

# Inspector's Report

## ABP-307849-20

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<b>Development</b>	Retention permission for sub-division and formation of Lower Ground Floor Retail Units, and shared escape corridor.
<b>Location</b>	Boyne Centre, Bolton Street, Drogheda, Co Louth
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	20/240
<b>Applicant(s)</b>	Leonard and Woods Development Ltd.
<b>Type of Application</b>	Retention permission.
<b>Planning Authority Decision</b>	Grant Retention.
<b>Type of Appeal</b>	First Party v's Development Contribution.
<b>Appellant(s)</b>	Leonard and Woods Development Ltd.
<b>Observer(s)</b>	N/A.
<b>Date of Site Inspection</b>	N/A.

**Inspector**

Stephanie Farrington

## 1.0 Site Location and Description

- 1.1. The subject application relates to retention permission for works to units 6A,6D and 6E of the Boyne Centre, Bolon Street, Drogheda, Co. Louth. The Boyne Centre is located on the corner of Georges Street and Bolton Street on the northern edge of Drogheda town centre.

## 2.0 Proposed Development

- 2.1. The proposed development comprises retention permission for sub division and formation of Lower Ground Floor Retail Units 6A, 6D and shared escape corridor servicing units 6A and 6E. Minor elevational changes have been carried out to the south elevation to provide new shop front entrances and signage zones above the units.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Louth County Council issued a decision to grant permission for the proposed development in July 2020 subject to 2 no. conditions.
- 3.1.2. Condition no. 2 relates to a development contribution of €30,780 under the Council's Section 48 Development Contribution Scheme on the basis of the following calculation:

(a) Infrastructure (including roads and surface water) - €48 x 513 sq.m. = €24,624

(b) Amenity (including parks, recreation, amenity, and community facilities) €12 x 513 sq.m. = €6,156

Total = €30,780

*Reason: The provision of such public infrastructure and facilities in the area of the Planning Authority has benefited or will benefit the proposed development and it is considered reasonable that the developer should contribute towards the cost of their provision.*

## 3.2. **Planning Authority Reports**

### 3.2.1. Planning Reports

The planner's report which informs the decision of Louth County Council to grant permission for the proposal sets out the following rationale for the proposal:

- Medical type offices are considered acceptable in principle with the "town centre" zoning objective.
- The combined area of the retention application equates to 513 sq.m. in area.
- Development contributions will be applied at a rate of €60/ sq.m. (€48 for infrastructure and €12 for amenity).
- Only relevant previous permission is PA Ref 09/510046 which was for subdivision of ground floor retail unit and with omission of lift core and lobby granted under PA Ref: 08/119.
- In the view of the planning officer, the permission affecting the units did commence but no actual change in use took place.
- No reductions apply for retention applications as per section 6.1 Exemptions under the Louth County Council Development Contribution Scheme 2016-2021.

### 3.2.2. Other Technical Reports

None.

## 3.3. **Prescribed Bodies**

None.

## 3.4. **Third Party Observations**

None.

## 4.0 Planning History

PA Ref 08/510119: Planning permission granted in September 2008 for alterations & refurbishment consisting of internal amendments and new façade treatment to existing structure. Condition no. 2 relates to a Section 48 Development Contribution.

PA Ref 09/510046: Planning permission granted in July 2009 for sub-division of existing lower ground floor retail unit south (Londis), with omission of lift core & lobby granted under PA. Ref. 08/500119 & change of use to provide for storage area (19 sq.m) to existing cinema & new food takeaway unit (73 sq.m), new shopfront, signage & all associated works. Condition no. 2 of the permission relates to a Section 48 Development Contribution.

## 5.0 Policy Context

### 5.1. Drogheda Borough Development Plan 2011-2017

- 5.1.1. The appeal site is zoned for town centre purposes with an objective “*to protect and enhance the special physical and social character of the existing town centre and provide for new and improved town centre facilities and uses*” within the Drogheda Borough Council Development Plan 2011-2017.

### 5.2. Louth Development Contribution Scheme 2016-2020

- 5.2.1. The Louth Development Contribution Scheme 2016-2020 is the relevant scheme. Article 6 of the Development Contribution Scheme relates to Exemptions and Reductions. This outlines that exemptions shall not apply to permissions for retention.
- 5.2.2. Note 6 outlines that no charge will apply to retention applications where the application relates solely to minor amendments of the original grant where there is no increase in floor area.

### 5.3. Development Contributions - Guidelines for Planning Authorities 2013

- 5.3.1. The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as

amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in performance of their functions under the Planning Acts.

- 5.3.2. 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. Authorities are reminded 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.

#### 5.4. **Natural Heritage Designations**

The site is located c. 300m from the River Boyne And River Blackwater SAC (Site Code 002299).

## 6.0 **The Appeal**

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

A first party appeal has been submitted by John Spain Associates on behalf of the applicant in respect of Condition no. 2 of the notification of decision of Louth County Council to grant permission for the development. The following grounds of appeal is set out:

- Requests An Bord Pleanála to restrict consideration to appropriateness of Condition no. 2 only.
- It is requested that Condition no. 2 is removed from the permission.
- A case is made that the provisions of the Louth County Council Development Contribution Scheme 2016-2021 have been incorrectly applied.
- Proposed development relates to subdivision of an existing retail unit and does not create any additional floorspace. Classification as an extension is incorrect and provisions of the scheme has been misapplied.
- Reference is made to Article 6 of the Development Contribution Scheme and guidance set out in row 6 which details that there is no charge for retention

applications where it relates to minor amendments to the original grant where there is no increase in floor area. The proposal for which retention permission is sought would fall within this category.

- The relevant permission is that permitted under PA Ref 08/119. This permission was implemented, and relevant contributions paid. The development permitted under PA Ref 09/510046 was not implemented.
- Refers to the Development Contributions Guidelines published by the DOECLG in 2013 which advises planning authorities against double charging.
- Development contributions have been paid in full for all existing uses and implemented permissions and the requirements for additional payments as set out under Condition no. 2 is unjustified.
- The planning authority is double charging for contributions paid for permission PA Ref 08/119 which established the retail use on the site.

## 6.2. Planning Authority Response

Correspondence from Louth County Council dated the 8<sup>th</sup> of September 2020 outlines the following:

- Provides overview of the Development Contribution Scheme and Planning History for the site.
- Application was assessed under PA Ref: 09/510046 which had commenced but no change of use taken into place. On review it is clear that PA Ref: 08/911 is the relevant permission. The unit has been assigned for retail use as detailed in Drawing no. 101 Rev. no. A. Development contributions applicable to this permission have been applied.
- It is accepted that the application of Condition no. 2 of 20/240 will result in a double charging and would be contrary to the Development Contribution Guidelines and the provisions of the Louth County Development Contribution Scheme.

- Recommends that condition no. 2 is removed from the grant of permission granted under PA Ref: 20/240 on the basis that the financial contribution would result in a double charging.

## 7.0 Assessment

7.1. This First Party Appeal is solely against Condition no. 2 of the Council's permission relative to development contributions. Therefore, the application is not considered 'de novo' and issue in question in this case is solely whether the Council's Development Contribution Scheme has been properly applied.

7.2. Condition no. 2 of Louth County Council's notification of decision to grant permission for the proposed development relates to a development contribution of €30,780 under the Council's Section 48 Development Contribution Scheme. The following basis of calculation is set out within the report:

- Infrastructure (including roads and surface water) - €48 x 513 sq.m. = €24,624
- Amenity (including parks, recreation, amenity and community facilities) €12 x 513 sq.m. = €6,156
- Total = €30,780

*Reason: The provision of such public infrastructure and facilities in the area of the Planning Authority has benefited or will benefit the proposed development and it is considered reasonable that the developer should contribute towards the cost of their provision.*

7.3. The relevant permission is that permitted under PA Ref 08/510119. Both the applicant and planning authority confirm permission was implemented and relevant contributions paid. The development permitted under PA Ref 09/510046 was not implemented.

7.4. The nature of the subject application together with the planning history of the site is of relevance in assessing the subject appeal. On review of the application drawings, I consider the works for which retention permission relates to fall within the classification of "minor amendments" of the parent permission pertaining to the unit where there is no increase in floor area. In accordance with Note 6 of the Development Contribution Scheme no charge applies in such instances.



- 7.5. On review of the planning history, the grounds of appeal and the response to the appeal received from Louth County Council I accept that the parent permission pertaining to the unit is PA Ref: 08/510119. The response to the grounds of appeal from Louth County Council outlines that the permitted use of the unit is retail as evidenced in Drawing no. 101 Rev No. A. No change to the permitted use is applied for under the current application.
- 7.6. Having regard to the issues raised, I would consider that the levy imposed under Condition no. 2 would result in a double charging of contributions. I consider that the provisions of the Louth County Council Development Contribution Scheme 2016-2021 have been incorrectly applied in this instance and I recommend the removal of Condition no. 2.

## 8.0 Recommendation

- 8.1. I recommend that the planning authority be directed to REMOVE Condition no. 2 of PA Ref 20/240.

## 9.0 Reasons and Considerations

- 9.1. The Board considered the Louth County Council Development Contribution Scheme 2016-2020 is the applicable contribution scheme in this case and that the terms of the scheme have been incorrectly applied and the levy imposed under Condition no. 2 would result in a double charging of contributions.

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Stephanie Farrington  
Senior Planning Inspector  
24<sup>th</sup> of November 2020