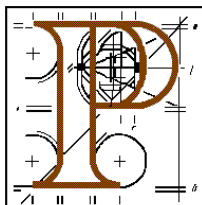


An Bord Pleanála



Inspector's Report

Development: Demolish existing house and garage, construct a house with integrated garage and associated site works at Lakecastle Upper, Straffan, Co. Kildare

Planning Application

Planning Authority:	Kildare County Council
Planning Authority Reg.	15/256
Applicant:	Oliver and Lorraine Kelly
Type of Application:	Permission
Planning Authority Decision:	Grant with conditions

Planning Appeal

Appellant(s):	Oliver and Lorraine Kelly
Type of Appeal:	First Party Vs Condition
Observers:	None

1.0 PROPOSED DEVELOPMENT

1.1 The proposed development is for

- (a) The demolition of an existing dwelling (118sq.m.) and garage (34sq.m.)
- (b) The erection of a replacement dwelling of 343sq.m. and garage 29sq.m.

The original submitted dwelling was 390sqm. But it was reduced in size following a request for further information.

2.0 SUBMISSIONS RECIEVED

There were no submissions received.

3.0 TECHNICAL REPORTS

The Planning Report dated 27/11/2015 stated the development contribution was calculated at 343sq. (amended from original proposal) = €19208.

4.0 PLANNING AUTHORITY'S DECISION

Kildare granted planning permission for the development subject to 28No. conditions.

Condition No. 28 Payment of a development contribution of €19,208.

5.0 APPEAL GROUNDS

The following is a summary of the appeal:

Demolition of Existing Dwelling

The planning authority should have regard to the floor area of the dwelling to be demolished when calculating the development contribution payable. This is evident from case PL09.222386 whereby the Board took into account the existing floor space and placed great weight on the need for a nexus between new proposals and the additional demands for services when calculating the levy.

Similarly in appeal, PL78.223484 whereby it was considered appropriate to compare existing and proposed floor space in order to determine the net increase in floor area arising, and to allow the correct calculations of the relevant floor area.

Other cases cited are PL16.228466 in Mayo and PI06S.218902 in Tallaght, and PL09.216074 in Kildare.

The current proposal falls to be treated pursuant to exemption Section 12 of the adopted *Kildare Development Contribution Scheme* , whereby the net floor area chargeable is 225sq.m.

The Rate to be Applied

The Contribution Scheme of 2015 contains separate rates depending on the floorspace involved, and having regard to the area of dwelling to be removed that the current development should be levied at a rate of €50 per sq.m. rather than €56 per square meter on the basis that its chargeable area is less than 230sq.m. Such an approach accords with Section 12(k) of the Scheme.

Concluding Comment

It is submitted that the sum total applicable to Condition No. 28 is **€11250** (225sq.m. x €50 per sq.m.).

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:

The floor area of the development permitted under the parent permission reference 77/1004 measured 105.7sq.m. Therefore the levy should have been calculated as follows;

Floor area permitted under P15/256	343sq.
Floor area of integrated garage permitted under P15/256	29sq.
Total Area Permitted	372sq.m.
Floor area been replaced granted under P77/1004	105.7
Total additional Floor area	266.3sq.m.

Levied at Band 3 Extension rate of €56 per sq.m. which is for floor areas between 231-370sq.m.

= **€14,912.80**

6.2 Applicant's Response to Planning Authority's Submission

The planning authority now admit the existing development on site should have been considered in the calculations of the development contribution. The file relating to the permitted dwelling has been lost, therefore the case presented that the floor area of the dwelling is 105sq.m. cannot be relied upon. The planning authority has not disputed the submitted internal floor area of the existing dwelling as 118sq.m. The applicant states the garages should be excluded from the calculations. The planning authority has included the floor area of the integrated garage in its calculations and excluded the detached garage. There is no reference to domestic garages throughout the development contribution scheme.

7.0 PLANNING HISTORY

7.1 77/1004

Permission granted for a bungalow, septic tank and soak pit and sinking well on the site.

14/499

Planning permission refused to the applicants for a development consisting of the remodelling, construction incorporating existing walls, foundations, demolitions and extension/ enlargement of the existing dwelling on ground and incorporating a new first floor with a dormer roof.

The extension was refused because it was not sensitive to the existing dwelling and would distort the scale and mass of the existing house.

8.0 PLANNING POLICY

Kildare Co. Co. Development Contributions Scheme 2015-2022 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 2015-2022.

9.0 ASSESSMENT

9.1 Kildare Co. Co. granted planning permission to demolish the existing house and garage on the subject site and to construct a new dwelling on the subject site. The planning authority, by way of Condition No. 28, imposed a development contribution of €19,208. These contribution and the calculations did not take into consideration the floor area of the existing dwelling on the site, which is 105.7sq.m. and was granted planning permission under registration number 77/1004.

9.2 The adopted development contribution scheme applicable to this development is Kildare Co. Co. Development Contribution Scheme 2015-2022, as included in the Appendix of this report. Section 12 is the **Exemptions and Reduced Contributions**. The relevant item is as follows:

k) Redevelopment Projects

Where permission is granted for the redevelopment of a project which includes replacing existing development, the relevant contribution change will be applied to the additional floor area per sq.m. i.e. residential (using extension rates), commercial, retails, etc.

I note from the planning report on file and the planning authority's submission to the Board on appeal, that this relevant section and reduction was not applied to the calculations of the development contribution. Therefore, the development contribution scheme has been incorrectly applied in this instance.

9.3 The floor area of the existing dwelling is (118sq.m.) and the detached garage (34sq.m). There is no reference to detached garages throughout the development contributions scheme. The planning authority has excluded it

from the calculations, but has included the proposed integrated garage (29sq.m.) as part of the calculations. This floor area should be subtracted from the *permitted* floor area which was amended by way of further information. The permitted replacement development which including an integrated garage is 343sq.m + 29sq.m. = 372sq.m. Therefore the net floor area is subject of the development contribution scheme **252sq.m.**

- 9.4 According to Section **8(ii) Extensions (Residential)** of the Development Contributions Scheme The relevant calculation rate is €56/ sq.m. Therefore the development contribution payable is **€14112.**

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 28 so that it shall be as follows for the reason stated.

The developer shall pay to the planning authority a financial contribution of **€14112** (fourteen thousand, one hundred and twelve euro) 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

24/03/2016