



An
Bord
Pleanála

Inspector's Report PL 17.247913

Development	Change of house type.
Location	35 Kribensis Manor, Williamstown Stud, Clonee. Co Meath.
Planning Authority	Meath Co Council.
Planning Authority Reg. Ref.	RA161177.
Applicant(s)	Abdul Rauf
Type of Application	Permission.
Planning Authority Decision	To Grant Permission.
Type of Appeal	First Party
Appellant(s)	Abdul Rauf
Date of Site Inspection	April 6 th , 2017.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located in Kribensis Manor, south of Clonee in Co Meath. It consists of an undeveloped site within an existing residential estate. The estate consists of large two-storey houses on individual sites arranged around a central area of landscaped open space. The internal access roads and public lighting around the main areas of the estate are in place. The estate is accessed via the R149 that connects Clonee with Lucan to the south. Access into the estate is by remotely operated gates.
- 1.2. The appeal site is located immediately inside the entrance gates and to the south of the main internal access route. It is adjoined to the east by an undeveloped site (No 33), to the west by the treeline along the R149 and to the rear by the currently undeveloped Site No 32. The site is at road level with a small mound located towards the rear.
- 1.3. The R149 borders the site to the east. It is a heavily trafficked rural road with a posted speed limit of 80 km/h. It has a narrow carriageway with poor vertical and horizontal alignment. Its boundary with the subject site is defined by a treeline and hedgerows.

2.0 Proposed Development

- 2.1. The proposal as described in the public notices seeks planning permission for a change of two-storey house type with detached garage to that previously approved under planning permission Ref No RA/160186 and DA40501.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 15 no conditions, which includes the following conditions of note;

Condition No 2 – Requires that the development complies with the conditions set out in DA/110054 and RA160186, except where conditions require otherwise.

Condition No 3 – Permission shall expire on 16th December, 2018.

Condition No 4 – External finishes to be as submitted. Samples of external wall, roof and fenestration finishes which show colours, textures and materials to be submitted for written agreement.

Condition No 8 – Natural boundaries consisting of a mixture of hedgerow and mature/semi mature trees to be retained.

Condition No 15 – Requires the payment of a special contribution of €12,000 towards the cost of providing a footpath and public lighting along the R149 for the full frontage of the site, as provided in the Contribution Scheme adopted under Section 48.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **Planning Officer's** report of 13/12/16 notes that the current proposal is for a change of house plans from that previously approved on the site and is therefore acceptable in principle. It is noted that the house type is consistent with the house types immediately adjacent and the dwellings within the overall housing development. The design of the house is generally similar to that granted under DA40501 and DA/110054 and is therefore considered acceptable. It will have a ridge height of 9.7m and a floor area of c.280m² compared to the dwelling permitted under

DA/110054 (328 m2). The siting of the detached garage is also considered acceptable.

It is stated that contributions have been paid for this site by the original developer (DA/40501) and therefore no contributions are applicable for the dwelling unit. It is noted that the recent grant of permission for sites 27, 28 & 34 (RA/160665) contained a special contribution of €36,000 (€12,000 per unit) as recommended by the Roads Section towards the cost of providing footpath and public lighting along the full frontage of the site (400m).

3.2.2. **Other Technical Reports**

The **Road Design Office** report of 14/12/16 notes that a number of infrastructural works attached to the original permission were not carried out including a footpath along the full frontage of the site as well as works towards Clonee village. It is stated that it is fair and reasonable that a pro rata special levy be put on each application in this development. No objections were raised subject to a special contribution of €12,000 towards these works.

3.3. **Prescribed Bodies**

None.

4.0 **Planning History**

DA/40501 – Planning permission granted on 23/5/05 for a residential development consisting of 99 No. houses. The residential development was divided into three distinct elements, comprising Holsteiner Park (32 units), Cavalier Green (32 units) and Kribensis Manor (35 units), which includes the appeal site.

DA/110054- Planning permission granted on 27/4/11 for the construction of 9 no. houses at various locations within the estate and including the appeal site.

RA/160186 – Permission granted on 21/4/16 for an extension of duration of planning permission to build 9 no. houses at various locations within the estate and including the appeal site.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the **Meath County Development Plan 2013-2019**. The site lies within the plan boundary of the Dunboyne, Clonee, Pace LAP 2009-2015 and is unzoned.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised below:

- The appellant questions the validity of Condition No 15.
- The site was bought to be used as applicant's primary residence. The new house is similar in scale to the original approved house.
- The original grant of permission for the site imposed development levies of c.€29,700 including Part V contributions, which were determined as adequate in relation to the development of these lands under permissions RA/160186 and DA/40501.
- The applicant is happy to pay the previously advised contributions.
- Condition No 15 imposes an additional levy of €12,000 for providing a footpath and public lighting along the adjoining public road. This is a subsequent levy and is excessive. It has not been applied to other developments in the immediate vicinity and is not considered valid.
- The imposition of the levy is unfair as it has retrospectively and unfairly imposed an additional development cost on the site. It should have been applied on the parent permission and not retrospectively applied. It is in contravention of the legal principle that changes in statute are not retrospectively applied.

6.2. Planning Authority Response

The planning authority is satisfied that all matters outlined in the appeal were considered in the course of the assessment of the application as detailed in the planning officer's report. The contribution levied as per Condition No.15 has been justified in the attached reports from the Road's Section in relation to the current application and the more recent application RA/160665, which was granted permission with the same condition.

7.0 Assessment

The appeal relates solely to a condition requiring the payment of a special contribution. Under Section 48 (13) (a) of the Planning and Development Act, 2000, as amended, the Board is not permitted to determine the application *de novo* and is restricted to determining the matters under appeal. My assessment is therefore limited to Condition No 15.

Condition No 15 reads as follows;

'The developer shall pay a special contribution to the sum of €12,000 towards the cost of providing a footpath and public lighting along the R149 for the full frontage of the site, as provided for in the Contribution Scheme of Meath Co Council adopted in accordance with the provisions of Section 48 of the Planning and Development Act 2000-2015. Payment of this sum shall be made prior to commencement of development.

The above sum shall apply until 31st December 2017 and shall be subject to review on that date and to annual review thereafter unless previously paid. The contribution rates shall be undated effective from January 1st each year during the lifetime of the lifetime of the Development Contribution Scheme in accordance with the Wholesale Price Indices-Building and Construction (Capital Goods) published by the Central Statistics Office.

Reason: The provision of the footpath and public lighting are necessary to facilitate the proposed development. It is considered reasonable that the developer should contribute towards the cost of providing these services.

I would point out to the Board that the wording of the Condition No 15 is contradictory in terms in that it infers that the 'special contribution' is required in respect of works provided for in the Development Contribution Scheme. In the first instance it is expressly provided by Section 48 (2) (c) that a 'special contribution' will apply in respect of specific exceptional costs *not covered by the scheme*. Secondly, Appendix A of the Meath County Development Contribution Scheme 2016-2021 provides a list of projects which may be funded from development contributions. Class 2 refers to Roads & Public Transport Infrastructure and includes improvements to a number of regional roads (R156 Dunboyne-Summerhill improvements; R150 Julianstown-Laytown etc). The R149 is not included in the scheme of works. The provision of public lighting generally is covered by the scheme.

The planning history relating to the site is as follows. Under the original permission (DA/40501) planning permission was granted for 99 no. houses on a large site exceeding 23 ha, bounded to the west and north by the R149 and to the east by the CR 588. The development comprised three phases (Kribensis Manor, Holsteiner Park and Cavalier Green). The appeal site is located within Kribensis Manor, the first phase of the proposal to be developed. The permission included a number of financial contributions, including Condition No. 20 relating to roads infrastructure.

A number of houses were built on the site prior to the expiry of the permission. Under Reg Ref No DA/110054 planning permission was granted for the construction 9 no. houses which included the appeal site. Condition No. 15 required the payment of a contribution *'towards expenditure that was and/or that is proposed to be incurred by the planning authority in the provision, refurbishment, upgrading, enlargement of public roads and public transport infrastructure by the Council benefiting development in the area of the Authority, as provided for in the Planning Authority's Contribution Scheme'*. There was no reference to the requirement for a special contribution. This permission was extended under Reg Ref No RA/160186 to 17/12/18. It included one condition requiring the payment of a bond as a security towards the satisfactory completion of the development. The requirement for a special contribution first emerged during the processing of an application for the development of 3 no. sites (27,28 & 34) under Reg Ref No RA/160665 (Condition No 14) granted on January 1st, 2016.

The situation on the ground is that the majority of the houses in Kribensis Manor have been completed and construction has commenced on Holsteiner Park to the north. The existing development exists in isolation from the built urban form to the east and access to the development is by vehicular transport only. No works have taken place to install a footpath along the site frontage and it would appear that this would necessitate the removal of the existing tree line with impacts on the visual amenities of the area. A safer and more acceptable option would be to provide pedestrian linkages internally within the development, avoiding the local network and connecting into public transport and other community facilities to the east.

According to the S.E.E Road Design report the file the special contribution is required to carry out infrastructural works required under the original permission which were not carried out by the developer. The works referred to in the report refer to a *'footpath and public lighting along the full frontage of the site as well as works towards Clonee village'*. It is estimated in Reg Ref No RA/160665 that the works would cost approximately €120,000 and that the cost should be apportioned over the remaining units to be developed in the estate i.e. €12,000 per house. The Board will note that the condition attached to the planning authority's decision refers to 'a footpath and public lighting along the R149 for the full frontage of the site' with no reference to other works towards Clonee.

The appellant has questioned the validity of the special contribution condition. Section 48 (2) (c) of the Planning and Development Act 2000 sets out the legislation underpinning and the criteria for the imposition of a special contribution. These include that the contribution must be in respect of the *'particular development'*, where *'specific exceptional costs not covered by the scheme'* are incurred by the local authority in *respect of public infrastructure and facilities* which *'benefit the proposed development'* Section 48(12)(a) requires that such contributions should *'specify the particular works'* to which the contribution relates,

In order to test whether the condition is legally valid, it is necessary to examine the wording of the condition, by reference to these statutory requirements.

- It is clear that the condition relates to exceptional costs that are not covered by the Development Contribution Scheme.

- The works in question have been specified i.e. ‘a footpath and public lighting along the R149 for the full frontage of the site’.
- The provision of a footpath and public lighting is within the definition of ‘public infrastructure and facilities’ in Section 48(17).

On the face of it, Condition No 15 is a special contribution pursuant to Section 48(2)(c) and despite the ambiguity of the wording would appear to be legally valid.

It is the opinion of the appellant that the condition is unjust and unfairly applied. I would point out to the Board that there is an extant permission relating to the subject site. According to the Planning Officer’s report financial contributions have been paid in respect of this site. The current proposal is for a change in house plans only. It would appear unreasonable and unjust that an application for a change of house plans would be levied in this way and that a small number of sites within the larger scheme should be saddled with the cost of the works. Whilst I accept that the provision of a footpath with public lighting could provide valuable linkages between the various phases of the development and would ‘benefit development in the area’, it is difficult to perceive how it would specifically ‘benefit the proposed development’ in accordance with the requirements of Section 48(2)(c). The applicant could, for example, revert to the original house plans and achieve the same benefit from the development without incurring an additional levy of €12,000.

The imposition of a special contribution requires a degree of specificity i.e. a detailed breakdown of the costs involved and details of the nature and scope of the works must be explicit. This has not been provided. The planning authority has failed to demonstrate that the works in question would benefit the proposed development in accordance with the provisions of the Act. There is no ‘new development’, merely a modification of a previously approved development and there is no obvious material benefit that will be derived from the works.

The works would benefit development in the area of the planning authority and I consider that the costs involved are amenable to inclusion in the development contribution scheme. This could have reasonably been anticipated in the time lag between the expiry of the original application (DA/40501) and the more recent application to construct 9 no. houses within the estate.

To conclude, as the benefit deriving extends to other properties in the vicinity, I consider that it is unjust that the costs should be apportioned to a small number of applicants within a larger development where the benefit to the development in question has not been demonstrated. The proposal is for a change of house plans only on a site with an extant permission and it is my opinion that the special contribution is not justified by reference to the provisions of the Act.

Note: This appeal should be considered in conjunction with PL17. 247914 relating to Site No 32 within Kribensis Manor and which is appealed on similar grounds.

8.0 Recommendation

- 8.1. In the light of the above assessment, I recommend that the Board should determine the application under section 48 of the Act and direct the planning authority to delete Condition No 15, for the reasons and considerations set out below.

9.0 Reasons and Considerations

It is considered that the financial contribution under Condition No 15 is not a valid special contribution which complies with the provisions of Section 48 of the Planning and Development Act 2000, in that it has not been demonstrated how it will benefit the proposed development since the subject application is for a change of house type only for one dwelling which were authorised by a previous permission.

Breda Gannon
Planning Inspector

20nd April, 2017