



An
Bord
Pleanála

Inspector's Report

ABP-315301-22

Development	Retain the use of a former warehouse building for use as a shop including elevation changes to the unit and associated site works.
Location	Canal Court, Mullingar, Co. Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	2298
Applicant(s)	Corajio Trading as Mr Price
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party V s.48 Conditions
Appellant(s)	Corajio Trading as Mr Price
Observer(s)	None
Date of Site Inspection	25 th June 2023
Inspector	Ronan O'Connor

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1.0 Site Location and Description

1.1. The site is occupied by a detached former warehouse structure on the northern side of Canal Avenue. The premises is currently occupied by the Mr. Price retail store.

2.0 Proposed Development

2.1. Retain the use of a former warehouse building for use as a shop including elevation changes to the unit and associated site works.

3.0 Planning Authority Decision

3.1. Decision

Grant permission (Decision Date 14th November 2022). Conditions of note include:

- Condition No. 2 –revised details of front face to include two no. shop windows.
- Condition No. 3 – revised public realm plans/omission of 4 car parking spaces and other items
- Condition No. 4 - Details of proposed public footpath
- Condition No. 5 – Revised signage
- Condition No. 8 - Development contribution 29,668.85 – in accordance with the WCC s48 Dev Contribution Scheme (Class 3)
- Condition No. 9 – Development Contribution of 159,600 - in accordance with the WCC s48 Dev Contribution Scheme (to address shortfall in car parking)
- Condition No. 10 – Special Development Contribution of 12,200 in respect of footpath infrastructure, public lighting, ancillary traffic management works

3.1.1. I note that conditions 8, 9 and 10 are the subject of this appeal.

Planning Authority Reports

Planning Report dated 26/04/2022

- Site is zoned Mixed-Use/Development is consistent with zoning objective

- Proposed location of the retention application is consistent with retail policy objectives
- Concerns raised in relation to the design and appearance of the building/signage/visual clutter/impact on residential amenity/noting the location close to residential properties and within the Canal Avenue Urban Regeneration Masterplan Area.
- Inadequate car parking provided

3.1.2. **Further Information** was requested on 27/04/2022 in relation to

1. The elevation/public realm
2. Provision of a footpath/Regularisation of the car parking
3. Waste storage details
4. Address matters in Fire Officer's Report.

3.1.3. Further Information was received by the PA on 18/10/2022.

Planning Report dated 14/11/2022

- Note the applicant's response/no changes proposed/accepted that continued use and occupancy would continue to contribute to the regeneration of the area/recommends that fenestration is provided/should be addressed by way of condition.
- Constraints of the site in relation to provision of car parking is acknowledged/A revised public realm indicating the omission of 4 no. car parking spaces and proposed grassed area/replaced with hard landscaping, street planting, public lighting/should be addressed by way of condition
- Other matters have been addressed
- Proposed development was considered to be acceptable and it was recommended that permission be **Granted**.
- An advisory note in relation to development contributions was attached.

3.1.4. Other Technical Reports

Fire Officer - note travel distances within the building are excessive/recommend refusal

Engineer's Report

(Report Dated X) – Applicant to submit a revised site layout maximising car parking and provision of a footpath on the front boundary parallel to the public road.

Report Dated 11/11/2022 – FI regarding footpaths and parking is satisfactory/recommends contribution of 9,200 towards the cost of providing a footpath extending from the proposed new footpath to the existing footpath approaching McCurtain St

3.2. Prescribed Bodies

None.

3.3. Third Party Observations

None.

4.0 Planning History

P.A. Ref 97/135 Permission granted to B.W.G. Foods Ltd. for extension to Cash and Carry

P.A. Ref 81/727 Permission **refused** to extend premises at Canal Avenue¹. The reason related to the impact of the extension on surrounding residential amenity, excessive site coverage, and design issues

5.0 Policy Context

Relevant Section 28 Guidelines

5.1.1. Guidelines for Planning Authorities on Development Contributions (2013)

Westmeath Development Contribution Scheme 2022

¹ This is cited as being 'granted' in the Planning Report. However with reference to the WCC Online Planning Search the decision was to refuse permission.

5.1.2. The Westmeath Development Contribution Scheme 2022 is of relevance here (and I have placed a hard copy of same on the file for the Board's perusal). The following provisions of same are of relevance to this appeal:

- waivers in the case of change-of-use permissions, where it does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure (including, for example, transport infrastructure) (Page 4 of the Scheme refers)
- Special Development Conditions - A Planning Authority may, in addition to the terms of a General Development Contribution Scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a Scheme are incurred by the Local Authority in respect of public infrastructure and facilities which directly benefit the proposed development (Section 2.2/Page 5 of the Scheme refers)
- Section 6 – Table 2 – Class 3 COMMERCIAL / INDUSTRIAL / RETAIL / RETAIL WAREHOUSING / DATA CENTRES - Any structure which is normally used for the carrying out of any professional or commercial undertaking. €23.00 per sq. m. (Page 8 of the Scheme refers)
- Class 16 of the WCC Development Contribution Scheme 2022 refers to shortfalls in car parking spaces in urban areas being charged at €5,700 per space.
- Note 6: All retention permissions will be charged a multiple of 1.25 times the appropriate rates for any development in excess of the exemptions of this Scheme (Page 10 of the Scheme refers)
- Section 7.7 Change of Use/Modification to a permitted development - Where permission is granted for change of use development/modification to a permitted development, then allowance will be made for any contribution that has been previously paid and the contribution will be based on the difference between contributions previously paid and the contribution associated with the change of use as set out in the relevant class of development under Section 6. The Scheme does not provide for any rebate or refund in this regard.

5.2. Natural Heritage Designations

5.2.1. The Royal Canal pNHA is located 100m to the east of the site.

5.3. EIA Screening

5.3.1. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

5.4. AA Screening

5.4.1. Having regard to the modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal is a First Party Appeal against Conditions No. 8, 9 and 10 of the decision of Planning Authority. The appeal submission is summarised as follows:

Introduction

- Appeals relates to financial conditions No 8, 9 and 10 of 22/98
- Sets out the history of the site insofar as the information could be found.
- Makes reference to the Westmeath Development Contribution Scheme
- Section 6 of the Scheme sets out that the use of commercial/industrial/retail/retail warehousing are all in the one use class for the application of development contributions.

- The building may have been levied in terms of development contribution and parking under the pre-1980's parent permission/this file is not available
- Or the subsequent 89/362 permission/ this file is not available
- And the 1997 application for the extension to the cash and carry
- Reference is made to Section 7.7 of the Scheme as relates to previously paid contributions

Grounds of Appeal

- The Planning Authority has misapplied the terms of the Development Contribution Scheme

Condition No. 8

- Planner incorrectly states there is no planning history status for the structure/use on the site (Cash & Carry)/that no development contributions have been previously applied to this existing structure.
- Condition No. 8 requires a development contribution of 29,688.85 in respect of public infrastructure and facilities benefiting the development.
- Copies of the 1997 permission/compliance opinion/fire safety cert are attached to appeal submission/proves this situation incorrect
- Planning Authority cannot assume that no contributions have been paid and apply significant charges to the public where they cannot make files available to the public to support their claims
- Furthermore it is contested that no change of use (as defined in the Development Contribution Scheme) has taken place as both the previous use (commercial/retail/warehousing) and the current use (retail;) are within the one use class (Class 3) as per Section 6 of the scheme.
- No building works were carried out as part of the change of use

Condition 9 (Car Parking)

- Cash and Carry use associated with the building had provided for its car parking requirements up to 1997/no further extensions were added to the building thereafter

- Parent permission could not be found/very unlikely the 1997 permission (extension to Cash and Carry) would have been granted as to do so would have compounded an unauthorised use
- 1997 permission sought 'additional' 6 no. spaces for the extension/suggesting that parking spaces were also sought at parent permission stage/is not known if there were provided 'on-site' or a contribution was paid as the file was not available for public viewing/however certificate of compliance outlines that planning was substantially complied with.
- Only fair to assume that planning conditions in relation to parking and financial contributions in 1997 as per the opinion on compliance
- Therefore the only requirements for parking should be calculated only on the change in demand from the permitted cash & carry to the existing retail use
- Noted there is a paid public car park opposite the Mr. Price Store
- With reference to s16.4.14 of the Development Plan (Parking Standards) – 13 additional spaces required – resulting in a contribution of 74,100 not the 156,000 as conditioned

Condition 10 (Special Development Contribution/Footpaths)

- Proposed development is merely a change of use with no increase in demand for any public services
- Contended that as contributions were previously paid for the existing use/extension to the building in 1997/development is therefore exempt from paying a contribution/PA improperly applied the Development Contribution Scheme/Condition 10 should be removed.
- Conditions 3 and 4 require applicants to develop hard and soft landscaping/public footpath, public lighting/roadway and pedestrian areas on the site and adjoining public road
- Council is also seeking a special development contribution of 6,200 to facilitate the Council to construct a footpath outside an adjoining warehouse owned by another business person in the town/PA have permitted other commercial and

residential schemes on McCurtain Street/Didn't require them to construct any footpaths on the northern side of the public road.

- Footpath will only run for the length of the derelict warehouse to the west of Mr. Price as there is no space for a footpath in front of the apartment complex to the east
- There is a full footpath to the other side of the road/this is sufficient
- PA Conditioned payment of 2,000 traffic management costs/1,000 changes to the road markings
- Road markings were never a feature of this road/PA have previously resurfaced this road/did not replace the car parking lines following the resurfacing/applicant should not have to pay for relining car parking spaces covered over by the council
- Unreasonable for applicants to bear the costs of all works on this road
- Council has also requested that a contribution in lieu of existing public lighting of 3,000 was required by applicant/public lighting is required by Condition No. 3 of 22/98
- PA is charging applicants for upgrading lighting along the public road to facilitate the council's own housing

6.2. **Planning Authority Response**

6.2.1. None.

6.3. **Observations**

6.3.1. None

7.0 **Assessment**

7.1. **Introduction**

7.1.1. This First Party Appeal relates to financial conditions. The scope of the appeal is limited to whether the planning authority have properly applied the terms of

Westmeath County Council's Development Contribution Scheme 2022 (in respect of Conditions 8 and 9), as per Section 48(10)(a) of the Planning and Development Act 2000, and if they have sufficiently justified the imposition of the special contribution, as per Section 48(12)(b) of the PDA 2000, as amended, and as per Section 48(13)(a) of the PDA 2000, as amended.

7.2. Condition No. 8 (Development Contribution)

- 7.2.1. Condition No. 8 requires the first party appellant to pay the sum of €29,665.85, in accordance with WCC's Development Contribution Scheme, applying Class 3 contributions to the area of the warehouse (1,289.95 sq. m) at 23 per sq. m.
- 7.2.2. The first party appellants contend that it must be assumed that development contributions have been previously paid in relation to this premises, and have submitted evidence in this regard, namely a copy of the 1997 planning permission (97/135 which relates to 'Extension to Cash and Carry at Barrack Street, Mullingar), a Certificate of Compliance in relation to this same permission, signed by Paul O'Reilly, Engineer and a Fire Safety Certificate relating to the same property. Reference is made to Section 7.7 of the Development Contribution Scheme as relates to previously paid contribution. Furthermore it is stated that Section 6 of the Scheme sets out that the use of commercial/industrial/retail/retail warehousing are all in the one use class for the application of development contributions and therefore no change of use (as defined by the Development Contribution Scheme) and therefore no development contributions are payable in any case.
- 7.2.3. Of relevance in this instance, is the planning history of the site. A 1981 permission (81/727), 'to extend store at Canal Avenue' referred to in the planner's report was in fact refused for one no. reason [decision date 27/01/82] (it is stated that this was granted in the planner's report). The reason related to the impact of the extension on surrounding residential amenity, excessive site coverage, and design issues². This does not appear have been appealed. However, I am not of the view that the success, or otherwise, of this appeal would hang on this refusal.
- 7.2.4. The 1997 permission is the next permission of relevance and refers to 'Extension of Cash and Carry' (Reg Ref 97135) and which was granted permission subject to 9

² With reference to the planning search function on Westmeath County Council's website.

conditions [decision date 29/07/1997]. Conditions of note include Condition No. 2, a sum of £2,400 as a contribution towards the cost incurred by the Council in providing public water and foul sewers, and Condition No. 6 which requires the applicant to submit details of an additional 6 no. spaces or where these spaces are not provided sum of £700 per space not provided. The development levy of £2,400 in this instance would appear to have been calculated on the basis of the extension to the premises (with reference to the Engineer's report relation to this application).

7.2.5. I concur with the first party appellant's assertion that the Cash and Carry Use is likely to have been a lawful use, in planning terms, at the time of the 1997 permission, notwithstanding the lack of a planning history for same, as the Council is unlikely to have granted an extension to a premises in which an unauthorised use was been carried out. I note that this is no reference to any enforcement action being taken in relation to this 'Cash and Carry' use, and is no enforcement history on file in relation to this use. Therefore, it is likely there is a parent permission but no details of this appear to be available. The Planner's report, in relation to this current application, states that the 'structure was previously in use a retail warehouse'.

7.2.6. In any case, the consideration of the planning history here is limited only to whether a development contribution should be payable for the change of use from retail warehouse to retail, discounting any previous contributions made, as per Section 7.7 of the Development Contribution Scheme. To my mind it is likely that previous contributions have been made in relation to the retail warehouse, noting the application of contributions to the 1997 permission, which was limited to the extended floor area only, and not the entire premises. I note also that no enforcement history, as relates to the 1997 permission (97/135) is on file, and it would appear that all relevant conditions were complied with, including those conditions which required financial contributions to be made by the applicant (which is supported by the signed certificate of compliance submitted by the first party appellants). As such, I am of the view that Section 7.7 of the Development Contribution Scheme applies in this instance, and that no additional development contributions should be levied here, with reference to the WCC Development Contribution Scheme 2022.

7.2.7. While not raised explicitly by the first party appellants, of note also are the provisions as set out on Page 4 of the Scheme which allows for 'waivers in the case of change-

of-use permissions, where it does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure'. There is no discussion of this in the planners report and this would imply that the PA consider that the change of use being retained here (from retail warehouse/cash-and-carry use to retail use) would lead to the need for new or upgraded infrastructure, and hence the need to apply the development contributions. I do not consider that this is the case. While the parking requirements may differ (see discussion below), to my mind, a cash and carry use would generate generally similar demands on roads and services to the retail use proposed here, although it arguable that the cash and carry use would place a heavier demand on road infrastructure with generally larger vehicles associated with such a use. As such, even the Board were of the view that development contributions are in fact payable here, with reference to the WCC Development Contribution Scheme 2022, I would be of the view that the waivers as referred to in the scheme would be applicable here, and reduced or nil contributions would be payable, in any case.

- 7.2.8. I would also note that if the Board is not in agreement with the above assessment and conclusions, and the Board consider some level of development contributions apply, Note 6 of the Scheme is of relevance here which states that 'all retention permissions will be charged a multiple of 1.25 times the appropriate rates for any development in excess of the exemptions of this Scheme'. As this is a retention permission, this would apply to any development contributions deemed applicable here.

7.3. **Condition No. 9 (Development Contribution - Car Parking)**

- 7.3.1. I note that Class 16 of the WCC Development Contribution Scheme 2022 refers to shortfalls in car parking spaces in urban areas being charged at €5,700 per space.
- 7.3.2. Condition No. 9 relates to a contribution in lieu of car parking, and the shortfall of spaces is calculated at 28 no. spaces, at €5,700 per space totalling €159,000. The shortfall in spaces appears to be calculated by the PA with reference to the standards in s16.4.14 of the Development Plan (Parking Standards). This provides for a 'maximum' of 38 no. spaces for the retail floorspace of 1,290 sq. m. The applicant is proposing to provide 10 no. spaces (noting the PA have conditioned out 4 of these spaces as per Condition No. 3 of 22/98).

- 7.3.3. The First Party appeals contends that, as per the discussion in relation to Condition 8 above, it is likely that development contributions have already been paid for any shortfalls in car parking, with reference to the fact that it is likely that there is a parent permission on this site, and any relevant contributions would have been paid at this point. It is contended that the only contribution attributable to the current applicant is that corresponding to the difference in parking standards applied to 'cash and carry use' to that applied to 'shopping' use. In a town centre site, the max space per 100 sq. m. of 'Retail' floorspace is 3 spaces, with the max space per 100 sq. m. of 'Cash and Carry' floorspace being 2 spaces. Therefore the difference in the 'maximum' level of car parking to be provided is 1 space per 100 sq. m. which would equate to 13 no. spaces.
- 7.3.4. In relation to same, and with reference to the discussion as relates to Condition 8, I concur that it is likely that either the level of car parking on this site, as relates to the cash and carry use, has previously been accepted by the Planning Authority and it would appear that any applicable development contributions have been paid, noting in particular Condition No. 5 of PA Reg Reg 97/135, which relates to car parking and development contributions. There is no enforcement history on file which would indicate that this condition has not been complied with. I also think it is reasonable to apply the difference in contributions applicable to a 'Retail' use to that applicable to a 'Cash and Carry' use, i.e. that is a shortfall of 13 spaces which equates to a development contribution of €74,100, and I would recommend that condition 8 of 22/98 be amended to reflect same.

7.4. **Condition 10 (Special Development Contribution/Footpaths)**

- 7.4.1. Section 48(2)(C) of the PDA allows for a Planning Authority, in addition to the terms of the contribution scheme, to levy a special contribution where specific exceptional costs not covered by the development scheme are incurred by the local authority relating to infrastructure and facilities which benefit the proposed development.
- 7.4.2. Condition 10 relates to a contribution of 12,200 as a special contribution applied under s48(2)(C) of the Planning and Development Act 2000, as amended, towards the provision of the required footpath infrastructure, to connect the proposed development to the existing footpath to the west of the site, in the direction of McCurtain Street, as well as public lighting and ancillary traffic management works.

- 7.4.3. The WCC Engineer's report dated 11/11/22 notes that a contribution of €9,200 shall be paid towards the provision of the footpath which includes €6,200 towards the footpath itself, €2,000 towards traffic management set up costs, and €1,000 towards changes to road markings on the public road.
- 7.4.4. The applicant contends that the proposed development is merely a change of use with no increase in demand for any public services and that PA have improperly applied the Development Contribution Scheme and that condition 10 should be removed.
- 7.4.5. In relation to same, I note the applicant is proposing to provide a public footpath to the front of the application premises, which I agree is necessary. I also agree it is necessary to improve the connectivity to the town centre by providing a footpath to connect to the existing footpath to the east, and the existing situation is not satisfactory from a pedestrian safety nor from a public realm viewpoint. The Planning Authority have specified the particular project being delivered in this instance, which the applicant's will benefit from. As such, I concur that a special contribution, as per the Engineer's Report, is warranted in this instance, noting the provisions of s48(12)(b) of the PDA 2000, as amended, whereby the Planning Authority must complete these works within a specific timeframe, such contributions are refunded to the applicant. However, the development contribution levy figure applied in Condition 10 (of €12,200) does not reflect the figure in the Engineers Report (of €9,200) and as such I recommend that the cited figure in Condition 10 be amended to reflect this. It may well be case that the additional €3,000 is being levied to provide public lighting. However, as per Condition 3 of 22/98, the applicant is being asked to provide additional public lighting and I am not of the view an additional contribution towards same is reasonable, nor have the planning authority cited this as a specific project that they intend to deliver. In relation to the appellant's assertion that the PA have misapplied the terms of the contribution scheme, I note the provisions of the scheme are not applicable here, and the special contribution is being applied in addition to the terms of the development contribution scheme.

7.5. **Conclusion**

- 7.5.1. In relation to conditions 8 and 9 (as relate to development contributions), I am of the view that the Planning Authority have misapplied the terms of the Westmeath

Development Contribution Scheme 2022, for the reasons as set out above. In relation to condition 10 (special contribution) I am of the view that a special contribution towards the provision of footpath infrastructure is required but not towards the provision of public lighting, and I recommend that the condition is altered to reflect the discussion above.

8.0 Recommendation

8.1. I recommend that the Planning Authority be directed to omit and/or amend the conditions as follows:

1. **Omit** Condition 8 of PA Ref 22/98
2. **Amend** Condition 9 of PA Ref 22/98 to replace the sum of €159,600 with the sum of €74,100.
3. **Amend** Condition 10 of PA Ref 22/98 to replace the sum of €12,200 with the sum of €9,200.

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.

Ronan O'Connor
Senior Planning Inspector

26th June 2023