



An
Bord
Pleanála

Inspector's Report

ABP-316273-23

Development	4 apartments within curtilage of protected structure.
Location	28 Patrick Street, Mountmellick, Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	22399
Applicants	Patrick & Tara Lalor
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	John A Moloney
Date of Site Inspection	12 th October 2023
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located at 28 Patrick Street, Mountmellick, Co. Laois. The site is part of the historic town of Mountmellick (LA008-023). The site is occupied by a three storey house and outbuildings which is a protected structure (RPS 030), rated as of regional importance for its architectural interest in the National Inventory of Architectural Heritage, (Reg. No. 12900335).
- 1.1.2. The two-bay three-storey house, c. 1820, is part of a terrace of three storey buildings on the main street of the town. These buildings and their plots are rectangular in shape with the short axis along the street and extending in depth. The site includes the three storey building which fronts the street and outbuildings along the south-eastern site boundary as far as the rear of the site. The lands outlined in blue, within the ownership of the applicant, are part of the curtilage of the protected structure, appearing, together with the dwelling on the earliest Ordnance Survey map. At the end of the site, there are two buildings with a similar orientation to the dwelling, extending across the full width of the site (carriage access under), with a yard between; and to the rear of the second building the property widens, taking in an area the width of the adjoining property to the north-west. This field is bounded by a high masonry wall to either side. Agricultural lands adjoin to the south-west.
- 1.1.3. The adjoining property, over which access to the rear of the dwelling is gained, and where the existing and proposed services lines run, is also a protected area, and is referred to in the application notice (RPS 695).
- 1.1.4. The dwelling and its curtilage are part of the Georgian (Quaker) town of Mountmellick.
- 1.1.5. The dwelling has been disused for many years and needs to be refurbished to protect its integrity. The interior is as represented in the photos contained in the report 'Architectural Design & Historic Statement', submitted with the application. The building includes a large entrance hall, with a stairs with a continuous handrail which ends in a curved rail outside an existing door on the second floor.
- 1.1.6. The site is given as 0.154ha.

2.0 Proposed Development

- 2.1.1. The proposed development is described in the notices as: 'convert and renovate an existing dwelling. Works to include subdividing the dwelling into 4 no. one bedroom apartments, together with all necessary ancillary services and associated site works. The proposed works are within the curtilage of a protected structure RPS 695 and RPS 030.'
- 2.1.2. The application was accompanied by: drawings showing existing layout, drawings showing proposed layout, and drawings showing interventions (ie. changes to the building fabric); and a report titled Architectural Design & Historic Statement, prepared by Patrick Lalor BSc(Hons).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decision, dated 21st March 2023, was to grant permission subject to 10 conditions, including:

2(a) The works to the protected structure shall be carried out under the direction of an experienced conservation architect with RIAI accreditation at Grade 2 or Grade 1. Prior to the commencement of the development, the developer shall submit for the written agreement of the planning authority the name and professional qualifications of the conservation architect.

b) The works to the protected structure shall be carried out in accordance with the approach set out in the submitted 'Architectural Design & Historic Statement' received by the planning authority on 01/07/2022 and the details submitted with the planning application. The project conservation architect shall immediately inform the planning authority in the event that any concealed feature of interest is uncovered during the works and work shall cease in this area pending agreement with the planning authority on how to proceed.

c) The project conservation architect shall make a photographic record of the works as they proceed, to include photographs of the protected structure at intervals of no greater than one month from commencement of the works until completion of the

development. These photographs shall be annotated and dated. This photographic record shall be collated into a single record of the works, copies of which shall be submitted to the planning authority and the Irish Architectural Archive on completion of the development.

d) The conservation architect shall submit to the Local Authority a Conservation Compliance report upon completion of the development. Photographs of the areas of change and a record of the main stages of the works shall be included, cross referenced to a suitably scaled drawing showing the existing structure and fabric elements.

Reason: To ensure that the integrity of the protected structure is maintained and that the proposed works are carried out in accordance with best conservation practice with no unnecessary damage or loss of surviving historic building fabric.

6 a) All surface water run-off from roofs, entrances and parking areas shall be collected and disposed of to the public surface water sewer network. No such surface water run-off shall be allowed to flow onto the public roadway or adjoining properties.

b) The proposed development shall not interfere with existing land or road drainage.

3.1.2. The decision was in accordance with the planning recommendation.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The first planning report, (17th August 2022) recommended further information on 4 items: internal floor areas – all the proposed apartments fall below the minimum 45sqm required for one bedroom apartments; parking – Laois County Development Plan sets out minimum 1.26-2 spaces per apartment; open space; and the third party submission.

3.2.3. The second planning report (19th January 2023), recommended clarification of further information on 2 items: internal floor areas; and parking:

1) The justification provided by the applicant as to why the shortfall in minimum floor areas prescribed by the 'Sustainable Urban Housing: Design Standards for New Apartments 2020' guidelines, is acknowledged. However, the planning authority

contends that for all units to be below the minimum standards suggests over-development of the site. The planning authority appreciates that the layouts of apartments 1 and 4 are working with the existing fabric and, on that basis, those units are considered to be acceptable. However, it is considered that only one apartment should be provided on the first floor of the building especially given the significant shortfall in apartment 2. You are requested to submit a revised proposal to the planning authority in this regard.

2) The planning authority would be satisfied with 2 car-parking spaces for 3 units.

3.2.4. The third planning report (16th March 2023), recommending permission:

Satisfied with responses:

1) Robust argument with respect to the proposal to maintain 4 x 1 bedroom units principally relating to the building being a protected structure. External storage areas compensate for unit shortfalls and an amendment to the scheme to provide studio type units would be an inferior alternative.

2) Satisfied with provision of parking spaces.

3.2.5. Other Technical Reports

Roads Design Office, 23rd August 2022 – conditions.

3.3. **Prescribed Bodies**

TII, 14th July 2022 - no observations.

3.4. **Third Party Observations**

3.4.1. A third party observation from the appellant, re. use of the right of way, has been read and noted.

4.0 **Planning History**

Pre-planning consultation took place.

Adjoining at 29 Patrick Street, Mountmellick

314805, PA Reg Ref 22294, in an appeal against the decision to grant permission for: renovation of ground floor level only; proposed development will include takeaway area, seated restaurant, toilets, kitchen, stores, new shopfront signage and associated siteworks; the Board granted permission, 26th October 2023.

5.0 Policy Context

5.1. Development Plan

5.1.1. Laois County Development Plan 2021-2027 is the operative plan. Relevant provisions include:

5.1.2. Volume 2 of the plan includes zoning and flood maps – the site is zoned Town Centre (Primary / Core Retail Area). Land to the rear is liable to flooding. The site is not within the area liable to flooding.

TRANS 28 Ensure that the provision of adequate parking facilities, including disabled parking, shall form part of the assessment of any application for development in accordance with the standards contained in Table 10.3: Land Use Parking Space Requirements. Where it is not possible to provide parking for the proposed development within the site, the matter will be dealt with in accordance with an approved Development Contribution Scheme. A relaxation of car parking requirement may be considered where a development is located in town centre locations, in close proximity to public transport or for certain types of housing developments such as assisted living units.

DM TRANS 10 Apartment developments 2 private secure spaces per 100 sq. m (design should not require bicycle access via living area) 1 visitor bicycle space per two housing unit.

CM ST 2 To support and facilitate the integration of land use with transportation infrastructure, through the development of sustainable compact settlements which are well served by public transport.

CM ST 9 Promote more compact development forms that reduce overall demand for private transport and private transport infrastructure and support proposals that encourage modal shift towards sustainable travel modes.

5.2. **Laois County Council Development Contribution Scheme 2017-2023**

5.2.1. This is the policy document currently in place, it includes:

12. EXEMPTIONS The following categories of development will be exempted from the requirement to pay development contributions under the Scheme.

12.7. Protected Structures Development consisting of approved [by way of a grant of planning permission or a Section 57 Declaration] works to a protected structure where the works substantially contribute to the restoration or protection of the protected structure. Exemptions are sought in relation to any development within the curtilage of a listed building together with an exemption in relation to the upgrade of a protected structure to allow for the change of use where it contributes to the restoration and protection of a protected structure.

Reductions for town centre rejuvenation also apply.

5.3. **Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities Department of Housing, Planning and Local Government, March 2018**

5.3.1. This guidance includes:

Apartment schemes should provide storage for bulky items outside individual units (i.e. at ground or basement level). Secure, ground floor storage space allocated to individual apartments and located close to the entrance to the apartment block or building is particularly useful and planning authorities should encourage the provision of such space in addition to minimum apartment storage requirements. This form of storage may be used for equipment such as, for example, bicycles or bicycle equipment, children's outdoor toys or buggies. However, such storage does not satisfy bicycle parking requirements.

Car Parking – (4.18) The quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.

Central and/or Accessible Urban Locations: (4.19) In larger scale and higher density developments, comprising wholly of apartments in more central locations that are

well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.

Intermediate Urban Locations: (4.21) In suburban/urban locations served by public transport or close to town centres or employment areas and particularly for housing schemes with more than 45 dwellings per hectare net (18 per acre), planning authorities must consider a reduced overall car parking standard and apply an appropriate maximum car parking standard.

5.4. Sustainable Urban Housing: Design Standards for New Apartments Guidelines

- 5.4.1. The guidelines update the 2018 guidelines, which update of the Sustainable Urban Housing: Design Standards for New Apartments guidelines published in 2015, and the 2020 update which related to 'Shared Accommodation'/'Co-living'. The guidelines include:
- 5.4.2. Specific Planning Policy Requirement 3 sets out minimum apartment floor areas, including: Studio apartment (1 person) 37 sq.m, 1-bedroom apartment (2 persons) 45 sq.m and 2-bedroom apartment (4 persons) 73 sq.m.
- 5.4.3. Departures from the requirements of the guidelines, as set out in paragraph 6.8, states that planning authorities are requested to practically and flexibly apply the general requirements of these guidelines *'in relation to refurbishment schemes, particularly in historic buildings, some urban townscapes and 'over the shop' type or other existing building conversion projects, where property owners must work with existing building fabric and dimensions. Ultimately, building standards provide a key reference point and planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors commensurate with these building standards requirements'*.

5.5. Natural Heritage Designations

- 5.5.1. The River Barrow and River Nore SAC (site code 002162), c 270m distant, is the closest Natura site.

5.6. EIA Screening

- 5.6.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity 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

- 6.1.1. John A Moloney has submitted the appeal. The grounds include:
- Applicants appear to propose to use the rear of their property for the purposes of providing two car parking spaces. The access lane at the rear of appellants property is very narrow for the proposed extra activity, particularly in light of the use of the appellants property, being a public house.
 - He objects to the use of the yard to gain access to parking spaces.
 - The planning authority did not properly or adequately consider the infirm legal basis by which the applicants would traverse the property; or the practical implications of using the appellant's property in this manner.
 - The proposal represents overdevelopment, provides no mix of unit type contravening SPP 3 for new apartments that no more than 50% would comprise studio types.
 - SPP 3 is quoted.
 - The design and layout of the apartments to not provide sufficient space to accommodate the modern family unit. Average household size for 2023 in Laois is 2.77. The size of units is not confirmed on layout drawings nor is indicative furniture layout; per Design Standards for New Apartments 2020. These units are not suitable for elderly or disabled and do not provide for lifetime adaptability.
 - This form of accommodation is not suitable for Mountmellick.

- There should be no requirement for car parking in this location.
- CDP CMST2; CMST9 and TRANS28 are quoted.
- The laneway leads onto Partick St and this is a risk to pedestrians and potential traffic hazard.
- It poses a radical and unacceptable burden on the appellant's property.
- There are entries and exits into and out of their public bar, lounge, toilets and family residence. The fire escape from their bar (capacity 60 people) and lounge (capacity 100 people) leads into the laneway. Photographs are enclosed.
- It will pose a security risk to their home and licensed premises.
- Submissions to Laois Co Co did not disclose right or entitlement to rely upon the right of way through appellant's property. This should be provided.
- Their registration is clear.
- In so far as the applicant's may be contending an entitlement by long user or prescription, they respectively draw attention to the provisions of Section 35(1) of the Land and Conveyancing Law Reform Act 2009 (as amended), which they quote:
 - An easement or profit a prendre may be acquired at law by prescription –
 - on registration of a court order under this section, or
 - In accordance with section 49A of the Act of 1964.
 - Neither applies. It creates a substantial increase and excessive use of the purported right of way.

6.2. Applicant Response

6.2.1. Patrick & Tara Lalor have responded to the grounds of appeals including:

- There is a historic and established legal right of way to provide pedestrian and vehicular access to the rear of the dwelling to service the property at 28 Patrick St Mountmellick, via the archway, and has been used continuously by the previous and current property owners.

- 2 parking spaces are shown as has always been the case.

6.3. Planning Authority Response

6.3.1. The planning authority have not responded to the grounds of appeal.

7.0 Assessment

7.1.1. I consider that the main issues which arise in relation to this appeal are as follows: appropriate assessment, built heritage, residential amenity, use of the right of way, car parking and development contribution and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.3. Built Heritage

7.3.1. The site is part of the historic town of Mountmellick (LA008-023). Although the site of the historic town is not defined on a map, it is likely to include the subject site.

7.3.2. The building, the subject of the alterations, is a protected structure. The site and associated land, within the ownership of the applicant, are part of the curtilage of the protected structure.

7.3.3. The building has been vacant for many years and its condition appears to have deteriorated over that period.

7.3.4. The Architectural Design & Historic Statement accompanying the application refers to the need to secure the building. I accept that interventions in the built fabric are necessary to ensure the future of the building, and I accept that the use of the building as 4 apartments will contribute to securing its future.

7.3.5. Given the location, any ground excavation, such as that required to replace the timber floor of the ground floor sitting room, should be carried out under the supervision of an archaeologist. Works of alteration should be carried out under the supervision of a conservation architect.

7.4. Residential Amenity

7.4.1. The grounds of appeal refers to the minimum apartment floor area standards set out in Sustainable Urban Housing: Design Standards for New Apartments Guidelines, SPPR 3. This Specific Planning Policy Requirement requires a 1-bedroom apartment (2 persons) to be a minimum of 45 sq.m in area.

7.4.2. Floor areas are given on drawing PL-004-22, submitted with the application. Apartment No. 1 is 41 sq m, apartment No. 2 is 37 sq m, apartment No. 3 is 39 sq m, and apartment No. 4 is 39 sq m. As pointed out in the further information response to this issue, the shortfall in individual unit floor area is compensated for by the external secure storage space provided for each apartment, the combined secure bike storage area and the combined plant room area.

7.4.3. Departures from the requirements of the guidelines is provided for in section 6.8 and 6.9. As set out in paragraph 6.8 planning authorities are requested to practically and flexibly apply the general requirements of the guidelines: *'in relation to refurbishment schemes, particularly in historic buildings, some urban townscapes and 'over the shop' type or other existing building conversion projects, where property owners must work with existing building fabric and dimensions. Ultimately, building standards provide a key reference point and planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors commensurate with these building standards requirements'*.

7.4.4. In my opinion the central location, generous front hall, outdoor yard space, and private storage provided within the outbuildings, make adequate provision for the residential amenities of future residents, notwithstanding the shortfall in internal floor space.

7.4.5. The guidelines clearly provide for departures from the requirements of SPPR 3 in circumstances such as the present case.

7.5. Use of the Right of Way

- 7.5.1. The substance of the appeal concerns the use of the adjoining property, the licensed premises, for vehicular access.
- 7.5.2. Matters of dispute over ownership/title and rights of way are legal matters which are not for the Board to determine.
- 7.5.3. The appellant contends that access as proposed would be unsafe.
- 7.5.4. If the applicant has a right of vehicular access, it would, in my opinion, be inappropriate for the Board to seek to restrict such use. If such an access is not available to the proposed development, it should not, in my opinion, prejudice the implementation of the proposed development. The need for car parking is dealt with under a separate heading.

7.6. Car parking.

- 7.6.1. It is part of the proposal that two car parking spaces will be provided to serve the apartments, in an existing yard within the site. This is accessed via an arched entrance from the public street, via the adjoining property which is a licensed premises.
- 7.6.2. The substance of the third party appeal concerns the use of the adjoining property, the licensed premises, to gain vehicular access, and in particular to access the two proposed car parking spaces.
- 7.6.3. The appellant points out that per the development plan it is not a requirement that car parking spaces be provided. I concur with this assessment.
- 7.6.4. The apartment guidelines (2018) refer to eliminating car parking in certain circumstances, in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such as rail and bus stations located in close proximity; and of a reduced overall car parking standard and applying an appropriate maximum car parking standard, in suburban/urban locations served by public transport or close to town centres or employment areas.

- 7.6.5. The development plan refers to considering a relaxation of car parking requirement where a development is located in town centre locations, in close proximity to public transport.
- 7.6.6. The subject site is within the town centre of Mountmellick and is served by several public bus services, via Portlaoise to Dublin. In my opinion this is an area where, per the guidelines, the policy regarding car-parking provision should be for car parking to be reduced or eliminated. In my opinion the provision of on-site parking is not necessary to serve this development.

7.7. Development Contribution

- 7.7.1. Condition no. 10 of the planning authority's decision requires the payment of a development contribution, (€16,000).
- 7.7.2. The Laois County Council Development Contribution Scheme 2017-2023, which is the operative scheme, provides for exemptions from the requirement to pay development contributions under the scheme, which exemptions include 'Protected Structures Development'. This exemption includes the subject development. In my opinion the levying of a development contribution is inappropriate in this case.
- 7.7.3. The Board should note that this issue was not raised in the appeal and may be considered a new issue.

8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that the proposed development be permitted, for the following reasons and considerations, in accordance with the following conditions.

9.0 Reasons and Considerations

- 9.1.1. The proposed development accords with the development plan, would be adequately provided with infrastructural services, would safeguard a protected structure, contribute to compact urban development, would not unduly impact on the amenities of the area, and would, subject to the following conditions, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 20 day of December 2022 and 23 February 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Other than the works detailed in the application, no works shall be carried out to any structure within the site, except in accordance with a further permission or a declaration issued in accordance with Section 57 (2) of the Planning and Development Act 2000.</p> <p>Reason: To ensure that the integrity of the protected structure and its curtilage.</p>
3.	<p>(a) the works to the protected structure shall be carried out under the direction of an experienced conservation architect with RIAI accreditation at Grade 2 or Grade 1. Prior to the commencement of the development, the developer shall submit for the written agreement of the planning authority the name and professional qualifications of the conservation architect.</p> <p>b) the works to the protected structure shall be carried out in accordance with the approach set out in the submitted 'Architectural Design & Historic Statement' received by the planning authority on 01/07/2022 and the details submitted with the planning application. The project conservation architect shall immediately inform the planning authority in the event that any concealed feature of interest is uncovered during the works and work</p>

	<p>shall cease in this area pending agreement with the planning authority on how to proceed.</p> <p>c) the project conservation architect shall make a photographic record of the works as they proceed, to include photographs of the protected structure at intervals of no greater than one month from commencement of the works until completion of the development. These photographs shall be annotated and dated. This photographic record shall be collated into a single record of the works, copies of which shall be submitted to the planning authority and the Irish Architectural Archive on completion of the development.</p> <p>d) The conservation architect shall submit to the Local Authority a Conservation Compliance report upon completion of the development. Photographs of the areas of change and a record of the main stages of the works shall be included, cross referenced to a suitably scaled drawing showing the existing structure and fabric elements.</p> <p>Reason: To ensure that the integrity of the protected structure is maintained and that the proposed works are carried out in accordance with best conservation practice with no unnecessary damage or loss of surviving historic building fabric.</p>
4.	<p>Prior to commencement of development, the developer shall enter into water and/or waste water connection agreements with Uisce Eireann.</p> <p>Reason: In the interest of public health.</p>
5.	<p>Arrangements the disposal of surface shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of orderly development and public health.</p>
6.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed</p>

	<p>in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
7.	<p>Any ground excavation required to facilitate the proposed development, including that required to replace the timber floor in the ground floor sitting room, shall be carried out under the supervision of a licensed archaeologist.</p> <p>Reason: In the interests of archaeological protection.</p>

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.

Planning Inspector

1st November 2023

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	Convert and renovate an existing dwelling. Works to include subdividing the dwelling into 4 no. one bedroom apartments, together with all necessary ancillary services and associated site works. The proposed works are within the curtilage of a protected structure RPS 695 and RPS 030		
Development Address	28 Patrick Street, Mountmellick, Co. Laois.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	/
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No			Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
		N/A	Conclusion
No			No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	/	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Appendix 2 Photographs

Appendix 3 Laois County Development Plan 2021-2027, extracts

Appendix 4 Architectural Heritage Protection Guidelines for Planning Authorities, extracts

Appendix 5 Sustainable Urban Housing: Design Standards for New Apartments Guidelines, extracts

Appendix 6 Laois County Council Development Contribution Scheme 2017-2023, extracts