



An
Bord
Pleanála

Inspector's Report PL.09.246948

Development

Sub division of St. Mary's Lane back to 2 separate dwellings and the extension to the rear of both dwellings at 1 St. Mary's Lane, Monasterevin, Co. Kildare

Planning Authority Kildare County Council

Planning Authority 16/325

Reg. Ref.

Applicant(s) Martin Doyle

Type of Application First Party v Condition 24

Planning Authority Grant permission

Decision

Appellant(s) Martin Doyle

Observer(s) None

Date of Site Not applicable

Inspection

Inspector Joanna Kelly

1.0 Site Location and Description

1.1 The appeal site is located on St. Mary's Lane, a cul-de-sac serving a number of dwellings to the rear of the Catholic Church. The rail-line is located approx. 150m north of the appeal site.

2.0 Proposed Development

The applicant is seeking permission for sub-division of 1 St. Mary's Lane back to separate dwellings and the extension to the rear of both dwellings to convert them to two separate four bedroom dwellings and all associated site works.

Each unit is a four-bedroom unit with a floor area of approx. 140sq.m.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission subject to 24 conditions:

Of relevance to this appeal is condition 24 cited as follows:

The applicant/developer to pay to Kildare County Council the sum of €10,270.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare county Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

Reason: *It is considered reasonable that the development should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.*

3.2. **Planning Authority Report**

The first planning report recommended a further information request seeking a single storey rear extension, and clarifications regarding use on site et al. The second report indicated the proposal was acceptable and recommended a grant of permission.

4.0 **Planning History**

File Ref. No. 07/2618 Permission refused for 31 units at 1-5 St. Mary's Lane.

File ref. No. 05/2314 Permission refused for 40 no. units at 1-5 St. Mary's Lane.

5.0 **Policy Context**

The Kildare County Development Plan 2011-2017 is the statutory development plan for the area.

Monasterevin Local Area Plan 2016-2022

The appeal site is zoned "existing residential and infill" in the plan where the objective is to protect and improve existing residential amenity, to provide for appropriate residential infill development and to provide for new and improved ancillary services.

6.0 The Appeal

6.1 Grounds of Appeal

The grounds of appeal can be summarised as follows:

- It is submitted that the development contribution scheme has not been properly applied.
- Reference is made to the provisions within the scheme.
- The applicant sets out that the calculation indicates the total sum sought (€10,270) represents a change of €50 for each of the 205.4sq.m. of chargeable space (following a reduction of a 40sq.m. exemption for each of the two rear additions).
- The applicant endorses the Council's rationale in concluding that 80sq.m. of the total area of 285.4sq.m. is non-chargeable on the basis of the exemption within section 8 (ii) of its Scheme and the appeal concerns the manner in which the remaining 205.4sq.m. should be treated.
- The planning authority has imposed a levy on the area using the rate set out in section 8 (i) of the contribution scheme but this particular clause relates to entirely new residential floor-space rather than conversion of existing development.
- The footnote to the calculation table indicates that this approach has been adopted on the basis that the applicant has not supplied details of the planning history of the land as part of his submission.
- On a point of law, it is set out that it infers that section 12 (g) contains particular prerequisites which do not actually form part of the scheme and it is not open to the planning authority to read additional requirements into the text.

- Reference is made to the case *Cork City Council v An Bord Pleanála* which applied the case of *XJS Investments* where planning documents should be construed in their ordinary meaning.
- In the *Cork County Council* case the High Court held that ABP were statutorily bound to apply the actual text of the particular contribution scheme and not to indirectly vary its provisions.
- The key issue concerns the manner in which section 12 (g) was applied. The footnote implies that section 12 (g) only applies where a contribution has previously been paid however the scheme as adopted does not contain such a provision.
- Some proposals might affect structures which pre-date planning control, as is the case in this instance, the Council's approach would effectively require landowners seeking to avail of section 12 (g) of the Scheme to prove that established use rights still exist.
- It is submitted that it is inappropriate for the Council to effectively place the onus on providing provenance of a particular structure, or the fact that a previous contribution condition has been satisfied on an applicant for permission. Such a burden is not contemplated in paragraph 12 of the adopted scheme.
- Section 8(i) and (ii) and section 12(g) differentiate between existing structures and new floor space and whereas the Council seeks to levy a charge for new buildings, this latter clause indicates that a levy will only be applied on changes of use proposals in one situation.
- It is submitted that the change of use of this residential building, from one unit into two dwellings will not 'lead to the need for new or upgraded infrastructure/services' or the 'significant intensification of demand placed on existing infrastructure' as stipulated in section 12 (g) of the Scheme.
- It is requested that the 146sq.m. within the existing building which occupies the subject site should thus be treated as being non-chargeable.

- The actual area of the two extensions is 138.8sq.m. and allowing the 40sq.m. exemption for two resulting dwellings there remains a residue of 58sq.m. of chargeable space which at a rate of 50sq.m. results in a total payment of €2,900.
- The submission concludes that levies can only be imposed pursuant to a contribution scheme and the sum under condition no. 24 breaches the adopted scheme.

6.2 Planning Authority Response

There is no response from the Planning Authority

7.0 Assessment

- 7.1 Introduction - I consider the key issue for determination in this instance pertains to the development contribution. In accordance with Section 48 (13) (a) the Board will not determine the application as if it had been made to it in the first instance but will only determine the matters under appeal and will issue appropriate directions to the Planning Authority when it has determined the appeal. The reason for appeal pertains to the exemption provision within the scheme, specifically section 12 (g).

Provisions of the Contribution Scheme - The Kildare Development Contribution Scheme provides for the payment of a contribution in respect of residential developments at a rate specific to floor area of the dwellings. Section 8 (ii) provides for extensions to residential properties and sets out that development contributions will be applied to extensions by determining the floor area of the extension, allowing a 40sq.m. exemption and applying rates as follows:

Floor Area	0-40sq.m.	41-230sq.m.	231-370sq.m.	371sq.m. and over
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Rate per sq. m. €	0	€50	€56	€65
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The exemption is cumulative and will only be granted once.

7.2 Proposal - The planning application sought permission for sub-division of an existing residential property with a floor area of 146.6sq.m. The total floor area of both units is stated as 279.4sq.m. Therefore, the total increase in new residential floor area is 132.8sq.m.

7.3 Assessment of condition 24 –

Section 12 of the said scheme provides that “Exemptions and Reduced Contributions” in particular instances apply. With regard to changes of use it is set out that *“this scheme provides for waivers in the case of change of use planning permissions. Kildare County Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure”*. The First Party contend that this provision in section (g) applies in this case. I disagree. This provision clearly pertains to change of use which is not the case in this instance. The proposal is to sub-divide an existing residential property into two distinct residential units and construct an extension to both. Therefore, I conclude that this section is not of relevance to this appeal as there is no change of use but rather a sub-division.

With regard to the application of the development contribution scheme to the proposed development, there is no provision in the adopted scheme that makes

reference to such a case. Therefore, it is considered that the application of a residential contribution should be calculated as follows:

Overall floor area proposed – existing floor area = Area subject to contribution

279.4sq.m. – 146.6sq.m. = 132.8sq.m. (I note that the applicant makes reference to a figure of 138.8sq.m. in the submission).

In this case, I consider the proposal to represent an extension to an existing house. As the proposal also includes the sub-division of the floor space into two distinct units, including the provision of an extension to both units, it is reasonable that the 40sq.m. exemption would be permitted for both units. Therefore, a total of 80sq.m. should be off-set against the 132.8sq.m. This gives rise to a remaining figure of 52.8sq.m. that should be levied. The rate for this floor area is €50 per sq.m giving rise to a contribution of €2,640.

8.0 Recommendation

I recommend that the planning authority is directed to **AMEND** Condition 24 as follows.

9.0 REASONS AND CONSIDERATIONS

The Board considered that Condition 24 has not been correctly determined in accordance with the current Kildare County Council Development contribution scheme 2015-2022.

REASONS AND CONSIDERATIONS

Having regard to

- (a) The established use on the appeal site as a residential unit and the proposal to sub-divide and increase the existing residential floor area;
- (b) the general arrangements regarding payment of development contributions and implementation of the scheme; and the
- (c) the provisions of the Kildare County Development Contributions Scheme, in particular, section 8 (ii)

the Board considered that the terms of the Scheme has not been properly applied in this instance. Section 12 (g) of the Development Contribution Scheme pertains to a change of use application and is not applicable in this instance.

Joanna Kelly

Planning Inspector

30 September 2016