



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314415-22

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<b>Development</b>	Change of use of first floor office area to 2 one bedroom apartments.
<b>Location</b>	Cross Street, Athenry, Co. Galway
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	2260256
<b>Applicant</b>	Joe O'Hara
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party v Condition
<b>Appellant</b>	Joe O' Hara
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	7 <sup>th</sup> February 2023
<b>Inspector</b>	Ian Campbell

## 1.0 Site Location and Description

- 1.1. The appeal site is located at Cross Street, in the centre of Athenry, Co. Galway. The appeal property is a two storey building accommodating a solicitors office on the ground and first floor levels and a two bedroom apartment at first floor level.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the change of use of part of the first floor from office use to 2 no. one bedroom apartments. The floor area concerned is stated as 110.4 sqm. The existing property accommodates 1 no. apartment at first floor level. The development permitted under PA. Ref. 22/60256 permits an additional 2 no. apartments<sup>1</sup>.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority granted permission for the proposed development on the 28<sup>th</sup> July 2022 subject to 10 no. conditions.

Condition no. 10, the subject of this appeal, requires the payment of €8,498.40 as follows;

*Prior to the commencement of development, the applicant/developer shall pay €8,498.40 to the Planning Authority, unless a phased payment schedule has been agreed in writing, with the Planning Authority. This charge has been calculated using the Development Contributions Scheme adopted by Galway County Council in accordance with the provisions of Section 48 of the Planning and Development Act 2000 (as amended):*

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<sup>1</sup> The existing first floor plan indicates the office area and 1 no. apartment, as was permitted under the parent permission i.e. PA. Ref. 03/5689. The proposed first floor plan indicated the 2 no. proposed apartments with the part of the first floor accommodating the existing apartment blank. Reference is however made on this drawing to the floor area of the 'existing apartment' as being c. 61 sqm.

**Reason:** So that the developer shall pay an equitable portion of the cost of the facilities that are provided or that it intended will be provided by or on behalf of Galway County Council, which will facilitate the proposed development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the Planning Officer recommends a GRANT of permission consistent with the Notification of Decision which issued.

Condition no. 10 sets out the basis for the calculation of development contribution as follows;

Development Sub-Area	Development Sub-Type	Charge Code Description	Number of Units	Unit Charge	Line Charge
Sub Area 1	Residential	Recreation & Amenity	2	€2,152	€4,304
	Residential	Roads	110.4 sqm	€7.50	€828
	Residential	Athenry Relief Road	110.4 sqm	€11	€1214.40
	Residential	Car Parking	2	€1,076	€2,152
					<b>Total</b> <b>€8,498.40</b>

#### 3.2.2. Other Technical Reports

None received.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

None received.

## 4.0 Planning History

The following applications relate to the appeal property. The most relevant application is the parent permission, PA. Ref. 03/5689. The remaining permissions relate to other parts of the building and not to the part of the building which is the subject of the current appeal.

### Appeal Property:

**PA. Ref. 03/5689<sup>2</sup>** – Permission GRANTED to demolish 2 no. existing houses/shops and construct office unit with 1 no. apartment and 1 no. townhouse.

### Other Applications Relating to Appeal Property:

**PA. Ref. 17/1483** – Permission GRANTED for change of use of part of ground floor office to one bedroom apartment.

**PA. Ref. 08/3587** – Permission GRANTED for changes to the front elevation and for change of use of part of first floor from residential to commercial.

**PA. Ref. 06/4330** – Permission GRANTED for change of use of ground floor from residential to commercial.

## 5.0 Policy Context

### 5.1. Ministerial Guidance

5.1.1. The following Section 28 Guidelines are pertinent to this appeal.

- **Development Contributions, Guidelines for Planning Authorities (Department of the Environment, Community and Local Government 2013).**

The Guidelines note that the *‘practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit*

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<sup>2</sup> Condition no. 7 required the payment of a development contribution in respect of the 2 no. residential units.

*of capturing “planning gain” in an equitable manner. 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 this development had already made a contribution’.*

## **5.2. Galway County Council Development Contribution Scheme 2016 (revised 1<sup>st</sup> August 2019)**

5.2.1. The Galway County Council Development Contribution Scheme 2016 (as revised 1<sup>st</sup> August 2019) is the applicable development contribution scheme.

Part 1 of the scheme sets out charges for residential units within Sub-Area 1, that being towns and villages with adopted Local Area Plans, and development within the GTPS. I note that the Planning Authority based their assessment on the Athenry Local Area Plan 2012 (extended until 22<sup>nd</sup> May 2022).

Part 3 of the scheme sets out additional contributions.

- A contribution of €11 per sq. metre towards the provision of the Outer Relief Road in Athenry shall be imposed for all new development within the Athenry LAP area.
  
- Car parking shall be provided in accordance with the parking requirements set out in the County Development Plan/ Local Area Plan. A contribution of €1,076 per space will be required for each space not provided as required by the Plan in areas subject to a Local Area Plan. In other villages and areas, no additional charges for car parking spaces shall apply.

Part 4 of the scheme sets out exemptions, which include;

Change of Use:

Where a Change of Use permission is sought, due regard shall be had to any Development Contributions paid previously and any additional levies shall only be applied where there is a substantial increase in output or intensity of use or where additional gross floorspace or functional area is created.

### Town Centre Revitalisation Exemptions:

Development consisting of the conversion or renovation of upper floors of buildings into business/commercial or residential uses in areas zoned as “Town Centre” in Local Area Plans shall be exempt from the provisions of the Development Contributions Scheme. Changes of use in Town Centre zoned lands within LAP areas that do not impose significant additional demand for services (i.e. additional car parking), will also be regarded as exempted from the provisions of the Development Contributions Scheme.

### 5.3. **Natural Heritage Designations**

Not relevant.

### 5.4. **EIA Screening**

Not relevant.

## 6.0 **The Appeal**

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

This is a first-party appeal against Condition No. 10 of the Planning Authorities Notification of Decision to Grant Permission. Condition No. 10 requires the payment of a financial contribution. The grounds for appeal can be summarised as follows;

- The financial contribution is excessive in the circumstances.
- The proposal relates to a change of use rather than a new build and there is no intensification of usage of local services.
- The proposed apartments are single occupancy
- The building is of a high quality design and very little refurbishment is required. There would be no change to the exterior of the building or intensification of use.
- In respect of the levy for carparking, the site is located in the town and is served by public transport.

## 6.2. Planning Authority Response

None received.

## 6.3. Observations

None.

## 7.0 Assessment

- 7.1. This is an appeal against Condition no. 10, requiring the payment of a development contribution under the adopted Galway County Council Development Contribution Scheme 2016 (as revised on the 1<sup>st</sup> August 2019). 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. Having reviewed the Galway County Council Development Contribution Scheme 2016 (as revised on the 1<sup>st</sup> August 2019), and specifically Part 4 'Exemptions', I note that there are two provisions contained within this section of the scheme which in my opinion are relevant to this appeal. The first relates to change of use applications, where it is stated that *'due regard shall be had to any Development Contributions paid previously and any additional levies shall only be applied where there is a substantial increase in output or intensity of use or where additional gross floorspace or functional area is created'*. Having reviewed the planning history relevant to the appeal property I consider the parent permission, PA. Ref. 03/5689, to be the most relevant in this regard. The Planning Authority have confirmed that development contributions were paid in relation to PA. Ref. 03/5689. Following this, it is necessary to consider whether the proposed development would represent 'a substantial increase in output or intensity of use'. The proposal entails the change of use of c. 110 sqm of the first floor of the property currently used as a solicitors office to 2 no. one bedroom apartments. Noting the single occupancy of the apartments, and the floor area concerned which was used as an office, I am satisfied that the proposal would not result in a substantial increase in output or intensity of use. Furthermore, I note that the proposal does not

entail any increase in floorspace, or functional area. On this basis, I consider that development contributions do not apply.

- 7.3. In the context of town centre revitalisation, the Development Contribution Scheme provides that the conversion of the upper floors of buildings into residential uses in areas zoned as “Town Centre” in Local Area Plans<sup>3</sup> is exempt from the provisions of the Development Contributions Scheme. Under the Athenry Local Area Plan 2012 (as extended), the appeal site was zoned ‘C1’ (Town Centre/Commercial). I further note that the site is zoned ‘C1’ (Town Centre) in the Draft Athenry Local Area Plan 2023-2029. On this basis, I consider that development contributions do not apply.
- 7.4. The Galway County Development Contribution Scheme 2016 (as revised on the 1<sup>st</sup> August 2019) also provides that changes of use on Town Centre zoned lands within LAP areas that do not impose significant additional demand for services (i.e. additional car parking) will be regarded as exempted from the provisions of the Development Contributions Scheme. The proposed development comprises 2 no. one bedroom apartments on town centre zoned lands and as such I am satisfied that the proposal does not result in a significant demand for car parking.
- 7.5. In summation, and having regard to the nature of the proposed development, its location within a town centre on town centre zoned lands, the previous payment of development contributions in respect of PA. Ref. 03/5689 and the provisions of the Galway County Development Contribution Scheme 2016 (as revised on the 1<sup>st</sup> August 2019), I conclude that the exemptions referred to in Part 4 of the applicable development contribution scheme should have been applied and that a condition requiring the payment of a development contribution has therefore been incorrectly included in the permission.

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<sup>3</sup> I note that the Athenry Local Area Plan 2012 was extended until the 22<sup>nd</sup> May 2022 and that at the time of writing this report the Draft Athenry Local Area Plan 2023-2029 is on public display. I consider it reasonable to consider this appeal in the context of the Athenry Local Area Plan 2012, including the zoning of the appeal site.



## 8.0 Recommendation

I recommend that the Planning Authority be directed to remove Condition no. 10.

## 9.0 Reasons and Considerations

1. Having regard to the exemptions provided under Part 4 of the Galway County Council Development Contribution Scheme 2016 (as revised on 1<sup>st</sup> August 2019), as the proposed development entails a change of use of part of a building, for which development contributions have previously been paid, and the proposed development would not result in a substantial increase in output or intensity of use or the creation of additional gross floorspace or functional area; as the proposed development consists of the conversion of the upper floor of a building into residential use in an area zoned town centre in the Athenry Local Area Plan 2012 (as extended); and as the proposed development does not result in significant additional demand for services (i.e. additional car parking), the proposed development is exempt from the provisions of the Development Contribution Scheme. The Board consider that the Planning Authority has therefore erred in its application of the scheme and Condition 10 should be removed accordingly.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Ian Campbell  
Planning Inspector

24<sup>th</sup> July 2023