3	Castlebar DCS Rate	Application in full to proposed	Appellant recommends
Water services*	1191			900 per dwelling		
Sewerage Services*	1787			1350 per dwelling		
Surface water services	596	1192	€1192	450 per dwelling	900	900
Amenities	357	714	€714	270 per dwelling	540	540
Community open space and recreational facilities	357	714	€714	180 per dwelling	360	360
Roads	1519 for residential (varies for commercial)	3038	€3038	360 per dwelling	720	720
Footpaths and public lighting	238		€476	135 per linear metre 180 if land acquisition	No footpath specified	
Housing est. take-over	238			180 per dwelling	N/A	
Recycling				45 per dwelling	90	90
Car parking	2382 (commercial)			3150		
Utility/road lining/signs				Cost of work basis		
Total est.		5658	6134		2610	2610

*Irish Water functions

8.4.2. There is no explanation in the planning authority documentation as to the basis of calculation for the rates. Although having regard to the rates for CT DCS it appears the planning authority has applied levy rates on a per dwelling basis. It seems

reasonable to seek a contribution for services provided by the council for the provision of infrastructure benefiting the development such as in relation to surface water, amenities, community facilities and roads and footpaths. This modus operandii of applying a dwelling rate seems generally reasonable however the footpath levy should be applied at a linear metre rate. There are however no linear metres specified by the planning authority and the linear metre rate has been applied on a per dwelling basis instead. The application proposes this should be left at zero. I do not agree – it is clear the planning authority are seeking a levy towards footpaths and this is provided for in both schemes. It is likely that the dwelling rate is a lesser charge and a rate of 1m per dwelling is not excessive. However in view of the nature of the proposal I consider there is some discretion to reduce the amount of other elements that make up the overall contribution.

- 8.4.3. In this case the application relates to a change of use from ancillary space in a student accommodation block to additional transient residential use for students and tourists. While it is a commercial type of use, I note the definition of dwelling and that it does not exclude this type of residency. I therefore consider residential use is the applicable category of development for the purposes of levies.
- 8.4.4. While the proposal is for a change of use, it amounts to the development of two additional dwellings. In strict terms, the full rates of all relevant categories of infrastructure could be applied. I do however note the provision for a discretionary reduction in section 4 of the CT DCS of no less than 25% of the total amount applicable. There is no guidance on this. I do however note the provision for reduction in the case of 'change of use' categories of development in other schemes.
- 8.4.5. In this regard I note in the neighbouring county, the Galway Contribution Scheme provides some flexibility in applying rates for change of use as it is stated that 'Where a Change of Use permission is sought, due regard shall be had to any Development Contributions paid previously and any additional levies shall only be applied where there is a substantial increase in output or intensity of use or where additional gross floorspace or functional area is created.'
- 8.4.6. In the Dublin City Council Development Contribution Scheme, change of use qualifies for a reduction in the order of 50% and states that 'In the case of a change of use from residential use to commercial and vice versa, development contributions

will be calculated at 50% of the applicable rate. Where development contributions under a Section 48 Scheme were paid in respect of the former use, the contribution payable on the new proposal will be net of the quantum of development previously paid for. The Development Contribution Scheme does not provide for any rebate or refund in this regard. Agents/applicants should provide evidence of prior payment at application stage in order to expedite assessment and avail of this provision.'

- 8.4.7. There are no details of the breakdown of the previous levy in the case of the 2003 permission for the existing building complex. However, in this case, having regard to the limited amount of works to an existing building which has been previously levied for all infrastructure and the small scale of the one-bedroom units amounting to 36 sq.m. each, I consider it reasonable to reduce the overall levy. There will however be some intensification of use of amenities associated with a more intensive residential use and particularly as the nature of development involves the removal of student accommodation amenities /ancillary services. I also note that the footpaths would benefit from some improvement in the environs and that recycling is a relatively new service that may not have been previously accounted for. In any event the charge for recycling is nominal.
- 8.4.8. In view of the connection charges for water relates services levied by Irish Water I do not consider it appropriate to attach the rates for such services which are no longer provided by the council.
- 8.4.9. In view of these circumstances I consider it reasonable to apply a levy towards the footpaths which in the absence of further details I would leave at the rate of €476 as specified by the council and would also add a levy of €90 towards recycling. The levy for amenities and community facilities is reasonable and should be applied in full. I otherwise consider it reasonable to reduce the levy for surface water by 75% and roads by at least 50%. By applying all these rates this would amount to €2051. The following table sets this out for clarity.

Categories of infrastructure for residential	Condition 3	Castlebar DCS Rate €	Appellant recommends €	Recommended in this report €
Water services*		900 per dwelling		0
Sewerage Services*		1350 per dwelling		0
Surface water services	€1192	450 per dwelling	900	225 (25%)
Amenities	€714	270 per dwelling	540	540
Community open space and recreational facilities	€714	180 per dwelling	360	360
Roads	€3038	360 per dwelling	720	360 (50%)
Footpaths and public lighting	€476	135 per linear metre (180 if land acquisition)	0	476
Housing est. take-over		180 per dwelling	N/A	N/A
Recycling		45 per dwelling	90	90
Car parking		3150		N/A
Utility/road lining/signs		Cost of work basis		N/A
Total est.	€6134		2610	2051

8.5. Appropriate Assessment

- 8.5.1. Having regard to the relatively minor nature of the proposed development associated with a change of use in an serviced urban area and also having regard to the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. In view of the foregoing, I recommend that the development contribution applied by the planning authority is amended to reflect this reduced amount for the reasons and considerations set out below.

10.0 Reasons and Considerations

10.1. The planning authority did not properly apply the terms of the development contribution scheme adopted under section 48 of the Planning and Development Act 2000, as amended, being the Castlebar Town Council Development Contribution Scheme 2011, and it is necessary therefore to amend the contribution figure applied under condition number 3. It is considered reasonable, therefore, and in accordance with the provisions of this scheme to reflect the nature and scale of the proposed development and its location in Castlebar Town.

3. The developer shall pay to the planning authority a financial contribution of €2051 (two thousand and fifty-one euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any 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.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Suzanne Kehely

Senior Planning Inspector

9th December 2019