



An
Bord
Pleanála

Inspector's Report ABP-301377-18

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|-------------------------------------|---|
| Development | Modifications to single storey dwelling and domestic garage, provision of additional out-building and all associated works as previously granted planning Ref. 10/193 |
| Location | Stone Cross, Newtown, Eadestown, Naas, Co. Kildare W91 NDX8. |
| Planning Authority | Kildare County Council |
| Planning Authority Reg. Ref. | 17/1275 |
| Applicant(s) | Malachy Harney |
| Type of Application | Permission |
| Planning Authority Decision | Grant with conditions |
| Type of Appeal | First Party Vs. Dev. Contribution Condition |
| Appellant(s) | Malachy Harney |
| Observer(s) | None. |

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1.0 Site Location and Description

1.1. There was no site inspection required in this instance.

2.0 Development

Planning permission was granted under planning reference 10/193 for a single storey dwelling and domestic garage. The applicant constructed a larger dwelling, and this is the subject of the application. The dwelling originally granted on the subject site had a floor area of 280sq.m., and the existing dwelling, the subject of this application is **341sq.m.**. This represents an increase of 61sq.m. in floor area.

In addition, the original domestic garage permitted under 10/193 was 83sq.m., and the existing/ constructed garage is **190sq.m.** , and it has two floors.

There are also 44sq.m. of outbuildings subject of the retention application.

3.0 Planning Authority Decision

3.1. Decision

Kildare Co. Co. granted planning permission for the development. Condition No. 12 is the subject of this appeal.

A development contribution of €10,6000 is payable in respect of development permitted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report included a separate sheet outlining the basis of the development contribution calculation which was a total additional floor area (house, garage and outbuildings) of 212sq.m. calculated at a rate of €50 per sq.m..

4.0 Planning History

Permission was granted on the subject site under planning registration number **10/193** for a dwelling and associated amenities subject to 32No. conditions including a development contribution payable of €14,787. This condition was complied with in full on 22nd of September 2010 (copy of letter attached).

5.0 Policy Context

5.1. Development Contributions Scheme 2015-2022

Section 8 Level of General Contributions for Kildare County Council

effective from adoption of this Scheme

i) Residential

Development Contributions for residential development will be applied at the following rates:

| Floor Area | 230sqm. And under | 231-370sq.m. | 371sq.m. and over |
|----------------|-------------------|--------------|-------------------|
| Rate per sq.m. | €50 | €56 | €65 |

(xiv) Miscellaneous Developments

Miscellaneous developments, not listed individually above, will have the following development contribution rates applied

| | Built Per sq.m. | Open Per hectare |
|----------|-----------------|------------------|
| Rate (€) | 27.51 | 15,0000 |

Section 9 Modification / Retention Applications

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.

(ii) Development contributions in respect of retention applications will be applied at the rate of “standard” applications for planning permission

(iii) Where development contributions have not previously been paid, applications for retention of development will have contributions applied, based on the proposed floor area of the permitted development.

For development constructed pre 1963, contributions will be applied in full. The rate of contributions applicable will be based on the current contributions scheme in place at time permission is granted.

(iv) An application to retain an extended area to that previously granted, where contributions have been previously paid in full will have contributions applied to the extended floor area only. No exemptions will apply and charges will be based on the total extended floor area granted. The rate of contributions applicable will be based on the current contributions scheme in place at time permission is granted.

6.0 The Appeal

6.1. Grounds of Appeal

Condition No. 12 is outside the ambit of the Kildare Development Contributions Scheme 2016, on the basis the Scheme has not been properly applied. There are no other issues raised with the decision, and the Board is requested to solely assess this issue.

Evidence is submitted of full compliance with condition No. 32 of the original permission for a dwelling house on the subject site, **P10/193**, whereby the applicant paid the sum of €14,787 on 22nd of September 2010.

A single sheet indicates the proposal entails 212sq.m. and based on a charge of €50 per sq.m. the sum of €10,600 should be sought. The total floor space figure of 212sq.m. which is authorised by the Council comprises an extra 61sq.m. within the dwelling itself, and an additional 107sq.m. within the garage and 44 sq.m. within an outbuilding.

The Board is referred to case PL09.222386 whereby it is acknowledged existing floorspace within the building and placed great weight on the need for a link between the new development and additional demands for services when calculating

appropriate contributions. The Rule in Cork City Council v An Bord Pleanala is cited regarding the application of a development contribution scheme.

- The existing house is now 61sq.m. larger than the permitted dwelling, based on a charge of €50/ sq.m. the additional floor area commands a contribution of €3050
- The lower floor area of the garage is not chargeable. The gross floor area as defined under article 3 of the Planning and Development Regulations 2001, which would infer ancillary parking within the building is excluded from the gross floor area. Case PL06F.232934 stated the gross floor area was the enclosed space with walls, solid floor and a roof. Case PL06D.227546, at Lepoardstown Racecourse is cited in terms of miscalculation of gross floor area and application of the development contribution scheme. Other cases cited are PI28.213960 relating to a three storey building in Mallow, where extracts of the inspectors report are quoted at length, and a case in Thurles Tipperary relating to a canopy over an external yard, PL79.237957. In short, the lower part of the appellant's garage does not constitute floorspace to the degree it is used for parking proposes by the applicant and is therefore not chargeable.
- The first of the garage should not be chargeable as it is a low value facility in terms of its use under Condition No. 3. Under appeal 09.244527, the permission for the conversion of a garage at 516 Newtown Road, Maynooth, did not include a development contribution condition. The current proposal is not chargeable.
- The Board should reduce the sum payable under condition 12 of the schedule by reduced from €10,600 to €3050 in respect of the 61sq.m.

6.2. Planning Authority Response

A residential rate was applied to the two storey garage and shed which due to the nature and scale of the buildings do not comply to been a domestic shed and garage. However it is agreed as 'miscellaneous' rate should be applied in respect of the buildings at a rate of €27.51sq.m. and not the residential rate. The submission states the Miscellaneous rate is applied to all garages and sheds. This would result

in a revised contribution payable of €7204.00. A revised table of calculations has been submitted to the Board for its consideration.

7.0 Assessment

- 7.1. I consider the principle of the overall development to be accordance with the proper planning and development of the area, and the Board is in a position to consider Condition no. 12 relating to the application of a development contribution condition in isolation of the overall decision.
- 7.2. The Board should note it is accepted by the applicant and the planning authority that the additional floor area constructed onto the dwelling, which the subject of the retention application, is 61sq.m.from the permitted area granted under the original planning application, **P10/193**. Therefore, in accordance with current development contribution scheme, the 61sq.m. should be charged at a 'Residential' rate of €50 which is a total of €3050. I concur with this calculation
- 7.3. The contentious issue is the garage and outbuildings which are the subject of the retention application. Under the original permission, **10/193**, the permitted garage was originally 83sq.m., and it is now 190sq.m. it includes a parking bay, a plant room, and a toilet at ground floor level, with a store (95sq.m.) at first floor level. The outbuildings are entirely new and were not proposed under the original application, and these are 44sq.m.
- 7.4. The planning authority originally calculated the development contribution for the garage and outhouses at the residential rate of €50/ sq.m. On appeal they acknowledged the rate should have been calculated at the 'Miscellaneous' rate of €27.51, resulting in a contribution of €4154.00, with a total revised levy of €72014.00. The planning authority considered the nature and scale of the garage and outbuildings and concluded they did not comply with usual domestic shed and garages, therefore a 'Miscellaneous' development contribution was applicable.
- 7.5. On appeal, the applicant's agent has cited various cases whereby the Board excludes the carparking areas from the gross floor area calculations within various permitted schemes. Copies of the Board's Order cited in the grounds of appeal are included on the appeal file. Some of the cases cited are large scale developments and not relevant to a domestic house, garage and outhouses. In my opinion, the

garages and the outhouses are incidental to the dwelling house and they should not have been calculated as 'Residential' in the first instance. Therefore, I agree with the applicant, the development contribution scheme has been incorrectly applied in this instance. The permitted use of the garage is for parking cars on the ground floor of the structure and in accordance with condition No. 3 of the permission, the attic space on the first floor of the building shall be used for storage purposes. Therefore, I do not consider the carparking area should be removed from the gross floor area of the building as this is the permitted and intended use of the purpose built garage. In the event likely cars are parked outside of the building adjacent to the house, the ground floor area can be used for other purposes incidental to the enjoyment of the dwelling house other than human habitation.

7.6. In terms of storage and incidental use the applicant has cited a case in Maynooth, PL09.244527 whereby the Board granted retention of the conversion of a garage for domestic/ hobby room with part mezzanine floor, which included only one condition attached to the order to grant permission, and did not include a development contribution. Firstly, I examined the appeal file in question, whereby the inspector's recommendation to refuse the conversion was overturned by the Board. I do believe the case cited is irrelevant to the current proposal considering, it was the conversion of a garage to the rear of a semidetached house in Maynooth, and the current proposal is the construction of a new two storey garage (190sq.m.) and detached outhouses (44sq.m.). The planning authority is correct, the nature and scale of the garage and outhouses is disproportionate to average domestic garage. Given the scale of the garage and outbuildings, I consider it is appropriate to apply the 'Miscellaneous Developments, not listed individually above' contribution as cited in the Scheme.

8.0 Recommendation

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 12 and directs the said Council to AMEND condition number 12 accordingly.

9.0 Reasons and Considerations

Having regard to:

(a) the provisions of the Kildare County Development Contribution Scheme 2015-2022 and which includes an Development Contribution for Retention Applications and Miscellaneous Developments , and

(b) the submission made in this appeal,

(c) the scale of the domestic garage/shed and outhouses

the Board considered based on the evidence submitted that the terms of the Development Contribution Scheme have not been properly applied and the total amount payable as per Condition No. 12 should be reduced from €10,600 to €7,204.

Caryn Coogan
Planning Inspector

17/07/2018