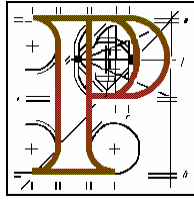


An Bord Pleanála



Inspector's Report

Appeal Reference: PL06D.241805

Development: Demolition of part of house and construction of new extension and renovation of existing house at Oldfield House, Kilmashogue Lane, Rathfarnham, Dublin 16.

Planning Application

Planning Authority: Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref. D12B/0374

Applicants: Peter & Lesley Robertson

Type of Application: Permission

Planning Authority Decision: Grant permission

Planning Appeal

Appellants: Peter & Lesley Robertson

Type of Appeal: First Party against conditions

Date of Site Inspection: No site inspection required

Inspector: Donal Donnelly

Appendix: Maps & Development Contribution Scheme.

1. BACKGROUND

- 1.1 This is a first party appeal against the requirements of Condition 6, 7 & 8 attached to Dún Laoghaire Rathdown County Council's decision to grant permission for the demolition of part of an existing house, construction of a replacement extension and renovation work, together with all ancillary works and services at Oldfield House, Kilmashogue Lane, Rathfarnham, Dublin 16
- 1.2 Condition 6 requires the payment of €1,982.50 as a contribution under Section 48 of the Planning and Development Act, 2000 (as amended) in respect of water and drainage public infrastructure and facilities benefiting development in the area of the Planning Authority. Similarly, Conditions 7 & 8 require the payment of €3,965 and €1,982.50 respectively towards roads and community & parks public infrastructure and facilities.
- 1.3 The applicant considers that the contribution towards waste and drainage is unreasonable as the site is served by a private well and proprietary wastewater treatment system. In addition, there are no plans to provide the applicant with a mains water supply or connection to the public sewer system.
- 1.4 The appeal against Conditions 7 & 8 relates to a misinterpretation of the floor area used to calculate the development contribution. The applicant claims that an area of 14.72 sq.m. should be excluded from the amount used in the calculation.

2. PROPOSED DEVELOPMENT

- 2.1 The proposed development comprises the demolition of part of an existing two storey dwelling, construction of a replacement extension and renovation works to the original dwelling.
- 2.2 The area to be demolished will amount to 136 sq.m. of the 267 sq.m. dwelling and the replacement extension will measure 169 sq.m. The proposal will therefore increase the floor area of the dwelling by 32.3 sq.m. to 299.3 sq.m.
- 2.3 The part of the dwelling to be demolished includes the entrance hallway, living room and kitchen/ dining area at ground floor level and 2 no. bedrooms and 2 no. bathrooms upstairs.
- 2.4 The proposal will see an open plan dining and living room and the kitchen within the area to be retained at ground level, and a new entrance hall, lounge and utility accommodated within the extended area. The area to be retained, comprising 3 no. bedrooms, will remain largely the same at first floor level. The extended area will include a bathroom and bedroom with dressing room and en-suite.

3. TECHNICAL REPORTS

- 3.1 The recommendation to grant permission, as outlined within the Planning Report, reflects the decision issued by the Planning Authority.
- 3.2 It is noted that the proposed extension will essentially follow the footprint of the demolished extension and will also extend the original dwelling to the west by approximately 33 sq.m.
- 3.3 A report from the EHO requires further details in respect of the capacity and condition of the existing septic tank. The applicant submitted further information in this regard showing compliance with the EPA's Code of Practice.
- 3.4 The calculation details relating to development contributions states that the floorspace of proposed works is 169 sq.m. minus 40 sq.m. exempt = 129 sq.m. The total floor space to be levied is 61 sq.m. based on the demolition area of 136.7 sq.m. (half allowed) and minus 68 sq.m. for demolition.

4. PLANNING AUTHORITY'S DECISION

- 4.1 Dún Laoghaire-Rathdown County Council issued notification of decision to grant planning permission subject to 10 conditions. Condition 6, 7 & 8 state as follows:

6. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €1,982.50 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Water & Drainage Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14/12/2009 . Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced. Following commencement, any outstanding balance shall be updated at the 1st of January each year during the life of the scheme in accordance with annual increases in the Wholesale Price Index - Building and Construction Materials published by the Central Statistics Office.

Reason: *It is considered reasonable that the payment of a contribution be required in respect of the provision of the Water & Drainage Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.*

7. *The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €3,965.00 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14/12/2009 . Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced. Following commencement, any outstanding balance shall be updated at the 1st of January each year during the life of the scheme in accordance with annual increases in the Wholesale Price Index - Building and Construction Materials published by the Central Statistics Office.*

Reason: *It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.*

8. *The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €1,982.50 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14/12/2009 . Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced. Following commencement, any outstanding balance shall be updated at the 1st of January each year during the life of the scheme in accordance with annual increases in the Wholesale Price Index - Building and Construction Materials published by the Central Statistics Office.*

Reason: *It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.*

5. APPEAL GROUNDS

5.1 A first party appeal was lodged the applicant against Condition 6 and Conditions 7 & 8 only of the Council's decision. It is considered that the development contribution is unreasonable in the case of Condition 6 and has been miscalculated under Conditions 7 & 8 for the following reasons:

Condition 6

- There was originally a shared well with the adjoining house when neighbour owned both dwellings – neighbour did not want to continue sharing this well when dwelling was sold to the applicant.
- Applicant contacted the Council to get connected to mains water supply but was informed that there were no plans to continue it up Kilmashogue Lane.
- Applicant has had to spend money drilling a well to provide his own water supply and does not now wish to be on mains water now or in the future.
- Applicant has his own septic tank which was replaced by a new Kingspan pureflow system in 2010 – there are no plans to put the applicant on the sewer system.
- Seems unreasonable that applicant should pay the water and drainage contributions when he does not use mains water or the public sewer system.

Conditions 7 & 8

- Applicant was informed by his architect that there would be an exemption from all contributions as only 32 sq.m. were being built (under the 40 sq.m. limit).
- When architect was submitting plans he did not accurately reflect the internal new works and over-calculated the area of work to be carried out – hallway, rear wall, west wall and front are remaining in situ. Only change is to the east wall which is being knocked down and relocated by 2m.
- Full hallway footprint should not have been calculated in the demolition works and therefore should not have been liable to contributions.
- Total extension is 162 sq.m. minus 40 sq.m. allowance = net 122 sq.m and at 50% of this rate = 61 sq.m. Existing hallway is being extended by 14.72 sq.m. and this amount should be excluded from the 122 sq.m. calculation.
- Calculation for roads and community & parks should be €3,477.50 and €1,738.75 respectively.
- Applicant will be paying the full amount and expects a refund of any contribution, either whole or in part, that has been unreasonably or incorrectly calculated.

6. RESPONSES

Dún Laoghaire-Rathdown County Council

6.1 In response to the first party appeal, the Planning Authority submitted the following comments:

- Development Contributions Scheme provides that conditions requiring the payment of contributions provided for in the Scheme will be imposed in all decisions to grant planning permission made following the making of the Scheme by the Council.
- Condition 6 is applied to all grants of permission – condition is for the provision of water and drainage infrastructure and facilities in the area of the Planning Authority and is not solely related to the site subject of this appeal. Development Contributions Scheme lists projects that are intended to be provided by or on behalf of the Council.
- Application form, statutory notices and drawings submitted with the application clearly outline the area of building to be retained and the area to be demolished.
- Applicant states in the appeal that the total extension size is 162 sq.m. - assessment of development contributions was calculated on an extension of 169 sq.m. as per the application form.
- Drawing office measured the area to be demolished and has confirmed it to be 138.16 sq.m. and at 50% equates to an area of 69.08 sq.m. (including hallway).
- Applicant states that the extension size is 147 sq.m. less 40 sq.m. = 107 sq.m. / 50% = 53.5 sq.m. to be levied – this is considered incorrect as the 50% credit appears to have been wrongly applied.
- Proposed extension is 169 sq.m. less 40 sq.m. = 129 sq.m. less demolition credit of 69.08 sq.m. = 59.92 subject to development contributions.
- Correct figures are €1,947.40 (water & drainage), €3,894.80 (transportation) and €1,947.40 (community & parks).

Third party

6.2 The applicant was invited to respond to the Council's submission and did so with the following:

- Council has made no consideration of the reasonableness of the applicant's point or the possibility that the water contribution should not be applied in this manner considering the circumstances.
- Applicant accepts that his architect was predominantly at fault and the Council had little choice but to apply the contributions based on demolition

and rebuild basis – applicant accepts the calculation as determined by the Council.

- Applicant cannot accept a situation where he has been refused connection to water and drainage systems and then is told to contribute to it anyway.
- Applicant had to absorb other costs to supply water and should not have to pay the contributions as well.
- Applicant is paying for a service he is not receiving and asks why should he pay twice when others pay once?

7. PLANNING HISTORY

Dún Laoghaire-Rathdown County Council Reg. Ref: D05A/0469

- 7.1 Mary Fetherston was granted permission on 8th June 2005 for a new detached part two storey / part dormer bungalow with roof lights plus separate garage, soak pit and borehole, sewage treatment plant with percolation area and associated site works with new boundary treatment and site entrance to a site adjacent to Oldfield House.
- 7.2 There were water & drainage, roads and parks & community contributions attached to this decision. This dwelling has been constructed on the site adjoining the appeal site.

8. DEVELOPMENT PLAN

Dún Laoghaire-Rathdown County Development Plan, 2010-2016

- 8.1 The appeal site falls within Zone Objective B - *'to protect and improve rural amenity and to provide for the development of agriculture.'*
- 8.2 Details of development contributions are set out in the Dún Laoghaire-Rathdown Development Contribution Scheme 2013-2015, which was adopted on 14th May 2013.

9. ASSESSMENT

- 9.1 This is an appeal against financial contribution conditions only attached to Dún Laoghaire-Rathdown County Council's decision to grant permission for the demolition of part of a dwelling and the construction of a new extension, together with renovations and ancillary works and services at Oldfield House, Kilmashogue Lane, Rathfarnham, Dublin 16.
- 9.2 Conditions 6, 7 and 8 require the developer to pay contributions totalling €7,930 in respect of the provision water and drainage, roads and community &

parks infrastructure, facilities and amenities benefiting development in the area of the Planning Authority, as provided for in the Development Contributions Scheme. The contributions are based on a rate of €1,982.50 for water and drainage, €3,965.00 for roads and €1,982.50 for community & parks facilities and amenities and levied on the basis of a floor area of 61 sq.m.

- 9.3 Under Section 48 10 (b) of the Planning and Development Act, 2000 (as amended), an appeal may be brought to the Board where an applicant for planning permission considers that the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the Planning Authority.
- 9.4 The applicant has appealed Condition 6 and Conditions 7 & 8 for different reasons. The applicant considers that it is unreasonable to attach Condition 6 relating to water & drainage contributions having regard to the fact that the dwelling is served by a proprietary wastewater treatment system and private well and there are no plans by the Council to extend the mains water supply or sewer system as far as Kilmashogue Lane.
- 9.5 With respect to Conditions 7 & 8, the applicant points out that his architect submitted plans that did not accurately reflect the internal works and which over-calculated the re-development area. In this regard, it is submitted that the full hallway footprint should not have been calculated in the demolition works and therefore should not have been liable to contributions. Thus, an area of 14.72 sq.m. should have been excluded from the calculation area and the amount payable for roads and community & parks should therefore be €3,477.50 and €1,738.75 respectively.
- 9.6 In response to the first party appeal against Condition 6, the Planning Authority highlights that the condition is for the provision of water and drainage infrastructure and facilities in the area of the Planning Authority and is not solely related to the site subject of this appeal. In this regard, I would highlight that Subsection (1) of Section 48 of the Planning and Development Act, 2000 (as amended) enables the planning authority, when granting permission to include conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority. It does not state that the public infrastructure and facilities should benefit the development in question but rather development in the area of the planning authority in general.
- 9.7 As noted above, an appeal may be brought to the Board under Section 48 (10) (b) of the Planning and Development Act, 2000 (as amended), where an applicant for planning permission considers that the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the Planning Authority. The Scheme clearly states that contributions are towards development in the area of the planning authority and there are no exemptions/ reductions for developments which are already served by private services and facilities. I do not therefore consider that there has been any improper application of the Scheme in respect of Condition 6.

There is no question as to the reasonableness of the condition when the condition has been properly applied.

- 9.8 With respect to the appeal against Conditions 7 & 8, it should be noted that the Council issued its notification of decision to grant permission for the proposed development when the Dún Laoghaire-Rathdown Development Contributions Scheme 2010-2017 was in force. The 2013-2015 Development Contributions Scheme was adopted by the Council on 14th May 2013 subsequent to the Council decision. Significantly, the unit price per class of public infrastructure has been reduced within the new scheme. The rate per square metre of domestic extension in excess of 40 sq.m. is now €23.75, €47.50 and €23.75 for community & parks, roads and water & drainage facilities and amenities respectively.
- 9.9 The list of exemptions under the new Scheme has also been amended. The first 40 square metres of any residential extension, including granny flats, shall be exempt from the contribution scheme. All house extensions in excess of 40 square metres, including family or “granny” flats, shall be assessed at €95 (down from €130) per square metre of residential development in respect of the portion exceeding 40 square metres.
- 9.10 In addition, there is a new exemption where *‘only the net additional development in cases of redevelopment projects, where industrial/commercial and domestic extensions will be levied (e.g. a redevelopment totalling 200 sq.m. of which 150 sq.m. is replacing existing development, contribution should only be levied on the additional 50 sq.m.) NB. If no contribution was previously paid – the contribution will be levied on the new development in full.’*
- 9.11 Notwithstanding the above, Section 48 (10) (c) of the Act states that *‘where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.’*
- 9.12 An appeal against the Council’s decision may be made to the Board within the period of 4 weeks beginning on the date of the decision of the planning authority. The notification of decision was issued on 13th March 2013. The new Development Contributions Scheme was adopted on 14th May 2013 and therefore I would be of the opinion that the previous Development Contributions Scheme was still in force when the Planning Authority would have made the grant of permission after a period of 4 weeks from 13th March 2013. The applicant has stated in the appeal submission that he paid the full amount to the Council after submitting the appeal in the expectation of a refund of contributions.
- 9.13 In his final submission to the Board, the applicant appears to accept that the area used by the Planning Authority when calculating the floor space to be

levied is correct (i.e. exclusive of the part of the hallway). The Planning Authority highlights that the assessment of development contributions was calculated on an extension area of 169 sq.m. as per the planning application form. The Drawing Office measured the area to be demolished and has confirmed that it is 138.16 sq.m. A 50% credit is applied to the area of demolition which would amount to 69.08 sq.m. Therefore, the Planning Authority calculated the floor area to be levied at 59.92 sq.m. based on the proposed extension of 169 sq.m. less 40 sq.m. = 129 sq.m. less demolition credit of 69.08 sq.m. It would appear that the 50% credit applied to the area to be demolished is derived from the exemption/ reduction in the previous Development Contributions Scheme that *'replacement dwellings or replacement commercial developments will be charged 50%.'*

9.14 In my opinion, the above method would appear to be correct. I would also agree that the planning authority was correct to use the floor area figures as per drawings and the planning application form. In addition, I note that the front elevation of the extension, including entrance, is materially different to the current elevation and entry arrangements. Therefore, I do not agree that part of the hallway area should be excluded from the calculation where it appears that this area is also being re-developed.

9.15 Having regard to the above, I would agree with the Planning Authority that the following development contributions are payable:

Class of Public Infrastructural Development	€ per sq.m. of domestic extensions in excess of 40 sq.m.	Area to be levied	Total
Class 1: Community & parks facilities & amenities	32.50	59.92	€1,947.40
Class 2: Roads infrastructure & facilities	65.00	59.92	€3,894.80
Class 3: Water & drainage facilities & amenities	32.50	59.92	€1,947.40
Total:			€7,789.60

RECOMMENDATION

The Board considered, based upon the reasons and considerations set out below that the terms of the Development Contribution Scheme for the area had been properly applied in respect of Conditions 6, 7 and 8 but that the conditions should be AMENDED to reflect the accurate floor area as follows;

6. The developer shall pay to the planning authority a financial contribution of €1,947.40 in respect of water & drainage facilities and amenities 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 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. The application of any indexation required by this condition 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.

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.

7. The developer shall pay to the planning authority a financial contribution of €3,894.80 in respect of roads 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 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. The application of any indexation required by this condition 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.

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.

8. The developer shall pay to the planning authority a financial contribution of €1,947.40 in respect of community & parks facilities and amenities 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 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. The application of any indexation required by this condition 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.

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.

REASONS AND CONSIDERATIONS

The Board considers that the terms of recently adopted Dún Laoghaire-Rathdown County Council Development Contributions Scheme were correctly applied in this case by the planning authority, but that the accurate reckonable floor area had not been included within the calculation details for development contributions.

Donal Donnelly
Inspector

26th June 2013