



An  
Bord  
Pleanála

## Inspector's Report ABP-311259-21

<b>Development</b>	Change of use of part of ground floor & part of first floor of existing premises from previous retail/commercial use to café/food & beverage use and ancillary works (Protected Structure)
<b>Location</b>	Roseville House, Main Street, Celbridge, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	2123
<b>Applicant(s)</b>	Narmah Investments Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Narmah Investments Ltd
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> February 2022
<b>Inspector</b>	Ian Boyle

## **1.0 Site Location and Description**

- 1.1. The subject site has an address at No. 3 Main Street, Main Street, Celbridge, Co. Kildare. There is an existing building onsite known as Roseville House. It is a Protected Structure (RPS Ref. B11-86). The building is vacant and the windows are boarded up. It was previously used as a retail premises and accommodated a dry cleaners. The site is within Celbridge town centre.
- 1.2. The building is also featured on the National Inventory as having Regional Importance (NIAH Ref. 11805004). It is described as a five-bay two-storey house with a dormer attic that was built in the late 1700s. It has a pitched and hipped fibre-cement slate roof behind parapet with ridge tiles, a rendered chimney stack, rendered capping, and cast-iron downpipes. The windows are squared-headed openings with sills.
- 1.3. The character of the surrounding area is mainly commercial and retail.
- 1.4. The site has a stated area of approximately 252sqm.

## **2.0 Proposed Development**

- 2.1. The proposed development is for a change of use of part of the ground floor and part of first floor of the building from 'retail/commercial' use to 'café/food & beverage' use and ancillary site works.
- 2.2. The Planning Authority requested further information on 8<sup>th</sup> March 2021, including in relation to loading/unloading arrangements (Item 1), and a requirement to complete an Architectural Heritage Impact Assessment (Item 2).
- 2.3. The Applicant provided further information on 8<sup>th</sup> July 2021.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The Planning Authority issued a Notification of Decision to Grant Permission on 4<sup>th</sup> August 2021, subject to 14 no. conditions.

3.1.2. Condition No. 14 is in relation to the payment of a financial contribution (€3,436.60) and is applied under Section 48 of the Planning and Development Act 2000, as amended. The contribution is in respect of public infrastructure and facilities benefiting development in the area of the planning authority.

### 3.2. **Planning Authority Reports**

### 3.3. **Planning Reports**

- The initial report of the Council's Planning Officer noted the characteristics of the site and the internal reports received, particularly the report from the Council's Roads Department.
- Further information was sought for 2 no. items (see Section 2.2 above).
- The second Planner's Report recommended that permission be granted, subject to conditions.

### 3.4. **Other Technical Reports**

Area Engineer: No objection subject to conditions.

Water Services: No objection subject to conditions.

Roads / Transportation: Further information initially sought in relation to loading / unloading arrangements. No objection, subject to conditions, after further information received from the Applicant.

EHO: No objection subject to conditions.

Chief Fire Officer: No objection subject to conditions.

### 3.5. **Prescribed Bodies**

Irish Water: No objection subject to standard conditions.

## 4.0 Planning History

### Subject Site

Reg. Ref. 00/904: The Planning Authority granted retention permission for signage and replacement signage on 30<sup>th</sup> August 2000.

Reg. Ref. 99/720: The Planning Authority granted permission for the construction of 2 no. two-storey houses at the rear of the site on 7<sup>th</sup> July 2000.

Reg. Ref. 90/1236: The Planning Authority granted retention permission for an extension at the rear of the building for dry cleaners on 16<sup>th</sup> January 1991.

Reg. Ref. 90/379: The Planning Authority refused permission for retention of signage for Celbridge District Credit Union on 16<sup>th</sup> August 1990.

## 5.0 Policy Context

### 5.1. Kildare County Council Development Contribution Scheme 2015-2022

The Kildare County Council Development Contribution Scheme 2015-2022 ('the Scheme') was adopted on 5<sup>th</sup> November 2015.

#### Section 8(iv) Retail Development (including Retail Warehousing)

*Calculated based on the gross floor area of the development.*

Gross Floor Area	0-100sqm	101-1,500sqm	>1,500sqm
Rate per sqm (€)	39.82	54.31	65.16

#### Section 12(g) Change of Use

*This scheme provides for waivers in the case of Change of Use planning permissions. Kildare County Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.*

### Section 12(h) Town Centre:

*A reduction of 33% in development contributions may be applied in relation to development within Town Centres as designated in*

- *Kildare County Development Plan 2011-2017, Chapter 9, Table 9.1 – County Retail Hierarchy Levels 2 and 3 only;*
- *Naas Town Development Plan 2011-2017, Chapter 6, Core Retail Area – Map 6.1 and*
- *Athy Town Development Plan 2012-2018, Chapter 6, Core Retail Area – Map 6.1*

*Where development requires work to a protected structure, recorded in the Record of Protected Structures (RPS), a further 25% reduction will be allowed.*

### Section 12(i) Protected Structures

*A 50% waiver will be granted in respect of works on protected structures not in Town Centres identified at (h) above. They must be included in the Record of Protected Structures and works proposed must substantially contribute to the restoration or protection of a protected structure. The waiver will not apply, for example, to works for purposes of adding an extension to a protected structure.*

## **5.2. Celbridge Local Area Plan 2017-2023**

The appeal site is zoned 'A – Town Centre' under the Celbridge Local Area Plan 2017-2023 ('LAP').

## **5.3. Kildare County Development Plan 2017-2023**

The relevant Development Plan is the *Kildare County Development Plan 2017-2023* ('County Development Plan').

- Chapter 11 – Social, Community and Cultural Development
- Chapter 12 – Architectural and Archaeological Heritage.
- Chapter 17 – Development Management Standards.

- Variation No. 1 of the *Kildare County Council Development Plan 2017-2023* took effect from 9<sup>th</sup> June 2020.

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

No natural designations apply to the subject site.

The closest European Site is the Rye Water Valley / Carton SAC (Site Code: 001398), which is approximately 3.7m to the north. The site is also a pNHA.

The Grand Canal pNHA (Site Code: 002104) is roughly 2.8km to the southeast.

### 6.0 **The Appeal**

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

The following is a summary of the main issues raised in the first party grounds of appeal (dated 31<sup>st</sup> August 2021):

- The Appeal is solely in relation to Condition No. 14, which requires the Applicant to pay a financial contribution in the order of €3,436.60.
- The Applicant submits that the Planning Authority has incorrectly applied the *Kildare County Council Development Contribution Scheme 2015-2022* ('the Scheme').
- The proposed development can be broken down into two elements, including:
  - i) The physical improvement and refurbishment of the building, particularly the façade of the historic structure, and
  - ii) Change of use of part of the ground and first floor areas from existing commercial / retail to café use.
- The Planning Authority appears to have calculated the contribution figure on the basis of a rate of €39.82 per sqm for two areas, which comprise the proposed change of use area (77.5sqm) and an additional floor area of 8.8sqm, which collectively equates to 86.3sqm. [The 8.8sqm was wrongly

considered additional floorspace due to internal changes proposed at further information stage involving the relocation of internal stairs.]

- The Applicant contends that this is incorrect and that the Council have erred in applying a Section 48 Contribution. They have not taken the nature of the proposed development into proper consideration and have misinterpreted the Contributions Scheme.
- The proposal does not create any additional floorspace. Therefore, the applicable net area for the purposes of calculating a development contribution would be 77.5sqm. However, the Applicant submits that there is an exemption for change of use applications under Section 12(g) of the Council's Development Contributions Scheme and that this has not been correctly applied.
- Taking Section 12(g) into consideration, the test that should be applied is whether the new use would lead to a need for new or upgraded infrastructural services or significant intensification of demand being placed on existing infrastructure. If not, then the Scheme states that the Planning Authority will grant a mandatory reduction.
- As the proposal is for a change of use for a small part of an existing retail commercial space to a café, it would not lead to any intensification or additional demand on existing infrastructure. Therefore, it is submitted that no development levy should apply.
- The Applicant references other sections of the Scheme, including Sections 12(h) 'Town Centres' and 12(i) 'Protected Structures' and states that, at the very least, a reduced levy should be applied under these provisions. However, it is maintained that a full 100% exemption should be applied under the terms of Section 12(g), as outlined above, and that no contribution should apply.

## **6.2. Planning Authority Response**

The Planning Authority's response to the grounds of appeal (dated 29<sup>th</sup> September 2021) can be summarised as follows:

- The Planning Authority reviewed the First Party Appeal and stated that a levy reduction would be acceptable.
- With regards to a 100% levy reduction, this is not acceptable as the proposed change of use from retail/commercial to café would give rise to demands for new services. A new café would lead to a demand on outdoor space and give rise to a requirement for public realm improvements, and where such capital schemes are provided for within the Development Contribution Scheme.
- As the building is a Protected Structure in the town centre, a 58% reduction in the contribution figure should be imposed.

### 6.3. Applicant Response

The Applicant's response to the Planning Authority's submission (dated 4<sup>th</sup> October 2021) can be summarised as follows:

- The Planning Authority maintain that a development contribution (58%) is appropriate. The reduction is due to the Protected Structure status of the building, which is in the town centre (Section 12(h) applies).
- The Planning Authority argues that a contribution, albeit reduced, should still apply as the proposed new use (café) would give rise to demands for new services and that it would lead to an increased demand being placed on outdoor space and that, consequently, it would give rise to demands for public realm improvements.
- The Applicant references Section 12(g) of the Scheme and states that it clear that the change of use would not lead to any intensification or additional demand on existing infrastructure.
- There is no specific reference in relation to the provision of outdoor space or improvement to the public realm referenced in the Scheme. The new café would not require any new or upgraded open space, and nor would it result in an intensification of same.



- The proposed café includes an element of open space / outdoor seating for use of its customers, which is the enclosed external seating area at the front of the building. This area is wholly within the Applicant's ownership.
- To suggest the proposed development would create a significant intensification of demand on open space is not supported, is not credible, and does not pass the test as per by the Planning Authority's own Development Contributions Scheme.

## 7.0 Assessment

- 7.1. The sole planning consideration relevant to this appeal case is whether the Applicant should be required to pay a development contribution in respect of the development proposed, which is for a change of use of part of a premises from 'retail/commercial' use to 'café' use and ancillary site works.
- 7.2. The proposed development is in accordance with the relevant Development Plan policy and is considered acceptable. The appeal, therefore, is confined to the matters concerning the specific condition, which the Applicant has appealed, and which, in this case, can be treated under Section 48(10)(b) of the *Planning and Development Act, 2000 (as amended)*.
- 7.3. Condition No. 14 requires the Applicant to pay a development contribution in the order of €3,436.60. The condition has been applied by the Planning Authority under the provisions of Section 48 of the Planning and Development Act 2000 (as amended) and the stated reason for doing so is that it is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority.
- 7.4. I note the Planning Authority has now agreed to reduce the contribution to 58% of the original levy amount, which would equate to €1,993.23. The Planning Authority states in their Response that this is due to the Protected Structure status of the subject building, which is in the town centre, and that the provisions of Section 12(h) should apply in this case.

- 7.5. Planning Authority does not consider it appropriate, however, to apply Section 12(g) of the Scheme, which I note is specifically in relation to proposals seeking permission for a change of use. Rather, it is submitted that the new use, which is for a café, would lead to the need for outdoor space and that this would give rise to a 'significant intensification' of demand being placed on existing infrastructure, such as a requirement for public realm improvements.
- 7.6. In my opinion, it is unlikely that the new use would lead to a need for new or upgraded infrastructure/services, or that a significant intensification of demand would be placed on existing infrastructure in the area. I have reviewed the documentation submitted with the application and there is nothing to suggest that this would be case. There is an existing commercial/retail use established on the site and I note that the café would be relatively small with a stated area of approximately 77sqm.
- 7.7. The proposed café would also have access to its own enclosed outdoor seating area, which is positioned at the front of the building. Therefore, it is potentially unlikely there would be a future requirement to have outdoor seating on the footpath or on any other land owned, or controlled, by the Council. However, even if that were the case, I do not see how a relatively small outdoor space associated with the proposed café could result in a 'significant intensification of demand placed on existing infrastructure'.
- 7.8. In my view, it is not reasonable, or necessary, for a contribution to be paid by the Applicant as the Scheme allows for such a change of use to be fully exempt / reduced by 100% under Section 12(g).
- 7.9. In summary, I do not consider that the provisions the Development Contribution Scheme (2015-2022) have been properly applied in this case. The Scheme clearly allows for waivers in the case of change of use permissions and, in my opinion, the proposed new use for a café would not attract a need for new or upgraded infrastructure, or lead to a significant intensification of demand being placed on existing infrastructure in the area.
- 7.10. In this regard, I consider that Condition No. 14 of the Planning Authority's Decision should be omitted.

## 8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that Kildare County Council be directed that Condition No. 14 attached to the *Notification of Decision to Grant Permission* be omitted from the final Decision.

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Ian Boyle  
Planning Inspector

11<sup>th</sup> February 2022