



An
Bord
Pleanála

Inspector's Report ABP-311101-21

Development

Permission for development of a 4-storey nursing home, step down facility, rehabilitation and convalescence unit reusing the existing structure on site; Development also includes car parking, new entrance from Ardan roundabout and all associated site works.

Location

Ardan/Puttaghan, Tullamore, Co. Offaly.

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

20503

Applicant(s)

John Flanagan Developments Ltd

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

First Party -v-Condition

Appellant(s)

John Flanagan Developments Ltd

Observer(s)

None

Inspector

Fergal Ó Bric.

1.0 Site Location and Description

1.1 The appeal site is located approximately 1.3 kilometres north-east of the Tullamore with access off the town by-pass at the Ardan roundabout, where the R443 links with the N52. The site frontage is along the N52, a national secondary route linking the town with Killbeggan. There is a three-storey steel framed structure on site, where works in relation to a previously permitted Primary Care Unit permitted on site had commenced but ceased. To the west the appeal site is the Arden Vale residential estate. The Tullamore by-pass is immediately north of and contiguous to the appeal site boundary. There are undeveloped amenity and open space zoned lands immediately east and west of the appeal site. The site has an area of 2.6 hectares and forms part of a larger land holding which extends to the south-east where it adjoins the Midlands Regional Hospital., to the south and south-east where the land holding adjoins the Harbour View residential estate. There is a vehicular access point into the site from the Ardan roundabout, on the N52.

2.0 Proposed Development.

2.1 Permission is sought for the following:

- A 4-storey nursing home, step down facility, rehabilitation and convalescence unit reusing the existing structure on site to accommodate a total of 244 bedrooms (revised to 230 following a response to the further information request) communal spaces, dining areas, administration, ancillary service spaces, meeting, and consulting rooms.
- 197 car parking spaces, new site entrance from the Ardan Road roundabout, access roads, security kiosks, pump station, plant rooms, landscaping, and all associated site works and services:

2.2 Further information was submitted in relation to: Whether the proposals constitute Strategic Infrastructure Development as per Sections 37A and 37B of the Planning and Development Act 2001 (as amended). Access to the site. A Masterplan for the remainder of the land holding. Response to the issues raised by Transport

Infrastructure Ireland regarding access off the Ardan roundabout. A Traffic and Transport Assessment, Road Safety Audit and a DMURS street design audit. A lighting report for the development. Confirmation that the design of footpaths and roadways are compliant with DMURS standards. Confirmation that the cycle paths are consistent with the National Cycle Manual. A site survey of all existing services on site. Details of site boundaries, drains and public storm sewers that the applicant will tap into. Confirmation of foul and storm drainage connection points. Surface water management proposals for the site. Details of telecommunication ducting and chambers for the site. Cross sections of roads, footpaths, and cycle lanes. Details of car parking standards and layouts of parking spaces and pedestrian routes through car parking areas. Details of bus stops to serve the development should the town bus service be extended. Details of a site survey confirming that all lands within the applicant's control are within the red line application site boundary. SuDS proposals for the site. A site-specific flood risk assessment. A report confirming the structural integrity of the existing steel frame structure on site. Details of pre-connection enquiries with Irish Water. An Acoustic Design Statement. Details of open space to serve the nursing home and convalescence unit in accordance with HIQA standards. Hard and soft landscaping proposals for the appeal site.

- 2.3 The overall number of rooms within the overall facility and the break down of the number of rooms between the nursing home and the step-down facility is set out and would provide for 140 bedrooms/bedspaces in the nursing home and 90 bedrooms/bedspaces within the step-down facility.

3.0 Planning Authority Decision

- 3.1 A grant of planning permission was issued subject to seventeen conditions. The following conditions are of relevance:

Condition number 1: Development shall be carried out in accordance with the documentation and particulars lodged with the application, as amended by further information received by the Planning Authority on the 8th day of June 2021.

Condition number 17: Development contribution of €225,738.

3.2 Planning Authority Reports

3.2.1 Planning Report:

After a response to the further information request was received, the proposed nursing home and step down facility development was considered to accord with the policies and objectives of the Development Plan and was considered acceptable in the context of the proper planning and sustainable development of the area. An Appropriate Assessment screening concluded that a Stage 2 Natura Impact Statement would not be required given the proposal to connect to public services and the separation distance from the Natura 2000 sites. An Environmental Impact Assessment screening (EIA) concluded that the submission of an EIAR would not be required as the development is not of a type listed in Schedule 5 of the Planning and Development Regulations, 2001, (as amended) and the site area is below the 10-hectare threshold set out within Class 10 (b) (iv) of the Regulations.

3.2.2 Internal Reports

Area Engineer: No objection, subject to conditions

Roads Design: No objections, subject to conditions.

Environment and Water Services: No objections, subject to conditions.

Chief Fire Officer: No objections, subject to condition

Planning report:

3.2.3 Prescribed Bodies

Transport Infrastructure Ireland: Issues raised, addressed by conditions.

Irish Water: No objections, subject to conditions.

HSE: No objections, subject to conditions

Westmeath NRDO: No objections, as the proposal would have a low impact on the study area for the N52 link road scheme from Killbeggan to Tullamore.

4.0 Planning History

Planning Authority reference number, 07/360, In 2007, planning permission was granted to John Flanagan Development Ltd for the development of an acute hospital and primary care centre comprising 22,000 sq. m, including operating theatres, recovery rooms, 2 wards providing for 60 patients beds, consultant suites, accommodation for 10 GP,s, rehabilitation centre, and underground car parking for 360 cars, long term access from Ardan roundabout, short term access from Tyrrells Road and all associated site works and first phase of larger project to create the Wellwood Healthcare Park, concurrent planning application made to Tullamore Town Council on site of 3.29 hectares. An extension of duration of planning permission was subsequently granted for the development under Planning Authority reference number EX12/055 (1). To date a three-storey structural steel frame has been developed on site.

5.0 Policy Context

5.1 Development Plan

5.1.1 The relevant Development Plan is the Offaly County Development Plan 2021-2027. The site is zoned Community Services and facilities - where the objective is: “To provide necessary community, social, health, public administration and educational services and facilities”.

Chapter 9 pertains to Social Inclusion, Community and Cultural Development.

Section 9.17 pertains to Health and Wellbeing and sets out the following “The Council considers that medical practices should be provided for within town, village, or neighbourhood centres, preferably in purpose-built premises and in locations which should have minimal impact on residential amenity”

Policy SICCDP-12 It is Council policy that residential care homes for older people, retirement homes, nursing homes, independent living units, assisted living units, retirement villages and sheltered accommodation are located within defined settlement boundaries and are appropriate in scale to the size of the settlement. The provision of these accommodation types within the open countryside is considered only in such cases where it is clearly demonstrated that due to the nature of the services to be provided, the open countryside is necessary and that no suitable alternative sites are available within a nearby settlement.

5.1.2 Offaly County Council Development Contributions Scheme 2021-2025

Section 23-Circumstances where no contribution or a reduced contribution can apply.

Section 27- Circumstances where development will be exempt from the requirement to pay development contributions.

5.1.3 Development Contributions-Guidelines for Planning Authorities, January 2013

Section 2: Double charging

5.1.4 Natural Heritage Designations

None relevant.

6.0 The Appeal

6.1 Grounds of Appeal

6.1.1 A first party appeal has been lodged by Scott Hobbs, Planning Ltd. on behalf of the first party, John Flanagan Developments Ltd. The grounds of appeal are as follows:

- The appellant is pleased that the Planning Authority has determined the development as being acceptable, however considered that the development contribution, as imposed under condition number 17, regarding the payment of a financial contribution of €225,738, is onerous

and does not recognise previous contribution payments made by the appellants in relation to development on this site.

- The appellants set out the legislative provisions pertaining to Development Contributions as provided for under Section 48 of the Planning and Development Act 2000, (as amended)
- Reference is made to the Development Contributions Guidelines for Planning Authorities 2013, where it sets out (within Section 2) 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”.
- Section 23 of the Offaly Development Contributions Scheme (DCS) provides for Change of Use applications or re-development of buildings. This section makes specific reference to where the re-development of a site is proposed where “the contributions applicable shall be the difference between the contribution applicable to the existing use/buildings and the contribution payable for the proposed use (where granted)”. Section 27(h) of the Offaly DCS outlines a number of exemptions from development contributions and sets out that “In order to avoid the practice of double charging, change of use permissions or extensions to existing developments, where the change of use or extension 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).
- The Offaly County Council (OCC) approach to development contributions follows the national level requirements that there should be no double counting, including for re-development proposals and that contributions should only be sought for new floorspace where no contribution has previously been paid.
- A development contribution of €511,697.81 has already been paid to the Planning Authority, as confirmed by the Planning Authority (PA) is a letter dated the 4th day of May 2017 (Document 9 in appellants appeal submission to the board). The figure above is based on a 15.500sq m of

development, as set out within condition number 2 of the 2007 planning permission.

- Works commenced on site in late 2007, but subsequently ceased due to the effects of the financial crises, and the site has remained in this part-developed state since then.
- 15 years later a new viable use has been found for the structure and site which will allow for the completion of the development on site.
- OCC granted planning permission for the development of a nursing home and step-down care facility, comprising approximately 12.500 sq. m, representing approximately a 25% reduction on that previously permitted on the site.
- The appeal relates to condition number 17 only, and it is considered that the terms of the Development Contributions Scheme (DCS) have not been applied properly in this instance.
- The contribution already paid in 2007 in relation to this site pertained to all classes of infrastructure, including those which then were applied by local authorities but are now under the control of Irish Water.
- The Offaly County Council (OCC) DCS makes clear that double counting (within Section 27(h)) should be avoided, if a contribution has previously been made, then additional contributions should not be required for the same classes of infrastructure where there is no increase in floorspace.
- In this case, a contribution has been made under the 2007 planning permission on this site, as confirmed in writing by OCC. A three-storey metal framed structure has been erected on site, although no actual usable floorspace has been created, Nevertheless, OCC retained the contribution, and it is assumed has used these monies for infrastructural development which the previous development would have benefited from had the building been brought into use and the proposed development will benefit from.
- The current proposal would change the proposed use of the site and result in the re-development of the existing building and site for alternative uses with a lesser floor area than that for which the contribution was previously

paid. Effectively, there has been an overpayment of contributions paid on this site. Paragraphs 23 and 27(h) of the Offaly DCS are relevant to this appeal and set out the circumstances in which a financial contribution has previously been paid that no further contribution will be required, except in circumstances where additional floor area is proposed.

- The Planners report acknowledges payment of contributions to Offaly County Council but does not refer to the part paid to Tullamore Town Council. There is no assessment against the DCS nor the provisions of Paragraphs 23 or 27(h) of the DCS.
- Based on the 2007 rates, the current proposals would have required a contribution of €445,205.50. This figure includes for the contribution towards water and sewerage infrastructure, now the responsibility of Irish Water.
- The requirement to pay the contributions again for development that has taken place is not reasonable and does not accord with the terms of the current DCS. As the development has not benefitted from other infrastructural projects, the applicant does not consider it reasonable that OCC has retained the financial contributions.
- The applicant considers it more unreasonable to charge additional contributions for a development of less floor space, as is required by Condition number 17.
- The national level guidance is clear that Planning Authorities must not engage in the practice of double counting of development contributions and ensure that developments that have already paid contributions are exempted from paying additional contributions.

6.2 Planning Authority Response

Response by Offaly County Council

- The response states that the site currently has no functional use and that no buildings are present on site. A metal frame structure with no floor area

exists on site and no further development has occurred. The provisions of Section 23 of the Offaly DCS, therefore, do not apply.

6.3 Applicant response to Planning Authority observation

- Offaly County Council comment only on one element of the appeal and do not comment on the issue of double charging.
- The Planning Authority specifically refer to Section 23 of the DCS, referring to the redevelopment of sites, which the current proposals would achieve. There is no case for monies to be paid again, as this would represent double charging and would be contrary to national guidance.

7.0 Assessment

- 7.1 Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. Therefore, the Board, is restricted to considering the merits of condition number seventeen only and cannot consider the proposed development *de novo*.
- 7.2 The Offaly County Council (OCC) DCS 2021-2025 came into effect on the 18th day of January 2021. This assessment will consider the provisions of the current OCC DCS 2021-2025.
- 7.3 There are specific exemptions from the payment of financial contributions, specifically in relation to the redevelopment of sites or where financial contributions were previously paid and that no additional floor area is proposed as set out within Sections 23 and 27(h) of the OCC DCS 2021-2025.
- 7.4 Condition number seventeen requires the payment of a development contribution of €225,738 by the developers in respect of public infrastructure and facilities benefitting development within 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 OCC DCS 2021-2025, the scheme at the time the decision was being

made by the Planning Authority. I note the content of the planning report in relation to Development Contributions, where it is stated that the contributions are payable on 12,541 sq. m of development at €18 per sq. m. The terms of applying Development Contributions are set out within the OCC DCS 2021-2025.

- 7.5 Section 23 of the DCS states that “where redevelopment of a site is proposed, the contributions applicable shall be the difference between the contribution applicable to the existing use/buildings and the contribution payable for the proposed use (where greater). It is noted that financial contributions of €511, 697.81 have been paid to the Planning Authority under the 2007 planning permission pertaining to the site. The receipt of this payment has been confirmed in writing by the Planning Authority. Correspondence to this effect is included within Document 9 of the applicants appeal submission.
- 7.6 Development contributions towards the development/provision of public infrastructure had been paid in accordance with the 2007 planning permission on the site, the applicant had not received any benefit from that payment nor had they received a refund of their financial contributions. I also note that the public notices specifically reference reusing the existing structure on site. Therefore, I am satisfied that the current proposal would represent a re-development of the site as provided for under Section 23 of the Offaly DCS., works having commenced in 2007 with the construction of a three storey steel frame structure.
- 7.7 In terms of whether the proposal would constitute a change of use, as referenced by the applicants, and as provided for under Section 27 (h) of the DCS. I am not satisfied that a change of use has occurred or is proposed on site. I accept that a medical facility, namely a Primary Care Unit was permitted on site in 2007 and the proposed uses would comprise of medical facilities in the form of a nursing home and associated step-down facilities. However, no medical related uses have commenced on site as only a metal framed structure exists on site. Given that no medical related use has commenced on site and noting also that there is no reference to a change of use within their public notices as submitted to the Planning Authority, I do not consider that the exemption as provided for under Section 27 (h) of the DCS in relation to a change of use, is applicable in this instance.

7.8 The practice of double charging is addressed with Section 2 of the Development Contributions Guidelines for Planning Authorities, 2013 where the following is set out “ The practice of double charging is inconsistent with both the primary objective of the 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”. I am satisfied that in this particular instance, the Planning Authority have not deducted the 2007 financial contributions paid from the current charge as required under the national guidance, and therefore the practice of double charging arises in this case.

7.9 Therefore, on balance, I consider that the development contributions as set out by the Planning Authority and as included within condition number 17 under planning Authority reference number 20/503 should be removed. I consider that the financial contributions as proposed are not warranted or justified in accordance with the OCC DCS 2021-2025 and should be removed. In view of the foregoing, I can conclude that the terms of the Offaly County Council Development Scheme have not been properly applied in this case and that the appeal should be upheld.

8.0 Recommendation

8.1 It is recommended that the Planning Authority be directed to remove condition number 17, for the reasons and considerations hereunder.

9.0 Reasons and Considerations

9.1 Having regard to the nature of the proposed and previously permitted uses on the site under 07/360, and to the floor area of the current proposals, being less than that previously permitted on site, the lack of any material intensification of demand on existing infrastructure or requirement for new or upgraded infrastructure arising from the permitted use, and to the provisions of Section 23 of the adopted Offaly County Council Development Contribution Scheme, 2021-2025, which states the

contributions are not payable on proposals for the redevelopment of sites, and that the contributions applicable will be the difference between the contribution applicable to the existing use/buildings and the contribution payable for the proposed use (where greater). The development contribution as set out in condition number 17 is not greater than that figure previously levies on the site. The financial contribution set out within Condition 17 of planning reference number 20/503 would amount to double charging, which to be avoided as per the Development Contributions, Guidelines for Planning Authorities 2013, Section 2. Therefore, it is considered that the provisions of the adopted contribution scheme have not been properly applied such that Condition Number 17, attached to Planning Reference number 20/503 should be removed.,

Fergal Ó Bric
Planning Inspectorate

17th November 2021