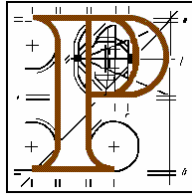


An Bord Pleanála



Inspector's Report

PL06S.239795

Completion of Alterations & Additions to House including new entrance wall and gates, additional openings, reduction in land levels and extra living space at Crockaunadreenagh, Rathcoole, Co. Dublin

PLANNING APPLICATION

Planning Authority: South Dublin County Council

Planning Authority Reg. No: SD11B/0235

Applicant: Anthony Brennan

Planning Authority Decision: Grant with conditions

APPEAL

Appellants: Anthony Brennan

Type of Appeal: First Party – V- Condition

1.0 THE SITE

- 1.1 There was no site inspection carried out as this appeal has been taken under Section 48(10(b) of the *Planning and Development Act 2000* and relates to the application of the Development Contribution Scheme by the planning authority and not the principal of the development. Therefore a site inspection was not deemed to be necessary.

2.0 THE PLANNING APPLICATION

2.1 DEVELOPMENT

The development is stated as follows in the public notices:

The retention and completion of on-going alterations and additions to an existing house involving 138sq.m. of extra living space contained within a three-level rear extension (26.5sqm.), a new first floor are resulting from a change from a hipped to a gable roof (12sq.m.) and the use of part of a domestic store in the basement as part of the house (100sq.m.);

New entrance wall and gates;

A reduction in land levels to the front, rear and side of the dwelling of up to about 2.5metres;

The raising of the ridgeline by 0.6metres, the provisions of a light coloured brick finish to the lower section of the dwelling, the removal of external steps, the installation of a new garage door, changes to the balcony, elevation alterations to existing fenestration and the creation of a new basement level window and door opening.

On the application form it states the site area is 0.55 hectares. The gross floor area of the existing building is 669sq.m. , and the gross floor area of works to be retained is 138sq.m.

2.2 SUBMISSIONS RECIEVED

There were none.

2.3 PLANNING AUTHORITY'S REPORTS

Roads: No objection

EHO: Further Information required

Planning Report: The main points of the report state:

- The development is consistent with the H zoning objective for the Dublin Mountain Area which is considered to have outstanding natural character.

- The lowering of the dwelling to reveal the basement does not lend the development to be visually obtrusive, as the proposal provides a moderate contour grading of the site
- The stated additional floor area is 138sq.m.
- The increase in the ridge height of the roof by 0.6metres is considered to be marginal.
- The revised elevations are acceptable
- No overlooking
- The site contains a septic tank and a private well, and details of the septic tank were requested by further information.
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2.4 **ADDITIONAL INFORMATION**

The information requested related to the capacity of the wastewater treatment system, the design and construction of the existing septic tank and percolation area. The surface water disposal system.

The response stated the existing septic tank was to be replaced with a package system and a sand polishing filter, and the water supply is from the **public mains**.

2.5 **PLANNING AUTHORITY'S DECISION**

The planning authority granted the development subject to 12No. conditions, which were standard planning conditions relating to, water supply, wastewater treatment, maintenance contract for the treatment system, external finishes of the dwelling, the house and extension shall be a single unit, stormwater disposal, and finally :

Condition No. 12

A financial contribution is payable of €11331.74 in respect of public infrastructure and facilities benefiting the development.

3.0 **THE APPEAL**

3.1 **THE GROUNDS OF APPEAL**

Vincent Farry has taken this appeal on behalf of the applicant against Condition No. 12 which requires the payment of €11,331.74 in the form of a development contribution. This appeal is being brought in pursuant to S. 48(10)(b) of the Planning and Development Act 2000, and there are no other issues relating to the planning authority's decision. A summary of the grounds of the appeal is as follows:

The Contribution Scheme

The current Scheme dates from 2010-2017, which extensions to be levied at a rate of €120 per square metre. There are certain exemptions to the payment of this rate:

- The first 40sq.m. of an extension to a residential development is exempt

- Developments for which either public piped sewerage services or water services are unavailable will be exempt from the contribution amount attributable to the water and drainage class of public infrastructure and facilities
- Elevation alterations
- Internal layout change- where no additional floor area is created.

The Development

The proposal mainly consists of minor changes to the appearance of the dwelling, it also involves 138sq.m. of floorspace, the majority of which already exist:

- 12sq.m. of existing space within the building which was included in the fee calculation purposes is a change from a hipped to a gable roof
- 100sq.m.resulting from the use of a permitted basement store and garage for living purposes
- 26.5sq.m. of entirely new space is contained within a three level rear extension with this additional area being used for low density staircase and bathroom purposes

Grounds of Appeal

The €120 rate is the subject of a lengthy list of exclusions and reductions as set out in Section 10 including a lower rate in the an unserved area. The first 40sq.m. will not command a levy, and as the three level rear addition contains an area of 26.5sq.m. and is below the threshold, the levy should not be paid for this part.

The 12sqm.m is only a change in roof profile and already exists in the house. It is within four external walls. Indeed even if it were include the combined are of both these features would still be less than 40sq.m.

The 100sq.m. basement that was originally authorised by Dublin city Council under TA/1943 has been used as part of the applicant's home since it was originally constructed. This existing space was also included as part of the application for reasons of thoroughness but it comprises an internal layout change and this area should not be included for development contributions charges.

There is no increase in floor area as most of the changes are internal alterations and not chargeable under the development Contributions Scheme.

Relevant case is PL06S.236621 at 2 Heatherview Park.

3.2 THE PLANNING AUTHORITY'S RESPONSE

The stated floor area of the total additional living floor space is 138sq.m.

The applicant has not provided evidence of previous payments of development contributions. On the basis that permission was sought for development already carried out, the Council has no previous record of payment of development contributions, this increase in habitable floor area is identical in character to a new domestic extension, which is chargeable at a rate of €120. For the Council to exempt a development contribution on the basis that it is already built, and does not represent an increase in the gross floor area, is an incentive for future unauthorised developments.

This is the first opportunity for the local authority to impose a development contribution to a development that required it in the first instance. The net effect of the development is no different in character to a newly constructed dwelling. The permission permits the use of 138sq.m. of additional residential floor area, it should be noted that the exemption of 40sq.m. referenced in the appeal documents instead of charging 98sq.m.

The Council charged 98sq.m. at a lower rate of €115.63 in relation to the exemption relating to the availability of piped sewerage and water services for the development. The assessment was set as below:

- Retained residential floor area for assessment for development contribution : 138sq.m.
- Exemption of the first 40sq.m.
- Assessable area 98sq.m.
- X €115.63 (rate excluding water and drainage contribution)
- = €11331.74

3.3 APPLICANT'S RESPONSE TO PLANNING AUTHORITY'S SUBMISSION

The response includes several incorrect assumptions and fails to apply the actual scheme. The proposal does not seek to lower to the floor levels of the dwelling, it merely involves a change in land levels outside of the dwelling. The basement has been occupied by the applicant since it was built. It is not relevant to suggest the applicant had not previously paid a development contribution, especially since the local authority did not draw attention to any outstanding contribution conditions.

The applicant's case relies on the definition of *floorspace* and the question of whether existing areas, which have already been permitted by the Council are chargeable under the Scheme, in circumstances where these spaces are already contained within the external shell of the house and where they have been used for domestic purposes since it was built.

The deductions are noted, but the applicant is not appealing the rate per se but rather whether the development is chargeable in the first place. The planning authority's response clearly demonstrates an overarching desire to secure extra funding at all costs, even where the proposal falls outside of the Scheme, and it is because of this ulterior motive that its response does not address whether the works, other than the rear addition, actually include a house extension.

Why is the basement, and existing space, being charged? The Council has not explained the basis for the sum sought, especially where it accepts the lower level comprises of existing basement accommodation.

Turning to the levy on the 12sq.m. at first floor level, this space is also contained within the house, and even if it was included in the combined total of the new area of 26.6sq.m. it would still be below 40sq.m.

4.0 PLANNING HISTORY

Planning Enforcement File: S6568

A S.154 Enforcement Notice was served on Anthony Branagan on the 5th of May 2011 requiring certain actions to be carried out, including the removal of unauthorised works

5.0 STATURY FRAMEWORK

South County Development Plan 2010- 2016

Objective H – to protect and enhance the outstanding natural character of the Dublin Mountain Area.

Policy H16: Extensions to Dwelling Houses

It is the policy of the Council to support the extension of existing dwelling houses in principle to safeguards contained within the Plan and within the House Extension Design Guide included in Appendix 5.

Appendix 5 – House Extension Design Guide

South Dublin County Council Development Contribution Scheme 2010-2017

6.0 ASSESSMENT

6.1 The applicant has appealed the principal of the applying a Development Contribution to the decision to grant retention and completion of works at his dwellinghouse in Rathcoole Co. Dublin. Although the planning authority applied a reduction in the overall calculation of the amount payable, allowing for the private sewage treatment on the site, the applicant is not disputing the form of calculation. The applicant is disputing the entire principal of applying a Development Contribution to the development in the first instance. He maintains the proposed extension to the dwelling is under the 40sq.m. and is therefore exempt from the charges, and the sections of the dwelling that form part of the retention application, have in fact being in place since the construction of the dwelling, should not be charged as they have always existed.

6.2 The public notices describe the legal nature and extent of the development applied for on the site which clearly and unambiguously states the application is for :

The retention and completion of ongoing alterations and additions to an existing house, involving an extra 138sq.m. of living space contained within a three level rear extension (26.5sq.m.), a new first floor area resulting from a change a change from a hipped to a gable roof (12sq.m.) and the use of an existing domestic store as part of the house (100sq.m.)....

The application form states the gross floor space of the **existing** building is 669sq.m. and the gross floor space of work to be **retained** is 138sq.m. The submission documents illustrate 'General Arrangement of House Prior to Works being carried out' and works to be retained and completed as part of this application. This application is on foot of a Section 154 Enforcement Notice which was served on the applicant on the 5th of May 2011, requiring the dwelling to be reinstated to a two storey dwelling with a basement level, etc.

6.3 The applicant maintains on appeal that the overwhelming majority of the 138sq.m. already exists within the dwelling, i.e. the 12sq.m. of existing space from a hipped to a gable roof provides additional headroom only, 100sq.m. of the permitted basement store has been converted to living purposes and has existed since the house was first constructed, and there is 26sq.m. of entirely new floor space, which includes a staircase and a bathroom. The applicant states that as the new three level contains an area of 26sq.m. it is below the stated threshold of 40sq.m. therefore no levy should be paid.

Also that applicant states the 100sq.m. basement level formed part of the dwelling originally permitted under TA/1943. The space was included in the application for reasons of thoroughness but it comprises of '*internal layout changes*' of a type provided for under Section 10 of the Scheme, and should not be chargeable under the Contribution Scheme.

- 6.4 In response to the appeal, South County Dublin County Council has stated that the stated additional living floor area is 138sq.m. The planning authority maintain the development as stated was converted without planning permission and not to charge a development contribution on that basis that existed since it was constructed albeit and unauthorised use, would be an incentive for future unauthorised developments. The planning authority also states that it applied the 40sq.m. exemption to the calculations and that only 98sq.m. was calculated and this was further reduced from €120.00 to €115.63 in recognition of the sewage treatment on the site. This new permission now permits the use of an extra 138sq.m as residential space to the dwelling and is assessable for the purposes of Development Contributions.
- 6.5 The application documentation clearly states development applied for was the retention and completion of an extra 138sq.m. living space contained in a new extension (26.5sq.m.), an increase in the roof height (12sq.m.) and the use of an existing domestic store as part of the house (100sq.m.). The applicant has not provided on appeal the permission granted or the previous authorisation of the basement area as living accommodation. I note that the planning application is in response to planning enforcement proceedings initiated by the planning authority. The applicant has claimed on appeal that the basement was shown on drawings permitted under planning registration No. TA/1943 and has been occupied by the applicant since the house was built. The Board can only review this case as presented in the planning application and on appeal. The applicant has made broad statements on appeal that the basement is in existence, implies that it is authorised under the original planning permission, and yet this own planning application form, public notices and drawings indicate otherwise. The case presented by the applicant for an exemption of Development Contributions under section 10 of the Scheme- i.e. *Internal layout change – where no additional floor area is created*, I consider the applicant has failed to present a plausible case having regard to the content of the Planning Enforcement case **S6568** initiated by the planning authority and the content of the planning application and notices applied for by himself. It appears to me the applicant is now trying to move the goal posts on the development description after a levy has been imposed. I note the planning authority's method of calculations i.e.

138sq. – the 40sq.m exemption = 98sq.m. of the development is chargeable

The 98sq.m. is not charged at the standard €120 per sq.m. residential rate it is charged at €115.63 per sq.m. which excludes sewage contribution).

This implies a Development Contribution of €11,331.74 is payable which is in line with Condition no. 12 and is a reasonable amount given the extent of the development and having regard to the adopted Development Contribution Scheme 2010-2017.

7.0 RECOMMENDATION

In my opinion, the Development Contribution Scheme has been correctly applied by the planning authority in this instance.

**Caryn Coogan
Inspector**

5th of March 2012