



Development

- (i) Demolition of toilet block,
- (ii) extension to provide for sanitary facilities and storage,
- (iii) restaurant and wine bar at first floor level.

Location

The Harbour/Market Square,
Dunfanaghy, Letterkenny PO, County Donegal.

Planning Authority

Donegal County Council.

Planning Authority Reg. Ref.

19/51677.

Applicant

Daniel Sweeney.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

First Party -v- Financial Contribution.

Appellant

Daniel Sweeney.

Observers

None.

Date of Site Inspection

14th May, 2020.

Inspector

Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	3
4.0 Planning Authority's Decision	4
5.0 Planning History.....	6
6.0 Grounds of Appeal.....	6
7.0 Donegal Development Contribution Scheme	9
8.0 Development plan Provision	10
9.0 Assessment	10
10.0 Recommendation	13
11.0 Decision	13

1.0 Introduction

ABP306502-20 relates to a first party appeal against the financial contribution condition attached by Donegal County Council in granting planning permission for a new commercial development at Market Square, Dunfanaghy in North Donegal. The grounds of appeal argue that the financial contribution of €57,863.75 is excessive and has not been properly calculated in accordance with the adopted development contribution scheme.

2.0 Site Location and Description

- 2.1. The appeal site is located at Market Square in the centre of the village of Dunfanaghy on the North Donegal coast. The site is located on Market Square to the immediate north of Main Street in the centre of the village. The site comprises of a series of buildings which are currently unoccupied and include a two-storey former public house and a single storey stone clad structure contiguous to the public house. Social Welfare offices are located to the immediate south of the site and there is an existing boat shed to the north-west of the site. A row of surface parking spaces are located to the front of the premises

3.0 Proposed Development

Planning permission is sought for the following:

- The demolition of an existing toilet block and a proposed extension to the rear to accommodate bin storage and toilets.
- The provision of 9 indoor artisan market units in the northern portion of the building and
- A proposed new restaurant and wine bar at first floor level occupying a gross floor area of 383 square metres.

4.0 Planning Authority's Decision

- 4.1. Donegal County Council granted planning permission for the proposed development subject to 13 conditions.

Condition No. 11 stated the following:

“The applicant (or person at the relevant time entitled to the benefit of the permission) shall pay a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is already provided or is intended will be provided by the Planning Authority. The amount of the contribution shall be set out below and determined in accordance with the “Donegal County Council Development Contribution Scheme 2016 – 2021” made under Section 48 of the Planning and Development Act 2000. The total contribution and breakdown of same in respect of the different classes of public infrastructure and facilities provided/to be provided by the Authority are

- *Commercial €2,864.74.*
- *Parking €54,995.01.*
- *Total €57,863.75.*

- 4.2. *The total contribution shall be paid to the Council prior to commencement of development unless the Council have agreed in writing beforehand to facilitate phased payment of the contribution in which event as part of any such agreement the Council may require the giving of security to ensure payment.*

Reason: *To facilitate provision of capital works.*

4.3. Planning Authority Assessment

- 4.3.1. A letter received with the planning application from the applicant's agent, Canavan Associates, states that the site is in a central town location beside the harbour and market square. On-street car parking is available in the vicinity and along the Main Street. Car parking facilities are also being provided at the top of the town along the Falcarragh Road. Some 50 spaces will be made available within walking distance to the Main Street and Market Square of Dunfanaghy. Sketches indicating the layout of the public car parking facility at the top of the town is attached.

4.3.2. Also submitted by way of unsolicited further information on behalf of the applicant is an extract from the Donegal Democrat newspaper published 31st October, 2019 stating that Dunfanaghy is part of a town and village renewal scheme which has been awarded €100,000 for car parking and streetscape enhancements. This it is argued, will greatly relieve the pressure of car parking demand in Dunfanaghy Village.

4.3.3. The planner's report states that the principle of the development proposal is acceptable within the designated town centre of the village and there is no objection to the mass, scale and layout of the proposal. In relation to access and parking, it is noted that under a previous application, parking was proposed to be within the enclosed ground floor courtyard area along with some external parking at the site frontage which is currently in use as public parking.

4.3.4. In terms of parking required there is a total parking requirement of 24 spaces. The existing spaces outside the bar area cannot be considered as part of the parking provision as this parking already facilitates the permitted bar premises. It is noted in the application that the applicant is intending to avail of public parking that is planned for the village. This public parking is not currently in situ, however on the strength of the correspondence from the Council in respect of a potential car park in the future, the Planning Authority consider it reasonable to attach a charge to the permission for the provision of parking giving the overall shortfall. The proposal is considered to be an extension to the existing commercial premises within the designated town centre. In terms of exemptions in such areas for car parking the following applies.

- First 2 spaces are exempt from charges.
- Space 3 and 4 allow a 50% reduction.
- Spaces 5 to 24 incorporate no reduction.
- The total parking charge therefore amounts to €54,995.01

4.3.5. In addition, given that the proposal is considered to be an extension to an existing premises, the relevant reductions for commercial charges will also apply as follows:

0 – 100 square metres – 100% reduction.

101 – 200 square metres – 50% reduction.

- 4.3.6. Taking the above on board the total commercial floor area is 811 square metres. The charge applicable therefore relates to 711 square metres with a 50% reduction on 100 square metres of the 711 square metres. The total commercial charges therefore amount to €2,864.74.
- 4.3.7. It is on this basis that the financial contribution set out in Condition No. 11 was attached.

5.0 Planning History

- 5.1. Under Reg. Ref. 16/50489 Donegal County Council granted planning permission for a change of use from retail shop to public bar area within the building.
- 5.2. Under Reg. Ref. 13/51453 planning permission was granted for alterations to the existing premises including demolition and extensions and the provision of a first floor restaurant and wine bar together with all associated site works and ancillary development.

6.0 Grounds of Appeal

- 6.1.1. A first party appeal was submitted by Canavan and Associates. The appellant seeks only to appeal the condition in respect of the financial contribution where the applicant argues that the terms of the development contribution scheme have not been properly applied. The grounds of appeal are set out below.
- 6.1.2. The imposition of the c.€55,000 parking charge threatens the commercial viability of the proposed development in a village experiencing significant decline and dereliction.
- 6.1.3. It states that the proposed development involves the reuse of a derelict building with partial demolition and new build. It therefore qualifies under sub-sections 1(a), 1(b) and 1(c) of Table 3 of the Development Contribution Scheme.
- 6.1.4. This table offers a parking charge reduction as follows:
- 6.1.5. The first four car parking spaces 100% reduction.
- 6.1.6. The next 5 – 8 car parking spaces 50% reduction.
- 6.1.7. The next 9+ car parking spaces no reduction.

- 6.1.8. The grounds of appeal go on to calculate the actual car parking requirement based on the planner's assessment of charges which amounts to €54,995 and the agent's assessment of charges which is calculated at €47,136.
- 6.1.9. Furthermore, it is stated that if the charges were calculated at €2,500 per space (as opposed to €2,618.81 per space) then the calculation for car parking would be €45,000.
- 6.1.10. Furthermore, dual use of the car parking spaces can be arrived from the different uses proposed as part of the scheme (artisan markets, restaurant, public house).
- 6.1.11. In addition, funding is proposed for a 40 to 50 public car parking facility is to be provided at the edge of the town centre.
- 6.1.12. The appeal further states that on-street car parking is already available within the market square and along Main Street.
- 6.1.13. It is noted that the public house is closed most of the day and usually only open early evening. The artisan markets would normally be a morning use and would only be available at certain times of the year. Similarly, the restaurant would normally be open for evening or lunches and would not necessarily be open at the same time as the markets. The deduction of 8 spaces is thus unfair and not practically required. On this basis it is argued that the number of spaces should be based on 16 spaces and not 24. If the charges were applied as per Table 3 the Development Contribution Scheme the financial contribution could be reduced to €26,186.40.
- 6.1.14. It is argued that the charge applied seems to be predicated on providing funding for a new planned Council car park at the Horn Head junction to the west of Harbour Square. However, funding for that car park has already been provided. Commercial rates from existing town centre business could also assist in the payment for this proposed car park. It is stated that Dunfanaghy is securing funding of €100,000 under the town and village renewal scheme that will pay for the new car park. On this basis it is unclear why the appellant is being requested to pay a very large sum amounting to almost €55,000. The car parking is estimated to be c.300 metres distance from the subject site.
- 6.1.15. Finally, it is stated that evidence from the planning file does not support the requirement for the car parking levy. There is no roads report from the Road Engineer or Roads Department or Transport Infrastructure Ireland. Thus, the Roads

Authority did not have an issue with parking nor did they seek payment of such a large financial sum for car parking. On this basis it is argued that there is no justification for a €55,000 parking charge.

6.2. Planning Authority's Response to the Grounds of Appeal

- 6.2.1. A response from Donegal County Council was received on 24th February, 2020. It states the following:
- 6.2.2. The charges of €2,618.81 per space are correct and in accordance with the parking rates effective from the 1st March, 2019 as contained in the Council's Development Contribution Scheme 2016 – 2021. The €2,500 rate referred to by the applicant was effective from the 10th October, 2016 to 28th February, 2017.
- 6.2.3. It is the Council's opinion that the development charges were correctly calculated under Section 2 of Table 3 of the Development Contribution Scheme. The proposal is classed to be an extension to an existing building within the town centre rather than a reuse of a derelict/vacant building. The proposed extension is located on part of the site on which there is a longstanding unauthorised building and as such the Planning Authority cannot reasonably consider this to be a new build on a brownfield site. The parking requirements have been applied to the proposed extension area only. The requirement for 24 spaces is substantial and particularly in a village where parking has been an issue for some time. In the absence of the applicant being able to provide any spaces the only option available was to apply charges that could be utilised by the local authority in the provision of a public car park in the village in the future.
- 6.2.4. On this basis the Planning Authority request An Bord Pleanála to uphold the financial contribution applied.
- 6.2.5. **Further Submission on behalf of the Applicant**
- 6.2.6. A further submission by Canavan and Associates on behalf of the applicant was received by the Board on the 30th March, 2020. It is summarised below.

- 6.2.7. The Council's response in relation to the inflation index update whereby the cost per parking space is €2,618.81 is noted.
- 6.2.8. The applicant does not accept that the proposal constitutes an extension as the building is overwhelmingly the reuse of an existing building and includes only a small minor extension for subsidiary sanitary facilities and storage. This is a minor extension and it is not a plausible claim to render the whole development as being under a different class for parking contributions.
- 6.2.9. With regard to the unauthorised development claim it is noted that permission was granted in 2008 for a restaurant on this site and this permission was extended to 2018. This is not an application for retention therefore exemption or reductions for car parking charges do apply. It is reiterated that adjacent car parking will be available along the front of the building as indicated on the layout plans submitted. It is also reiterated that the €55,000 car parking charge will threaten the financial viability of the proposal.

7.0 Donegal Development Contribution Scheme

- 7.1. The current Donegal Development Contribution Scheme was adopted in October, 2016. Development contribution rates for parking amount to €2,500 per space. Section 4.2 of the Development Contribution Scheme relates to index linked contributions, payments and phasing of payments. It states that all development contributions shall be index linked from the 1st March each year following the date of the implementation of the scheme in line with adjustments in the Wholesale Price Index for Building and Construction published by the Central Statistics Office. The rate of the development contribution to be applied is the rate applicable on the date of issue of the decision to grant permission and will not be subject to further index linked increases irrespective of whether the development commences that year or not.
- 7.2. Section 3.3 of the Development Contribution Scheme relates to exemptions and reductions. In relation to car parking charges it states that the following exemptions will apply.
- 1(a). The reuse of existing derelict/vacant buildings – first 4 spaces 100% reduction.

- 1(b). New build on vacant brownfield sites – spaces 5 to 8 - 50% reduction.
- 1(c). Demolition and rebuild on brownfield sites – spaces 9+ no reduction.
- 2. Extensions to existing buildings within main towns/village centre core.
 - First 2 spaces 100% exemption.
 - Spaces 3 & 4 50% reduction
 - and spaces 5+ no reduction.

8.0 Development plan Provision

- 8.1. Car parking standards are set out in Table 6 of Appendix 3 of Donegal County Council development plan 2018 – 2024. For public houses one parking space is required per 20 square metres.
- 8.2. For restaurants 1 space per 9 square metres of publicly accessible floor area is required.
- 8.3. For shops – retail food one space per 20 square metres of publicly accessible floor area is required plus parking for delivery vehicles. For shops retail non-food one space for 25 square metres of publicly accessible floor area is required plus parking for delivery vehicles.

9.0 Assessment

9.1. Preliminary Matters

- 9.1.1. Reference is made in the grounds of appeal to the development contribution being made under the provisions of Section 48(2)(c). This section of the Act relates to special development contributions. The contribution which is the subject of the current appeal as per Condition No. 11 relates to a contribution being levied under the provisions of Section 48 Development Contribution Scheme and not under the provisions of Section 48(2)(c) which relates to special contributions.
- 9.1.2. Secondly, the grounds of appeal make reference to a levy of €2,500 as set out in the Development Contribution Scheme in lieu of parking to be provided. The Board will note that the development contribution scheme makes it quite clear that the amounts cited in the said scheme are subject to index link adjustments in the wholesale price

index and, as from the 1st March, 2019 this has resulted in an increase in the contribution per car parking spaces from €2,500 to €2,618.81. This point has been noted by the appellant in his further submission of 30th March, 2020.

9.2. Parking Requirements

9.2.1. The artisan units proposed as part of the development amount to a floor area of 194 square metres. The parking standards set out in the development plan require one space for every 25 square metres and as such 8 parking spaces are required. The restaurant area has, according to the planner's report, a publicly accessible area of 146 square metres. A requirement of one space per 9 square metres of publicly accessible area a total of 16 spaces would be required for the restaurant area. There is already an established public house on the subject site. In total therefore 24 car parking spaces are required in total. The calculation of the number of car parking spaces as per the land uses proposed are in my view transparent and reasonable. Therefore, the calculation of the number of car parking spaces for which a financial contribution is required is acceptable and does not appear to be disputed by the appellant in the grounds of appeal.

9.3. Dual Use of Spaces

9.3.1. In relation to the dual use of car parking spaces, the appellant argues that the spaces associated with the artisan units will be primarily used during the morning period whereas the restaurant and public house would be most frequently used during the evening and night time. Thus, it is argued that the spaces will have dual usage and therefore some type of discount in the requisite spaces to be provided should be incorporated in the calculation of any financial contribution in lieu of such parking.

9.3.2. It is argued that the double use of spaces would be less than the 24 required where normal parking standards are applied. The appellant suggests that any financial contribution charge should be based on 16 car parking spaces rather than 24 car parking spaces.

9.3.3. In relation to this argument I note that neither the development plan nor the adopted financial contribution scheme makes reference to any provision for discounts on the basis of potential dual use of spaces. Therefore, no such provision exists in either the plan or the scheme adopted to implement such a discount.

9.3.4. Furthermore, I do not fully accept that the spaces to be provided would be exclusive used at different times of the day. The artisan units are likely to attract usage of the car parking spaces during normal business hours. While the restaurant use will extend into the evening time, it is likely that car use associated with the restaurant is likely throughout the day having regard to the lunch and early afternoon trade associated with the restaurant facility. Car parking demand for both uses therefore in my opinion would not be mutually exclusive in order to permit a discount in the financial contribution as suggested in the grounds of appeal.

9.4. **Calculating the Financial Contribution Required**

9.4.1. The Planning Authority in its response to the grounds of appeal, suggests that the development charges were correctly calculated under Section 2 of Table 3 as the proposal is classed being an extension to an existing building within the town centre rather than the reuse of a derelict/vacant building.

9.4.2. Having inspected the site I note that the proposal by and large constitutes the reuse of a vacant building. Only a small extension is proposed to the rear of the building occupying an area of c.60 square metres whereas the gross floor area of the proposed works amounts to 882 square metres. The proposed area to be extended therefore is less than 10% of the building to be reused. On this basis I would agree with the appellant that the proposal is overwhelmingly the reuse of an existing building. On this basis I consider that the parking charges should be applied as per the requirements set out under Sections 1(a), 1(b) and 1(c) of Table 3 in the Development Contribution Scheme. As such there should be 100% exemption on the first four spaces, a 50% reduction on spaces 5 to 8 and no reduction in relation to additional spaces above 8.

9.4.3. On this basis I would recommend that the Board levy the financial contribution as follows:

Spaces 1 – 4 = 0

Spaces 5 – 8 = €5,237.62

Spaces 9 – 24 = €41,900.96

Total contribution for car parking = €47,138.58.

When the general commercial levy of €2,864.74 is added the total financial contribution in accordance with the Donegal County Council Development Contribution Scheme 2016 – 2021 made under the provisions of Section 48 of the Planning and Development Act would amount to €50,003.32.

10.0 Recommendation

Arising from my assessment above I recommend that the Board amend the financial contribution set out in Condition No. 11 incorporating the amended amount of €50,003 and issue a decision as follows.

11.0 Decision

The Board in accordance with Section 48 of the Planning and Development Act 2000, as amended, considered based on the reasons and considerations set out below that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of Condition No. 11 and directs the said Council to amend the decision so that it shall be as follows:

Condition No. 11

The developer shall pay to the planning authority a financial contribution of €50,003 in respect of public infrastructure and facilities benefiting the 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 under Section 48 of the Planning and Development Act 2000, as amended.

Paul Caprani,
Senior Planning Inspector

8th June, 2020.