



An
Bord
Pleanála

Inspector's Report ABP-301232-18

Development	Retention of reduction in floor area size of bay windows, conversion of vacant attic space to ensuite bedroom on second floor, alterations to elevation all to houses No's 9 to 14.
Location	Mill House, Castle Road, Saggart, Co. Dublin
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD17A/0459
Applicant(s)	D&L Burns (t/a Burns Partnership)
Type of Application	Retention
Planning Authority Decision	Grant with conditions
Type of Appeal	First Party
Appellant(s)	D&L Burns (t/a Burns Partnership)
Observer(s)	None
Date of Site Inspection	19 th June 2018
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located in Saggart Village, Co. Dublin. It is a small development of 8 apartments and 6 semi-detached dwellings accessed from one entrance off Castle Road. The apartments front onto the north side of Castle Road and the 6 semi-detached dwellings are to the rear of the apartments.
- 1.2. The development is fully completed and is surrounded by residential development to the north and west. A mix of residential and town centre type uses lie to the south along Castle Road. A number of detached properties are situated to the east of the site.

2.0 Proposed Development

- 2.1. Retention permission is sought for amendments to a previously permitted development, Reg. Ref. SD05A/0319. The amendments relate to the six semi-detached dwellings.
- 2.2. Retention is sought for:
 - a) Reduction in floor area of bay windows;
 - b) Conversion of vacant attic space to ensuite bedroom on second floor, and
 - c) Alterations to elevations including: Front elevation alterations to bay windows, front doors and provision of roof lights to second floor; Rear elevational alterations to window sizes and omission of roof lights; and side elevation alterations involving provision of extra windows.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant retention permission subject to 5 conditions. Condition no.5 is the subject of the appeal. It is the development contribution condition and it seeks a contribution of €16,736.74.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Development is consistent with zoning objective 'RES'.
- Applicant should be aware that use of attic conversion for habitable purposes must comply with Building Regulations.
- Considers residential amenity will not be impacted upon and the proposal is visually acceptable.
- Second floor opaque glazing should be maintained but overlooking not considered a major issue.
- Development contribution assessed as 6 units x 30.85sq.m equates to 185.1sq.m of additional floor area.
- Recommends permission is granted.

The decision was in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

- **Water Services:** No objection subject to condition
- **Roads:** No objection subject to condition

3.3. Prescribed Bodies

- **Irish Water:** No report on file

3.4. Third Party Observations

None

4.0 Planning History

- **Reg. Ref. SD09A/0432:** Permission granted in February 2010 for alterations to a previously approved development Reg. Ref. SD05A/0319, comprising retention of relocation of stair cores, addition of second level window,

modifications to individual apartments, porch extensions to front elevation of ground floor apartments, revised location of bin store and bicycle rack, etc.

- **Reg. Ref. SD08A/0617:** Retention permission was refused in April 2009 for the reduction in the number of units from 14 to 13 by the amalgamation of two apartments into one; relocation of stair cores; increase in floor area for an apartment; and, 3 no. porch extensions to 3 ground floor apartments. Further Information was requested following a number of discrepancies between the as built development and the original permission, including (inter alia): the visibility splay at the entrance and the building of 3 pairs of semi-detached dwellings rather than the 6 terraced units permitted. The revised drawings submitted as a response reflected the as-built layout of the development. The required changes to the entrance to provide the required visibility splay were not included. It was considered that the additional works proposed represented a significant departure and the applicant failed to submit revised public notices. Permission was refused for three reasons including: absence of public or private open space to serve the amalgamated apartment; alterations have diminished the open space to a large extent; and, the retention of the pedestrian and vehicular gates is contrary to guidelines and sets an undesirable precedent.
- **Reg. Ref. SD05A/0319:** Permission was granted in November 2005 for the alterations to development involving the demolition of a house and 3 sheds and the construction of two blocks, 8 no. 2 bed apartments and 7 no. 3 storey terraced dwellings. Permission was granted for 6 dwellings and 8 apartments. Condition no.24 required the Developer to pay €138,281 as a Development Contribution.

5.0 Policy Context

5.1. South Dublin County Development Plan 2016 – 2022

- 5.1.1. Under the County Development Plan 2016 – 2022, the site is zoned '**RES: To protect and/or improve residential amenity**'.

Chapter 2 refers to housing and Chapter 11 refers to Implementation. The Council has also produced guidance in the form of 'House Extension Design Guide'.

5.1.2. Section 2.4.1 of Chapter 2 considers residential extensions.

Policy H18 Objective 1 states: *To favourably consider proposals to extend existing dwellings subject to the protection of residential and visual amenities and compliance with the standards set out in Chapter 11 Implementation and the guidance set out in the South Dublin County Council House Extension Design Guide, 2010 (or any superseding guidelines).*

5.1.3. Section 11.3.3 considers Additional Accommodation. Section 11.3.3(i) states with respect to Extensions: *The design of residential extensions should accord with the South Dublin County Council House Extension Guide (2010) or any superseding standards.*

5.2. Development Contribution Scheme 2016 – 2020

5.2.1. The Development Contribution Scheme including an indexation rate of 6.3% states that the amount of contribution for residential development is €90.42 per square metre as of 1st January 2018.

5.2.2. Section 10 of the Scheme lists categories for which development shall be exempted from the requirements to pay development contributions.

(ii) The first 40sq metres of a permitted first extension (including garages, conversion of attic to habitable areas) to a residential or a non-residential development shall be exempted (subsequent extensions or extensions above 40 square metres to be charged at the applicable rate per square metre). These exemptions will not apply to development for which retention permission is sought.

5.3. Natural Heritage Designations

The Glenasmole Valley SAC (Site Code 001209) is c.6km to the south-east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against the Development Contribution has been lodged. In summary it states:

- Notes that under Condition no.24 of Reg. Ref. SD05A/0319 a financial contribution of €138,281.00 was levied which was complied with.
- Notes Condition no.5 of the subject application requires a contribution of €16,736.74.
- It is felt that this is excessive for the works for which retention is being sought.
- The works do not include any greater ground floor footprint or area that was granted permission under Planning Register SD05A/0319.
- Notes there is an overall increase in floor area of the dwelling houses which is brought about by the conversion of the attic spaces to habitable accommodation.
- Apart from the attic conversion the remainder of the works relate to alterations to elevations and provision of rooflights.
- Considers that further to Section 48 of the Planning and Development Act some categories are exempted or required to pay reduced contributions.
- Considers these categories include attic conversions.

6.2. Planning Authority Response

The Planning Authority responded confirming its decision and considered the issues raised have been covered in the Planner's Report.

6.3. Further Responses

The Planning Authority were requested to provide additional information under Section 132 of the Planning and Development Act. The Planning Authority responded referring to the exemptions set out in the Development Contribution

Scheme. It is stated that exemptions will not apply to development for which retention permission is sought. It is considered that the subject application concerns a retention permission, therefore an exemption would not be within the confines of the Scheme. It is considered that the application form indicates the area to be retained amounts to 185.1sq.m i.e. 6 x 30.85sq.m, and these areas were specified in the Planner's Report.

7.0 **Assessment**

- 7.1. The first party has appealed Condition no.5 only. Condition no.5 requires the developer to pay a Development Contribution of €16,736.74 to the Planning Authority. The first party has appealed the condition under Section 48(10)(b) of the Planning and Development Act 2000, as amended. Section 48(10)(c) of the Planning and Development Act 2000, states that where an appeal is brought in accordance with Section 48(10)(b) and no other appeal of the decision is brought by any other person, the authority may make the grant of permission as soon as may be, after the expiration of the period for making an appeal. The appeal is therefore confined to the consideration of whether or not the terms of the South Dublin County Council Development Contribution Scheme 2016 – 2020 were properly applied in this instance.
 - 7.1.1. The retention application relates to changes to the six dwelling houses built to the rear of the site. The houses were originally granted permission (as well as 8 apartments) under Planning Permission Reg. Ref. SD05A/0319. A number of retention modifications to the development were subsequently permitted, as indicated in Section 4 Planning History above.
- 7.2. The drawings submitted with the subject application indicate the differences between the 'granted' permission and the 'as-built' dwellings. At ground floor there are three differences identified and at first floor there are 2 differences identified. The changes which result in the addition of the development contributions relate to the attic floor of the dwellings.
 - 7.2.1. The drawing indicates that an "undeveloped attic" was originally permitted at second/attic level. The 'as-constructed' second floor drawing indicates that a

bedroom, ensuite bathroom and storage were built (Drawing Title: Second Floor Plans – Permitted and As Constructed).

- 7.2.2. The Planning Application form submitted with the application states that the floor space to be retained is 185.10sq.m which is indicated as being 6 no. dwellings x 30.85sq.m. The Planning Authority multiplied the residential Development Contribution of €90.42 per square metre by the floor area to be retained of 185.10sq.m, and the contribution was determined to be €16,736.74.
- 7.2.3. The applicant considers that financial contributions were already paid on the parent permission. The breakdown of this original contribution of €138,281.00 has not been provided by the Planning Authority, however, I note that the applicant acknowledges that there is an increase in the overall floor area, subsequent to the parent permission which is borne out by the drawings and the Planning Application form details. The Development Contribution scheme provides that contributions are levied on a square metre basis.
- 7.2.4. Thus, in the first instance having regard to the increase in floor area, I consider that the Planning Authority have correctly applied the Development Contributions for this increased floor area.
- 7.3. The applicant considers that attic conversions are exempt from the Development Contribution Scheme. I note that the Development Contribution Scheme provides for exemptions from the requirement to pay contributions. Section 10 of the Development Contribution Scheme 2016 – 2020 provides that *The first 40sq metres of a permitted first extension (including garages, conversion of attic to habitable areas) to a residential or a non-residential development shall be exempted (subsequent extensions or extensions above 40 square metres to be charged at the applicable rate per square metre). These exemptions will not apply to development for which retention permission is sought.* (my emphasis underlined)
- 7.3.1. As underlined above, the exemptions do not apply to development for which retention permission is sought. The subject development seeks retention permission.
- 7.3.2. Hence in the second instance, I consider that the Development Contribution scheme has been correctly applied.
- 7.4. It could be argued that the conversion of the attics in and of themselves do not require planning permission at all, and can be carried out under exemptions provided

for in the Planning and Development Regulations 2001, as amended (excluding the front façade changes proposed for retention). If the conditions and limitations of the P&D Regulations are complied with, with respect to extensions, and planning permission is not required, subsequently no financial contributions will be payable.

- 7.4.1. Article 9 of the P&D Regulations refers to Restrictions on Exemptions. Article 9(1)(a)(i) states that development will not be exempt if the carrying out of such development would contravene a condition attached to a permission.
- 7.4.2. Based on the information on file, it is unclear when the second floors were developed as bedrooms. No information has been provided to indicate whether the second floor bedrooms were constructed as part of the original development or subsequent to the completion and occupation of the development. No information on file indicates if the development was carried out originally in accordance with the conditions of the parent permissions, and therefore did not contravene a condition attached to the permission. In the absence of this information it cannot be concluded that the development of the second floor as a bedroom is exempt development.
- 7.4.3. Thus, in the third instance, I consider that the Development Contribution scheme has been correctly applied.
- 7.5. In conclusion, based on the information on file, I am satisfied that the condition should be retained.

7.6. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

I recommend that the Board directs the Council under Section 48 of the Planning and Development Act 2000, as amended, to RETAIN Condition no.5.

9.0 Reasons and Considerations

Having regard to the South Dublin County Council Development Contribution Scheme 2016 – 2020, and the information provided as part of the application and appeal, it is considered that there are no exemptions or reductions within the Scheme that would apply to the circumstances of this case, and that the development contributions required under condition 5 of this permission are payable in respect of the subject development. It is therefore considered that the terms of the Scheme have been properly applied in this instance.

Ciara Kellett
Senior Planning Inspector

19th June 2018