



An
Bord
Pleanála

Inspector's Report

ABP-306329-20

Development	Change use from a general warehouse to a warehouse with ancillary trade counters and external amendments to the property.
Location	Unit 1, Lismard Business Park, New Road, Portlaoise, Co. Laois.
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	19/568
Applicant	Geared Up Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party v Development Contribution Only
Appellant	Geared Up Ltd.
Date of Site Inspection	20.03.2020
Inspector	Anthony Kelly

1.0 Introduction

- 1.1. This report relates to a first-party appeal against Condition No. 13 of the planning authority decision to grant permission for the development. Condition No. 13 relates to the payment of a development contribution of €35,496 in accordance with the Laois County Council Development Contribution Scheme 2017-2023. Section 48(10)(b) of the Planning & Development Act, 2000 (as amended) states that an appeal may be brought to the Board where an applicant considers that the terms of the development contribution scheme have not been properly applied.

2.0 Site Location and Description

- 2.1. The site is located within Lismard Business Park, close to the junction with Well Road/R426, south east of Portlaoise town centre.
- 2.2. The site is occupied by an industrial type building externally finished with brick to the ground floor on the front elevation and render at ground floor to the sides with cladding to the upper areas to the front and both sides. The Triogue River runs along the western boundary of the site. There is a concrete area to the rear accessed along the eastern side of the building.

3.0 Development Description

- 3.1. The application was for permission for a change of use from a general warehouse to a warehouse with ancillary trade counters (for the sale of building related products principally to trade) and external amendments to the property including:
- additional car parking spaces towards the rear of the building;
 - filling in of existing goods ramp and existing goods-in door and construction of two new ramps to service a new customer entrance to the trade counters and a new goods entrance on the south east elevation;
 - security bollards and a hatched pedestrian route to the north east of the building;

- an area for mechanical plant on the south west elevation;
- cladding of either side of the door and insert new doors on the north west elevation;
- all associated works.

3.2. The site has an area of 0.28 hectares. The building has a stated floor area of 1,044sqm and an indicated height of 9.23 metres.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission for the development subject to 13 no. conditions. Condition No. 13 requires the payment of a development contribution as follows;

13. Prior to the commencement of development, a contribution shall be payable to Laois County Council, in accordance with the Council's Development Contribution Scheme 2017-2023 in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority, and that is provided or that it is intended will be provided by, or on behalf of, the Council.

The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and penalty interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme:-

This development is classified **Commercial and Industrial (located inside the Local Area Plans and designated settlement boundaries)** as per the Laois County Development Plan 2017-2023 and the Local Area Plans for Portlaoise, Portarlinton, Mountmellick and Grangecullen.

Commercial		Floor Area	Total per Contribution
Roads	€22.67	1044m ²	€23,667.48

Amenity	€11.33	1044m ²	€11,828.52
Total Development Contributions	€34	1044m²	€35,496

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Laois County Council in respect of the provision/improvement of public services/infrastructure benefitting development in the area of the Planning Authority.

4.2. Planning Authority Reports

4.2.1. The Planning Officer's report was the basis for the decision. Permission to grant was recommended. It was considered that, having regard to the nature and design of the existing and proposed development and the character of adjoining development, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be in accordance with the provisions of the Laois County Development Plan 2017-2023 and the Portlaoise Local Area Plan 2018-2024 and with the proper planning and sustainable development of the area.

4.2.2. Other Technical Reports

Chief Fire Officer – No objection in principle.

Area Office – No objection.

Road Design – No objection.

4.3. Prescribed Bodies

None received.

4.4. Third Party Observations

None received.

5.0 Planning History

P.A. Reg. Ref. 91/447 – Permission granted in 1991 for a warehouse unit and ancillary offices.

P.A. Reg. Ref. 92/29 – Permission granted in 1992 for the variation of approved plans (447/91).

P.A. Reg. Ref. 20/50 – Permission was granted in 2020 for the erection of signage relating to the use of the development permitted under P.A. Reg. Ref. 19/568 including downlighters on the two largest signs. Condition 6 of P.A. Reg. Ref. 19/568 required planning permission for all new signage.

6.0 Policy Context

6.1. Laois County Development Plan 2017-2023

6.1.1. Section 5 (Economic Development) of the Plan is relevant.

6.2. Portlaoise Local Area Plan 2018-2024

6.2.1. The site is in an area zoned 'General Business'. The zoning objective is 'to provide for and improve commercial activities.' Chapter 9 (Economic Development) is relevant to the application.

6.3. Laois County Council Development Contribution Scheme 2017-2023

6.3.1. Section 9.9 (Double Charging/Allowance for previous Use) states as follows –

'The practice of double charging is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing planning gain in an equitable manner.

Therefore a development contribution already levied and paid in respect of a given development should be deducted from the consequent charge so as to reflect that this development has already made a contribution to the enabling infrastructure and facilities.

In the case of an application to demolish an existing habitable and authorised residential unit and replace it with a similar type build, a contribution shall *only* be payable in relation to an increase in floor space if applicable.

A similar situation will apply in the case of a usable and authorised commercial or industrial unit.’

6.3.2. Section 12 (Exemptions) outlines categories of development which will be exempt from the requirement to pay development contributions. This includes Section 12.10 (Change of Use) which states –

‘Changes of use between the uses described in Class 1, 2 and 3 of the Planning and Development Regulations 2001 (as amended) (Schedule 2, Part 4, Article 10) shall be exempted from the development contribution scheme when the use being changed to, is also within these classes. Ordinarily, changes of use from one use to another contained within the one class is considered Exempted Development in accordance with Part 4 of the Regulations and therefore no Development Contributions apply as no application needs to be made. Where an application is made however, an exemption shall be given in respect of the development contribution scheme’.

6.3.3. Section 16 (Development Contribution Scheme 2017-2023) sets out the rates of charges. Commercial and industrial buildings are levied at €34 per sqm.

6.4. Natural Heritage Designations

6.4.1. There is no Natura 2000 site within approx. 8km of the site. The site is located within the Ridge of Portlaoise pNHA.

7.0 The Appeal

7.1. Grounds of Appeal

The first party makes the following points in their appeal against Condition No. 13 of the planning authority decision to grant permission.

- The Development Contribution Scheme 2017-2023 has not been applied correctly. A reduced rate is argued for.

- The change of use applied for was general warehouse to a warehouse with trade counters. External alterations to the building and property are not relevant. The gross floor area of the warehouse is 1,044sqm. The warehouse area is 945sqm and the trade counter area is 99sqm. The contribution, if it is to be applied at all, should only have been applied, in the worst case, to the 99sqm trade counter area. The correct development contribution in that case would be €3,366. The Council simply applied the figure to the entire gross area of 1,044sqm.
- Section 12.10 (Change of Use) of the Scheme is relevant. Change between Classes 1, 2 and 3 does not apply in this case. The second sentence is more general in nature referring to all the use classes where a change is made within one class. Normally an application is not required and thus the Scheme does not apply. The third section of Section 12.10 states that where an application is made an exemption shall be given.
- The Council's Planning Report acknowledges that the development has two distinct elements; the warehouse portion and the trade counters which is later referred to as retail space. It seems clear that the Planning Authority contained its assessment of the Contribution to only the first sentence of paragraph 12.10 which relates solely to uses in class 1, 2 and 3. For the warehouse portion it should have looked at sentences 2 and 3 which are more general. By applying sentences 2 and 3 a reasonable and rational conclusion is that paragraph 12.10 has a much wider interpretation.
- It is conceded that the trade counter portion is a change from warehouse to retail (albeit the nature of the end users is principally trade or business so it is not strictly 'retail' which by definition is principally members of the general public) but for the purpose of the appeal this element is not disputed.
- Section 9.9 of the Scheme refers to an allowance for development contributions previously paid. This allows that where contributions have been previously paid in respect of a development that amount shall be deducted from any amount falling due today in respect of a new development. This proposition accepts that monies have already been paid in respect of enabling infrastructure and facilities. The core of the text appears to relate to works as opposed to use so

its application in the context where the majority of the Gross Floor Area remains in the same use as before, is not clear. Irrespective, the Council confirmed that Contributions were levied and paid under P.A. Reg. Refs. 91/447 and 92/29.

- The Board is requested to reduce the Development Contribution to account only for the Trade Counters. The calculation the Board is asked to apply is 99sqm x €34 = €3,366.

7.2. Planning Authority Response

None received.

8.0 Assessment

- 8.1. The development includes permission for the change of use of 99sqm of a 1,044sqm building from general warehouse to a warehouse with ancillary trade counters for the sale of building related products principally to trade. Other alterations to the building and property are also proposed. This is a first-party appeal in relation to Condition No. 13 which required payment of a financial contribution of €35,496.
- 8.2. An appeal may be brought to the Board where an applicant considers that the terms of a Development Contribution Scheme has not been properly applied in respect of any condition laid down by the planning authority. In this appeal the issue to be considered is whether the terms of the scheme have been properly applied.
- 8.3. Section 9.9 of the Laois County Council Development Contribution Scheme 2017-2023 relates to double charging and allowance for previous use. It states that double charging is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing planning gain in an equitable manner. The warehouse building was permitted under P.A. Reg. Ref. 91/447 with permission granted for a variation of the approved plans under P.A. Reg. Ref. 92/29. The applicant states in the grounds of appeal that the local authority confirmed that contributions were levied and paid under these permissions. Therefore, the existing building is an authorised and established use and levies have already been paid. Double-charging

on the basis of the entire 1,044sqm warehouse when only 99sqm is subject of the proposed alteration would seem to be inconsistent with the provisions of Section 9.9.

- 8.4. Section 12.10 (Change of Use) of the Scheme states that a change of use between Classes 1, 2 and 3 of Schedule 2 Part 4 of the Planning & Development Regulations, 2001 (as amended) shall be exempt from the development contribution scheme when the use being changed to is also within these classes. Section 12.10 also states that, ordinarily, changes of use from one use to another use contained within the one class is exempt and no application needs to be made. However, when an application is made an exemption will be given. I consider that this means that any applications for a change of use outside of Classes 1, 2 and 3, or within any other use class, will be subject of development contributions. The applicant concedes that, while the trade counters are principally for the sale of goods to businesses and tradespeople, members of the public would not be prevented from visiting and purchasing goods i.e. a retail space. However, the grounds of appeal argue that this should only apply to the 99sqm trade counter area as the remaining 945sqm floor area remains a warehouse.
- 8.5. Section 9.9 of the Scheme states that the practice of double-charging is inconsistent with the primary objective of levying development contributions and with the spirit of capturing planning gain in an equitable manner and Section 12.10 (Change of Use) does not exempt the development from the scheme. The structure can be considered as Class 5 (use as a wholesale warehouse or repository) with the 99sqm trade counter area being changed to Class 1 (use as a shop). Having regard to the first paragraph of Section 9.9 I consider that only the 99sqm area subject of the change of use should be levied for development contributions rather than the entire 1,044sqm area and the Development Contribution Scheme has not been properly applied in this case.
- 8.6. Section 16 (Development Contributions Scheme) of the Scheme states that the rate of charge for commercial and industrial buildings is €34 per sqm. €34 x 99sqm gives a figure of €3,366.

$$€34 \times 99\text{sqm} = €3,366.$$

9.0 Recommendation

9.1. I recommend that Laois County Council be directed to amend Condition No. 13 on the grounds that the terms of the Development Contribution Scheme 2017-2023 have not been properly applied.

10.0 Reasons and Considerations

Having regard to:

- The established, authorised nature of the existing building;
- Section 9.9 (Double-Charging/Allowance for previous Use) of the Laois County Council Development Contribution Scheme 2017-2023;
- Section 12.10 (Change of Use) of the Scheme 2017-2023; and
- The 99sqm area subject of the change of use floorspace;

The Board consider that the terms of the Development Contribution Scheme have not been properly applied and Condition No. 13 shall be amended as follows;

The developer shall pay to the planning authority a financial contribution of €3,366 (three thousand three hundred and sixty six 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.

Anthony Kelly,
Planning Inspector
30.03.2020