



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312179-21

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<b>Development</b>	Change of use from commercial building to residential, comprising 12 apartments. Revised by Significant Further Information to now comprise 10 apartments with all associated site development works.
<b>Location</b>	Suncroft Road, Brownstown Great, Brownstown, The Curragh, Co.Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	21529
<b>Applicant(s)</b>	Shane Campbell
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	First Party V Contribution Condition
<b>Appellant(s)</b>	Shane Campbell
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	None
<b>Inspector</b>	Una Crosse

## 1.0 Site Location and Description

- 1.1. The subject development site accommodates an existing building located in Brownstown in the Curragh.

## 2.0 Proposed Development

- 2.1. The proposal relates to the proposed retention of permission for the change of use of an existing two storey and part single storey commercial building to a two-storey and part single storey residential building comprising 12 apartments. Following revisions at further information, 10 apartments were permitted.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority granted permission subject to 35 conditions.

**Condition 35**, subject of this appeal, requires the payment of **€50,650.00** as follows:

The applicant/developer to pay to Kildare County Council the sum of €50,650.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5<sup>th</sup> 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 the Development Contribution Scheme adopted by Kildare County Council on 5<sup>th</sup> November 2015.

**Reason:** It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contributions Scheme 2020 made under Section 48 of the Planning and Development Act 2000 (as amended).

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planner's report recommended a grant of permission as set out in the manager's order.

A Development Contribution Sheet dated 16 November 2021 outlines the charges for 10 apartments based on a €50 rate per sq.m with a total floor area of 1013 sq.m and a total charge of €50,650

### 3.2.2. **Other Technical Reports**

3.2.3. None of relevance.

## 4.0 **Planning History**

4.1. **Ref. 06/2102** – Parent Permission – two storey mixed use development comprising 4 retail units at ground floor with 5 two-bed apartments at first floor level - implemented – Condition 57 required development contribution of €92,022.25.

4.2. **Ref. 08/1200** – change of use from 4 first floor apartments to 4 first floor offices - implemented but not occupied. Levies of €13,500 required by Condition 53.

4.3. **Ref. 09/686** – Change of use of ground floor unit to retail use to include off licence - not implemented – Development Contribution of €38,325 required.

## 5.0 **Policy and Context**

### 5.1. **Development Contribution Scheme**

The Kildare County Council Development Contribution Scheme 2015-2022 is the applicable development contribution scheme. Section 12 of the Scheme deals with Exemptions and Reduced Contributions where it is stated at subsection (g) Change of Use that:

*“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”*

### 5.2. **Natural Heritage Designations**

Not relevant

### 5.3. EIA Screening

Not relevant

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The appeal relates solely to the application of the Development Contribution Scheme and to Condition 35.
- Demonstrates that Council did not correctly apply the scheme with levies previously paid for the original development and scheme provides that no levies are applicable for a change of use application relating to the same floorspace.
- Letter attached as Appendix B from Kildare County Council confirming that Development Contributions for parent permission Ref. 06/2102 in the sum of €92,022.25 were paid in full.
- Reference to Development Contribution Guidelines and issue of double charging with reference to statement that '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 the development has already made a contribution.
- Section 12 of Contribution Scheme deals with Exemptions and reduced contributions, subsection G deals with change of use applications and notes that a 100% reduction in contribution charges will apply where there is no new or upgraded infrastructure or significant intensification of demand on existing infrastructure.
- Scheme has been incorrectly applied as Council should have applied Section 12(g) of the contribution scheme which would have resulted in a 100% reduction in levies.
- Documentary evidence – Appendix B – showing all levies were paid on the existing floor space as per correspondence dated 6 November 2008 in relation to Ref. 06/2102.

- There is no new or upgraded infrastructure or intensification of demand on existing infrastructure.

## 6.2. Planning Authority Response

The response from the Planning Authority is summarised as follows:

- PA aware contributions were applied and paid in full in relation to Ref. 06/2102 in the sum of €92,022.25.
- Development Contributions were applied to two subsequent permissions – Ref. 09/686 (€38,325) and Ref. 08/1200 (€13,500) and both remain outstanding.
- PA consider the calculation of the Development Contribution is correctly applied.

## 6.3. Further Response by Applicant

The applicant was afforded the opportunity to respond to the Planning Authority's response to the appeal and it can be summarised as follows:

- Note that Ref. 09/686 was never implemented.
- In terms of Ref. 08/1200 PA are incorrect as the permission was implemented in full and all levies were paid in full.
- Development contributions in Ref. 08/1200 related to a parking shortfall of €13,500 (Condition 53) and levies of €8,983.32 (condition 54)
- Letter attached by applicant from KCC dated 24 June 2009 thanking applicant for the payment of €22,483.33 imposed under permission Ref. 08/1200 and stating that *"I can now confirm that financial contributions 54 and 53 of Ref. 08/1200 has been complied with in full"*

## 7.0 Assessment

- 7.1. This is an appeal against a contribution condition imposed by Kildare County Council under the adopted Kildare County Council Development Contribution Scheme 2015-2022. Section 48(10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be made to the Board by an applicant for permission where the applicant considers that the terms of the adopted development

contribution scheme have not been properly applied by the planning authority. This appeal relates solely to the development contribution condition and I propose to deal with the appeal in that manner.

- 7.2. Condition 35 requires that a contribution of €50,650 is made to the Council. This is calculated on the basis of 10 permitted apartments with a total floor area of 1013 sq.m with a charge of €50 per sq.m. There are two related matters to address in respect of this dispute. Firstly, the planning authority's rationale for the imposition of the condition, in that it is their contention that because levies imposed on previous amendments to the parent permission have not been paid that they can impose the contribution per sq.m of apartment with their contention that the Scheme has been appropriately applied. Secondly, given that the proposal is a change of use, whether development contributions can be applied.
- 7.3. In relation to the first matter, the planning authority have responded to the appeal stating that the development levies in respect of two permissions, Ref. 09/686 (€38,325) & Ref. 08/1200 (€13,500), have not been paid. The Planning Authority do acknowledge that the €92,022.25 for the parent permission has been paid. The Planning Authority however decided to apply the contributions for new development on the basis that the levies on previous amendments, of which there are two, were not paid.
- 7.4. The applicant has responded to state that Ref. 09/686 which was to provide an off licence was never implemented. There is no reason not to accept this position.
- 7.5. In relation to Ref. 08/1200 documentary evidence has been provided by the applicant from Kildare County Council itself, clearly stating that the development contributions have been paid in respect of Ref. 08/1200 with the receipt attached. Therefore, the PA have incorrectly arrived at their position in relation to the payment of the levies on both of these permissions and they have clearly erred in requiring the development contribution be applied on this basis.
- 7.6. The matter of whether an application for a change of use attracts development contributions also necessitates assessment. The Kildare County Council Development Contribution Scheme 2015-2022 is the applicable development contribution scheme. Section 12 of the Scheme deals with Exemptions and Reduced Contributions where it is stated at subsection (g) Change of Use that the scheme

provides for waivers in the case of Change of Use planning permissions with the granting of 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. The applicant provided within their appeal a letter from their consulting engineers that the development would not lead to such intensifications. I would also note that the Planning Authority do not suggest in their appeal response that the proposal would lead to such increases and therefore I consider that this subsection should have been applied and a condition requiring development contributions has been incorrectly included in the permission.

7.7. Therefore, the Planning Authority should be directed to delete Condition 35.

## 8.0 Recommendation

8.1. I recommend that the planning authority be directed to delete Condition 35.

## 9.0 Reasons and Considerations

A development contribution is not payable, as per the Kildare County Council Development Contribution Scheme 2015-2022, on foot of a grant of planning permission for a change of use of a development where subsection G of the aforementioned scheme specifically provides for a 100% reduction in same where the development would not lead to the need for new or upgraded infrastructure/services or a significant intensification of demand placed on existing infrastructure. Furthermore, the contributions considered to be outstanding in respect of amendments made to the parent permission have been paid/are not applicable and in this instance the rationale of the Planning Authority to apply the contribution on this basis is an error. The planning authority has therefore erred in its application of the scheme and Condition 35 should be deleted accordingly.

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Una Crosse  
Senior Planning Inspector

7 March 2022