



An
Bord
Pleanála

Inspector's Report

ABP-308821-20

Development	Change of use from public house to one two-bedroom residential unit at ground floor
Location	Spencer street, Gorteendrunagh, Castlebar, Co. Mayo.
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	20699
Applicant	William Cosgrave
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party vs. condition
Appellant	William Cosgrave
Observer(s)	None
Date of Site Inspection	18 th February 2021
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The subject site which has a stated area of 0.0095ha is located on the northern side of Spencer Street, approx.110m south east of Castlebar Park within Castlebar town centre.
- 1.2. The site is comprised of the ground floor of a three-storey terraced property. The proposed works are concerned with the ground floor only, which has a stated area of 71sq.m, which was previously used as a public house 'Cosgraves' which is currently vacant. The upper floors of the building are currently in residential use, divided into several units.
- 1.3. The building line to the east of the subject site match that of the current structure on site, however the adjacent building to the west is stepped back by approximately 3m. This building is listed on the National Inventory of Architectural Heritage (Reg. Ref. 31209095). Pay and display and permit parking is in force along both sides of the street.

2.0 Proposed Development

- 2.1. The proposed development is to comprise:
 - Permission is sought for the change of use of the ground floor of the building which was a former public house to a two bedroomed residential unit, with kitchen/dining area, dedicated storage and bathroom of total area 71sq.m. 20sq.m of private open space is also proposed to the rear of the ground floor.
- 2.2. The applicant states that the usable public lounge area of the former public house equated to an area of 75sq.m.

3.0 Planning Authority Decision

3.1. Decision

By order dated 11th November 2020, Mayo County Council issued notification of the decision to grant permission, subject to conditions.

Condition no. 3 of the decision states as follows:

The following contributions shall be paid to Mayo County Council prior to commencement of the development. The development contributions shall increase in accordance with the Wholesale Price Index for Building and Construction in January of each year from the date of grant of permission up to the date that payment is made to Mayo County Council.

- *Car parking €2382*

Reason: *To comply with Mayo County Council's Development Contributions Scheme.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report (dated 05th November 2020) can be summarised as follows:

- The site is zoned as town centre in the Castlebar & Environs Development Plan 2008-2014 (incorporating variations 1-5) as extended.
- Previous refusal under P20/251 on site for the conversion of the public house to 2 apartments earlier in 2020. Reason for refusal related to lack of compliance with the minimum standards required under the *DECLG Sustainable Urban Housing: Design Guidelines for New Apartments, Guidelines for Planning Authorities 2018*'.
- The current proposal sees a flat roof section of the ground floor existing toilets removed and its replacement with a 20sq.m area of private open space, with a dedicated refuse storage area accessed via a timber gate (3sq.m).
- Floor area of proposed change of use is 71sqm and relates to a two-bedroom unit with kitchen/dining area, dedicated storage and bathroom. The proposal meets the minimum floor areas as outlined in the 2018 Guidelines.
- Given that the proposal now meets the requirements and the fact that the unit has been vacant now for some time, the planning authority was satisfied that the previous refusal on site was overcome and that permission should be granted.

- Contributions – The proposal is for a change of use from a former public house to a residential unit with a floor area of 71sq.m. Contributions for the existing use would be no greater than proposed use therefore no general contributions have been applied. However, the planning officer stated that as there is no parking available on site and the property will now consist of 7 apartments, (including those 6 residential units located on the upper floors of the building) (with no parking) a parking contribution should be applied. Condition no. 3 attached a contribution for car parking in accordance with the Mayo County Council’s Development Contribution Scheme amounting to €2382.

3.2.2. Other Technical Reports

- Mayo County Council (MCC) National Roads Office – response dated 27th October 2020 - No issues raised.
- Executive Architect, Castlebar Municipal District Office – response received 11th November 2020 – No issues raised.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland (TII) – Response received 19th October 2020 – No observations.

3.4. Third Party Observations

None.

4.0 Planning History

- P.A. Ref. 20/251 Mayo County Council - Permission **refused** on 25th August 2020 for the redevelopment of existing public house, ground floor only into two residential units and all associated site works. Refusal related to the proposed developments lack of compliance with the *DECLG Sustainable Urban Housing: Design Guidelines for New Apartments, Guidelines for Planning Authorities 2018* and substandard level of development.

5.0 Policy Context

5.1. National Guidance

Development Contributions - Guidelines for Planning Authorities (January 2013)

- 5.1.1. These Guidelines aim to assist planning authorities in achieving a balance between the costs of services provided and the need to support economic activity via Development Contribution Schemes. Planning authorities are required to include specific exemptions and waivers in their Development Contribution Schemes outlined under Section 2, which should not apply to applications for change of use permissions.

Development Management – Guidelines for Planning Authorities (2007)

- 5.1.2. Section 7.12 of the Guidelines provides guidance on planning conditions relating to development contributions. Section 8.12 of these Guidelines refers to appeals regarding development contribution conditions.

5.2. Development Plan

- 5.2.1. The operative Development Plan for the area is the Castlebar & Environs Development Plan 2008-2014 (incorporating variations 1-5) as extended. The site is zoned as 'town centre' with a strategic objective listed under Chapter 12 "*To promote Castlebar town centre as the focal point of the town's archaeological, cultural and historic heritage, the shopping, commercial and administrative core, and location for key community and residential uses*".

5.2.2. Section 7.5 Carparking

The standard of car parking provision is generally good with adequate hard surfacing landscaping (where applicable) and signage. The car park facilities in the town centre are all fee paying and / or time restricted (generally up to two hours limit), including the large surface car parks at Tesco/Dunnes and Aldi/Shaws.

- 5.2.3. **Section 12.6 Residential – Policy TCO 1** - It is an objective of the Council to facilitate, where appropriate, the provision residential uses within the town centre. A mix of upper floor uses including apartments over shops shall be encouraged.

5.2.4. Section 14.13.1 Car Parking Standards

The parking standards set out in Table 3.2 will apply as appropriate. Where a standard is not given in Table 3.2 for a particular use, the car-parking requirement will be based on the nearest use included in the table.

Type of development	Relevant car parking standards
House and Flats	Grouped parking @ 1.5 spaces per dwelling unit otherwise 2 car spaces per dwelling unit except small one-bedroom flats where one space per unit is required.
Lounge bars	1 car space per 25 m ² of public floor space

This section also states that *'within the centre of the town – that is within the E1 and E2 zones – rigid adherence to these standards will not be required. It will often be more appropriate to utilise public parking or multi-storey car parks'*.

In addition the following is stated on page under the same Section 14.13.1 on page135:

Where there is a difficulty in providing car parking spaces or where it is considered by the Planning Authorities not to be in the interests of proper planning and development of the area, the Planning Authorities may choose that the developer make a financial contribution towards the provision of a car parking space by the local authority elsewhere.

This situation will apply in particular to town centre infill or redevelopment projects where the provision of on site parking would not be appropriate for traffic, access and urban design reasons.

In dealing with planning applications for change of use or for replacement buildings, an allowance will be given for the former site use in calculating the car parking requirements generated by new development.

5.3. Development Contributions Scheme

Mayo County Council Development Contribution Scheme 2004 (as amended in 2007)

5.3.1. The original scheme, adopted on 1st March 2004, was made pursuant to Section 48 of the Planning and Development Act 2000, and indicated the financial contributions, which Mayo County Council may include as conditions of planning permission in respect of specific infrastructure and facilities benefiting development in the area which Mayo County Council have already provided or that it is intended will be provided by or on behalf of Mayo County Council.

5.3.2. The development contributions that apply were amended on 31st December 2006. Schedule 1 contains the contributions which will apply through the county and as stated previously these were amended in 2006 and then formed the adopted Mayo County Development Contribution Scheme 2007.

Mayo County Council Development Contribution Scheme 2007

5.3.3. This scheme sets out charges applicable from 5th February 2007 updated from 2004. There is no detailed written guidance in the application of these rates. Those relevant to carparking for commercial development are listed as follows:

COMMERCIAL

Category	Amount (2004)	Amount 31 st December 2006
Water Services	1000	1191
Sewerage Services	1500	1787
Surface Water Services	500	596
Amenities	300	357
Roads	Varies	Varies
Footpaths	200	238
Community Open Space & Recreational Facilities	300	357
Car Parking	2000	2382

Source: Extract from updated Development Contributions, 2007.

There are no specific development contribution charges listed for carparking in relation to residential development. See overleaf.

RESIDENTIAL

Category	Amount (2004)	Amount 31 st December 2006
Water Services	1000	1191
Sewerage Services	1500	1787
Surface Water Services	500	596
Amenities	300	357
Roads	1275	1519
Footpaths	200	238
Community Open Space & Recreational Facilities	300	357
Housing Estate Take-Over	200	238

Source: Extract from updated Development Contributions, 2007.

Castlebar Town Council Development Contribution Scheme 2011

- 5.3.4. The Castlebar Town Council Development Contribution Scheme was adopted on 14th April 2011 and was made pursuant to Section 48 of the Planning and Development Act 2000 as amended. The Board should note that a copy of the Scheme is not available on the Council's website, however the scheme has been referred to in previous Board decisions within the Castlebar Town and Environs area, a recent example of which can be found under ABP. Ref. 305019. A copy of same Scheme has been appended to this report.
- 5.3.5. Section 2.2 of the Scheme states that in determining the amount of contribution, Castlebar Town Council had regard to the actual estimated cost of providing the classes of specific infrastructure.
- 5.3.6. Section 2.4 states that the development contribution scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances in accordance with the provisions of the scheme.
- 5.3.7. Section 4 states that the council at its own discretion may allow the payment of a reduced rate where the payment of the contribution would not be just and reasonable having regard to the limited extent of development, the limited cost of the development and other exceptional considerations. The amount payable for any reduced contribution under this scheme shall not be less than one quarter of the amount indicated in column 2 of schedule 1

- 5.3.8. Section 7 states that no later than 5 years from the adoption of the scheme, Castlebar Town Council shall review the said Development Contribution Scheme.
- 5.3.9. Schedule 1 of this Scheme sets out the amount of contribution costs on a 'cost per dwelling' basis under residential and a cost per car space basis for commercial. The following is a breakdown of the costs for carparking:

Category of Contribution	Amount of contribution in € (Euro)	Basis for the determination of the amount of contribution
<u>Residential</u> Carparking	€3150	Cost per space
<u>Commercial</u> Carparking	€3150	Cost per space

5.4. Natural Heritage Designations

- 5.4.1. None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. This first party appeal relates solely to Condition no. 3 of Mayo County Council's decision, which requires the payment of a Section 48 Development Contribution of €2,382.
- 6.1.2. The appellant contends that the imposition of the condition is unreasonable and should be completely eliminated on the following grounds:
- The development is for the change of use from a public house with a useable public lounge area of approx. 75sqm (as evidenced in submitted drawings) which equates to a parking requirement of 3 spaces, to a two bedroom apartment with a requirement for 2.5 spaces.
 - The car parking requirement is therefore reduced.

- These calculations are based on the current/applicable development plan for Castlebar Town and Environs which has the following requirements:
 - 1 space per 25sqm of public lounge area
 - 1.5space and 1 no. public space for 2 bed apartment.
- The proposed development reduces the car parking requirements from that of the existing use, thus the levy to provide car parking for the proposed development is unreasonable.
- At the very least, the existing development satisfies any car-parking requirements for the proposed development.

6.2. Planning Authority Response

- None.

6.3. Observations

- None.

7.0 Assessment

- 7.1. The appeal relates to condition no. 3 only, which imposes a Development Contribution in accordance with the provisions of Section 48 of the Planning and Development Act 2000 (as amended).
- 7.2. Section 48 (10) (b) of the Act makes provision for an appeal to be brought to the Board where an applicant considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority. In that context I consider that the Board is required to apply the scheme as adopted by the planning authority and not to evaluate the merits or otherwise of the scheme itself. Furthermore, as this appeal relates to a development contribution only, the Board cannot determine the application as if it was made to it in the first instance and is confined solely to the consideration of whether the terms of the scheme have been properly applied.

7.3. Which Contribution Scheme Applies

- 7.3.1. The planning authority have applied the Mayo County Council Development Contribution Scheme 2007 (herein after MCC DCS) to the current scheme as per Condition No. 3. However the current appeal site is located within the boundary of the Castlebar Town & Environs Plan 2008-2014 and in this regard I particularly note the Board's recent decisions in the cases of ABP Ref. 305019 (2020) and ABP Ref. 302292 (2019) wherein it was determined that the Castlebar Town Development Contribution Scheme 2011 (herein after CT DCS) remained applicable to development in Castlebar Town rather than the MCC DCS. In support of this I also note that section 48(2)(a) allows the planning authority to make one or more schemes in respect of its functional area and that the operation of separate development contribution schemes for the county and former town council area is not incompatible with the legislation.
- 7.3.2. I further note that by reference to Section 25 of the Local Government Reform Act 2014 provision is made for the continuance of all acts done such as the DCS notwithstanding the dissolution of the Town Council. The planning authority has not replied to the grounds of appeal and there is no evidence to suggest that the CT DCS has been replaced or has ceased to have effect and ultimately there is no change from the circumstances of ABP Ref. 305019, accordingly I am satisfied that the CT DCS is the applicable scheme in this instance.

7.4. Condition No. 3

- 7.4.1. Condition no.3 would appear to set out the calculation in accordance with the MCC DCS (2007) given that the figure of €2382 has been applied for car parking contributions. The Board should note however that there is no specific car parking category listed under 'Residential' within the MCC DCS (2007), Section 5.3.3 of this report confirms same. The planning authority instead appears to have applied a 'Commercial' contribution for car parking to the current permission.
- 7.4.2. While I note the above, the applicant does not raise this as an issue but instead argues that the financial contribution required under Condition no.3 should not apply as the proposed development reduces the car parking requirements from that of the existing use, and thus a levy to provide car parking for the proposed development is unreasonable. As outlined already under Section 7.3 it is my belief that the wrong

Contribution Scheme has been applied and that the development should in fact have been assessed under the CT DCS. However, in order to apply any contributions, it is first necessary to establish if they are applicable to the application in the first place and as outlined by the appellant, he does not consider any development contributions should be applicable. This is examined in further detail below.

- 7.4.3. Section 14.13.1 Car Parking Standards of the Castlebar and Environs Development Plan 2008-2014 (herein after referred to as CEDP) contains the parking standards that apply under the various types of development. I note that 'lounge bars' require 1 car space per 25sqm of public floor space. The applicant states that the current useable public lounge area is approx. 75sq.m. Having examined the submitted floor plans I would concur with this figure. Therefore, the current development on site has an existing requirement for 3 no. car spaces. The proposed development on site is for the change of use from the existing lounge bar to a two-bedroom residential unit. Under the current requirements as presented under Section 14.13.1 of the CEDP this use would require 2 car spaces per dwelling unit. The applicant has stated that a requirement of 2.5 car spaces in their appeal, however I believe they appear to have misinterpreted the requirements under Section 14.13.1.
- 7.4.4. I note that under this section also it is stated that within the centre of the town that rigid adherence to these standards will not be required and that it will often be more appropriate to utilise public parking or multi-storey car parks.
- 7.4.5. The applicant implies that the Development Contribution Scheme, MCC DCS in this case, was misapplied, as credit was not given for pre-existing development. Section 14.13.1 also states that "*in dealing with planning applications for change of use or for replacement buildings, an allowance will be given for the former site use in calculating the car parking requirements generated by new development*".
- 7.4.6. The planning officer in their report has used a figure of 0.47 dwelling equivalent and stated that one dwelling equivalent applies to the existing use on site and that the proposed use is the equivalent of one residential unit. Notably, the planning officer in their report states '*Contributions for the existing use would be no greater than proposed use therefore no general contributions have been applied*', thereby in effect agreeing with the appellant on this point. However, they then reason that as there is no parking available on site and the property (including the upper floors) will

now consist of 7 apartments (the proposed unit and 6 other upper floor units) with no parking provision, a parking contribution should now be applied for the entire building.

- 7.4.7. In response to his and having examined the submitted documents and drawings, I would consider the current application relates only to the ground floor of the building. Access from Spencer Street to the upper floors (first floor and second floor and the 6 other units referred to by the planning officer) and the uses on the upper floors themselves, is outside of the current red line boundary of the site and therefore outside of the scope of this planning appeal. If there are issues in relation to those upper floors then the matter of enforcement in relation to same falls under the jurisdiction of the planning authority.
- 7.4.8. In the case of the current application the use on proposed site had a higher car parking requirement that that for which a change of use is proposed i.e. change of use from public house to residential unit. I note that the Development Contributions Guidelines for Planning Authorities, 2013 outlines under Section 2 that planning authorities are required to include the following in their development contribution schemes '*waivers in the case of change-of-use permissions, where change-of-use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure (including, for example, transport infrastructure)*'. However, I note that no such waiver has been include under either the MCC DCS or the CT DCS as both schemes predate the 2013 guidelines.
- 7.4.9. Section 14.13.1 of the CEDP states that in dealing with planning applications for change of use or for replacement buildings, an allowance will be given for the former site use in calculating the car parking requirements generated by new development.
- 7.4.10. Under the CT DCS the basis for the determination of the amount of contribution under residential and commercial use is determined based on 'cost per space' and that cost is the same in the case of both categories of contribution at €3150 per car space as detailed under Section 5.3.9 of this report. In the case of the current appeal the applicant proposes to reduce the car parking demand on site, as a change of use is proposed from a public house to a residential unit. Therefore, the overall parking requirement on site has been reduced from 3 car spaces for lounge/bar of 75sq.m to

2 car spaces per dwelling unit. Given that there is an overall reduction in the demand for car parking on the site and no intensification of the use on site is proposed, this would suggest that there will be no additional infrastructural requirements as a result of the development. The planning officer has effectively agreed with this assessment in their report; however, they have then applied development contributions taking into account development outside of the site boundary.

- 7.4.11. Accordingly, in relation to condition no. 3, I firstly do not consider that the correct Development Contribution Scheme was applied by the planning authority and secondly, it is my opinion that as the development on site, for a change of use, effectively reduces the car parking demand on site and does not intensify the use in any way, that the planning authority has been unreasonable in its application of development contributions under condition no.3 and should therefore be required to remove same.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the minor nature and scale of the development, and the separation distance to any European site, no Appropriate Assessment issues 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.

8.0 Recommendation

- 8.1. I recommend that the Planning Authority be directed to REMOVE Condition No. 3 for the reasons and considerations set out hereunder.

9.0 Reasons and Considerations

Having regard to the submissions on file, the nature of the proposed development for the change of use of the subject site which consists of the ground floor only of the existing building, from commercial use as a public house to one residential unit, the terms of the Castlebar and Environs Development Plan 2008-2014 and the relevant reduction in car parking requirements on site and having had due regard to the Castlebar Town Development Contribution Scheme 2011, the Board considers that

the planning authority have incorrectly applied the terms of the development contribution scheme and that condition no. 3 of the decision should be removed.

Máire Daly
Planning Inspector

16th March 2021