



An
Bord
Pleanála

Inspector's Report ABP-301234-18

Development	Modification to development permitted under SD14A/0222 (as amended by SD17A/0132 to provide 11 communal bin storage facilities, 2 unit subs, amendments to dwellings and associated site works.
Location	Lands to the north side of Stocking Avenue (East End), Rathfarnham, Co. Dublin
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD17A/0465
Applicant(s)	Ardstone Homes Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant subject to conditions
Type of Appeal	First Party v condition
Appellant(s)	Ardstone Homes Ltd.
Observer(s)	None.
Date of Site Inspection	11/07/2018.
Inspector	Auriol Considine

1.0 Site Location and Description

- 1.1. The proposed development site is located on the northern side of Stocking Avenue with the M50 Motorway to the north. The site is currently enclosed as it is a building site with development works ongoing.
- 1.2. The site has a stated area of 6.9ha.

2.0 Proposed Development

- 2.1. Permission is sought for modification to development permitted under SD14A/0222 (as amended by SD17A/0132 to provide 11 communal bin storage facilities, 2 unit substation kiosks, amendments to dwellings and associated site works, all at Lands to the north side of Stocking Avenue (East End), Rathfarnham, Co. Dublin.
- 2.2. The development will include as follows:
 - a) alterations to the rear windows at ground level in 99 dwellings as follows - 77 no House Type Bm, 19 no Agt and 3 no. Hgs
 - b) Replacement of permitted concrete canopy to side gable and front elevation to pressed metal in 87 House Types as follows – 65 no. At, As, Ct, Dd, Fs, Hs, Cd, 19 no Agt and 3 no. Hgs.

The proposed bin storage units will measure 4m long x 2.5m wide and 3.1m in height, with a gross floor area of 10m². They will have a concrete floor which will fall to a central drain. The structure will consist of a galvanised steel frame, clad in Iroko Teak and covered in tensile wire netting. The structure will be covered on one side and the top by a pergola roof in Iroko Teak timber.

The proposed unit subs, which differs from a sub-station by virtue of the fact that it is not located within a switch room, will have a gross floor area of 6.5m². One is proposed at the north are of the overall scheme and the second at the south.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission for the proposed development subject to 8 conditions.

Condition 7 is of relevance to this appeal and requires the payment of a financial contribution of €1,884,280.46.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planning Report formed the basis for the Planning Authority decision to grant permission. The report noted the planning history associated with the site, as well as noting the requirements of the Ballycullen-Oldcourt LAP in relation to the location of bin stores. Reference is also made to the Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities. The report finally considers the proposed development in terms of financial contributions. The Board will note that condition 1(ii) omits the proposed bin storage structures and there is no appeal of this condition.
- The report includes a screening for Appropriate Assessment.

3.2.2. Other Technical Reports

Environmental Health Officer: No objections to the proposed development subject to conditions.

Roads Department: No objection

3.3. Prescribed Bodies

Irish Water: No objection

3.4. Third Party Observations

There were no third party observations noted.

4.0 Planning History

The following is the relevant planning history pertaining to the site:

SD14A/0222: 10 year permission granted for the construction of 164 houses, 8 apartments and 1 crèche (total of 172 dwelling units). The houses will consist of 2 no. 5 bed 2 storey and attic level detached houses; 6 no. 5 bed 2 storey and attic level semi detached houses; 70 no. 4 bed 2 storey end of terrace houses; 1 no. 4 bed 2 storey detached house; 6 no. 4 bed 2 storey and attic level semi detached houses; 79 no. 3 bed 2 storey mid terrace houses. A 5 storey detached block will contain the crèche at ground floor (364.8sq.m and 8 no. 2 bed apartments over consisting of 2 no. apartments at first floor, second floor, third floor and fourth floor levels); all associated site development works all on part of lands approved as 'Stocking Vale' (part Precinct 4 and Precinct 5) under An Bord Pleanala Ref. PL06S.212191, South Dublin County Council Reg. Ref. SD04A/0393) with access from approved and constructed entrance off Stocking Avenue.

Condition 29 related to development contributions and required €1,804,458.75 be paid – relating to 174 units with a floor area of 20849.31m² + Educational / Community building with a floor area of 394.21m².

SD17A/0132: Permission granted on the 28th July, 2017 for modifications to permitted house types under Reg. Ref. SD14A/0222 (174 dwellings and a crèche facility). The modifications will affect 166 of the permitted dwellings, involving 10 of the 12 permitted house types (AT, AGT, AS, BM, CD, CT, DD, FS, HS, HGS). The modifications involve the provision of a more contemporary external appearance along with internal reconfigurations to provide a more efficient layout. An altered footprint is provided in some instances (House Type BM and CT) and realignment of staggered block in south west corner (6 dwellings facing public open space). There will be cumulative net floor area increase of 204sq.m. The permitted dwellings will remain two storey in height, or two storey with attic, as permitted and the number of bedrooms permitted in each house will not alter. All associated site works, including minor increase in rear gardens resulting from altered footprints/realignment and altered front aprons with revised landscaping. The 8 permitted dwellings not included in this application will form the basis of a future application for modifications (house types J3S and K3S).

Condition 7 related to development contributions and required €1,690,984.29 be paid – relating to 166 units.

SD17A/0355: Permission granted for a change of house type of 10 permitted dwellings near the entrance off Stocking Avenue and provide 1 additional dwelling. The 10 permitted dwellings comprise 8 dwellings permitted under Reg. Ref. SD14A/0222 (House types 'J3S' and 'K3S' – both 4 bed, 3 storey, semi-detached dwellings) and 2 dwellings permitted under Reg. Ref. SD17A/0132 (House Type 'Hs' and 'Hgs' – both 5 bed, 2 storey with attic, semi-detached dwellings). The 10 replacement house types will all be 2 storey dwellings (House Type 'At' consisting of 1 No. 4 bed, end of terrace; House Type 'At/Sd' consisting of 1 4-bed, semi-detached; House Type 'Agt' consisting of 3 4-bed, end of terrace gable; House Type 'Agt/Sd' consisting of 1 4-bed semi-detached and House Type 'Bm' consisting of 4 3-bed, terrace dwellings). Permission is also sought of 1 additional dwelling, House Type 'Ct', consisting of a 4 bed, 2 storey, detached dwelling. In total the number of dwellings in the overall housing development arising from these modifications will be 175 dwellings (one more than currently permitted). All associated site works including landscaping, 4 additional car park spaces and minor revisions to rear gardens of 2 dwellings permitted under SD17A/0132 (Nos. 22 and 24 Stocking Vale Glade).

Condition 8 related to development contributions and required €110,203.74 be paid – relating to 11 units.

5.0 Policy Context

5.1. Development Plan

5.1.1. The site is located within the jurisdiction of the South Dublin County Development Plan 2016-2022. The area is also covered by the Ballycullen – Oldcourt Local Area Plan, 2014, which is the relevant policy document pertaining to this appeal. The subject site is zoned RES-N and it is the zoning objective 'to provide for new Residential Communities in accordance with approved plans.'

5.2. Development Contribution Scheme 2016-2020

5.2.1. The South Dublin County Council Development Contribution Scheme 2016-2020 provides that the applicable rate as of 1st January, 2018 is €90.42 per square meter of Residential Development. Note 1 of the Scheme advises that these rates of contribution shall be effective from 1st January 2018 until 31st December 2020 for all permissions *granted* after January 1st 2018 to 31st December 2020 inclusive within the administrative area of South Dublin County Council, irrespective of when the planning application was submitted. Indexation in accordance with the Tender Price Index may be applied to be effective from 1st January 2018 for permissions granted after this date, having regard to the prevailing economic circumstances, subject to the approval of the Council.

5.2.2. Section 10 of the Scheme deals with Definitions Exemptions and Reductions and part (xxvi) deals with *Revisions/Modification to a permitted development*. It is stated that: 'an application for permission for modification/revision to a permitted development, including a change of house type or amendment to a site layout will, where material, be treated as an independent/separate permission for development, and will be assessed on the full proposal for the floor area permitted in such a permission, at the rate of development contributions in operation on the date of issue of the decision to grant permission. The contribution payable at commencement will be based on the permission implemented i.e. the original permission or the revised proposal (updated in accordance with the relevant index).

5.3. Natural Heritage Designations

The subject site is not located within any designated site.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first party appeal against the decision of the Planning Authority to include condition 7 in the grant of permission seeking the payment of €1,884,280.40.

6.2. Planning Authority Response

The submission confirms the PAs decision and noted that issues raised in the appeal have been covered in the planner's report.

6.3. Observations

None

7.0 Assessment

7.1. This assessment relates to a first party appeal under S48(10) of the Planning & Development Act, 2000 as amended. The first party has appealed condition no. 7 of the decision of South Dublin County Council to grant permission for the proposed development. S.48(10)(b) of the Act provides that an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.

7.2. Section 48(10)(c) states that where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of the planning authority is brought under Section 37, the planning authority shall make the grant of permission as soon as may be after expiration of the appeal period, provided the appellant furnishes adequate security for the payment of the full amount of the contribution as specified in the condition.

7.3. In considering the appeal, I note that the Board is bound by the terms of the adopted Development Contribution Scheme and Supplementary Development Contribution Scheme and cannot deviate from same. The merits or appropriateness of any adopted Development Contribution Scheme is not open for interpretation by the Board as referenced in Cork City Council –v- An Bord Pleanala (2006). Rather, the Board is required to assess whether the terms of the scheme, as written, have been correctly applied.

7.4. In terms of the current proposal, I consider it appropriate to address the planning history of the overall site. Under the parent permission, SD14A/0222, 174 residential units were permitted, with a stated floor area of 20849.31m². SD17A/0132 sought

modifications to 166 of the permitted units and noted a net increase in floor area of 204m². The total floor area is indicated at 19,879.9m². Under SD17A/0353, the applicant sought to amend 10 of the previously permitted units and add an extra unit. This brought total number of units to 175. Two of the houses to be amended included 2 of those permitted under SD17A/0132 with a combined floor area of 300.4m². The total floor area proposed for the 11 units under SD17A/0353 is indicated 1295.6m². In this regard, the total floor area of the residential units amounts to 20,875.1m². The total development contributions sought under SD17/0132 and SD17/0353 is €1,801,187.90.

- 7.5. In relation to the development contribution under appeal, being €1,884,280.40, I would advise the Board that although work has commenced on the site, I am unsure if any development contribution has been paid to date. The South Dublin County Council Development Contribution Scheme 2016-2020 provides that the applicable rate as of 1st January, 2018 is €90.42 per square meter of Residential Development. Note 1 of the Scheme advises that these rates of contribution shall be effective from 1st January 2018 until 31st December 2020 for all permissions granted after January 1st 2018 to 31st December 2020 inclusive within the administrative area of South Dublin County Council, irrespective of when the planning application was submitted. Indexation in accordance with the Tender Price Index may be applied to be effective from 1st January 2018 for permissions granted after this date, having regard to the prevailing economic circumstances, subject to the approval of the Council.
- 7.6. Section 10 of the Scheme deals with Definitions Exemptions and Reductions and part (xxvi) deals with *Revisions/Modification to a permitted development*. It is stated that: ‘an application for permission for modification/revision to a permitted development, including a change of house type or amendment to a site layout will, where material, be treated as an independent/separate permission for development, and will be assessed on the full proposal for the floor area permitted in such a permission, at the rate of development contributions in operation on the date of issue of the decision to grant permission. The contribution payable at commencement will be based on the permission implemented i.e. the original permission or the revised proposal (updated in accordance with the relevant index).
- 7.7. It is the first party submission the overall parent permission for the site were granted prior to 1st January, 2018 and that the proposed development under the current

application does not involve any increase in floor area and therefore no levies should apply. It is considered that the levy based on the new indexation rates and is essentially double charging. It is submitted, in relation to section xxvi of the Development Contribution Scheme, that all applications have to be material and that what the elected members meant by the inclusion of this phrase was material in terms of an increase in floor area. It is further noted that modifications did not apply to all of the 175 units that the Council have based the levies on.

7.8. Overall, I would concur with the first party in this instance. There is no proposal to significantly amend the house types previously permitted, rather permission is sought to modify windows and canopy finishes, and there is no significant modification to the site layout. I would also note the Planning Authority's inclusion of condition 1(ii) which excludes the provision of the bin storage structures. In this regard, I would consider that Condition 7 should be removed.

7.9. I am satisfied that the Development Contribution Scheme has **not** been correctly applied.

7.10. There are no issues of a Special Development Contribution arising in this case.

Appropriate Assessment

7.11. There are no issues of AA arising in this instance.

8.0 Recommendation

8.1. It is recommended that Condition 7 of the grant of permission be REMOVED, on the basis that the terms of the Development Contribution Scheme, 2016-2020 have not been properly applied.

9.0 Decision

The Board, in accordance with Section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 7 and directs that the said Council to REMOVE condition number 7 and the reasons therefor.

10.0 Reasons and Considerations

Having regard to

- a) the provisions of the South Dublin County Development Contribution Scheme 2016-2020, and
- b) the information submitted in support of this appeal,

the Board considered based on the evidence submitted, that the proposed development constitutes revisions / modifications to a permitted development which is not material in terms of Section 10 part (xxvi) of the South Dublin County Council Development Contribution Scheme 2016-2020, and that the terms of the Development Contribution Scheme have not been properly applied.

A. Considine
Planning Inspector
13th July, 2018