



An
Bord
Pleanála

Inspector's Report PL09.248741

Development	Retention of revisions of permitted development (07/2417) including relocation of main dwelling and percolation area.
Location	Broadleas Common, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	16/1074.
Applicant	Robbie and Isabel Winders.
Type of Application	Permission.
Planning Authority Decision	Permission with conditions.
Type of Appeal	First Party
Appellant	Robbie and Isobel Winders.
Observer(s)	None.
Date of Site Inspection	None.
Inspector	Philip Davis.

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1.0 Introduction

This is an appeal under S.48(10)(b) of the 2000 Act, as amended, arguing that the Development Contribution Scheme has been improperly applied. It is one of three concurrent schemes on the same landholding – the others being **PL09.248743** and **PL09.248746**.

2.0 Site Location and Description

The appeal site is located in Broadleas Commons, a townland characterised by extensive rural sprawl extending south from the village of Ballymore Eustace. The appeal site is a 0.7-hectare site some 2-km south of Ballymore Eustace with a dwelling on the site, part of a larger landholding including dwellings, agriculture and commercial buildings and stables.

3.0 Proposed Development

- 3.1. The retention of revisions to permitted development (ref.07/2417) including the relocation of the main dwelling (c.425.5 sqm) and the relocation of the percolation area.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to 13 no. conditions. Condition 15 set a S.48 development contribution of €27,657.50.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The planning report states that there is no record of development contributions having been paid under 07/2417. It is noted that the dwelling has been constructed at a different location on site and the scale of the dwelling is significantly larger (permitted dwelling – 291 sqm – dwelling applied for – 425.5 sqm).

4.2.2. Other Technical Reports

The Development Contribution calculations attached indicates that for a dwelling of this side it falls under 'band 3' and so should be assessed at €65 per square metre.

4.3. Prescribed Bodies

None relevant.

4.4. Third Party Observations

None relevant.

5.0 Planning History

The planning report states that in 2007 permission was granted for the partial demolition of existing dwelling house and to convert the remainder to stable block and tack room, and to construct a new dormer style dwelling house with barn and all associated site works (**07/2417**).

6.0 Policy Context

6.1. Development Plan

The site is in open countryside without a specific zoning designation. There is a recorded monument close to the site (KLD029-014001), a standing stone.

6.2. Natural Heritage Designations

The closest Natura 2000 site is the Poulaphouca Reservoir SPA, site code 004063, some 3-km to the east. A screening was carried out by the planning authority which concluded that no AA was required.

7.0 The Appeal

7.1. Grounds of Appeal

- It is argued that it is entitled to be considered exempt under the terms of section 12(q) of the scheme as it is a previously permitted development (07/2417).
- It is noted that there was a development contribution set by condition 33 of that permission for a development contribution to the sum of €14,787.00. It is argued that this fee should have been taken into consideration in calculating the required contribution.

7.2. Planning Authority Response

- The background to the retention application is set out – it is noted that a Warning Letter was issued by an Enforcement Notice in 2016 following the applicant's failure to comply with a number of conditions on 07/2417.
- It is considered that as the permission is to retain the unauthorised modification and location of the dwelling it is not considered that the application is a 'retention' permission as per paragraph 12(q) of the Scheme. It is also noted that the contributions on 07/2417 are outstanding and that the changes are not viewed as minor modifications.

7.3. Applicants Response

- It is submitted that as the residential unit was previously permitted, it can be considered for an exemption under 12(q). It is restated that condition 33 set a development contribution, while the PA has attached levies based on a totally new house.
- It is submitted that the contribution should only be calculated as the net increase of 134.5 sqm, which comes to €8,742.50.

8.0 Assessment

8.1. Overview

In assessing this appeal, I would consider it important to establish an overview of the planning history of the overall landholding, not just this site, as all three appeals are interrelated.

There is no record on file of permissions on the landholding prior to 2007. A single dwelling was located on the south-western corner of the site at this time. This dwelling appears to have been a long established cottage, built at a right angle to the road. The dwelling appears on older OS plans from the early 20th Century. Aerial photographs from 2005 show the site undeveloped, apart from the cottage and another building at a right angle to this cottage.

In 2007 the planning authority granted permission (**07/2417**) for a dwelling on the landholding (the red lined area of this appeal). This permission was for a new dwelling and to turn the existing house on the south-western corner to stables and tack room use. Condition 33 of this permission set a development contribution for the new dwelling.

Subsequent to this, it appears that a series of unauthorised developments took place on the landholding. These included:

- The construction of the permitted dwelling on a significantly larger scale, and on a different design/alignment within the site.
- The existing dwelling was retained (or was reinstated) in residential use, contrary to the permission.
- Two sheds were constructed on the northern corner of the landholding, used partially for agricultural use, and partly for a business operated by the owners of the main house.

The applicants have sought, in three separate permissions, the retention of the permitted dwelling on its existing larger scale and new design/alignment (this appeal), the retention of the two sheds (**16/1075; PL09.248746**); and the retention of the use of the original dwelling as a residential unit (**16/1076/PL09.248743**).

While other arguments have been raised by the appellants, the core of the appeal against the development contribution is that it is argued that as these applications are for the 'retention' of previously permitted developments, they are exempt under section 12 of the Scheme. The applicant has specifically argued that the dwelling should be exempt from a Contribution under the scheme on the basis of 12(q) of the Scheme as adopted:

12(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).

The dwelling on the site has a permission from 2007, but was built on a very different design, location within the site, and scale from that permitted. While it can be said that there is a permission for 'residential' on the site, the reality is that the retention is for a very different dwelling than that permitted. This is not a case of seeking the retention of a number of modifications.

I further note that while condition 33 of the original permission set a development contribution under the Scheme at the time, this contribution was not apparently paid. I therefore do not see any basis for supporting the argument that the contribution can be off-set against a contribution which was never paid, for a development which was never completed according to its permission.

It is clear to me from the context, that 12(q) is intended only to apply to situations whereby a retention application is for an identical or very similar development, such as where the permission was time-limited. It is not intended to apply to a development simply because the site has a somewhat similar permission granted at some time in the past. I therefore do not consider that there is a basis for applying this exemption to the proposed development. Nor do I consider that it should be off-set against the previous S.48 condition as this development was not completed and Condition 33 was never discharged satisfactorily. I therefore conclude that the correct application of the scheme involves a rate of €65 per square metre for the entire residential area of the dwelling – i.e. €27,657.50 as was set originally by the planning authority, and that this should not be altered or deleted.

9.0 Recommendation

- 9.1. I recommend that the Board do not alter or delete condition 13 with regard to the S.48 development contribution for the reasons and considerations set out below.

10.0 Reasons and Considerations

The Board considers that the requirement to pay the development contribution is in accordance with the requirements of Section 48 of the Planning and Development Act, 2000, as amended, and the Kildare Development Contribution Scheme 2015-2022. Having regard to the very significant increase in scale over that permitted in 07/2417 and the failure to discharge the requirements of condition 33 of that permission, it is considered that the proposed development does not represent minor modifications to a permitted development or the retention of an existing temporarily permitted development. As such, it is not exempt under subsection 12(q) of the Development Contribution Scheme 2015-2022 or any other exemption set out in the Scheme. Accordingly, the Board considers that the development contribution set out in Condition 13 of permission 16/1074 was correctly applied.

Philip Davis
Planning Inspector

25th October 2017