



An
Bord
Pleanála

Inspector's Report ABP-311698-21

Development	Modifications and alterations to the development previously permitted under planning reference 15/819.
Location	Block CC2, Newbridge Retail Park, Athgarvan Road, Newbridge, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2156
Applicant(s)	Treacy Courtyard Developments.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	First Party v Conditions and Contributions
Appellant(s)	Treacy Courtyard Developments.
Observer(s)	None.
Date of Site Inspection	11 th March 2022.
Inspector	Lucy Roche

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.2452ha and is located in Newbridge town centre adjacent to and slightly comprising the Courtyard Shopping Centre, to the west-southwest of the Whitewater Shopping Centre and the multi-storey car parks.
- 1.2. The site, when inspected, comprised a vacant brownfield site accessed via the Gandouge Lane to the northwest and via the access road serving the Lidl Supermarket off the Athgarvan Road to the southeast.

2.0 Proposed Development

- 2.1. Planning permission has been sought for modifications and alterations to the development previously permitted under planning reference 15/819 (refer to section 4.0 of this report for details). The proposed modifications relate to solely to Block CC2 of the permitted mixed-use development and comprise the following:
 - At the Southwestern end the change of use from educational training facilities to 8 no. 2 bedroom apartments on the first & second floors.
 - At the North-eastern end to include change of use from Office to 6 no. two bedroom residential apartments on first, second and third floors.
 - Modifications to the internal layout of Block CC2 on the ground floor level to facilitate access to the proposed apartments, including a reduction of 8sq.m of Retail space at the Southwestern end and an increase of 98sq.m of retail space on the North-eastern end. These modifications would facilitate an overall increase of 90sqm of retail floor space within the permitted footprint of Block CC2.
 - Modifications to Site Boundary and parking arrangements to the rear of Block CC2, to that which was granted under planning Ref. 15/819.
 - Modifications to elevations of the previously granted Block CC2 & all ancillary works.
- 2.2. Block CC2, as permitted, comprises a three and part four storey building with retail use on the ground floor level (with ancillary access and service areas). The first and second floors comprise 9no. two-storey apartments in the centre of the block which

is then book-ended by a two-storey educational unit to the west and a three-storey office unit to the east.

2.3. Block CC2 as proposed (subject to the modifications outlined above) comprises a three and part four storey building with retail use on the ground floor level and a total of 23no 2-bed units on remaining floors. The additional 14no. apartment units proposed have a stated combined floor area of 1500sqm.

2.4. Table 2.1: Block CC2 – Schedule of Floor Areas:

Table 2.1	Block CC2 as Permitted under 15/819	Proposed Alterations	Block CC2 as now proposed
Retail	1,170sqm	+90sqm	1,630sqm
Residential	936sqm (9 apartments)	+1500sqm	2,436sqm (23 apartments)
Office	500sqm	-500sqm	0sqm
Education	680sqm	-680sqm	0sqm

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council, did by order dated 27th September 2021, decide to grant permission for the proposed development (as amended) subject to 5no conditions. The following conditions are of note:

Condition 2 Apart from the departures authorised by this permission, the development shall be carried out in full accordance with the terms and conditions of Planning Reg. Ref. 15/819 and any agreements entered into thereunder, and shall expire on the expiration of 15/819 i.e. 09/11/2026

Reason: In the interests of clarity and orderly development and to ensure that the development takes place in accordance with the permission to which this departure relates

Condition 3: The developer shall provide 18 number Electric Vehicle (EV) Home Charge Points, to comply with Sustainable Energy Authority of Ireland (SEAI) guidelines, for the apartments. The Developer shall ensure that all residents in the apartments can charge EV's overnight availing of efficient and economical renewable electricity at off-peak times

Reason: To promote the use of sustainable energy in transport and improve urban air quality

Condition 5: The applicant/ developer to pay Kildare County Council the sum of **€581,373.60** being the appropriate contribution to be applied to this development in accordance with the development contribution scheme adopted by Kildare County Council on the 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water

Reason: 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

3.1.1. Planning Reports

- The initial report of the Planning Officer had regard to the locational context and planning history of the site and the internal reports received, particularly the report from the Council's Roads Department.

- The assessment raised a number of issues relating to the design and finish of the development with regard to the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018
- Further information was sought on 11 items relating to waste storage, foul and surface water drainage, water supply, external finishes, the design of public areas and the design and location etc of private open space
- The second Planner's Report considered the further information received and recommended that permission be granted, subject to conditions.

3.1.2. Other Technical Reports (*Of relevance*):

- Roads and Transportation Department - Report dated 26th February 2021 – No objection to the proposed development subject to conditions that applied to 15/819 as amended by ABP and the following additional condition:

The developer shall provide 18 number Electric Vehicle (EV) Home Charge Points, to comply with Sustainable Energy Authority of Ireland (SEAI) guidelines, for the apartments. The Developer shall ensure that all residents in the apartments can charge EV's overnight availing o efficient and economical renewable electricity at off-peak times

3.2. Third Party Observations

None Received

4.0 Planning History

15/819 Permission granted (2016) for the demolition of existing retail units. The construction of two mixed use blocks: Block CC1 – Mixed use retail and office and Block CC2 – Mixed use retail, residential, office and education / training along with Modifications to elevations of existing unit no. 12 Newbridge Retail Park; car parking, landscaping, access roads and all ancillary works.

PL09.246805 Contribution Appeal in respect of 15/819. The Board, in accordance with section 48 of the Planning and Development Act, 2000, as

amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of conditions numbers 37 and 38 and directs the said Council to AMEND conditions numbers 37 and 38 so that they shall be as follows:

Condition 37: The developer shall pay to the planning authority a financial contribution of €572,350.43 in respect of public infrastructure and facilities benefiting development in the area of the planning authority

Condition 38: The developer shall pay to the planning authority a financial contribution in respect of the shortfall in car parking provision at a rate of €5,000 per space.... The number of spaces which comprise this shortfall shall be agreed between the Applicant/Developer and Kildare County Council or failing agreement shall be referred to an Bord Pleanála for determination.

21/278 Extension of appropriate period of Planning Register Reference 15/819 by an additional 5 years

5.0 Policy Context

5.1. National Policy

- 5.1.1. Project Ireland 2040: National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018
- 5.1.2. Eastern and Midlands Regional Authority - Regional Spatial and Economic Strategy 2019-2031
- 5.1.3. The Climate Action Plan 2021, issued by the Department of Environment, Climate and Communications
- 5.1.4. Smarter Travel – A Sustainable Transport Future 2009-2020

This document aims to deliver a sustainable transport system as an important dimension of the climate change agenda. In relation to renewable Energy in Transport and Fuel Economy, the Government is committed to ensuring that 10% of energy used in transport by 2020 is sourced from renewable resources, which are sustainable, reduce fossil fuel dependency and significantly reduce greenhouse gas emissions over the full life cycle.

Action 32: There are other potential alternative technologies for motor vehicles, which are likely to have a significant impact beyond 2020 as technology is developed. These include plug-in electric and hydrogen fueled vehicles. The Government signals its commitment to these alternatives and will promote such technologies as they become commercially feasible and develop market penetration.

5.2. Kildare County Development Plan 2017-2023

5.2.1. Section 17.1.5 Development Contributions

The Council, taking into consideration the capital expenditure necessary for the provision of infrastructure, will require the payment of financial contributions in accordance with the Development Contributions Scheme.

Developers may also be required to carry out works at their own expense to facilitate their development and these will be specified as a condition of their planning permission.

5.2.2. Section 17.7.6 Carparking

The Council will liaise with ESB Networks to continue the roll-out of rapid charge points throughout the County. Non-residential developments shall provide facilities for the charging of battery-operated cars at a rate of up to 10% of the total car parking spaces in order to meet the targets of the Government's Electric Transport Programme and in response to 'Climate Change the Government's National Policy Position on Climate Action and Low Carbon Development'.

5.2.3. Relevant Policy.

Renewable Energy:

- ER5 Seek the co-ordinated delivery of infrastructure and services to support sustainable communities.

Energy Efficiency in Buildings:

- EB1 Ensure that new development is designed to take account of the impacts of climate change, and that energy efficiency and renewable energy measures are incorporated in accordance with national building regulations, policy and guidance

Waste Management

- WM 2 Have regard to European Union, National and Regional policy relating to air quality, light pollution and noise pollution and to seek to take appropriate steps to reduce the effects of air, noise and light pollution on environmental quality and residential amenity

5.3. Newbridge Local Area Plan 2013-2019 (extended to 2021).

The site is zoned A – Town Centre. The objective for this zone is to provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses.

5.4. Kildare Development Contribution Scheme (KDCS) 2015-2022

- 5.4.1. The Kildare County Council Development Contribution Scheme 2015-2022 (KDCS) is the applicable development contribution scheme. This scheme was adopted 05/11/2015.

5.5. Section 8 of the scheme sets out Level of General Contributions for Kildare County Council effective from adoption of this Scheme:

Table 5.2 – Contribution Rates as per Section 8 of Kildare County Council Development Contribution Scheme				
Residential	Floor Area	230sqm and under	231sqm-370sqm	371qm and over
	Rate per sqm (€)	€50	€56	€65
Non-Residential	Floor Area	0-250sqm	251-3,000sqm	>3000sqm
	Rate per sqm (€)	€43.46	€54.31	€61.55
Retail	Floor Area	0-100sqm	101-1,500sqm	>1,500sqm
	Rate per sqm (€)	€39.82	€54.31	€65.16

5.6. Section 9(a) of the scheme refers to Modification Applications

An application to modify a previously permitted development, including change of house type, will be assessed on the basis of the Development Contribution Scheme rates current at the date of issue of the decision to grant permission, with a deduction for any contributions paid on any previously permitted development.

Where modifications are deemed to be minor as per the Planner’s Report, there is no additional area to that previously granted, and contributions have been received in full on the previous permission, no further contributions will be applied.

5.6.1. Section 12 of the scheme provides exemptions and reduced contributions, the following of which are noted:

(h) Town Centres

A reduction of 33% in development contributions may be applied in relation to development within designated Town Centres, including those designated in Kildare County Development Plan 2011-2017, Chapter 9, Table 9.1 – County Retail Hierarchy Levels 2 and 3 only.

The appeal site is location within Newbridge Town Centre and within Level 2 of the County Retail Hierarchy.

(j) ‘Over shop’ Space

To promote the use of existing/proposed space over shop/retail space the planning authority will allow a 50% reduction in development contribution

charges for the residential element of the development. To qualify for the reduction, applicants granted such permission shall provide residential accommodation in this 'over shop' space.

k) **Redevelopment Projects**

Where permission is granted for the redevelopment of a project which includes replacing existing development, the relevant contribution charge will be applied to the additional floor area per sqm i.e., residential (using the extension rates), commercial, retail etc

5.7. Natural Heritage Designations

The appeal site is not located on or adjacent to any designated European site. The Pollardstown Fen Special Area of Conservation and Natural Heritage Area is located approximately 1.7km to the west.

5.8. EIA Screening

Having regard to the nature and scale of the proposed development, the location of the site outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- Condition 3

- Under PRR15/819 planning permission was granted for 102 car park spaces for Blocks CC1 and CC2. No car parking was allocated to Block CC2.
 - Condition 3 requires the provision of 18no electric vehicle home charging points which must be able to facilitate charging overnight. In essence this means that there must be 18no dedicated parking spaces to facilitate charging at night-time along with home charging points which are in turn linked to a meter board
 - Section 17.7.6 of the KCDP 2017-2023 requires non-residential developments to provide facilities for the charging of battery-operated cars at a rate of up to 10% of the total car parking spaces ...
 - There is no requirement in the KCDP to provide electric charging points for residential dwellings including apartments – it is unreasonable for the Council to condition the applicant to provide such a facility.
 - They note the practical difficulties in implementing the condition due to the location of the car parking area (where such charging points would have to occur) in a communal area separate from the apartments which will be under separate management serious practical difficulties.
- Condition 5
 - The applicants contend that the Kildare County Council Development contribution scheme has not been correctly applied in this instance.
 - The Council should have applied the contribution on the basis of the floor area applied for under the application, subject to any exemptions that apply under the KDCS. There is no provision under the KDCS to apply a cumulative levy to PRR21/56 based on the permitted floor area under the previous planning permission 15/189.
 - In relation to the primary element of the application - the change of use from office and educational to residential, it is submitted that the applicant should be levied €37,500 based on 50% of €50 x 1,500sqm (€75,000).

- With regard to the above calculation, the applicants draw reference to Section 12(j) of the KDCS which allows for a 50% reduction in development contributions charges for the residential element of the development over shop/retail space. There is no reference to this shop being existing.
- They note that the applicant is entitled to benefit from 33% reduction under Section 12(h) also given the site is located on the town centre, however the 50% reduction is the larger of the two sections which are applicable.
- In relation to the retail element, they consider the increase of 90sqm floor area should be subject to a levy of €3,583.80 based on €39.82x 90sqm
- The applicant's calculation of the level of contribution arising is set out in Table 6.1 below

Table 6.1 - Development contributions as per applicants' calculation					
Development Type	Floor Area	Rate	Calculation	Exemption: Section 12(j)	Contribution
Residential	1,500sqm 14no apartments	€50 / unit <i>Band 1 - All units 230sqm an under</i>	14 x €50 = €75,000	- 50% reduction on residential over shop space	€37,500
Retail	90	€39.82 <i>Band 1: 0- 100sqm</i>	90x €39.82		€3,583.80
Total					€41,083.80

6.2. Planning Authority Response

- Condition 3:
 - In relation to the applicants claim that it would be unreasonable to require a developer to provide an element of infrastructure simply because it is not specified in the development management standards of the relevant

Development Plan is in the opinion of the planning authority to be a simplistic view of the spirit of development management standards.

- They refer to the objectives of the Kildare Climate Action Adaption Strategy 2019-2024, in particular Objective 2 which seeks to explore policies to help the transition to a climate resilient low carbon society and Action No.9 which seeks to encourage policy to support and develop the roll out of Eclectic Vehicles (EV) charging infrastructure
- They note that the provision of electric vehicle (EV) home charging points for residential units is now a standard planning condition in Kildare for all dwelling typologies and forms
- They refer to Chapter 8 of the KCDP 2017-2023 which sets out policies and objectives to encourage and support energy and communications efficiency, including Policies ER5 and EB1
- Condition 5
 - Planning permission 21/56 is an amendment to planning permission 15/819 with the same expiry date on both permissions.
 - The Council included the full Development Contribution for 15/819 and 21/56 for clarity purposes. If the development is commenced under 21/56 then the contribution under 15/819 would be restricted to zero.
 - They draw reference to Drawing No.4980-43-P003 submitted as part of the further information response (which outlines the changes from 15/819 and amendments to the current proposal) to highlight the difficulty for the planning authority in separating out the two proposals from each other.
 - The applicant at this stage can still take up the option to commence 15/819 if that is their preference. The council will restructure contributions to ensure that the appropriate amount is paid depending on which permission is taken up
 - In respect of the comments in respect of 50% reduction for over shop space under Section 12(j) of the KDCS the planning authority state that it is quite clear that the intent and operation of the scheme in this regard has

never been applied to new planning permission and is for the conversion of existing space. It is further noted that the Town Centre reduction under 12(h) may be applied however the Council did not deem it appropriate for such a reduction for a development of this scale and nature.

6.3. Further Responses

The applicant's response to the submission of the Planning Authority is summarised as follows:

- They stand over the view that a planning permission must be levied on an individual basis only. The cumulative approach being adopted by the Council is ultra-Vires and is not consistent with the contribution scheme.
- Reference is made to case law in terms of the approach to be adopted in interpreting a development plan – the provision of the development plan falls to be interpreted as they would be understood by a reasonably intelligent person, having no particular experience in law or town planning
- The KCDP does not contain any requirement for electric vehicle charging points for residential development – this is clearly a deliberate consideration by elected members as in contrast, the plan specifically includes a 10% requirement for EV charging points for commercial development. Therefore, the only interpretation of the KCDP 2017-2023 by a reasonably intelligent person is that electric vehicle charging points are not required for parking space for residential units which is why they were not included in the application.
- They note that the Council have not acknowledged or responded to the practical difficulties of providing these charging points as outlined in the appeal
- It is submitted to the Board that the KDCS 2015-2022 refers to 'Shop/retail space' under section 12(j) it does not describe this space as existing and therefore the only way it can be reasonably interpreted is that it applies to both existing and proposed shop/retail space. This makes perfectly

reasonable sense given the overall aim is to promote residential development over retail in town centres.

- They acknowledge that the KDCS does refer to the works 'may' in respect of Section 12(h) but cannot see the reason why it cannot be applied.

7.0 **Assessment**

7.1. Introduction

7.1.1. This is a first party appeal against conditions attached to Kildare County Council's notification of the decision to grant planning permission for the development proposed under planning reference 21/56, namely Condition No. 3 which requires the provision of 18no Electric Vehicle (EV) Home Charge Points for the apartments and Condition No.5 which requires the payment of a development contribution of €581,373.60.

7.1.2. Following my examination of the planning file and grounds of appeal, I consider it appropriate that the appeal should be confined to Conditions No. 3 and 5 only. Accordingly, I am satisfied that the development is otherwise in accordance with the proper planning and sustainable development of the area, and that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted. My assessment will therefore be limited to the matters raised in relation to the terms of the condition, pursuant to the provisions of section 139 of the Planning and Development Act 2000 (as amended).

7.2. Condition 3

7.2.1. Condition 3 as attached to the grant of permission is as follows:

The developer shall provide 18 number Electric Vehicle (EV) Home Charge Points, to comply with Sustainable Energy Authority of Ireland (SEAI) guidelines, for the apartments. The Developer shall ensure that all residents in the apartments can charge EV's overnight availing of efficient and economical renewable electricity at off-peak times

Reason: To promote the use of sustainable energy in transport and improve urban air quality

- 7.2.2. The proposal comprises modifications and alterations to the mixed-use development previously permitted under Kildare County Council planning reference 15/819 (which was assessed under the Kildare County Development Plan 2011-2017). There is no requirement under planning reference 15/819 for the provision of Electric Vehicle (EV) charging points.
- 7.2.3. The modifications / alterations proposed under this application relate solely to permitted Block CC2 and comprise the change of use of permitted office and educational / training space to residential, to facilitate the provision of an additional 14no apartments within the Block. The proposed modifications would also result in an additional c90sqm of retail floor space. As per the requirements of Condition 3, the 18 number Electric Vehicle (EV) Home Charge Points are intended for the use of the apartments.
- 7.2.4. The first party appellants contend that as there is no requirement in the KCDP to provide electric charging points for residential dwellings / apartments, it is unreasonable for the Council to condition the applicant to provide such facilities. They also note the practical difficulties of providing Electric *Vehicle (EV) Home Charge Points* for residents of the apartment units (as per the requirements of condition No.3) within a communal car park that is to be to be under the control of a private management company.
- 7.2.5. While I note that there is no specific requirement or standard for the provision of electric charging points for residential dwellings / apartments under the KCDP, it is stated policy of the Kildare County Development Plan 2017-2023 to support the delivery of infrastructure and services to support local communities (Renewable Energy: Policy ER5) and to take appropriate steps to reduce the effects of air and noise pollution on environmental quality and residential amenity (Waste Management: Policy WM2). Such policies do I consider support the reason for the application of Condition 3 which is 'To promote the use of sustainable energy in transport and improve urban air quality'.

- 7.2.6. In addition, the electrification of the national car fleet and the role out of the necessary infrastructure and facilities to support same, is I consider adequately supported by Government Policy. In this regard I refer the Board to Section 34(2)(a) of the Planning and Development Act as amended, which provides that when making a decision in relation to an application the planning authority are restricted to considering the proper planning and sustainable development of the area with regard not only to the provisions of the development plan but also, inter alia, the policy of the Government.
- 7.2.7. The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018 supports 'Sustainable Mobility' and states that in line with Ireland's Climate Change mitigation plan, we need to progressively electrify our mobility systems moving away from polluting and carbon intensive propulsion systems to new technologies such as electric vehicles. The government have set a target of c1 million electric vehicles on Irish roads by 2030 under the Climate Action Plan 2021. At regional level, the Regional Spatial and Economic Strategy for the Eastern and Midland Regional Authority considers electrification of the national car fleet represents a feasible option for Ireland, where supporting recharging infrastructure is developed. While it is expected that most electric vehicle (EV) recharging to happen in homes with driveways, the RSES states that it is important that charging is available where this is not an option.
- 7.2.8. In light of the above, I am satisfied that the requirement for the provision of Electric Vehicle (EV) to serve new residential development is supported by national, regional and local policy and that its provision in this case would accord with proper planning and sustainable development. However, I accept the First Parties appellants concerns regarding the practical difficulties in providing Electric Vehicle (EV) Home Charge Points for residents of the apartment units within a communal car park and therefore, I recommend that condition 3 be amended as follows:

The developer shall provide a minimum of 18no. parking spaces with electrical connection points, to allow for functional electric vehicle charging. Details of how it is

proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To promote the use of sustainable energy in transport and improve urban air quality

7.3. Condition 5

7.3.1. Condition No. 5 is as follows:

*The applicant/ developer to pay Kildare County Council the sum of **€581,373.60** being the appropriate contribution to be applied to this development in accordance with the development contribution scheme adopted by Kildare County Council on the 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015*

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water

Reason: *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*

7.3.2. The calculation for development contributions as set out within the decision of the planning authority (refer to table 7.1 for details), is based on the total floor area of the development permitted under Planning Ref:15/819, as amended by the development currently proposed (Planning Ref:21/56). The applicants, as set out in the grounds of appeal, are of the opinion the cumulative approach adopted by the planning authority in their calculation of development contributions is ultra-Vires and is not consistent with the Kildare Development Contribution Scheme 2015-2022 (KDCS). They contend that development contributions should have been applied solely on the basis of the floor area applied for under this application, i.e., on the additional 1500sqm of residential floor space and the additional 90sqm of retail floorspace,

(Refer to Table 6.1 above) - subject to any exemptions that apply under the KDSC. The applicant's approach to the calculation of development contributions would result in development contributions for Block CC2 being payable under two separate grants of planning permissions, Planning Ref:15/819 and Planning Ref: 21/56.

7.3.3. The proposed development relates to modifications and alterations to the development previously permitted under planning reference 15/819. The works proposed under this current application do not comprise a 'stand-alone' development but one that is, I consider, intrinsically linked to and reliant upon the grant of permission under planning ref: 15/819. In this regard, I refer the Board to Condition 2 of the grant of permission under planning ref 21/56 and which states that '*Apart from the departures authorised by this permission, the development shall be carried out in full accordance with the terms and conditions of Planning Reg. Ref. 15/819*'. In light of the above and in the interests of clarity and consistency, I consider the cumulative approach in the calculation of development contributions adopted by the planning authority to be the correct approach in this instance. I am also satisfied that this approach would accord with the KDSC. In this regard I refer to Section 9(a) of the KDSC which refers to modification applications stating that '*An application to modify a previously permitted development, including change of house type, will be assessed on the basis of the Development Contribution Scheme rates current at the date of issue of the decision to grant permission, with a deduction for any contributions paid on any previously permitted development*'. As per the information available, contributions have not been paid under planning ref:15/819.

7.3.4. While I agree with the approach taken by the planning authority in the calculation of development contributions, there does appear to be some inconsistencies in the figures used in their calculation. Table 7.1 below which sets out the planning authorities development contribution calculation. I refer the Board to the floor areas cited for the residential, retail and commercial uses, which I do not consider correspond with the residential, retail and commercial floor areas proposed (i.e., the development permitted under planning ref:15/819, as amended by the proposed modification application, planning ref:21/56).

Table 7.1: The Planning Authority's Development Contribution Calculation						
Rate Band	Description	Rate per sqm	Floor Area sqm	Exemption reduction	Area considered for contributions	Contribution
0-230sqm	Residential Apartments	€50	1452		1452	€72,600.00
>1,1500	Retail Units in block CC2	€65.16	7468		7468	€486,614.88
251-3,000sqm	Commercial /Office	€54.31	1488		1488	€80,813.28
					Sub-Total	€640,028.16
101-1500sqm	Retail Development Demolished	€54.31	1080		6,051sqm x €65.16	-€58,654.80
					Development Contributions Applicable	€581,373.60

7.3.5. With regard to the above, I note that the development contribution for the development permitted under planning ref:15/819 was decided by the Board under ABP Ref: PL09.246805. The contribution payable under 15/819 was assessed under the Kildare Development Contribution Scheme (KDCS) 2015-2022 and equated to €572,350.42. Table 7.2 below sets out the basis for the calculation.

7.3.6. I consider it appropriate, in the interest of consistency and clarity to utilise the information set out in Table 7.2 as a basis for calculating the contributions arising from the proposed modification application.

Table 7.2: Development Contributions payable under planning ref:15/819 as per ABP Decision PL09.246805				
Development Type	Floor Area	Rate	Calculation	Contribution Arising
Residential	936sqm <i>9no apartments of 104sqm</i>	€50 / sqm <i>Band 1 - All units 230sqm an under</i>	936sqm x €50	€46,800
Commercial /Office Education/ Training	1,737sqm 680sqm	€54.31per sqm <i>Band 2: (251-3000sqm)</i>	2,417sqm x €54.31	€131,267.27
Retail	7,131sqm Less 1,080sqm retail area to be demolished as per exemption under Section 12(k) KDCS	€65.16 per sqm <i>Band 3: >1,500sqm</i>	6,051sqm x €65.16	€394,283.16
Total				€572,350.42

7.3.7. Based on the schedule of floor areas set out in the Table 7.2 above, the provisions of the KDCS and the modifications / amendments proposed under this application, I calculate the level of contributions arising as a result of this proposed amendment application to be €528,229.03, as set out in Table 7.3 below:

Table 7.3: Development Contributions: 15/819 as amended				
Development Type	Floor Area	Rate	Calculation	Contribution Arising
Residential	2436sqm <i>23no apartments</i>	€50 / unit	2436sqm x €50	€121,800

	<i>(Original 936sqm +proposed additional 1500sqm)</i>	<i>Band 1- All units 230sqm and under</i>		
Commercial /Office	1237sqm <i>(Office area retained in building CC1)</i>	€54.31per sqm <i>Band 2: (251-3000sqm)</i>	1237sqm x €54.31	€67,181.47
Education/ Training	0sqm			
Retail	7221Sqm <i>(Original 7,131sqm +proposed additional 90sqm)</i> Less 1,080sqm retail area to be demolished as per exemption under Section 12(k) KDCS	€65.16 per sqm <i>Band 3: >1,500sqm</i>	6,141 x €65.16	€400,147.56
Total				€528,229.03

7.4. Exemptions / Reduced Contributions under Section 12 of the KDCS 2015-2022

- 7.4.1. Section 12 of the KDCS sets out exemptions and reduced contributions for various forms and types of development. The Board will note that no exemptions or reductions in the development contribution charges for 15/819 were sought or applied under ABP REF:09.246805.

Section 12(j)

- 7.4.2. Section 12(j) of the KDCS allows for a 50% reduction in the development contribution charges for the residential element of a development where such accommodation is provided 'over shop' space. As the residential element within

Block CC2 is to be provided over permitted / proposed retail space, the applicants contend that the development contribution applied to this development should be reduced in accordance with Section 12(j) of the KDCS. The planning authority, disagrees, stating that the intent and operation of the scheme, as regards Section 12(j), has never been applied to new planning permissions and is for the conversion of existing space.

- 7.4.3. As stated in the KDCS, the purpose of the reduced contribution under Section 12(j) is to promote the use of existing/proposed space over shop/retail space. The wording of Section 12(j) would, I consider, suggest that the new residential accommodation can be provided either through the conversion of existing space or, as in this case, through the provision / construction of 'new' floor space. The scheme is silent on whether the shop/retail space is existing or proposed. Therefore, notwithstanding the manner in which Section 12(j) of the KDCS has been previously applied by the planning authority, I consider that the development contribution charges applied to this development should be reduced in accordance with Section 12(j) of the KDCS as follows:

Table 7.4: Calculation of Development contribution subject to Section 12(j)		
Development Type	Contribution Prior to Exemptions	Contribution subject to Section 12(j) - 50% reduction on residential over shop space
Residential	€121,800	€60,900
Commercial /Office	€67,181.47	€67,181.47
Retail	€400,147.56	€400,147.56
Total	€528,229.03	€528,229.03

Section 12(h) Town Centre

- 7.4.4. Section 12 (h) of the KDCS relates to town centre development and states that a reduction of 33% in development contributions may (emphasis added) be applied to development within designated Town Centres. The proposed development is located within Newbridge Town Centre, a designated town centre as per the requirements of

Section 12(h). The planning authority did not apply the reduced rate under Section 12(h) in this instance stating in their response to the grounds of appeal, that “*the Council did not deem it appropriate for such a reduction for a development of this scale and nature*”. However, the KDCS scheme does not provide any guidance on the application of Section 12(j), nor does it set out criteria on the type, nature or scale of development to which Section 12(j) would apply and as such I see no reasonable grounds not to apply the exemption / reduced rate in this case.

Therefore, I recommend that the development contribution charges applied to this development be further reduced in accordance with Section 12(j) of the KDCS as follows

A reduction of 33% in development contributions of €528,229.03 = €353,913.45

8.0 Appropriate Assessment

- 8.1.1. Having regard to the nature and scale of development proposed and the location of the site within the built up area of Newcastle where public services are available and having regard to the nature of the receiving environment and the separation distance between the site and any Natura 2000 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

9.0 Recommendation

Condition 3

- 9.1. I recommend that Kildare County Council be directed to amend Condition No. 3 as follows:

The developer shall provide a minimum of 18no. parking spaces with electrical connection points, to allow for functional electric vehicle charging. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To promote the use of sustainable energy in transport and improve urban air quality

Condition 5

- 9.2. I recommend that Kildare County Council be directed to amend Condition No. 5 as follows:

*The applicant/ developer to pay Kildare County Council the sum of **€353,913.45** being the appropriate contribution to be applied to this development in accordance with the development contribution scheme adopted by Kildare County Council on the 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015*

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water

Reason: *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*

10.0 **Reasons and Considerations**

Condition 3

- 10.1. Having regard to the nature of the development proposed and the planning history of the site it is considered that the provision of electric vehicle charging facilities in accordance with the amended condition set out above would accord with policies for renewable energy and waste management as set out in the Kildare County Development Plan 2017-2023, in particular policy ER5 which seeks the co-ordinated delivery of infrastructure and services to support sustainable communities and Policy WM2 which seeks to take appropriate steps to reduce the effects of air and noise pollution on environmental quality and residential amenity; would help achieve the objectives set out in National and Regional Policy in relation to the electrification of the national car fleet and the role out of the necessary infrastructure and facilities to

support same and would otherwise be in accordance with the proper planning and sustainable development of the area.

Condition 5

- 10.2. It is considered that the Planning Authority incorrectly applied the terms of the Kildare County Council Development Contribution Scheme 2015-2022, including Section 12(j) which provides a 50% reduction in the development contribution charges for the residential element of a development where such accommodation is provided 'over shop' space and Section 12(h) which provides a 33% reduction for development within designated town centres of which Newcastle Town Centre is one.

Lucy Roche
Planning Inspector

26th October 2022