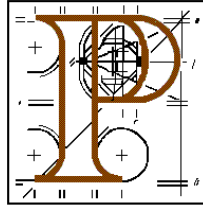


An Bord Pleanála



Inspector's Report

Development: Alterations to House Previously Granted Under Ref. No. 04/1472, Agricultural shed to the Rear and First floor Extension and site works at Brewel House, Brewel West, Colbinstown, Dunlavin, Co.Kildare.

Planning Application

Planning Authority: Kildare County Council
Planning Authority Reg. 15/774
Applicant: Ivan Johnston
Type of Application: Permission
Planning Authority Decision: Grant with conditions

Planning Appeal

Appellant(s): Ivan Johnston
Type of Appeal: First Party Vs Condition
Observers: None

1.0 PROPOSED DEVELOPMENT

1.1 The proposed development is for

- (a) an as contracted dwelling granted planning permission under Planning reference 04/1472;
- (b) Agricultural machinery storage shed to rear of dwelling (including carport at front) with part domestic use at first floor level;
- (c) First floor extension comprising enclosed walkway from first floor of dwelling to first floor of agricultural machinery shed to rear;
- (d) As constructed wastewater treatment system;
- (e) All site development works.

2.0 SUBMISSIONS RECIEVED

There were no submissions received.

3.0 TECHNICAL REPORTS

According to the Planner's Report the floor area of the dwelling house was not levied in the conditions schedule. The levies relate to the link, the leisure area at first floor level over the rear shed (combined 123sq.m.) and the agricultural shed and car port areas (combined 258.5sq.m.)

123sq.m. x €37.32 = €4,590.36

258.5sq.m. x €27.51 = €7,111.34

Total = €11,701.70

4.0 PLANNING AUTHORITY'S DECISION

Kildare granted planning permission for the development subject to 20No. conditions.

Condition No. 20 Payment of a development contribution of €11,701.70.

5.0 APPEAL GROUNDS

The following is a summary of the appeal:

- The applicant was granted planning permission for a dwelling on the subject site under planning reference 04/1472.
- The applicant has previously paid €23,549 in development contributions for the house and the stables on the site. The Council

are now looking for €11,701 in development contributions under the current application.

- The Council are trying to impose a levy for the extensions as opposed to the dwelling been considered as a single project. Under PL09.242101 ruled that permission for a dwelling involving additional floorspace to that permitted originally should be treated as a single project and not as an extension to the original dwelling. This development was in Rathangan Co. Kildare involved the retention of a dwelling house including additional floor space. The Board ruled the development was a single project.
- The terms of the adopted development contribution scheme have been incorrectly applied in this instance. The planning authority decided to treat the link, leisure area, shed and carport as an extension to the main dwelling.
- The development should have been treated as a single project and not an extension to a dwelling. The application was to regularise the existing development on the site. The works all form part of the same development. The applicant did not seek extensions to the main dwelling.
- Applying the same logic as the Board's calculations under PL09.242101:

Residential development involving floor area over 220sq.m. = €20,194 (under 2013 provisions)

Less water (€4,240) and on site wastewater (€3,634.92) = €12,318.34

Therefore the contribution should be based on €12,318.34 - €14,787 (levies already paid on the 2004 permission) = overpayment

- If the Board decide that non-habitable floorspace (shed and carport) should be treated different to an extension, then the payment for the stables should be subtracted as they were never built but a development contribution of €8,762 was paid.

6.0 RESPONSES

- 6.1 The **planning authority** has submitted on appeal that the development contribution scheme was incorrectly applied in this instance. The levy should have been calculated as follows:

Walkway	Concession
Leisure area with 1 st Floor extension	95sq.m.
Agricultural Shed	200sq.m.
Carport	58.5sq.m.
Total area to be levied is 353.5sq.m.	

Levied at a miscellaneous rate of €27.51sq.m. = €9,724.78

- 6.2 The **applicant** has responded to the planning authority's submission. There were no new issues raised. The planning authority has now accepted the applicant did not apply for or receive permission for an extension to the dwelling. The revised development contribution calculations remain flawed based on the Board's determination under PL09.242101 (single project).

Miscellaneous rates in the Scheme are meant to cover development which is not covered under residential development, miscellaneous rates cannot and should not apply in this instance.

If the Board consider that the non-residential element should be excluded from the single project (i.e. €7,111.34 for miscellaneous) , it is strongly argued the credit should be given to the previous payment of €8,762 under the 2004 application for stables.

7.0 PLANNING HISTORY

7.1 04/1472

Permission granted for a two storey dwellinghouse, 5No. stables, tack room and staff facilities, dungstead and a wastewater treatment unit subject to 26No. conditions. Condition No. 26 required payment of a development contribution of €23,549. The amount was paid in full i.e. €14,787 for the dwelling and €8,762 for the stables. The stables were not built.

8.0 PLANNING POLICY

Kildare Co. Co. Development Contributions Scheme 2015-2018 is applicable.

I have attached a copy of the current development contribution scheme in the appendix of this report and a copy of the cited Development Contributions Scheme 2011-2018.

9.0 ASSESSMENT

- 9.1 This appeal relates to the Condition No. 20 of the decision to grant permission which is stating a Development Contribution of €11,701.70 is payable in respect of the development. The Board should note on appeal the planning authority has stated the development contributions scheme was incorrectly applied and the amount should be revised to €9,724.78.

- 9.2 The applicant maintains there is no development contribution payable as he has previously paid €23,549 in respect of the original permission for the house granted under planning reference **04/1472**, i.e. for the permitted dwelling house and stables. In addition this is a similar case to an appeal relating to a dwelling in Rathangan Co. Kildare, PL09.242101, whereby the

Board considered the dwelling house a single project and that an extension did not require additional levies, i.e. the previous permitted house to be retained and the additional floorspace included in the retention application, involved a house constructed as a single project.

- 9.3 In my opinion the current proposal is not a similar case to PL09.242101. The case cited was retention of a considerably larger dwelling than the one originally permitted. The subject development of this appeal is a large agricultural shed with a carport, and a leisure area on the first floor area of the shed which is linked to the main dwellinghouse by a covered walkway. Incredulously the planning authority granted permission for the development. The planning authority has stated on appeal in a letter dated 21st of January 2016, that the development contribution scheme had been incorrectly in this instance and have outlined the correct calculation of the development levy as per the adopted Development Contributions Scheme.
- 9.4 The planning authority maintain the development is not considered to be a single project, therefore the previous development contributions paid in respect of the 2004 planning application, are not relevant to the current application. The development is a large structure to the rear of an existing dwelling house which is linked to the applicant's dwelling by a covered walkway. I consider the subject structure to be physically detached from the main dwelling, and is therefore not an extension to the existing house. Although the uses of the structure are described as an agricultural shed, a car port and a leisure area, I consider the leisure area and carport to be incident to the main residential use on the site, although they are separate from the main dwelling and are not a single project as stated by the applicant. Furthermore having considered the classes of developments whereby contributions are payable under section 8 of the Scheme, I do consider the development fall within (xiv) Miscellaneous Developments.
- 9.5 Therefore having regard to the content of the Development Contributions Scheme the following levy is applicable:

(xiv) Miscellaneous Developments

Miscellaneous developments not listed individually above will have the following development contributions rates applied –

Rate €27.51 per sq.m.

Leisure Area on First floor Level within the structure	95sq.m.
Agricultural shed ground floor	200sq.m.
Car Port	58.5 sq.m.
Total Floor Area	353.5sq.m.

353.5sq.m. x €27.51 per sq.m. = €9724.78 is payable.

- 9.6 The applicant has stated that a full development contribution of €23,549 was paid in respect of the original planning permission, planning reference 04/1472, which was permission for a two storey dwelling, 5 No. stables, tack room and staff facilities. The dwelling element included a levy of €14,787, and the stable element was a levy of €8762. Due to the economic downturn the stables were not built and the shed was constructed in its place with living space. In my opinion, if it were living space it should be considered a separate dwelling unit entirely, however the drawings indicate it is to be used as a leisure area.
- 9.7 The applicant maintains the planning authority is double charging in this instance. That credit should be given for the previous payment of €8,762 under the 2004 application for stables, as the stables were not constructed. The existing development, a shed, carport and leisure area are materially different to the stables permitted, and located to the rear of the dwelling as opposed to the location of the stables along the eastern site boundary. Therefore there is no double charging in this instance, the subject development is an entirely new development and use classification. There is no exemption or credit applicable under the adopted scheme to allow credit for the stables permitted under the original permission.

10.0 RECOMMENDATION

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 20 and directs the said Council under subsection (10) (b) of section 48 of the 2000 Act, to AMEND condition number 20 so that it shall be as follows for the reason stated.

The developer shall pay to the planning authority a financial contribution of €9,724.78 (nine thousand, seven hundred and twenty four euro and seventy eight cent) in respect of public 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, as amended. The contribution shall be paid prior to the commencement of development or 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.

Caryn Coogan

Planning Inspector

24/02/2016