



An
Bord
Pleanála

Inspector's Report

ABP-305090-19

Development	Retention of change of use from car sales showroom to kitchen manufacturing and display use, and permission for alterations and extension to existing workshop.
Location	Designer Kitchens, Dublin Road, Dundalk, Co Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	19/409
Applicant	Designer Kitchens
Type of Application	Permission
Planning Authority Decision	Grant permission (5 no. conditions)
Type of Appeal	First Party
Appellant(s)	Designer Kitchens
Inspector	Conor McGrath

1.0 Introduction

- 1.1. This report relates to a first party appeal against condition no. 2 of the planning authority decision to grant permission for the proposed development, which relates to the payment of development contributions in accordance with the Louth County Council Development Contribution Scheme 2016. S.48(10)(b) of the Planning and Development Acts states that an appeal may be brought to the Board where an applicant under section 34 considers that the terms of the development contribution scheme have not been properly applied.

2.0 Site Location and Description

- 2.1. The appeal site is located on the Dublin Road on the southern side of Dundalk, opposite the campus of the Institute of Technology. It is currently occupied by a kitchen showroom and workshop and is bounded by garden centre and plant hire uses to the north and south respectively. Lands to the west comprise open space associated with a residential development.
- 2.2. The site is currently occupied by L-shaped buildings, comprising single-storey showroom and office to front with double height portal frame workshop structures behind. The rear of the site is used for storage and accommodates an existing prefabricated structure identified on the plans as a workshop.

3.0 Proposed Development

- 3.1. The application sought permission for:
- Retention of the change of use of the site from car sales showroom to use for kitchen manufacturing and display (435-81-sq.m.).
 - Permission for new workshop extension to rear (298.44-sq.m.)

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission for the proposed development subject to 5 no. conditions. Condition no. 2 requires the payment of development contributions as follows:

2(a) Retention of Change of Use (non-residential rates)

Infrastructure	435.81-sq.m. x €48	€20,918.88	
Amenity	435.81-sq.m. x €12	€5,229.72	€26,148.60

2(b) Extension

Infrastructure	298.44-sq.m. x €48	€14,325.12	
Amenity	298.44-sq.m. x €12	€3,581.28	€17,906.40

Combined Total: €44,055

4.2. Planning Authority Reports

4.2.1. Planning Reports

Lands are zoned for residential use. The light industrial use on the site is non-compliant with the zoning. Given the history of uses on the site, the nature of adjoining uses and the absence of any complaint, the application can be considered on its merits. There are no concerns regarding the appearance or impacts on adjoining residential amenities to the west.

Article 6.1 of the County Development Contribution Scheme states that exemptions will not apply to permission for retention. The full rate must therefore be applied to the retention of change of use.

The report expressed satisfaction that retention of change of use would not contravene the zoning objective for the area and the extension is reasonable given the long established uses on the site.

4.2.2. Other Technical Reports

- Infrastructure: Conditions recommended.
- Irish Water: No objection

4.3. Prescribed Bodies

- Development Applications Unit: The development has the potential to disturb the roosting habitat of a significant population of listed bat species and potential to disturb breeding birds, including ground nesting birds. Conditions recommended to mitigate potential impacts including site surveys and timing of works on the site.

5.0 Planning History

PA ref. 03/413: Permission granted for a car sales showroom and office on the site.

There is a history of permissions on this site for use as a garage and service station.

6.0 Policy Context

6.1. Development Plan

Dundalk and Environs Development Plan 2009 – 2015

The site is zoned Residential 1: To protect and improve existing residential amenities and to provide for infill and new residential developments.

The following uses are identified as Not Permissible in this zone: Light industrial use, car showroom, motor sales / repair.

The plan notes that a 'not permitted use' is a use that would be contrary to the zoning objectives and sustainable development. Extensions to existing non-conforming uses within any zoned area will be considered on their merits.

6.2. Louth Development Contribution Scheme 2016

Article 5.0 sets out the contributions to be paid (excluding where Exemptions and Reductions apply):-

Non-Residential Development		
Classes of Public Infrastructural Development	%	Cost per Sqm
Class 1: Infrastructure (including roads and surface water)	80%	€48.00
Class 2: Amenity (including parks, recreation, amenity & community facilities)	20%	€12.00
Total	100%	€60.00

Section 6.1 “Exemptions” identifies categories of development liable for either a reduction or exemption from the requirement to pay development contributions under the Scheme. It notes that “Exemptions shall NOT apply to permissions for retention”.

Category of development	
10. Change of Use applications are exempt where the change of use and internal alterations does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.	No Charge

Section 6.2 identifies Reductions in contributions payable. It notes that reductions shall NOT apply to permissions for retention.

Category of development	Reduction
7. Expansions to authorised industrial and manufacturing operations including expansion of port operations/facilities.	75%
11. Where demolition is necessary to facilitate a proposed new development, the floor area of the structure to be demolished will be off set against contributions for new development.	As per the floor area of the structure minus the floor area of the structure to be

	demolished
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6.3. Natural Heritage Designations

The site is not subject to any natural heritage designations. The closest site is Dundalk Bay SPA and SAC, approx. 1.7km to the east.

7.0 The Appeal

7.1. Grounds of Appeal

The first party make the following points in their appeal against condition 2(b) of the planning authority decision to grant permission, which requires the payment of a development contribution in respect of the extension of the workshop structures.

- The current use has operated on the site since 2012 and buildings date back to 1979, with the last permission granted on the site in 2003.
- Section 6.2 of the development contribution scheme was not properly applied in respect of the extension to this existing business.
- Section 6.2(7) provides for a 75% reduction in respect of expansion to authorised industrial and manufacturing operations.
- The effect of granting permission for the change of use from car sale showroom to kitchen manufacturing and display was to immediately authorise this use, so that the development contribution should have been charged at the reduced rate.
- The contribution in respect of Amenity is unfair as the development does not need or rely upon the parks, community and recreational facilities which comprise the Amenity component of contributions.
- This unfair charge on a rate paying business compromise the viability of the proposed development.

- Condition 2(b) is ultra vires and contrary to the criteria for imposing conditions as set out in the Development Management Guidelines in terms of necessity, relevance and reasonableness.

7.2. Planning Authority Response

The planning authority initially made no further comment on the appeal. Following a further S.132 request the authority make the following comments:

The planning authority would accept the case made by the appellants for a reduced contribution for the proposed workshop extension as follows:

298.44-sq.m. x €12psm	=	€3,581.28
298.44-sq.m. x €3psm	=	€895.32
Total	=	€4,476.60

There is no exemption from the payment of contributions in respect of the amenity component of Condition 2(b).

7.3. Further Response

In response to the planning authority submission, the first party state that they are happy to accept a revised condition for a reduced contribution in line with the planning authority response.

8.0 Assessment

- 8.1. Section 48(10)(b) of the 2000 Planning Act provides for an appeal where the applicant for permission considers that the terms of a Scheme have not been properly applied. Appeals which include or relate solely to this matter will be dealt with under section 37(1) or 139 of the 2000 Planning Act, as amended, as appropriate. Where the appeal relates solely to this matter and there are no other appeals involved, the Board is not permitted to determine the application de novo but may only determine the matter under appeal.
- 8.2. In the current case, the planning authority decided to grant permission subject to 5 no. conditions. I note that a submission was received by the planning authority from

the Development Applications Unit, which recommended the attachment of conditions in the event of a decision to grant permission. Such conditions were not included in the planning authority decision, however, in the context of this first party appeal it is not within the discretion of the Board to attach further conditions to the decision in this regard.

- 8.3. The first party appeal relates to the application of the Development Contribution Scheme to the proposed new extension to existing structures under condition 2(b). There is no appeal against the contributions charged under condition 2(a) and no other appeal against that decision.
- 8.4. The appellants argue that the extension should be subject to a reduced level of contribution in accordance with Section 6.2 of the contribution scheme because the decision to grant permission authorises the kitchen showroom and workshop uses on the site.
- 8.5. The proposed development seeks to regularise the heretofore unauthorised use as a kitchen showroom and workshop on the site and construct an extension to serve that use. A reduction is available under section 6.2 of the development contribution scheme in respect of “*Expansions to authorised industrial and manufacturing operations*” I do not consider that this reduction can be applied within this application to regularise that use on the site. The existing use must be an authorised use prior to a reduction for such expansion being considered. I do not consider that the planning authority response, which accepts the argument of the first party correctly applies the terms of the development contribution scheme in this regard and I do not therefore consider that it is within the remit of the Board to reduce the development contribution in the manner proposed.
- 8.6. The wording of the scheme is somewhat unclear with regard to the reduction in contributions payable, however, a review of previous decisions of the planning authority confirm that the reduction which would be available is 75%, such that contributions are payable at 25% of the standard rate. In this regard, I note previous decisions of the planning authority under,

PA ref. 17/719: Construction of a single storey factory extension at Greenvale Park, Rathmullen , Matthews Lane, Drogheda.

PA ref. 17/13: Construction of industrial warehouse building and link to existing building at Brook Street, Ardee Road, Dundalk.

8.7. I note that section 6.2(11) of the Development Contribution Scheme provides for a reduction / off-set in respect of any structure whose demolition is required to facilitate the proposed new development. I note that the removal of the existing prefabricated structure at the rear of the site will be required to facilitate the proposed extension. While planning authority photographs indicate that this is in poor condition, I consider that the reduction under item 11 would be validly applied to its demolition and removal. I consider therefore that an off-set against contributions payable in respect of the proposed extension should be allowed for this structure (110-sq.m.). I note that an off-set in this regard has not been the subject of any comment from either the first party or the planning authority.

8.8. I consider that Condition 2(b) should therefore be amended as follows:

Infrastructure	188.44-sq.m. x €48	€9,045.12	
Amenity	188.44-sq.m. x €12	€2,261.28	€11,306.40

The Combined Total contributions payable under condition 2(a) and (b) would therefore be: €26,148.60 (retention) + €11,306.40 (extension) = **€34,455**

9.0 Appropriate Assessment Screening

9.1. Having regard to nature of the case and the scale of development proposed and separation from any European Site, no Appropriate Assessment issues are considered to arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site

10.0 Recommendation

10.1. Having considered the submissions received in relation to this appeal and the documentation submitted, I consider that the appeal can be addressed under section 139 of the Planning and Development Act 2000 as amended. I recommend that the planning authority be directed under subsection (1) of section 139 of the Planning and Development Acts, 2000-2018, to AMEND condition number 2 and the reason therefor, as follows:

Condition no. 2

The developer shall pay to the planning authority a financial contribution of €34,455 (Thirty four thousand, four hundred and fifty five euros) 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.

This sum is comprised of

(a) Retention of Change of Use (non-residential rates)

Infrastructure	435.81-sq.m. x €48	€20,918.88	
Amenity	435.81-sq.m. x €12	€5,229.72	€26,148.60

(b) Extension (non-residential rates)

Infrastructure	188.44-sq.m. x €48	€9,045.12	
Amenity	188.44-sq.m. x €12	€2,261.28	€11,306.40

Total **€37,455**

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.

REASONS AND CONSIDERATIONS

- 10.2. Having regard to the terms of the Louth County Council Development Contribution Scheme 2016, the nature of the proposed development, the planning history relating to the site and the uses thereon and presence of existing structures to be removed, it is considered that the terms of the development contribution scheme have not been properly applied and therefore, condition no. 2 should be amended to reflect the terms of the scheme.

Conor McGrath
Senior Planning Inspector
25/10/2019