



An
Bord
Pleanála

Inspector's Report

PL09.247749

Development	Retention of Dwelling House and Splayed Entrance as constructed at Rathbane, Killeel, Co. Kildare.
Planning Authority	Kildare Co. Co.
Planning Authority Reg. Ref.	16/567
Applicant(s)	Tony Owens
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Appellant(s)	Tony Owens
Observer(s)	None
Date of Site Inspection	14/03/2017
Inspector	Caryn Coogan

1.0 SITE LOCATION AND DESCRIPTION

1.1 The subject site is located in an elevated rural area south east of Killeel village in Co. Kildare. There is a dormer dwelling on the site and electric gates. The front roadside boundary is a mature hedge.

2.0 PROPOSED DEVELOPMENT

2.1 Planning permission for retention of a house as constructed and retention of splayed entrance.

3.0 PLANNING AUTHORITY DECISION

3.1 DECISION

Kildare Co. Co. granted planning permission for the retention of the dwelling subject to 14No. conditions.

Condition No. 14 is the most relevant, it required the payment of €16,760.

3.2 TECHNICAL REPORTS

Environment Section : No objections

Planning Report

The supplementary Development Contribution Calculations Report is attached to the general planning report dated 24/11/2016.

Basically it states there is no exemption as a retention, therefore the fee payable is for a floor area of 299.sq.m. at a rate of €56 per sq.m. which equates to €16,760.

4.0 PLANNING HISTORY

01/336: Permission granted to Tony and Linda Owens for a dwelling on the subject site.

ED00579: A referral case relating to a change of use from a dwelling to a residence for persons with intellectual or physical disabilities. It was considered not to be exempt. The report on file noted deviations to the house permitted under 01/336

5.0 POLICY CONTEXT

5.1 Kildare Development Contributions Scheme 2015-2022

6.0 THE APPEALS

- 6.1 Vincent JP Farry has taken this appeal on behalf of the applicant against Condition No. 14 of the Decision to Grant Planning Permission for the development. The conditions require the payment of €16,760 as a development contribution, which is considered to be outside the ambit of the *Kildare Contribution Scheme 2015*.
- 6.2 The application relates to the retention of a dwelling construction over 25 years ago which was not built in accordance with the submitted drawings. Mr. Owens wanted to apply for retention of the alterations, but the planning authority made him apply for retention of the entire dwelling.
- 6.3 Permission refused under 00/937 for a dormer extension and garage to the rear of existing cottage. The existing house was stated to be 107sq.m. Under registration number 01/336, for a dormer bungalow and garage the extent of the development was indicated to be 248sq.m. Under 16/498 the applicant sought retention of changes to the fenestration and elevational treatment of the dwelling which was permitted under 01/336. This was invalidated and the applicant had to apply for the entire dwelling. A new application was submitted with the gross floor area of existing buildings as 299sq.m.
- 6.4 The development contribution applied was calculated using the residential rate of €56 per sq.metre of 299sq.m.

6.5 The Issue of Floorspace Measurement

Under Section 9(b)(i) it states no levy will be applied to proposals involving the retention of minor modifications and where there is no increase in floor area. It is clear from 16/498, the development falls within that category. The building submitted has the same floor area as that permitted under 01/336. The application form indicated the development would contain 248sq.m. and the documents lodged with the application states the property now accommodates 299sq.

The plans permitted under 01/336 were reconsidered by the applicants agent and there are areas not considered in the calculations such as the garage (27sq.m.) the first floor void (5sq.m.) the walk in wardrobe (4sq.m.. The permitted plans were assessed in detail and the Board is invited to note the striking similarity between the existing and permitted plans.

There is an additional area which comprises of a store on the first floor and not a habitable room under the Building regulations, and is within the shell of the building permitted under 01/336, and it is unreasonable to levy Mr. Owens on this basis. The extra space would be exempted development even though the house is not as permitted plans (Ref. 17/RL2748). The board should remove development contribution and Condition No. 14 completely.

6.6 The Issue of Demolition

There was a cottage originally on the site and the application did not formerly seek consent for the demolition.

Under appeal PL09.222386 the Board acknowledged existing floor space placed weight on the need for a nexus between new proposals and the additional demands for services when calculating an appropriate levy.

Similarly, in appeal PL78.223484, the Board considered the amount payable on a development comprising the demolition of store rooms, the extension of a retail unit and the construction of a two storey ancillary (stores, lifts and stairs) as well as a change of use from residential to office on the first floor at Main Street Templemore. The Inspectors report stated that the development contributions scheme did not include a specific provision to do so, it appears to be a reasonable attitude.

Turning back to the appeal, as permission 01/336 is of no effect (since the Council required the applicant to seek retention for the full dwelling) and the Board is therefore asked to treat the application as a replacement space. The previous cottage on the site was 107sq.m.

The stated area of the house is 299sq.m. and the original cottage was 107sq.m. the chargeable area is 192sq.m. (note section 12(k) does not distinguish or differentiate between space which was used for living purposes, for the parking of cars or for domestic storage). The reduction in the overall chargeable rate has the effect of changing the applicable rate on the basis that the dwellings containing under 230sq.m. command a charge of €50 per sq.m. instead of the higher €56 rate which was applied by the Council.

Should the Board adopt this approach in lieu of directing the Council to remove condition 14 altogether, the current charge of €16,760 should be reduced to €9,600 (192sq.m. x €50).

- 6.7 Section 48 of the Planning and Development Act establishes that levies can only be imposed pursuant to an adopted development contribution scheme, and the sum sought under Condition No. 14 breaches the adopted scheme for two reasons:

It overlooks the fact the land does not contain extra habitable floor space, relative to the building which was permitted under reg. 01/336 and

The proposal also includes the removal of an existing dwelling and the floor space of same should be factored into the calculations.

6.6 RESPONSES

There was no response from planning authority.

7.0 ASSESSMENT

7.1 Included in the appendix of this report is a copy of the current Development Contribution Scheme 2015-2022. The Board should note the applicant applied for '**Permission for retention of house as constructed and retention of splayed entrance**'. The applicant applied for retention of the entire dwelling 299sq.m. on 0.24Ha at Killeel, Co. Kildare. Condition No. 14 of the grant of retention of permission stated the applicant is required to pay a development contribution of €16,760. This was calculated in a report accompanying the Planning report dated 24/11/2016.

7.2 Development contributions for Residential developments and Extensions are calculated by the floor area. The current proposal is within the 231sq.m. – 370sq.m. bracket, whereby a contribution of €56 per sq.metre is payable. The dwelling been retained is 299sq.m. and this calculations to €16,760. The Exemptions Section is outlined under Section 12 of the scheme. The planning authority had regard to 12(q) of the Exemptions:

q) Retention Permission

No exemptions or waivers shall apply to any developments subject to retention permission save where it applies to a previously permitted development (e.g. temporary permission).

In my opinion, the planning authority has correctly applied the Scheme in this instance, however the applicant has forwarded to counter-arguments for the Board to consider.

7.3 The applicant is claiming Section 9(b) of the development Contribution Scheme should have been applied in this instance.

9. b. Retention

(i) Development Contributions will not be applied where a valid application is received for retention of minor alterations (as determined by the Planning Authority) and where there is no increase in floor area.

The applicant states the dwelling was granted planning permission under reference 01/336. The current proposal is broadly similar. The drawings submitted as part of 01/336 included a floor area greater than the stated 248sq.m., as the garage, a first floor storage area and other minor areas were excluded from the calculated floor area at the time. It is submitted it is unreasonable to levy Mr. Owens €16,760 on the basis of an additional storage area which is not a habitable room by the Building Regulations Standards, and would be considered exempted development.

In terms of Section 9 of the Development Contributions Scheme, it is essential the applicant has presented proof of payment of previous development contributions in order to comply with this section of the

Scheme. The applicant did not apply for the retention of minor alterations to the subject dwelling, he applied for retention of the entire dwelling, therefore Section 9 (b) is not relevant.

- 7.4 The applicant then asks the Board to consider the floor area of a cottage that originally existed on the site which pre-dated 01/336. There are similar examples cited in terms of Board cases in Mayo, Tallaght, and Kildare, whereby it would be found that in the case of replacement of one floor area by another, the original floor area should be excluded from the development contributions calculations. I would accept that is a reasonable process and one which frequently comes before the Board. However, the applicant has not provided evidence of the floor area of the original cottage on the site. There is no reference in the development granted under 01/336 to the demolition of a cottage on the site, and the applicant has not provided proof of payment of any previous development levies associated with the property.
- 7.5 It is beyond the remit of the Board to calculate development contributions based on assumptions, and unsubstantiated arguments. The development does not come within the scope of 12(k) as described in the accompanying public notices and based on the information submitted on appeal which did not provide an original technical material relating to previous and permitted dwellings on the site. It is not the Board's remit to prove otherwise, and the applicant should have provided copies of original drawings, and proof of payment of previous levies associated with planning histories on the site. Furthermore, the development applied for under 16/567 does not include for modifications of a previously permitted development, therefore Section 9(a) of the Scheme is not applicable in this instance, and Section 9(b) is also not applicable as the drawings submitted and the information on file does not relate to the original dwelling permitted under reference 01/336. Although, cases within Kildare such as PL09.242101 and PI09.245780 are not exactly similar to the proposed development, the application of the development contribution scheme in those instances is relevant to this case, and it demonstrates a consistent approach by the Board.
- 7.6 The Board is restricted to the development applied for in this instance, the information on the appeal file and the adopted development contribution scheme. In my opinion, the planning authority correctly applied the development contributions scheme based on the information submitted and no evidence of previous payments of levies associated with the property and planning histories.

8.0 RECOMMENDATION

The planning authority's calculations should be upheld.

REASONS AND CONSIDERATIONS

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 has been properly applied in respect of condition number 14.

Caryn Coogan

Planning Inspector

04/04/2017