



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	Treacy Courtyard Developments.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	First Party v Conditions and Contributions
Appellant	Treacy Courtyard Developments.
Observer(s)	None.
Date of Site Inspection	11 th March 2022.
Inspector	Lucy Roche

1.0 Introduction:

- 1.1. This report should be read in conjunction with the previous Inspectors Report dated 26th October 2022.

2.0 Board Correspondence

- 2.1. The Board in their direction of the 9th of February 2023 decided to defer consideration of this case and to issue a Section 137 notice to the parties, requesting details on how Kildare County Council would propose to apply the new development contribution scheme adopted as and from January 1st, 2023, and seeking a view as to the appropriate level of electric vehicle charging in light of this change.
- 2.2. The Board wrote to the planning authority and David Mulcahy Planning Consultants Ltd, acting on behalf of the applicant, on the 20th of February 2023. A response was received from David Mulcahy, Planning Consultants Ltd applicant on the 13th of March 2023.
- 2.3. The Board in their direction of the 18th of April 2023 decided to defer this case for consideration at a further Board meeting. The Board also instructed that, on foot of the adoption of a new Development Contribution Scheme by the Local authority since the completion of the report, the section 137 notice and observations received, a new or addendum Inspector report containing a revised recommendation regarding Development Contribution to be applied is to be prepared for Board Consideration.

3.0 Policy Change

3.1. Kildare County Development Plan 2023-2029

The Kildare County Development Plan 2023-2029 was adopted on 9th December 2022 and came into effect on 28th January 2023. Relevant provisions include:

3.1.1. Chapter 5, Section 5.11 Parking:

TM O116 Facilitate, along with the NTA and TII, the conversion of the private car fleet to electric in the following ways:

- Providing public charging points at key destinations such as public car parks, Park and Ride facilities, on-street in town centres, and public parks.
- Ensuring that where car parking is proposed as part of all new developments either public or private, provision is made for all spaces to be dedicated over time to electric cars with provision for charging infrastructure built-in from the outset.
- Providing significantly expanded electric car charging facilities at service stations on the national road network.
- Ensuring provision is made for fast charging points at service stations and public car parks in order to make provision for a shorter charging time than domestic charging.
- Ensuring that charging infrastructure does not encroach on footpaths or otherwise compromise the free movement of pedestrians, cyclists, and public transport.
- Ensuring EV charging points are accessible to all, where possible.

TM O117 Support the Government's targets for electric vehicles on roads by prioritising parking for Electric Vehicles (EVs) in central locations, by supporting the provision of charging facilities on public and private land.

Ensure a future proofed approach to the rollout of EV charging infrastructure by means of planning decisions by applying the following requirements of the EU (Energy Performance of Buildings) Regulations 179 2021 (S.I. 393 2021) for Electric Vehicle recharging infrastructure:

- New buildings or buildings undergoing major renovations (other than a dwelling) shall install at least one recharging point and ducting infrastructure for at least one in every 5 car parking spaces to enable the subsequent installation of recharging points for electric vehicles.

- New buildings or buildings undergoing major renovations (containing one or more than one dwelling), which has more than 10 car parking spaces, shall install ducting infrastructure for each car parking space to enable the subsequent installation of recharging points for electric vehicles.

TM O118 Ensure the electrical wiring that developers install for all new residential units includes a double socket Home Charge Point for Electric Vehicles in order to comply with the Sustainable Energy Authority of Ireland (SEAI) Triple E Register and to promote the use of night-time renewable electricity in transport. In this regard developers shall provide for within curtilage/driveway car parking unless otherwise agreed in writing with the Planning Authority.

3.1.2. Chapter 15, Section 15.7.8 Car Parking

- Car parking standards are set out in Table 15.8. Parking standards are maximum standards. For reference, the parking requirements for the development permitted under KCC Ref: 15/819, as amended by the current proposal, are set out in Table 3.1 below.

Table 3.1: Parking Requirements				
Use	Standard	Units /Floor area		Requirement
Residential	1.5 spaces per unit + 1 visitor space per 4 apartments	23 apartments (All within Block CC2)		39.5 spaces
Retail	1 per 20 sqm gross floor area	Block CC1	5,894sqm	294.70 Spaces
		Block CC2	1,680sqm	81.5 Spaces
Office	1 per 30 sqm gross floor area	1237sqm (All within Block CC1)		41 Spaces
Total				456 Spaces (121 spaces for Block CC2)

- The use of shared car schemes will be encouraged in appropriate town centre and urban locations.
- The electric vehicle charging infrastructure requirements are set out in Table 15.9 of the KCDP as follows:

New buildings or buildings undergoing major renovations (containing one or more than one dwelling)	As per Chapter 5 - Objective TM O117 and TM O118.
New buildings or buildings undergoing major renovations (other than a dwelling)	As per Chapter 5 - Objective TM O117.

Table 15.9 - Electric Vehicle Charging Infrastructure Requirements

3.2. Kildare Development Contribution Scheme 2023-2029

- 3.2.1. The Kildare County Council Development Contribution Scheme 2023-2029 came into effect on the 1st of January 2023
- 3.2.2. Section 8 of the scheme sets out the level of contribution applicable on planning permissions granted from the date of the adoption of this scheme. The scheme provides that for both Residential and Non-residential (e.g., Commercial, retail, warehousing) the development contribution rate shall be: - €62 /sqm.
- 3.2.3. Section 10 of the scheme provides exemptions and reduced contributions, the following of which are noted:

10.3 Supporting Town and Village Centre Development

A 33% reduction of development contributions shall apply to land zoned as “Town Centre’ for all development (including commercial, retail, residential) as designated in statutory local plans for each of the relevant towns; and villages and settlements as designated in the County Development Plan.

The town listed include Newbridge.

Lands identified as ‘Regeneration Lands’ or Key regenerate sites’ in statutory local areas plan shall also qualify for an exemption of 33% in development contributions.

10.10 Replacement Buildings

Contributions will not be applied to permission for the construction of replacement buildings on the same footprint for the same areas as the original building following extensive damage by subsidence, flood or fire. Where extensions are added to such buildings, the contribution rates or relevant exemptions outlined in Section 8.1 or 8.2 shall apply.

4.0 Responses to Board Correspondence

4.1. Applicants Response:

4.1.1. A response, prepared by David Mulcahy Planning Consultants Ltd, on behalf of the applicant was revised on the 13th of March 2023. The response can be summarised as follows:

- The applicants are disappointed that new development plans and new contributions schemes have come into force given the appeal was lodged in 19/10/2021 well before any of these new plans / schemes were to be adopted.

Condition 3 – Provision of Electric Vehicle Charging Points:

- The submission notes that EV charging points are now required for residential scheme within over 10 units but again raises the issue of the practicalities of providing such EV spaces in this instance.
- The car parking area will be under the control of a separate private management company who will be responsible for same. If the charging points are linked to a common area electricity supply within the apartment block that is owned by the applicant and not the management company who will pay for the electricity being used. If the charging points are linked to the meters in the individual apartments how will this work given the distance from the spaces
- The applicant can't get electricity cables from the apartment out to the EV spaces.
- It would leave spaces in the retail centre empty all day if the person in the apartment was at work and no one else could use their space in order to ensure it was available to them to park when they return home.

Condition 5 – Payment of Development Contributions

- The submission notes that the 50% living over the shop exemption has now been replaced by a 33% exemption for applicants in town centre zoned land.

Note:

It is noted that the applicants are of the opinion that the level of contribution for this development should be calculated on the basis of the floor area applied for under the application, subject to any exemptions that apply under the KDCS, as set in Table 4.1.

Table 4.1 - Development Contributions as per applicant's calculation			
Development Type	Floor Area	Rate (KDCS 2023-2029)	Contribution
Residential	1,500sqm <i>14no apartments</i>	€62 /sqm	€93,000
Retail	90sqm	€62/sqm	€5,580
Total			€98,580
Less 33% for Town Centre Development			€66,048

4.2. **Planning Authority Response:**

None received.

5.0 **Assessment:**

5.1. **Introduction**

5.2. 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. The planning application and appeal were previously considered in respect of the Kildare County Development Plan 2017-2023 and the Kildare Development Contribution Scheme 2015-2022. The Kildare County Development

Plan 2023-2029 was adopted on the 9th of December 2022 and came into effect on the 28th of January 2023 and that the KDCS 2023-2029 came into effect on the 1st of January 2023, both of these documents are now relevant to this application.

5.2.1. The issues that arise in relation to this addendum report are:

- In respect of Condition 3: - The appropriate level of electric vehicle charging infrastructure for this development having regard to the adaptation of the and the new policy provisions set out in this plan in respect of Electric Vehicles
- In respect of Condition 5: - Development Contribution arising following the adaptation of the Kildare County Council Development Contribution Scheme 2023-2029.

5.3. **Condition 3 – Electric Vehicle Charging**

5.3.1. Condition 3 attached to the grant of permission under KCC REF: 21/56 (the subject of this appeal) requires the developer to provide 18 number Electric Vehicle (EV) Home Charge Points. The Board in their direction of the 9th of February 2023, noted the change to the mix of use in the proposed development and sought a view on the appropriate level of electric vehicle charging points in light of this change.

5.3.2. Regard is had to the Kildare County Development Plan 2023-2029 which came into effect on 28th January 2023. The provisions of the KCDP 2023-2029 are I consider relevant to this assessment. Kildare County Council's policy requirements in respect of electric vehicle charging infrastructure are set out in Chapter 5 Sustainable Mobility and Transport, and Chapter 15, Development Management Standards. The KCDP 2023-2029 has regard to the Climate Action Plan (2021) and its commitment to increase the fleet of Electric Vehicles and low emitting vehicles (LEVs) on Irish roads to 945,000 by 2030. KCDP Objective TM O116 seeks to facilitate the conversion of the private car fleet to electric in a number of ways including by *'ensuring that where car parking is proposed as part of all new developments either public or private, provision is made for all spaces to be dedicated over time to electric cars with provision for charging infrastructure built-in from the outset'*.

- 5.3.3. The electric vehicle charging infrastructure requirements are set out in Table 15.9 of the KCDP 2023-2029. In accordance with Table 15.9, new buildings, or buildings, undergoing major renovations (containing one or more than one dwelling) shall accord with the requirements of KCDP Objectives TM 0117 and TM0118.
- 5.3.4. This proposal relates to a previously permitted, but as yet unconstructed, mixed-use development in Newbridge (KCC Ref: 15/819 relates) and comprises modifications and alterations to Block CC2, including 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) along with the provision of an additional c90sqm of retail floor space. In my opinion the proposed modifications to Block CC2 represent a significant change to the previously permitted development and therefore I consider that the provisions of Table 15.9 and consequently, Objectives TM 0117 and TM0118, to be relevant to the consideration of this application.
- 5.3.5. Objective TM0117 seeks to ensure a future proofed approach to the rollout of EV charging infrastructure by means of planning decisions, by applying the requirements of the EU (Energy Performance of Buildings) Regulations 179 2021 (S.I. 393 2021) for Electric Vehicle recharging infrastructure. Under Objective TM0117, new buildings or buildings undergoing major renovations (containing one or more than one dwelling), which has more than 10 car parking spaces, shall install ducting infrastructure for **each car parking space** to enable the subsequent installation of recharging points for electric vehicles.
- 5.3.6. The development as permitted under KCC Ref: 15/819 includes for the provision of 101 parking spaces to be shared between Blocks CC1 and CC2. The amendments permitted under KCC Ref: 21/51 (the subject of this appeal) would reduce the number of spaces provided to 90 (to facilitate open space provision). It is noted that Condition 38, as amended by ABP Ref: PL09.246805, requires the payment a financial contribution in respect of the shortfall in car parking for the development. As the quantum of parking to be provided by the developer is significantly less than that required to serve the overall development and less than what would be required to serve Block CC2 (c121 spaces) I consider that it would be reasonable to apply the

requirements of Objective TM0117 to each of the 90 car parking spaces to be provided by directly the developer.

- 5.3.7. With regard to the above, I note that 90no parking spaces to be provided by the developer in connection with this amendment application are located on lands outside of the red line boundary but within the blue line boundary, as per the submitted site location map (Drawing No.4980-43-P001, Rev. A), indicating that the lands are within the ownership of the applicant, and I note S.34(4)(a) of the Planning Act gives power to impose a condition on land which is under the control of the applicant as long as the condition is expedient for the purposes of or in connection with the development authorised by the permission.
- 5.3.8. With regard to Objective TM O118, this objective seeks to ensure that the electrical wiring installed by developers for all new residential units includes a double socket Home Charge Point for Electric Vehicles to comply with the Sustainable Energy Authority of Ireland (SEAI) Triple E Register and to promote the use of night-time renewable electricity in transport. Developers are required to provide in curtilage/driveway car parking for residential units, unless otherwise agreed in writing with the Planning Authority. In this instance, parking for the residential units, is to be provided as part of a shared surface car park which in accordance with the details provided by the First Party appellant in correspondence received 13th of March 2023, will be under the control of a private management company. In light of this and the concerns raised by the First Party appellant regarding the practical difficulties in providing Electric Vehicle infrastructure for apartment units within a communal car, I do not recommend that compliance with the requirements of TMO118 be enforced in this instance.

5.4. **Condition 5**

- 5.4.1. Condition 5 as attached to the grant of permission under KCC REF: 21/56 requires the payment of development contributions as per the requirements of the Kildare

Development Contribution Scheme 2015-2022, adopted by Kildare County Council on 5th November 2015. As noted by the Board in their direction of the 9th of February 2023, the Kildare County Council Development Contribution Scheme 2023-2029 (KDCS 2023-2029) came into effect on the 1st of January 2023. The KDCS 2023-2029 is now applicable to the assessment of this application.

5.4.2. The planning authority's calculation of development contributions due in respect of this development proposal is based on the total floor area of the development previously permitted under Planning Ref:15/819 (the parent permission), as amended by the development currently proposed (Planning Ref:21/56). As per the previous Inspector's Report (26th October 2022) the approach taken by the planning authority is considered reasonable.

5.4.3. Utilising the same method in the calculation of development contributions and applying the contribution rates of KDCS 2023-2029, I calculate the level of contributions arising as a result of this proposed amendment application to be €675,428, as set out in Table 5.1 below:

Table 5.1: Development Contributions: 15/819 as amended				
Development Type	Floor Area	Rate	Calculation	Contribution Arising
Residential	2,436sqm <ul style="list-style-type: none"> Original 936sqm +proposed additional 1500sqm; all within Block CC2) 	€62 / sqm	2436sqm x €62	€151,032
Commercial /Office	1,237sqm <ul style="list-style-type: none"> Office area retained in building CC1) 	€62per sqm	1237sqm x €62	€76,694
Retail	7,221Sqm <ul style="list-style-type: none"> Original 7,131sqm +proposed additional 90sqm) 1,630sqm within Block CC2 	€62 per sqm	7,221sqm x €62	€447,702
Total				€675,428

Exemptions and Reduced Contributions.

- 5.4.4. Section 10 of the KDCS 2023-2029 sets out exemptions and reduced contributions for various forms and types of development. Only one discount or waiver determined under Section 10 of the scheme may be applied on any contribution.
- 5.4.5. For clarification, it is noted that unlike its predecessor, the KDCS 2023-2029 does not provide an exemption / reduced contribution for either 'over the shop' space or for redevelopment projects. Section 10.10 of the scheme does provide an exemption for the construction of replacement buildings following extensive damage by subsidence, flood, or fire; however, this does not apply in this instance.
- 5.4.6. Section 10.3 Supporting Town and Village Centre Development, states that a 33% reduction of development contributions shall apply to land zoned as 'Town Centre' for all development (including commercial, retail, and residential) as designated in statutory local area plans for each of the relevant towns, villages and settlements as designated in the County Development Plan. The proposed development is located within Newbridge Town Centre, a designated town centre. The reduced contribution under Section 10.3 is therefore applicable.

A 33% reduction in development contributions of €675,428 equates to €452,536.76.

6.0 Recommendation:

- 6.1. I recommend that the planning authority be directed under section 139 (1) of the Planning and Development Act, 2000, as amended, to amend Conditions 3 and 5 as follows:

6.2. Condition 3

The developer shall install ducting infrastructure to facilitate Electric Vehicle charging, for each of the 90no. surface car parking spaces detailed on Drawing

No.4980-43-P003, Rev003, submitted to the planning authority on 3rd September 2021.

Reason: To facilitate the conversion of the private car parking fleet to electric, to promote the use of sustainable energy in transport and improve urban air quality

6.3. Condition 5

The developer shall pay to the planning authority a financial contribution of €452,536.76 (four hundred, fifty two thousand and five hundred and thirty six euro and 76 cents) in respect of public infrastructure and facilities benefiting development in 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 Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

7.0 **Reasons and Considerations:**

Having regard to:

- (a) The Kildare County Development Plan 2023-2029
- (b) The Kildare Development Contribution Scheme 2023-2029
- (c) Climate Action Plan 2021
- (d) The planning history of the site, namely KCC Ref: 15/819

(e) The nature, scale, and location of the proposed development

It is considered that the provision of Electric Vehicle Charing Infrastructure in accordance with Condition 3 (as amended) would accord with policies and objectives for Sustainable Mobility and Transport as set out in the Kildare County Development Plan 2023-2029, in particular Objectives TMO116 and TMO117 and 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.

Furthermore, it is considered that the payment of a development contribution in accordance with Condition 5 as amended would accord with the requirements of the Kildare Development Contribution Scheme 2023-2029, which came into effect on the 1st of January 2023.

Lucy Roche
Planning Inspector

9th June 2023