



An
Bord
Pleanála

Inspector's Report ABP-321322-24 (Section 48 Appeal)

Development	PROTECTED STRUCTURE: Retention of alterations and planning permission for change of use to form 2 apartments.		
Location	29 High Street/Colliers Lane, Kilkenny, R95 P025		
Planning Authority Ref.	Kilkenny County Council		
Applicant(s)	Michael Dowling		
Type of Application	Permission	PA Decision	Grant with Conditions
Type of Appeal	First Party -V- Contribution Condition No. 2	Appellant	Michael Dowling
Observer(s)	None		
Date of Site Inspection	Not Required	Inspector	Caryn Coogan

1.0 **Site Location/ and Description.**

The subject site is located in Kilkenny City centre at 29 High Street/ Colliers Lane.

The building is a five bay three storey, over cellar house with a dormer attic. There is a three storey return to the rear, along Colliers Lane which attaches to the north of the building. It is far end of the return which is proposed to be adapted into two apartments with an entrance off Colliers Lane.

The retail premises at ground level will not be affected by the proposed development which will be to the rear of the shop area.

2.0 **Development**

Retention Permission, to retain indefinitely material alterations and associated works and Planning Permission to complete the construction of a change of use of part of the existing ground floor level, the existing first floor level and material alterations to the existing second and third floor levels of the existing four storey property to the rear of 29 High Street to form 2 no. self-contained apartments, connection to existing services and all associated site works. Gross Floor Area 150sq.m.

The proposed development consists of works to a protected structure (Protected Structure Ref: B63, NIAH Ref. No. 12000044) and is located within the City Centre Architectural Conservation Area.

3.0 **PA's Decision**

The planning authority issued a decision to grant planning permission subject to 8No. conditions. Condition No. 2 imposed the development contribution of €3750.00 which is the sole matter of this appeal.

The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in

Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the Local Authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Acts 2000 as amended.

The amount of the financial contribution shall be paid upon grant of permission, with the amount of the contribution being the rate of contribution in existence on commencement of development. In accordance with the current scheme the amount of the contribution is calculated at €3,750.00 (Three thousand seven hundred and fifty Euro), however this amount may be recalculated in accordance with any newly adopted Development Contribution Scheme that may supersede the current scheme prior to commencement of development. Any applicable amount is subject to revision with reference to the Wholesale Price Index and to penalty interest in accordance with the terms of Kilkenny County Council's Development Contribution Scheme.

Reason: It is a requirement of the Planning and Development Acts 2000 as amended 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.

4.0 **Planning History.**

There is no relevant recent planning history.

5.0 **National/Regional/Local Planning Policy**

5.1 The relevant plan is the Kilkenny City and Environs Development Plan 2021-2027.

5.2 ***Development Contributions – Guidelines for Planning Authorities 2013***

These guidelines were issued under section 28 of the PDA 2000 (as amended) with a stated aim to provide guidance on the drawing up of development contributions to reflect radical economic changes.

5.3 Kilkenny County Council Development Contribution Scheme 2016-2017

6.0 The Appeal

- The property did not increase in size.
- The application is in relation to a material alteration and change of use of an existing residential property to form 2No. residential units.
- The ground floor was classed as storage before the renovation, therefore there is no change of use.
- The 2nd and 3rd floors are remaining the same use as residential on both floors. These floors are referred to in the valuation's officers report No. 171 as a flat, and it is omitted from the commercial rateable area. These floors are not changing in use
- The 1st floor has been renovated and is changing from storage welfare use to residential. This floor area is 39.9sq.m. and this represents a material change of use.
- The applicant has been levied incorrectly, as there is no changes in respect of Floors 2 and 3. There should be no charges to these floors. The only area that should be charged is the first floor which is:
$$39.9\text{sq.m.} \times \text{€}25 = \text{€}1000$$

6.1 P.A. Response

- The current Kilkenny Co. Co. Development Contribution Scheme 2026-2017 is attached.
- The Development Contribution calculation sheet for this application.

6.3 Further Response from Applicant

The applicant made a further submission to the Board citing the following relevant issues:

- There are no changes in the floor area of the subject property, all changes are within the existing building.
- The subject property is 'Pre 63' therefore the Council cannot prove there was not a flat/ residence at this property.

- The Valuation Office Surveyor's report enclosed identified commercial use on the basement, ground floor and first floor. It stated the 2nd and 3rd floor are identified as flats.
- The Valuation Officer's Report was presented to the Finance section of Kilkenny Co. Co. The 2nd and 3rd floors are not subject to commercial rates.
- Kilkenny Co. Co. did not provide any allowance for the existing residential use within the subject building.
- There are flat over shops along High Street, Kilkenny.
- According the appropriate calculation is from Commercial to Residential on the First Floor at 39sq.m. x €25 = €1000
- Under the Living City Initiative, the planning authority are suppose to be encouraging property owners to bring back to life the heart fo the city by encouraging people to live in the historic centres.

7.0 Assessment

- 7.1 According to current adopted Kilkenny Development Contribution Scheme Residential Development is **Class 2**. The rate of charge is as follows:

Description	Unit	Rate of Charge
Urban Residential Development	Per sq.m.	€25

- 7.2 The floor plan drawings accompanying Planning Application Reference No. 2460092 indicate changes to First Floor, Second Floor and Third floor. The existing floor plan drawings do not specify the existing use. The submitted documents state the permission is for the retention and completion of the change of use of the existing ground floor level and the existing first floor level. In addition to material alterations to the existing second and third floor

levels of the four-storey building at 29 High Street/ Colliers Lane, Kilkenny to form two self-contained apartments.

7.3 I note the application form states the existing use includes Commercial (Part of ground and first floor). The proposed use is to be 2 apartments (1No. one bedroom and 1No. 2 bedroom) on the first, second and third floors. The application form does not make reference to the existing use of the second and third floors of the building.

7.4 The existing and proposed floor plan drawings, would appear to indicate changes in the layouts of both the second and third floors, with no indication of their current/ existing use. According to the submission documents, the floor area of each floor is 46.3sqm., 45.4sqm. and 46.3sqm, respectively, totalling to **138.1sq.m.** Based on the information received and the drawings submitted with planning reference \2460092, the Development Contribution payable equates to:

$$138\text{sq.m} \times \text{€}25 = \text{€}3,450$$

7.5 I have examined the Valuation Office report submitted by the applicant on appeal. I note the commercial rates that are applicable refer to the basement, ground floor and first floor of the building. However, this does not determine that the existing use of the 2nd and 3rd floor as residential. The submission documentation with the planning application does not clarify or establish any use of the upper two floors. The development levies applicable can only be calculated based on the facts presented and not based on assumptions. The residential use of the upper floors may have historically existed but there is no indication when the use was abandoned or technical evidence to demonstrate Floors 2 and 3 were last used for residential purposes. My calculations are based on the facts presented on the appeal file. Having regard to the description of the development in the public notices and the associated floor

plans, I am satisfied the floor areas of 2nd and 3rd floor should be included in the development contributions calculations.

8.0 Recommendation

I recommend that the planning authority be directed to amend Condition No. 2 to reflect the above calculations.

9.0 Reasons & Considerations

Having regard to: (a) the provisions of the Kilkenny County Council's Section 48 Development Contributions Scheme 2016-2017 (in force at the time of lodgement of the application), and (b) the submissions made in the appeal, it is considered that Condition no. 2 should be amended as follows:

A development contribution based on 138sqm shall be paid to the Planning Authority as a contribution towards expenditure that was and/or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefiting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contributions Scheme. The contribution is payable is therefore €3450 and is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contributions Scheme or if a new Section 48 Development Contributions Scheme is made by the County Council the amount of the contribution will be adjusted accordingly.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefiting development in the administrative area of the locality

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.

Caryn Coogan

Planning Inspector

1st of May 2025