



An  
Bord  
Pleanála

## Inspector's Report ABP-312509-22

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<b>Development</b>	Change of use from furniture store to retail shop
<b>Location</b>	O'Doherty Upholstery, The Demesne, Newcastle West, Co. Limerick
<b>Planning Authority</b>	Limerick City & County Council
<b>Planning Authority Reg. Ref.</b>	21/952
<b>Applicant(s)</b>	O'Doherty Upholstery.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	First Party v S48 condition
<b>Appellant(s)</b>	O'Doherty Upholstery.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	23/06/2022.
<b>Inspector</b>	Auriol Considine

## **1.0 Site Location and Description**

- 1.1. The proposed development site is located on the northwester side of the town centre of Newcastle West and on lands zoned Enterprise & Employment. The site lies just off Church Street, and fronts onto The Demesne. The land to the east comprises a mix of town houses and businesses while the land to the north and west comprise sports and recreational lands associated with the Demesne.
- 1.2. The subject site has a stated area of 0.212ha and comprises an existing building which is occupied by a furniture shop and upholstery business. There is a second commercial building located immediately to the west. To the northwest of the site there is a community centre with the GAA grounds and associated buildings further west. There is an Aldi located to the south of The Demesne.

## **2.0 Proposed Development**

- 2.1. Permission is sought for a change of use from a furniture store to a retail shop including ancillary staff offices and canteen, site signage and ancillary works, all at O'Doherty Upholstery, The Demesne, Newcastle West, Co. Limerick.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to grant permission for the proposed development subject to 18 conditions.

Condition 2 is of relevance to this appeal and requires the payment of a financial contribution of €84,650.00.

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

#### **3.2.1. Planning Reports**

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history, and the local policies and objectives. The report also includes a section on AA.

The Planning Report considered that the detail of the intended occupant was required and that a Retail Impact Assessment was required. Further information was required with regard to these issues, as well as details of signage, roads and traffic matters, car parking, public lighting and Fire and Building Control matters.

Following the submission of the response to the FI request, the planning officers report considered that all matters in the FI request were addressed and that the principle of the development was acceptable. The final report also presents a consideration of the appropriate calculation of development contributions applicable. In this regard, the report refers to the Development Contribution Scheme 2017-2021 and calculates that the development contributions paid under previous decisions amounts to €3050.00 which is deducted from the calculated contribution of €87,000.00. Condition 2 of the decision to grant permission therefore requires the payment of €84,650<sup>1</sup>.

The report recommends a grant permission for the change of use, subject to 18 conditions. This Planning Report formed the basis of the Planning Authority's decision to issue a grant of permission.

### 3.2.2. Other Technical Reports

**Chief Fire Officer:** No objection in principle to the proposed development subject to a number of comments to be addressed.

**LA Archaeologist:** No objection.

**Roads Department:** Notes that the car parking numbers do not appear to be in line with CDP requirements. It is further indicated that the proposed development is an intensification of the site.

**Planning, Environment & Place-Making:** Issues raised in relation to the public lighting and surface water disposal.

### 3.3. Prescribed Bodies

**TII:** No observations.

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<sup>1</sup> The Board will note that this is the figure specified in the Planning Officers Report, and in Condition 2 of the PAs decision to grant permission.

**Midwest NRDO:** No observations.

**Irish Water:** No objection

### 3.4. Third Party Observations

There were one third-party observations noted. The issues raised are summarised as follows:

- The applicant must justify why the retail development is not a material contravention of the plan.
- A Retail Impact Assessment should be required.
- Secure cycle parking should be provided.

## 4.0 Planning History

The following is the relevant planning history pertaining to the site:

**PA ref: 96/1948:** Permission granted for the construction of 3 no. industrial/commercial units to include exhaust & tyre centre, kitchen showroom and fabrication area and general furniture showroom, subject to 15 conditions, including condition 2 which sought the payment of £1,800 as a development contribution.

**PA ref: 02/696:** Permission granted for the construction of an extension to rear of existing furniture showroom and workshop to provide additional floor space for same, subject to 7 conditions, including condition 1 which sought the payment of €9,000 as a development contribution.

**PA ref: 05/2937:** Permission and retention permission for all signage granted without conditions.

**PA ref: 06/2391:** Permission granted for the construction of an extension to the eastern side of furniture store to incorporate furniture loading bays, additional signage at front wall and retention permission for an existing compressor-foam storage room at northern side of furniture store, subject to 10 conditions, including condition 2 which sought the payment of €18,786.14 as a development contribution.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1. The site is located within the settlement boundary of the town of Newcastle West in Co. Limerick and on lands zoned Enterprise & Employment. It is the stated purpose of this zoning to 'accommodate high quality & sensitively designed enterprise & employment development & complementary uses. The form & scale of the development shall be appropriate to their location'. The site lies adjacent to lands zoned Existing Residential to the east while the lands to the south are zoned Town Centre.

### **5.2. Development Contribution Scheme 2017-2021**

5.2.1. The Limerick City & County Council Development Contribution Scheme 2017-2021 was in force at the time that the Planning Authority made its decision to grant permission for the proposed change of use development. Part 10 of the Scheme deals with Change of Use and states as follows:

Where a proposed change of use does not lead to the need for new or upgraded infrastructure/services or a significant intensification of demand placed on existing infrastructure and where a contribution was paid previously for the existing use, the development shall be exempt from paying a contribution. In all other circumstances the change of use shall be charged at the rate appropriate to the new use, subject to a reduction in respect of the contribution rate already paid for the existing use.

Change of use applications where the contributions have not been paid previously will be subject to contributions at the appropriate rate. Applicant's agent shall provide evidence of proof of payment at application stage in order to expedite assessment and avail of this provision.

### **5.3. Development Contribution Scheme 2022**

5.3.1. Since the appeal has been lodged with the Board, The Limerick City & County Council Development Contribution Scheme 2022 has come into effect. Part 10 of the 2022 Scheme deals with Change of Use and states as follows:

Where a proposed change of use does not lead to the need for new or upgraded infrastructure/services or a significant intensification of demand placed on existing infrastructure, the development shall be exempt from paying a contribution.

In all other circumstances, the change of use shall be charged at the rate appropriate to the new use, subject to a reduction in respect of the contribution rate appropriate to the existing usage.

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

The subject site is not located within any designated site and comprises an already developed site. The proposed development relates to a change of use of the existing building only. The closest Natura 2000 site is the Stacks to the Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA, Site Code 004161, which is located approximately 4.3km to the west of the site.

## **6.0 The Appeal**

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

This is a first party appeal against the decision of the Planning Authority to include condition 2 in the grant of permission seeking the payment of €84,650.00 as a development contribution. The grounds of appeal are summarised as follows:

- In terms of the planning history associated with the site, the following is relevant:
  - £1,800 was paid under PA ref 96/1948
  - €9,000 was paid under PA ref 02/696
  - €18,786.14 was paid under PA ref 06/2391

- It is submitted that the PA has misapplied the terms of the Development Contribution Scheme for the following reasons.
  - The proposed development is for a change of use from furniture to blended retail sales. There are no new, or upgrades to existing, infrastructures or services required.
  - The existing parking provision and access arrangements on site have been deemed acceptable for the proposed development confirming that no intensification of use in terms of traffic is proposed.
  - The proposed change of use will bear no impact on recreation and amenity or on community and tourism.
- It is contended that because contributions were paid previously, the development is exempt from paying a contribution and that Condition 2 should be removed.
- If the Board does not agree, it is contended that the rate charged should be €20/m<sup>2</sup>, being the difference between the retail charge (€100/m<sup>2</sup>) and the permitted retail warehouse charge (€80/m<sup>2</sup>). To simply deduct the amounts charged at the time, does not reflect the change in inflation and yields a much higher charge now than is reasonable.
- The planner mis-calculated the contributions paid to date.

It is requested that the Board agree with the appellants contention that no development contribution is due, and if not, that the contribution is reduced significantly according to the differences between the use classes. It is contended that Condition 2 has been improperly applied.

## 6.2. Planning Authority Response

The PA did not submit a response to the appeal.

## 6.3. Observations

None

## 7.0 Assessment

- 7.1. This assessment relates to a first party appeal under S48(10) of the Planning & Development Act, 2000 as amended. The first party has appealed condition no. 2 of the decision of Limerick City & County Council to grant permission for the proposed development. S.48(10)(b) of the Act provides that an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.
- 7.2. Section 48(10)(c) states that where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of the planning authority is brought under Section 37, the planning authority shall make the grant of permission as soon as may be after expiration of the appeal period, provided the appellant furnishes adequate security for the payment of the full amount of the contribution as specified in the condition.
- 7.3. In considering the appeal, I note that the Board is bound by the terms of the adopted Development Contribution Scheme and Supplementary Development Contribution Scheme and cannot deviate from same. The merits or appropriateness of any adopted Development Contribution Scheme is not open for interpretation by the Board as referenced in Cork City Council –v- An Bord Pleanala (2006). Rather, the Board is required to assess whether the terms of the scheme, as written, have been correctly applied.
- 7.4. In terms of the current proposal, I consider it appropriate to address the planning history of the overall site. Under the previous grants of planning permission, PA refs. 96/1948, 02/696, 05/2937 and 06/2391, permission was granted for the construction of industrial / commercial units which included an exhaust & tyre centre, kitchen showroom & fabrication area, and a general furniture showroom. The subject appeal relates to the change of use of the furniture showroom and upholstery business. As part of the previous decisions to grant permission, development contribution conditions were attached in three instances. The parent permission required the payment of £1,800, which equates to €2,285.53. As such, the total contributions paid to date amount to €30,071.67.



7.5. The development contribution under appeal amounts to €84,650.00, and it is the appellants contention that as contributions have already been paid, the proposed change of use is exempt as there are no new infrastructures or services, or upgrades to existing, required. The works involved in the change of use will be shelving. There will be an intensification of use and the existing car parking provision and access arrangements have been deemed acceptable for the proposed use. The appellant has requested:

- (a) That the condition be removed on the basis that the Development Contribution Scheme has been improperly applied.
- (b) That just the difference between the two applicable rates being €20 (retail €100 and retail warehouse €80) be applied.
- (c) The full amount of contributions paid to date be deducted.

7.5.1. The current appeal presents a unique situation in that since the decision to grant permission issued from Limerick City & County Council, and the making of the decision on this S48 appeal, the Development Contribution Scheme has changed. That said, with regard to a change of use, the detail remains in principle, the same. The 2022 Development Contribution Scheme provides that:

Where a proposed change of use does not lead to the need for new or upgraded infrastructure/services or a significant intensification of demand placed on existing infrastructure, the development shall be exempt from paying a contribution.

In all other circumstances, the change of use shall be charged at the rate appropriate to the new use, subject to a reduction in respect of the contribution rate appropriate to the existing usage.

7.5.2. Having regard to the above, and in the first instance, I would agree with the First Party that the calculation of the development contribution by Limerick City & County Council is inaccurate. If the full rate of contribution is applicable, it would appear that the applicant has already paid €30,071.67 in contributions relating to the site and associated use as retail warehousing. As such, in the event of the full contribution for the development being sought, for a floor area of 999.08m<sup>2</sup> (as per the application form) then the contribution payable is €99,908.00-€30,071.67 = €69,836.33.

- 7.5.3. In terms of the provisions of the Development Contribution Scheme however, the question to be considered is that if the change of use from the furniture and upholstery store to a Mr. Price outlet, which offers both convenience and comparison goods at discount, including a variety of products, would represent an intensification of demand on existing infrastructure or services. The Board will note that the Roads section of Limerick City & County Council considered that the change of use will represent an intensification of use of the site, and having regard to the existing and proposed use, I would agree.
- 7.5.4. As such, I do consider that a contribution is applicable. In this regard, I note the provisions of the 2022 Development Contribution Scheme and that ‘the change of use shall be charged at the rate appropriate to the new use, subject to a reduction in respect of the contribution rate appropriate to the existing usage.’ In this regard, the charge for the permitted retail warehouse use is €80/m<sup>2</sup> while the proposed retail use is €100/m<sup>2</sup>, a difference of €20/m<sup>2</sup>. The proposed retail floor area is indicated at 877m<sup>2</sup> and therefore the contribution payable is €17,540.00 for the proposed new retail use.
- 7.5.5. I am satisfied that the Development Contribution Scheme has not been correctly applied and that Condition 2 of the grant of permission should be AMENDED to reflect the appropriate development contribution payable as detailed above.

### **Appropriate Assessment**

- 7.6. There are no issues of AA arising in this instance.

## **8.0 Recommendation**

- 8.1. It is recommended that Condition 2 of the grant of permission be AMENDED, on the basis that the terms of the Limerick City & County Council Development Contribution Scheme, 2022 have not been properly applied.

## 9.0 Decision

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 condition number 2 and directs that the said Council AMEND condition number 2 and the reasons therefor as follows:

## 10.0 Reasons and Considerations

Having regard to

(a) the provisions of the Limerick City & County Development Contribution Scheme 2022,

and

(b) the information submitted in support of this appeal,

the Board considered based on the evidence submitted, that the proposed development constitutes a change of use from retail warehousing to retail, and that the terms of the Development Contribution Scheme have not been properly applied in the calculating of the Development Contribution payable. It is directed that condition 2 be amended as follows:

2. The developer shall pay to the planning authority a financial contribution of €17,540.00 (seventeen thousand, five hundred and forty euro) 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.

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A. Considine  
Planning Inspector  
28<sup>th</sup> June 2022