



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308145-20

---

<b>Development</b>	Demolition of existing derelict structures, the construction of a part 2 storey and part 3 storey care home building and a modification of the common boundary between the previously approved permission, Reg Ref 18/87 and this current application.
<b>Location</b>	Brewery Lane Back Lane Market Square, Rathdrum, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	19/1055
<b>Applicant(s)</b>	Pintarus Limited.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party V. Development Contribution only.
<b>Appellant(s)</b>	Pintarus Limited.
<b>Observer(s)</b>	None.

**Date of Site Inspection**

Not applicable.

**Inspector**

Susan McHugh

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	7
3.4. Third Party Observations .....	7
4.0 Planning History.....	7
5.0 Policy Context.....	9
5.1. Rathdrum Local Area Plan 2017 .....	9
5.2. Wicklow County Development Plan 2016-2022 .....	10
5.3. Wicklow County Council Development Contribution Scheme 2015 .....	11
6.0 The Appeal .....	12
6.1. Grounds of Appeal .....	12
6.2. Planning Authority Response .....	14
6.3. Observations .....	16
6.4. Further Responses.....	16
7.0 Assessment .....	19
8.0 Recommendation.....	24
9.0 Reasons and Considerations.....	24

## 1.0 Site Location and Description

1.1. The appeal site is located in the centre of Rathdrum, a relatively small town in south west Wicklow. The Wexford to Dublin railway line passes to the east of the town. The site is located at Market Place at the centre of the town. The lands are positioned behind the retail units that front onto Market Place and the site stretches north westwards with Gilberts Row to the north and Brewery Lane to the south. It is a large extensive site that comprises unfinished development at its eastern end with cleared ground now overgrown at its western end. The ground level rises to the west from Market Place.

## 2.0 Proposed Development

2.1. The application was lodged with the planning authority on the 22/10/2019 and is for permission for;

- Demolition of existing derelict structures (**808.5sqm**), and
- Construction of a part 2 storey and part 3 storey care home building consisting of **126 beds**, (**gross floor area 6,341sqm**)

2.2. Permission is also sought for;

- External landscaped areas, a roof top landscape garden,
- **54** car parking spaces, 6 bicycle parking spaces, pedestrian entrance link to adjacent development, entrance roadway,
- Boundary treatment and all other associated site works.

2.3. The stated site area is 0.5944 ha. A modification of the common boundary between the previously approved permission Reg.Ref.18/87 is also proposed.

2.4. Further plans and details submitted 07/07/2020 triggered revised public notices.

2.5. The proposal as amended comprises:

- Revision to site boundary outlined in red, site area 0.6347 ha.
- Reduction in no. of beds to **119**
- Increase in no. of car parking spaces to **65**
- Omission of the lower ground floor level

- Reduced building footprint (Block 1)
- Provision of a new additional entrance off Brewery Lane
- Omission of the proposed pedestrian link between the proposed development and the development permitted under PA Reg.Ref.18/87.

2.5.1. The application was accompanied by a planning statement and design rationale prepared by SBA Architects.

## 3.0 Planning Authority Decision

### 3.1. Decision

The decision of the planning authority was to **grant** permission subject to 16 no. conditions.

Of relevance to this appeal is the following;

#### **Condition no. 2**

'Before development commences the developer shall pay the sum of €279,004 (two hundred and seventy nine thousand and four euro) to the Planning Authority as a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

The contribution sought is in accordance with Wicklow County Council's Development Contribution Scheme for the area in which the site is located and Section 48(1) of the Planning and Development Act 2000.

Where the contribution remains unpaid the monies payable shall be updated in accordance with the Wholesale Price Index as published by the Central Statistics Office on the 1<sup>st</sup> January of each year following the date of the Final Grant.

**Reason:** The public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof.'

### 3.2. Planning Authority Reports

#### **Planning Reports**

3.2.1. The 1<sup>st</sup> planning report dated 13/11/2019 is the basis for the Planning Authority decision. It includes;

- Site is zoned for town centre development and is located within Rathdrum's Retail Core.
- Site forms a significant portion of the opportunity site OP1 Market Square as designated under the Rathdrum Local Area Plan.
- It is an objective for OP1 to provide for a mix of uses capable of accommodating retail/commercial/residential/community development.
- Recommends further information in relation:
  - Works proposed outside of redline site boundary
  - Impact upon adjoining town centre zoned lands
  - Proposals for active street frontage in compliance with objectives for OP1 as set out in the Rathdrum LAP
  - Demonstrate adequate provision of parking
  - Address roads, traffic and pedestrian facilities
  - Irish Water requirements in relation to line of foul sewer
  - Surface/storm water drainage proposals connection and design details
  - Demonstrate that proposed development represents an appropriate use on town centre lands, impact on role and function of the retail core area of Rathdrum, and demand for development of this nature and scale

3.2.2. Further plans and details submitted 07/07/2020 triggered revised public notices.

3.2.3. The 2<sup>nd</sup> planning report dated 12/08/2020 following further information includes;

- Revised proposals accord with the objectives for the area as set out in the Rathdrum Local Area Plan, and
- Acceptable in terms of scale and design
- Development Contributions

- New Build 6,341sqm<sup>1</sup> x €44 = €279,004 (Footnote <sup>1</sup> As noted on site location plan/OS map Drawing No. P18-102-000 F, received 07/07/2020).
  - Demolition 808.5sqm of the existing development on site. The structures (partially constructed now derelict) were constructed under a previous grant of permission PRR05/3375. Development contributions do not appear to have been paid.
- Recommends a grant of permission.

#### 3.2.4. Other Technical Reports

- **Transportation, Water and Emergency Services (TWES):** 1<sup>st</sup> Report recommends further information. 2<sup>nd</sup> Report recommends no objection subject to conditions.

#### 3.3. Prescribed Bodies

- **Irish Water:** 1<sup>st</sup> Report recommends further information. 2<sup>nd</sup> Report recommends no objection subject to requirements.
- **Roads Authority:** 1<sup>st</sup> Report recommends further information. 2<sup>nd</sup> Report recommends no objection.

#### 3.4. Third Party Observations

Objections to the proposed development received by the planning authority have been forwarded to the Board and are on file for its information.

#### 4.0 Planning History

There is a lengthy planning history relating to this site, of relevance to this appeal are the following;

**PA Reg.Ref.18/87:** Permission **granted** July 2018 for demolition of existing blocks 3, 4, 5, 6, 7 and 8; change of use of Block 1 from credit union to commercial and Block 2 from library to commercial; construction of a new 2-storey primary care

centre; construction of a new single storey building to accommodate a library, café and pharmacy and 70 car parking spaces on a site of 0.5584 hectares.

**Condition No.2** – Section 48 Development Contribution **€625,000**.

*Part of site:*

**PA Reg.Ref. 17/1355:** Change of use from pharmacy to use as a credit union.

**PA Reg.Ref. 17/48:** Change of use of Block 6 from public library and tourist office to use as a credit union (previous applications 05/3375 and 15/1 refer).

**PA Reg.Ref. 16/794:** Minor alterations to Ref. 15/1.

**PA Reg. Ref. 15/1:** Change of use from commercial and office use of existing buildings (constructed pursuant to Ref. 05/3375) to Block 1 – pharmacy, Block 4 – dental and GP, Block 5 – HSE primary care centre, Block 6 – public library and tourist office.

**PA Reg.Ref. 05/3375:** Permission **granted** July 2006 for Mixed use development of 55 residential units and 2,900 sq.m of commercial/office residential development including new buildings and refurbishment of existing buildings. This permission has been partly implemented.

**Condition No.2** – Section 48 Development Contribution of **€625,000**.

**Condition No. 5** - Security Bond of **€240,000**.

**PA Reg.Ref. 02/7274:** Mixed use development of 61 residential units and 3,723 sq.m of commercial and civic development.

*Vacant Site Levy*

**PA VS/Rathdrum/08 ABP-306730-20:** Appeal in accordance with section 18 of the Urban Regeneration and Housing Act 2015 against payment of a Vacant Site Levy. Notice **confirmed** August 2020; - Vacant Site Levy had been correctly calculated by the PA. The Boards reasons and considerations had regard to:

(a) the information submitted to the Board by the planning authority in relation to the entry of the site on the Vacant Sites Register,

(b) the grounds of appeal submitted by the appellant,

(c) the report of the Inspector,



- (d) the neglected and ruinous condition of the buildings on site which detracts from the residential amenities of the area,
- (e) that the majority of the site is and was vacant,
- (f) that the amount of the levy has been correctly calculated at 7% of the site value in 2019, and
- (g) that there has been no change in the ownership of the site.

A levy of €70,000 (as applying from 2019 onwards and as annually charged).

#### *Vacant Site Register*

**PA VS/Rathdrum/08 ABP-302623-18:** Appeal in accordance with section 9(1) of the Urban Regeneration and Housing Act 2015 against the entry on the Vacant Sites Register by Wicklow County Council in respect of lands measuring 1.117 hectares at Market Place, Rathdrum, County Wicklow by Pinturas Limited.

Appeal S.9. Notice **confirmed** April 2019. The Board's reasons and considerations had regard to:

- (a) the information submitted to the Board by the planning authority in relation to the entry of the site on the Vacant Sites Register,
- (b) the grounds of appeal submitted by the appellant,
- (c) the report of the Inspector, and
- (d) the neglected condition of the site and the neglected and ruinous structures thereon, which it is considered has adverse effects on existing amenities and on the character of the area,

the Board considered that it is appropriate that a notice be issued to the planning authority to confirm the entry on the Vacant Sites Register.

## **5.0 Policy Context**

### **5.1. Rathdrum Local Area Plan 2017**

The site is located on lands zoned '**TC – Town Centre**' - '*To provide for the development and improvement of appropriate town centre uses including retail,*

*commercial, office and civic use, and to provide for 'Living Over the Shop' residential accommodation, or other ancillary residential accommodation', and within an **Action Area/Opportunity Site, OP1 Market Square**, objectives on this site include:*

- To provide for a mix of uses capable of accommodating retail / commercial / residential / community development;
- A 'town centre' type density will be required to be achieved across the site; a site coverage of at least 50% and a plot ratio of at least 1:1 will be expected;
- Those parts of any proposed development that adjoin existing streets shall provide for an active street frontage, that is in keeping with the existing character of the town; existing buildings of substance or of streetscape / historical character shall be retained and sympathetically redeveloped.

## 5.2. **Wicklow County Development Plan 2016-2022**

The current Wicklow County Development Plan 2016-2022 refers to Urban Regeneration and Housing in Chapter 4 of the Plan and specifically at Policy HD19 where it states:

In many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:

- a. adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- b. urban blight and decay,
- c. anti-social behaviour, or
- d. a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses

It is an objective of this plan to encourage and facilitate the appropriate development of such sites/lands and all available tools and mechanisms, including the Vacant Site levy, may be utilised to stimulate such development.

In this regard, it is considered that all lands zoned 'Town Centre' in this plan (this refers to Level 5 settlements) as well as the following zones in larger towns (with standalone plans) may include sites that are in need of renewal and regeneration,

and these areas will be examined in detail to determine if there are sites where the Vacant Site Levy should be applied.

Rathdrum is a Settlement Zone 3 where TC and VC are included for the purposes of the Act. The site is zoned TC in the current Plan.

### 5.3. Wicklow County Council Development Contribution Scheme 2015

- 5.3.1. The scheme refers to the basis for determination of contributions, categories of development and rates of charge, and exemptions and reductions.
- 5.3.2. The development contribution scheme outlines that the following contributions are payable with regard to commercial development.

**Table 4.3** Industrial/Commercial Development

<b>Development Type</b>	<b>Class 1 €/m<sup>2</sup></b>	<b>Class 2 €/m<sup>2</sup></b>	<b>Class 3 €/m<sup>2</sup></b>	<b>Total €/m<sup>2</sup></b>
Commercial e.g. Retail, Retail Warehousing, Office, etc.	32	4	8	44

- 5.3.3. In relation to ‘double charging’ **Section 4.10** of the DCS states;  
*‘There will be no double charging. Credit will be given for previously paid development contributions or previously authorised use or existing floor areas. Development contributions shall not be charged on a change of use permission, where such change of use does not result in a significant intensification of demand on public infrastructure.’*
- 5.3.4. In relation to ‘Exemptions’ **Section 5.1** of the DCS states;
- 5.3.5. *‘S48(3)(c) of the Planning and Development Act 2000, as amended, allows for a reduction in contributions or no contributions in certain circumstances under the terms of the Scheme. Table 5.1 details the exemptions that are allowed under the scheme.’*

**Table 5.1**

<b>Development Type</b>	<b>Exemption Reduction</b>
Commercial development in the core town centre areas/main street locations, that consolidates and strengthens the historical town.	10%

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal was lodged by The Planning Partnership on behalf of the applicant. It relates to **condition no. 2** of the Planning Authority's decision to grant planning permission which includes the payment of **€279,004** in accordance with the Wicklow County Council Development Contribution Scheme 2015 (WCCDCS).

The appeal was accompanied by a number of appendices including a copy of the following;

- Appendix A - Notification of Decision, PA Reg.Ref.19/1055
- Appendix B - Final Scheme Gross Floor Areas by SBA Architects
- Appendix C - Planners Report PA Reg.Ref.19/1055
- Appendix D - Planners Report PA Reg.Ref.18/87
- Appendix E - Schedule of Conditions PA Reg.Ref.05/3375
- Appendix F - Further Information response of Applicant as presenting employment benefits PA Reg.Ref.19/1055
- Appendix G – Development Contribution Scheme 2015

The grounds of appeal can be summarised as;

- The correct scale of the development as amended during the Further Information Response process, reduced from **6,341sqm**, applied for, to the **5,804sqm** as granted.

- The existing buildings on site requiring demolition and with permission under a previous grant of permission (WCC Reg.Ref.05/3375) have an area of **808.5sqm**. This area should be deducted from the total floor area resulting in a floor area of **4,995.5sqm** (5,804sqm-808.5sqm = 4,995.5sqm). On this basis a development contribution of **€219,802** applies (4,995sqm x €44 = €219,802).
- The allowance of a further **10% reduction** on urban centre development proposals at Table 5.1 also apply.
- In combination with recently applied Vacant Site Levies associated with the Urban Regeneration and Housing Act 2015 (WCC VSL Reg.Ref. VS/Rathdrum/08 and ABP-306730-20) of **€70,000** per annum (as applying from 2019 onwards and as annually charged) the potential for 'double-charging' is increased.
- Whilst it is 'mandatory' to draw up a DCS its application is discretionary' by nature and seek the consideration of the Board under Section 48(10)(b) of the Planning and Development Act 2000-2020 (as amended) that the proper application of the Scheme as referred by Condition No. 2 of the associated Notification of Decision to Grant Reg.Ref.19/1055.
- Contend that the wider benefits of the proposed and allowed development (WCC19/1055) allowing for reduced contributions or waivers for development in support of town centre development schemes, the potential for overcharging of approved floor areas, the potential double charging of constructed floor space and the ability of the PA may allow for a reduced or no contribution in circumstances under Section 48(3)(c) with the provisions allowed in the Adopted Scheme.
- Acknowledge that while it is essential for planning authorities to raise funds for public infrastructure it is not mandatory that they impose Development Contributions, as worded in the act: "a planning authority **may** when granting permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority". This implied flexibility and potential partnership recognised within the

Ministerial Guidelines on Development Contributions should be afforded suitable opportunity within the subject appeal.

- Seek the available reductions associated with the DCS as would present a figure of **€197,284**. This is based on the deduction of the area to be demolished from the total floor area to give 4,996sqm (5,804sqm – 808.5sqm = 4,996sqm).
- The floor area is then further reduced by 10% to give 4,496sqm (4,996sqm – 499.55sqm = 4,496sqm). A contribution of €197,284 is calculated on the basis of (4,496sqm x €44=€197,284). (I note this appears to be an error and should be €197,824)
- In the interests of positive employment and regenerative benefits set directly relatable to the URHA presented and at the discretion referred and allowed, as to prevent double-charging occurring, a figure of **€127,384** can be appropriately set. This is calculated on the further deduction of the vacant site levy of €70,000, (€197,284-€70,000 = €127,384). (I note this appears to be an error and should be €127,284).

## 6.2. Planning Authority Response

- 6.2.1. The Board requested specific details of the basis on which the calculation was made, calculation involved, and the specific provisions in the scheme on which the calculation was based.

The Planning Authority in a response dated 5<sup>th</sup> October 2020 refers to;

### Incorrect Gross Floor Area

- Development Contribution was calculated on the basis of the stated gross floor area of 6,341sqm. This is the total gross floor area of the development as detailed on the Proposed Site Layout Plan, Drawing No. P18-102 000 Rev F, submitted as part of the further information response on the 7<sup>th</sup> July 2020.
- It appears from details submitted with the appeal documentation that this figure was incorrectly cited and that the correct Gross Floor Area of Development Permitted is 5,804sqm. This correction is noted.

## Double Charging

- The permitted development includes for the demolition of 808.5sqm of partially constructed development previously permitted under the grant of planning permission PA Reg.Ref.05/3375.
- Development permitted under PA Reg.Ref.05/3375 required the payment of development contributions (applied at a rate of €625,000 under condition 2). Development was not completed and no contributions were paid. The PA is not of the opinion that an offset can be given in this case.
- PA Reg.Ref.18/87 – Previous grant of planning permission refers to the development of
  1. The demolition of existing buildings blocks 3,4,5,6,7 and 8
  2. The change of use of block 1 – from credit union to commercial – and block 2 – from library to commercial
  3. The construction of a new two storey building to contain a HSE – Primary Care Centre.
  4. The construction of a new single storey building to contain a Library, Café and Pharmacy, and
  5. 70 car parking spaces, access road, boundary treatments and all other associated site works on 0.5584ha.
- The site area (lands within the redline site boundary) incorporates c.2,371sqm of existing development that had also been constructed under the previous grant of planning permission PA Reg.Ref.05/3375. Development contributions required under condition 2 of PA Reg.Ref.05/3375 were not paid.
- As part of the development permitted under PA Reg.Ref.18/87, 2,169sqm of the existing 2,371sqm of development on site were/are to be demolished. No 'off set' in development contributions under PA Reg.Ref.18/87 were given for this demolition.

- Following demolition, c202sqm of the existing development was to be retained on site. As this 202sqm of development was constructed on foot of the previous grant of planning permission PA Reg.Ref.05/3375, it is considered appropriate that the development contributions owed for this development (now outstanding) are paid under that permission. Therefore, they were not included as part of the contribution required under PA Reg.Ref.18/87.
- Security bond of €120,000 was paid by previous developers under Condition no.5 of PA Reg.Ref.05/3375. The PA does not consider it reasonable to utilise this security bond to offset the development contributions for the development permitted under this application or under PA Reg.Ref.18/87.

#### Exemptions

- Table 5.1 of the DCS allows for 10% reduction for commercial development in the core town centre areas/main street locations, that consolidates and strengthens the historical town centre. The PA is not however satisfied that the proposed development, due to its nature as a nursing home, its location and its lack of integration with the main street, would qualify for this reduction.
- On the basis of the above the Planning Authority would request that the Board interprets the DCS as interpreted by the PA and that the Board apply contributions to this scheme based on the reduced/corrected Gross Floor Area of 5,804sqm as follows:
  - 5,804sqm x €44=€255,376.

#### 6.3. **Observations**

None.

#### 6.4. **Further Responses**

A further response was submitted by The Planning Partnership on behalf of the applicant dated 30<sup>th</sup> October 2020 indicates;

Issues arising on foot of WCC submission



1. *Past failures to comply of previous landowner and past failures of PA to enforce.*

- Assert that there have been significant inconsistencies with the application of the scheme, and that the applicants have been unfairly penalised by the past failures to comply of previous landowner/developer, and the failure of the PA to attain the 'prior to commencement' financial contribution of €625,000.
- Contend that development should not have commenced under PA Reg.Ref.05/3375 without the requisite development contributions paid in full on the lands and the site would not have the burden of benefit of existing built footprint.
- Failure of the PA to undertake their role in collecting a 'prior to commencement' development contribution should not unfairly penalise subsequent landowners.
- Submit that the fact that contributions were not collected should not restrict the ability of the current applicant to claim a discount associated with a built footprint of 808.5sqm which in itself presents an additional cost/burden to the applicant, the cost of demolition and associated waste management. Burden appears to be weighted towards the against the developer.
- Refer to Section 4.10 of the Scheme and contend that the use of the word or can be interpreted as allowing for previously authorised or existing floor area which may not have had their contributions paid previously, as in the subject case.

2. An available security bond of €120,000 not apparently utilised to date.

- The Developer's Bond of €120,000 is available to the PA under PA Reg.Ref.05/3375. This could have been utilised across the site either to demolish and tidy the lands where part built elements do not appear to benefit from a discount.
- The Bond is being held unfairly during the current Vacant Site Levy process.

- The Developer's Bond has not been used to date in the clearance of the site, and this could be used in the 'offsets' on costs.
3. The significance of importance of the site as a vacant site vs. limited importance to the consolidation of the Town Centre.
- Lands are zoned Town Centre and defined as Opportunity Site No.1 within the Rathdrum Local Area Plan. Subject site represents a 'core' town centre 'opportunity site' through which its commercial development as a nursing home will only serve to benefit, strengthen and consolidate the pattern of development locally and the range of active uses locally to the over-riding benefit of the town providing up to 70 no. jobs with annual earnings of €2.6 million injected into the local economy.
  - Submit that that Exemptions available and referred at Table 5.1 of the WDCS allow for commercial development in town centre and main street locations as strengthening the historical town centre and allow a further 10% reduction on the contribution scheme.
  - Submit that whatever final amount is considered appropriate by the Board in this instance a further 10% reduction is allowable via the Adopted 'Exemption Rate of 10%'.

In conclusion the applicant;

1. Seeks the available reductions associated with the applicable DCS which would present a figure of **€197,284**, and
2. In the interests of the positive employment and regenerative benefits directly relatable to the URHA presented and the discretion referred and allowed, as to prevent further double – charging occurring, a figure of **€127,284** (discount associated with Vacant Site Levy applicable and set at €70,000 p.a.) can be appropriately presented.

Request that the Board **amend** the financial contribution conditions as suggested.

## 7.0 Assessment

- 7.1.1. This is an appeal in relation to the application of a development contribution only. The Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.
- 7.1.2. An appeal may be brought to the Board where an applicant for permission under section 34 considers the terms of the Development Contribution Scheme have 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.

### Gross Floor Area Proposed

- 7.1.3. The current proposal is for permission for construction of a care home facility. There is a long planning history associated with the overall site.
- 7.1.4. Under a previous permission works commenced on site but were not completed and as part of the current proposal it proposed to demolish these works.
- 7.1.5. The stated area of the site as indicated on the application form is 0.5944 ha. The stated floor area of the proposed 126 bed care home facility is 6,341sqm.
- 7.1.6. The application was amended by way of further information, such that a revised/reduced site area and development footprint of one of the blocks was proposed.
- 7.1.7. The revised 119 bed care home facility which was amended to exclude the lower ground floor level, including a reduction in the building footprint of Block 1, was incorrectly annotated, referring to the original floor area of 6,341sqm.
- 7.1.8. The original floor area formed the basis of the PA's calculation of the development contribution, and this is clearly set out and annotated in the planners report referring to the site location plan/OS map Drawing No.P18-102-000 F, received 07/07/2020.
- 7.1.9. The applicant submits however, that the floor area indicated was in error, and as part of the appeal has submitted a comprehensive schedule of floor areas, detailing the correct floor areas.

- 7.1.10. The gross floor areas as detailed in the final scheme have been prepared by SBA Architects on behalf of the applicant and are included in Appendix B of the appeal. This refers to a revised gross floor area of 5,804sqm.
- 7.1.11. The PA have accepted this discrepancy in stated floor areas and submit that the correct calculation of the development contribution, therefore, should be based on a gross floor area of 5,804sqm.
- 7.1.12. I have examined the relevant floor plans, revised schedule of floor areas, and submissions as part of the appeal, and am satisfied that the gross floor area of 5,804sqm as now detailed by the applicant to be correct.

#### Calculation of the Development Contribution

- 7.1.13. The calculation of the levy by the PA indicates that that the levy was calculated having regard to Table 4.3 of the Wicklow County Development Contribution Scheme. Table 4.3 refers to commercial development, where a total charge of €44.00 per sqm of development applies.
- 7.1.14. The PA's calculation of the levy of €279,004 was based on the stated floor area, and this is clearly set out and annotated in the planners report (6,341sqm x €44 = €279,004).
- 7.1.15. Based on the correct/reduced floor area of 5,804sqm a reduced levy of **€255,376** applies (5,804sqm x €44 = €255,376).

#### Exemption for Area Proposed for Demolition

- 7.1.16. The applicant submits that existing buildings on site permitted under PA Reg.Ref.05/3375, which are now proposed to be demolished, have not been discounted from the calculable floor area for contributions as allowable under the Scheme. The area proposed for demolition is 808.5sqm.
- 7.1.17. The applicant has calculated that this area should be deducted from the total floor area resulting in a floor area of **4,995.5sqm** (5,804sqm-808.5sqm = 4,995.5sqm). On this basis a development contribution of **€219,802** applies (4,995sqm x €44 = €219,802).
- 7.1.18. The PA accepts that these structures (partially constructed now derelict) were constructed under a previous grant of permission, PA Reg.Ref.05/3375. However, it is also noted by the PA that development contributions do not appear to have been

paid. Condition no.2 of that permission required a development contribution of €625,00.00.

7.1.19. The PA assert that the existing buildings on site requiring demolition are not able to be 'offset' or discounted from the calculable floor area for contributions as allowable by the WCCDCS 2015.

7.1.20. I would note that in response to the PA's assertion that development contributions were never paid, the applicant has not provided any evidence to the contrary. Instead, the applicant asserts that it was the responsibility of the PA to attain the financial contributions prior to commencement of development, and that the applicants have been unfairly penalised by the past failures to comply of previous land/owner developer.

#### Double Charging under Section 4.10 of the DCS

7.1.21. The applicant refers to Section 4.10 of the DCS which relates to 'double charging', and specifically to where it states, 'there will be no double charging'.

7.1.22. Section 4.10 also states that '*Credit will be given for previously paid development contributions or previously authorised use or existing floor areas.*'

7.1.23. The applicant contends that the use of the word 'or' can be interpreted as allowing for previously authorised or existing floor areas which may not have had contributions paid previously, as in the subject case.

7.1.24. I have considered the case made by the applicant in respect of the development being double charged and Section 4.10 of the DCS. I have also had regard to the planning history, and development contributions attached to the site.

7.1.25. While I would accept that this section of the DCS is open to interpretation, the overriding consideration is that under the previous grant of permission PA Reg.Re.05/3375 development contributions required under condition 2 were not paid. I am, therefore, of the view that it cannot be reasonably argued that under the current application that the applicant is being double charged.

7.1.26. The PA have also noted that the interpretation of the current DCS is consistent with that previously where no 'off set' in development contributions under Reg.Ref.18/87 were given for the area to be demolished.

7.1.27. I am satisfied therefore, that in this instance an 'offset' in relation to the partially constructed building with an area of 808.5sqm is not appropriate, based on the non-payment of financial contributions under the relevant permission PA Reg.Ref.05/3375.

#### Security Bond

7.1.28. The applicant submits that the Developers Bond of €120,000 is available to the PA which was paid under PA Reg.Ref.05/3375. It is suggested that this could have been used by the PA to demolish partly constructed works and tidy the site, and that the bond is being held unfairly during the current Vacant Site Levy process. It is further argued that this bond could be used in the 'offsets' on cost.

7.1.29. The PA confirm that a security bond of €120,000 was paid under Condition No. 5 of PA Reg.Ref.05/3375. However, the PA claim that this could not be reasonably utilised in association with any subsequent application PA Reg.Ref.18/87 or PA Reg.Ref.19/1055 (the subject of this appeal).

7.1.30. I have considered the issues raised by the applicant in respect to the bond paid and held by the PA, however I concur with the PA in that it would be unreasonable to use this bond to offset development contributions. I would also note that the purpose of a Developers Bond is to ensure that site development works are completed to a satisfactory standard by the developer.

#### Exemptions under Section 5.1 of the DCS

7.1.31. The applicant submits that the Exemptions available and referred to in Table 5.1 of the DCS in relation to 'commercial development in the core town centre areas/main street locations that consolidates and strengthens the historical town' allow a further 10% reduction on the contribution. In essence the applicant contends that what ever final amount is considered appropriate by the Board that a further 10% reduction is allowable.

7.1.32. The applicant submits that given the Town Centre Zoning and identification as an Opportunity Site within the Rathdrum Local Area Plan that the site represents a 'core' town centre 'opportunity site'.

7.1.33. The applicant contends that the development will benefit the town in terms of uses, employment, and local economy. In support of this the applicant submitted by way

of further information a report outlining the employment and urban design benefits associated with the scheme, and this was submitted as part of the appeal as Appendix F.

- 7.1.34. The PA consider that the subject development does not comply with the criteria associated with a 10% Exemption allowable for 'commercial development in the core town centre areas/main street locations and does not qualify for such a reduction. Specifically, the PA is not satisfied that the proposed development, due to its nature as a nursing home, its location and its lack of integration with the main street would qualify with the criteria.
- 7.1.35. I would state that the criteria as set out in the scheme are very general, but I have had regard to the specific objectives for the site as identified in the Rathdrum LAP.
- 7.1.36. I have considered the location, town centre zoning, commercial nature and merits of the proposed development, along with the design of the scheme. I concur with the PA that the development in the main where it adjoins existing streets does not provide for an active street frontage.
- 7.1.37. Having had regard to the case put forward by the applicant and the PA and having regard to the planning history of development on site, I am not satisfied that the proposed development satisfies the requirements of section 5.1 of the DCS to justify a further exemption of 10%.
- 7.1.38. I am not satisfied, therefore, that the current proposal benefits from any exemption, and that the applicant is entitled to avail of the exemption.

#### Discount associated with Vacant Site Levy

- 7.1.39. The applicant submits that the importance of the site as a vacant site is recognised with the inclusion of the site on the Vacant Site Register, and Vacant Site Levy applied. The applicant submits that the development contribution be reduced to €127,284 calculated on the basis of (€197,284 - €70,000 = 127,284).
- 7.1.40. I can see the application of the vacant site levy as entirely separate to the application of the DCS, and in my opinion therefore it would be inappropriate to allow a further compensatory discount of the vacant site levy approved by the Board.

#### Conclusion

7.1.41. I am satisfied, therefore, on the basis of the corrected floor area of the proposed development, that the Development Contribution Scheme has not been correctly applied.

## 8.0 Recommendation

8.1. I recommend that Wicklow County Council be directed to **amend** Condition No. 2 on the grounds that the terms of the Development Contribution Scheme 2015 have not been properly applied.

## 9.0 Reasons and Considerations

Having regard to

(a) The provisions of the Wicklow County Council Development Contribution Scheme 2015

(b) The submissions made in this appeal;

The Board considers that the terms of the Wicklow County Council Development Contribution Scheme 2015 have not been properly applied, and the amendment of Condition number 2 is, therefore, appropriate.

### **Condition no. 2**

Before development commences the developer shall pay the sum of **€229,838.40** (two hundred and twenty nine thousand and eight hundred and thirty eight euro and forty cents) to the Planning Authority as a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

The contribution sought is in accordance with Wicklow County Council's Development Contribution Scheme for the area in which the site is located and Section 48(1) of the Planning and Development Act 2000.

Where the contribution remains unpaid the monies payable shall be updated in accordance with the Wholesale Price Index as published by the Central Statistics Office on the 1<sup>st</sup> January of each year following the date of the Final Grant.



**Reason:** The public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof.

---

Susan McHugh  
Senior Planning Inspector

19<sup>th</sup> January 2021