



An  
Bord  
Pleanála

## Inspector's Report ABP317162-23

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| <b>Development</b>                  | Change of use of lounge bar to 4 residential units. |
| <b>Location</b>                     | Bridgewater Inn, Canal View, Sallins, Co. Kildare.  |
| <b>Planning Authority</b>           | Kildare County Council                              |
| <b>Planning Authority Reg. Ref.</b> | 23/94   |
| <b>Applicant(s)</b>                 | Woodpath Ltd.                                       |
| <b>Type of Application</b>          | Permission  |
| <b>Planning Authority Decision</b>  | Grant with conditions.                              |
| <b>Type of Appeal</b>               | Applicant v Contribution Condition.                 |
| <b>Appellant(s)</b>                 | Woodpath Ltd.                                       |
| <b>Observer(s)</b>                  | None  |
| <b>Date of Site Inspection</b>      | None  |
| <b>Inspector</b>                    | Hugh Mannion  |

## 1.0 Site Location and Description

1.1. The former Bridgewater Inn, Sallins, County Kildare.

## 2.0 Proposed Development

2.1. The proposed development comprises a change of use of existing first floor bar/lounge/office/toilets to 4 self-contained apartments (3 two bed units and 1 one bed unit) amendment to facade, roof lights, additional windows, bin and bike store, and open space at Bridgewater Inn, Canal View, Sallins, County Kildare.

## 3.0 Planning Authority Decision

### 3.1. Decision

Grant permission with conditions. Condition 2 requires the payment of €50,000.00 in the absence of a minimum requirement of 5 car spaces. This condition is in accordance with section 8 of the Kildare Development Contribution Scheme.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planning authority's planner's report recommended a grant of planning permission.

#### 3.2.2. Other Technical Reports

The **Chief Fire Officer** noted that a fire safety cert was required for the proposed development.

The **Environmental Health Office** recommended a grant of planning permission.

**Water Services** no objection.

**Irish Water** No objections.

**Roads and Transport** sought further information.

## 4.0 Planning History

None relevant

## 5.0 Policy and Context

### 5.1. Development Plan

5.2. The **Kildare County Development Plan 2023 – 2029** is the relevant development plan for the area.

5.3. The **Kildare County Council Development Contribution Scheme 2023 – 2029** is the relevant development contribution scheme for the area.

5.4. The **Development Management Guidelines for Planning Authorities (2007)** are issued under section 28 of the Planning and Development Act 2000, as amended, and provide guidance in relation to development contribution schemes at paragraph 7.12. The Guidelines, *inter alia*, make the point that a contribution scheme under Section 48 should clearly set out how the relevant terms are interpreted and applied to the proposed development.

5.5. **Development Contributions Guidelines for Planning Authorities (DoEHLG 2013)** are issued under section 28 of the Planning and Development Act 2000, as amended. The Guidelines make the point that a key aim for development contribution schemes must be to promote sustainable development patterns, secure investment in capital infrastructure and encourage economic activity.

5.6. Section 48 of the Planning and Development Acts, provides that planning authorities must draw up a development contribution scheme in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority.

5.7. The Guidelines advise that when planning authorities are drawing up development contribution schemes that “in order to achieve a standard basis on which rates could be determined, broad estimates of the floor area (m<sup>2</sup>) of anticipated development

should be prepared, including the assumptions and any other relevant factors which have shaped the estimates” (see page 17 of the Guidelines).

5.8. **Circular Letter PL04/2023 from the Minister for Housing, Local Government and Heritage** sets out mechanisms whereby in certain cases contributions payable by developers can be paid instead to the local authority by the Minister for Housing, Local Government and Heritage

#### 5.9. **EIA Screening**

Not relevant.

### 6.0 **The Appeal**

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

- The appeal is against condition 2 required the payment of €50,000.00 to the planning authority in accordance with the Development Contribution Scheme.
- The condition should not be applied as the application intensity of use of the site from a public house use to 4 apartments.
- There is significant on-street car parking on in the vicinity of the application site.
- The public house/commercial floor area has been vacant for some time including because of covid.
- Applying the development plan car parking standards of 1 space per 15m<sup>2</sup> of commercial floor area the floor area the subject of this application of 300m<sup>2</sup> would generate a requirement of 20 spaces but the present site has no dedicated car parking spaces.
- The proposed residential use would generate a demand for 7.5 spaces which is only 66% of the notional parking demand for the existing commercial floor space.
- The charge undermines the planning authority’s policy of living-over-the-shop.

- The Design Standards for new Apartments recommends reducing car parking provision.
- The contribution scheme allows for 100% reduction in the charge where no significant additional demand is placed on services.

## 6.2. Planning Authority Response

- The planning authority stated (15<sup>th</sup> June 2023) that it had no further comment to make.
- 29<sup>th</sup> June 2023 the Board asked Kildare County Council for details of the calculation of the contribution sought. On the 4<sup>th</sup> July the planning authority submitted a breakdown.

## 6.3. Applicant's response to PA Comments.

- The planning authority's calculation was circulated for comment, but none was received.

## 6.4. Further Responses

None

## 7.0 Assessment

- 7.1. Section 48 (1) requires that planning authorities make development contribution schemes and that where a permission is being granted under section 34 of the Planning and Development Acts, 2000, as amended. In the present case the planning authority applied two financial contribution conditions. Condition number 17 requires the payment of €10,385.00 in accordance with the current Kildare Development Contribution Scheme. This condition was not appealed by the applicant and is not controversial in this case.
- 7.2. The planning authority also imposed condition 2 that required the payment of €50,000.00 for a shortfall in parking spaces. The planning authority states that this is

in compliance with section 8 of the Development Contribution Scheme. Section 8.6 of the scheme states “a rate of €10,000 per car parking space shortfall shall apply in all towns and settlements”. As against this the applicant makes a number of, in my view reasonable points, that there are no dedicated spaces for the existing commercial/public house use, that national policy is to reduce car parking attached to town/city centre residential uses and that the charge undermines the overall policy of making better uses of vacant upper floor accommodation as ‘living over the shop’ residential accommodation.

- 7.3. Section 48 requires that a development contribution scheme will include in its calculations all the relevant planned expenditure costs that it expects to incur in the period covered by the scheme and that these are equitably apportioned between the forms and volumes of development expected to be undertaken within the area of the planning authority within the period of the scheme. The planning authority has done this in its scheme in section 7.2 and predicts a number of residential units per annum with an associated contribution rate and an expected figure (€9.5 million) raised.
- 7.4. The only other mechanism that the legislation makes provision for is a special development contribution under Section 48 (2)(c) whereby a planning authority may, in addition to the terms of a 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 any local authority in respect of public infrastructure and facilities which benefit the proposed development. But in the event that such a condition is imposed the planning authority is required to set out the extra costs and make provision for their repayment/part repayment to the developer in the event that the works are not carried out or carried out only in part.
- 7.5. The Development Contributions Guidelines for Planning Authorities (Department of the Environment, Community and Local Government January 2013) makes the point that development contributions are “not cash cows” and that “subject to the overriding principles of proper planning and sustainable development, adopted development contribution schemes should contribute to the promotion of sustainable development patterns, economic activity and to securing investment in capital infrastructure and economic activity. They should also reflect the reduced costs of infrastructure provision in recent years relative to when schemes were last revised”.

7.6. The Board has limited powers of review in cases of appeals against financial contribution conditions and is limited to considering if the condition imposed is in accordance with the adopted development contribution scheme. I consider that the Kildare development contribution scheme is flawed in that it imposes charges under section 8 of the scheme unrelated to the expenditure expected to be made in the administrative area of the County. There is no indication that the shortfall in parking spaces is going to be made good by the planning authority as would be appropriate under section 48(2)(c) and as far as the detail set out in the scheme the figure of €10,000 is entirely arbitrary and unsupported.

7.7. Section 48 provides that “an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority”. Therefore, since the scheme makes provision for the charge as set out in condition 2 and I recommend attaching the condition.

#### **7.8. Appropriate Assessment Screening**

7.9. Not relevant.

#### **8.0 Recommendation**

8.1. I recommend that condition 2 be attached.

#### **9.0 Reasons and Considerations**

9.1. The Kildare County Council Development Contribution Scheme 2023 – 2029 makes provision in section 8 for the payment of a contribution of €10,000 per car parking space shortfall. Condition 2 of the decision to grant permission applied this charge. The Board is satisfied that the planning authority has properly applied provisions of the scheme. Accordingly, condition 2 should be attached.

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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Hugh Mannion  
Senior Planning Inspector

3<sup>rd</sup> September 2023