



An
Bord
Pleanála

Inspector's Report ABP – 315849-23

Development	Retention of amended apartment layout at first and second floors and, redesignation of a one bed apartment as a two-bed apartment at first floor omitted under Condition No 2 of the grant of permission under P.A. Reg. Ref. 18/11
Location	No 9 Main Street, Naas. Co. Kildare. (Protected Structure.)
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	22 1183.
Applicant	Pierce Moloney
Type of Application	Permission for Retention
Planning Authority Decision	Grant Permission.
Type of Appeal	First Party
Appellant	Pierce Moloney.
Date of Site Inspection	26 th June, 2023.
Inspector	Jane Dennehy.

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1.0 Site Location and Description

The site has a stated area of 0.0124 hectares and is that of a three bay, three storey building, which formerly was that of the Grandstand Public House. It faces onto the eastern frontage of Main Street and adjoins the entrance to the Dunnes Stores supermarket, coffee shop and carpark. The supermarket and carpark along with the building at No 9 Main Street are in the applicant's ownership entire site.

The building was vacant for an extended period prior to a major renovation works facilitating conversion into a retail unit at ground floor level and the two apartments are on the upper floors. residential units on the upper floors. The retail unit at ground floor level which has a shop front and separate entrance off Main Street and is occupied by Ikea Ltd.

2.0 Proposed Development

The application lodged with the planning authority indicates proposals for retention of an amended apartment layout at first and second floor levels within the building and, redesignation of a one bed apartment as a two-bed apartment at first floor level. A bedroom was omitted under Condition No 2 of the grant of permission under P.A. Reg. Ref. 18/11. A request for additional information was issued to the applicant in respect of planning and technical issues to which a response was lodged on 23rd December, 2022.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 24th January, 2023, the planning authority decided to grant permission for retention and final grant of permission for retention was issued following expiry of the statutory period for lodgement of appeals.

Condition No 6, which is subject to the appeal is a financial contribution condition whereby the applicant is required to pay €9,349.60 in respect of public infrastructure and facilities benefitting development in the area of the planning authority in

accordance with the Section 48 Development Contributions Scheme adopted by Kildare County Council on 19th December, 2022.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer in his initial report indicated a recommendation for an additional information request in respect of planning and technical issues to which a response was lodged on 23rd December, 2022 which the planning officer considered satisfactory. He also concludes in his final report further to review of the further information submission that the proposed development benefits the building in bringing it into use and that it is a positive contribution to the main street.

The internal technical reports indicate no objections to the proposed development as amended in the further information submission, subject to the conditions.

4.0 Planning History

P.A. Reg. Ref. 18/11: Permission was granted for removal of a flat roof rear return on one and two storeys with linkage to the former public house on the adjoining site (P. A. Reg. Ref. 17/1433 refers.) Provision of a service lane to the rear of the Grandstand Public linked to the former public house. Under Condition No 2 there is a requirement for the first-floor apartment to be amended to a one bed apartment (from a two-bed apartment) with submission of revised plans for written agreement being required.

Permission was subsequently granted for signage and for staff facilities for the ground floor retail unit which is occupied by Ikea. (P.A. Reg. Refs. 21/1333 and 21/1638 refer.)

P. A. Reg. Ref. 17/1433: Permission was granted for a major upgrade and modernisation of the overall site of No 9 Main Street, (the application site), the supermarket and carpark inclusive of works to the return linked to the public house.

5.0 Policy and Context

5.1. Development Plan

The operative development plan is the Kildare County Development Plan, 2023-2029 which was brought into effect on 28th January, 2023. The planning authority determined its decision to refuse permission during the lifetime of the, now superseded Kildare County Development Plan 2017-2023.

According to the Naas Local Area Plan, 2011-2027 the site is within an area subject to the zoning objective; “A” Town Centre to protect, improve and provide for the future development of the town centre”

No 9 Main Street is included on the record of protected structures (Ref No NS 19 158) and is within the area of the Naas Architectural Conservation Area for the town centre.

5.2. EIA Screening

Having regard to the brownfield nature of the subject site, together with the scale of the proposed development, 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.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was lodged on behalf of the applicant on 17th February, 2023. The appeal is solely against Condition no 6 attached to the grant of permission according to which the applicant is required to pay €9,349.60 in respect of public infrastructure and facilities benefitting development in the area of the planning authority in accordance with the Section 48 Development Contributions Scheme adopted by Kildare County Council on 19th December, 2022.

According to the appeal:

- The application was for reconfiguration of internal space and continuation of a previously permitted use and there is no additional floor area of new works which would give rise to a requirement for a financial contribution. The planning authority should not have treated the application as a retention proposal to regularise unauthorised development. The statement on the development contribution sheet that as it is “*a retention permission, exemptions or waivers in relation to this property being a protected structure do not apply*”, is not accepted.
- The building is a protected structure, and a contribution was not required in connection with the prior grant of permission under P. A. Reg. Ref. 18/11 in recognition of the works’ costs involved and an identical approach is applicable to and should have been taken by the planning authority.
- During enabling works, extensive unforeseen structural works were deemed necessary to safeguard the building which included removal of internal walls which facilitated flexibility with regard to the internal layout of the apartments. As a consequence, the reasoning for reduction, (according to condition no 2 of the prior grant of permission) from a two to one bedroom apartment at first floor level was no longer warranted because a simplified layout providing for a second, double bedroom became feasible, and the purpose of the current application was to regularise the rearrangement. The apartments have identical floor plans which exceed the minimum standards in *Sustainable Urban Housing Design Standards for New Apartments, Guidelines for Planning Authorities, 2020* and can be considered as two bed three person apartments. The floor areas for the current grant of permission are marginally different from those previously permitted P.A. Reg. Ref. 18/11. (Calculations are provided.)
- It is evident that there was a lack of familiarity with the planning background and history in the planning reports on the current application. This led to inappropriate issues being raised at application stage, an unnecessary additional information request and inappropriate conditions being attached,

- The adopted development contribution scheme applicable is the Kildare County Development Contributions Scheme 2015-2022 because the application was lodged in 2022. Development Contributions are not required for valid applications for minor alterations with no increase in floor areas. whereas the Kildare County Development Contributions Scheme 2023-2029 has no provision for waivers or exemptions.

6.2. **Planning Authority Response**

In the submission received from the planning authority on 18th April, 2023 it is stated that the decision to grant permission was made on 24th January, 2023 and that the Kildare County Development Contributions Scheme 2023-2029 was adopted on 19th December, 2022 and it became effective on 1st January, 2023.

Reference is made to Section 9 of the scheme in which it is stated that no exemptions or waivers shall apply to developments subject to retention permission.

A copy of the planning authority's calculation sheet showing calculations based on floor areas and the rates applicable is included in the submission.

6.3. **Observations on the Planning Authority's Response**

In a submission received from the applicant's agent on 11th May, 2023 the background to the application and case made in the appeal submission are reiterated with particular emphasis on:

- The claim that the application was not for unauthorised development and just a simple reconfiguration of internal space enhancing the previously permitted development.
- The time taken by the planning authority to issue the request for additional information which related to conservation and parking and impractical matters delaying the expected decision is a compounding issue. The response was lodged on 22nd December, 2022 with the decision to grant permission being made three weeks after to adoption of the '2023 contributions scheme'.

- The narrowing of allowances for retention applications in the current 2023 contributions scheme is acknowledged but there has been an incorrect interpretation by the planning authority. It is therefore requested that the condition be omitted.

7.0 Assessment

- 7.1. The subject appeal which is solely against Condition No 6 according to which a development contribution in the amount of €9,349.60 is payable can be determined in accordance with the provisions of Section 48 of the Planning and Development Act, 2000 as amended.
- 7.2. There is no dispute that the Kildare County Development Contributions Scheme 2023-2029 was the adopted and effective Contributions Scheme on the date of the Manager's Order confirming the planning authority's decision to grant permission for retention on 24th January, 2023 and a subsequent final grant of permission after the statutory period for lodgement of appeals.
- 7.3. The terms of the Kildare County Development Contributions Scheme 2023-2029 were correctly applied by the planning authority in that it is clearly stated in Section 9 that no exemptions or reductions apply in the case of development. It includes development at protected structures subject of a grant of permission for retention. An exemption was applicable for development at protected structures within the prior, superseded the Kildare County Development Contributions Scheme 2015-2021. It is noted that the prior application, under P A. Reg. Ref.18/11 did not include proposals for permission for retention, contrary to the subject proposal, which is for retention, for which permission has been granted.
- 7.4. It is agreed with the applicant's agent that the development subject of the application for permission for retention is minor and that the development at the property has contributed to planning gain in restoring and bringing the historic town centre building into viable use. However, there is no scope in applying the terms of the Kildare County Development Contributions Scheme 2023-2029 specifically with regard to waivers, reductions, and exemptions for discretionary judgement to enable the planning authority or the Board on appeal to determine that the development contribution required can be set aside so that the condition can be omitted.

- 7.5. It is therefore concluded that the planning authority correctly applied the terms and conditions of the Kildare County Development Contributions Scheme 2023-2029 in attaching Condition No 6 to the grant of permission. However, it is also recommended that the terminology in the condition be amended. Therefore, the condition can be replaced with an amended condition.

Appropriate Assessment Screening

- 7.6. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built-up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

8.0 Recommendation

- 8.1. Given the foregoing it is recommended that the planning authority be directed to omit Condition No 6 and to attach following revised condition in which the terminology is amended based on the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the decision of the planning authority to grant permission for retention of the proposed development on 24th January, 2023, to the adopted Kildare County Development Contributions Scheme 2023-2029 superseding the Kildare County Development Contributions Scheme 2015-2019 which came into effect on 1st January, 2023 and, specifically to Section 9 according to which no exemptions or reductions apply in the case of development it is considered that the planning authority correctly applied the terms and conditions of the Kildare County Development Contributions Scheme 2023-2029 in attaching Condition No 6.

10.0 Condition

The developer shall pay to the planning authority a financial contribution of €9,349.60 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. The contribution shall be paid prior to the 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: *It is a requirement of the Planning and Development Act 2000 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.*

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.

Jane Dennehy
Inspector
17th July, 2023.