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Bord  
Pleanála

## Inspector's Report ABP-301704-18

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<b>Development</b>	Modifications to single storey constructed extension, modifications to previously permitted extension
<b>Location</b>	23 Standhouse Rise, Morristownbiller, Newbridge, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	18/299
<b>Applicant(s)</b>	Patrick & Deirdre Murphy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party-v-Condition
<b>Appellant(s)</b>	Patrick & Deirdre Murphy
<b>Date of Site Inspection</b>	No site inspection
<b>Inspector</b>	Colin McBride

## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.039 hectares, is located to the west of Newbridge town centre in the existing housing development of Standhouse Rise. The site is occupied by no. 23, which is a single-storey semi-detached dwelling. To the east is no. 24 (other dwelling that makes up the pair of semi-detached dwellings). To the west is no. 22. To the south and back to back with the dwelling on site is no. 14 Standhouse Rise. There is a green space located to the north.

## 2.0 Proposed Development

- 2.1. Permission is sought for the retention of modifications to a single-storey as constructed extension to the side and rear of an existing semi-detached dwelling, previously granted permission under ref no. 05/3017. The modifications include relocation of 3 no windows to the side elevation, relocation of a roof light from the side to the rear elevation, removal of a rear external door, reduction in roof height, change of roof style, omission of the gable end to the rear elevation and an overall reduction in area from 59.91sqm (permitted extension) to 52sqm. The proposal also entails internal modifications from the previously permitted development.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission granted subject to two conditions. Of note is the following condition.

Condition no. 2: A Section 48 development contribution of €2,600 in accordance with the Kildare County Council Development Contribution Scheme.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning and Technical Reports

Water Services (03/05/18): No objection subject to conditions.

Irish Water (04/05/18): No objection subject to condition.

Planning report (08/05/18): The design and scale of the works for retention were considered acceptable in the context of the proper planning and sustainable development of the area. A grant of permission was recommended subject to the conditions outlined above.

### **3.3. Third Party Observations**

No third party observations.

## **4.0 Planning History**

05-3017 (2015): Permission granted for a single-storey extension to the rear and side of an existing dwelling.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant plan is the Newbridge Local Area Plan 2013-2019.

The site is zoned Existing Residential/Infill with a stated objective 'to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new improved ancillary services'.

### **5.2. Natural Heritage Designations**

None in the vicinity.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

A first party appeal has been lodged by Vincent JP Farry & Co Ltd on behalf of Patrick & Deirdre Murphy, 23 Standhouse Rise, Morristownbiller, Newbridge, Co. Kildare. The grounds of appeal are as follows.

- The appeal concerns the application of condition no. 2. which requires payment of a Section 48 development contribution of €2,600 in accordance with the Kildare County Development Contribution Scheme. The appellant note that the appeal is being submitted pursuant to s.(48(10(b) of the Planning and Development Act, 2000 and is on the basis that the development contribution scheme has not been properly applied.
- The appellants note the terms of development contribution scheme in relation to extensions and section 9 of the scheme, which relates to Modifications/Retention Applications. It is noted that the contribution charge is €2,600 and is based on the entire floor area of the existing, €50 x 52sqm.
- The appellant notes that in relation to Section 9(b) that a distinction should be drawn between cases where a landowner seek to retain a structure which was erected without any consent whatsoever, and structures erected in a manner different from that approved by the Council. It is noted that the present case falls into the second category. It is also noted that the scheme at the time of the application (2004 scheme) did not include development contributions for extensions meaning no contribution was attached to 05/3017 and no outstanding contribution is at issue.
- Given the planning history and absence of previous requirement for a condition the Board could treat the development under Section 9(a) 'Modification' under the development contribution scheme. It is noted that the changes over the previously permitted extension are design related and the extension is lesser in floor space than that permitted and would satisfy the stipulation under Section 9(a) which notes that 'where modifications are deemed to be minor as per the Planner's Report, there is no additional area to that previously granted', there are grounds for the development not to be chargeable.
- The appellants note the provisions of Section 9(b)(ii) of the contribution scheme in relation to retention that notes that contributions on retention applications will be applied at the rate of standard applications. The appellants then refer to section 8(ii) of the scheme noting the contributions for extensions allow for an exemption for the first 40sqm of the existing. It is noted based on

such provision a contribution of €600 would apply based on €50 x 12sqm. It is noted that although s.9(b)(iii) later notes that applications for retention will have contributions applied to the floor area of the development, this does not operate to deprive the appellant of the benefit of the exemption contained in s.9(b)(ii).

- It is suggested that the contribution charged should fall from €2,600 to €600 comprising a levy of €50 per sqm on a floor area of 12sqm.

## 6.2. Planning Authority Response

Response by Kildare County Council

- The Planning Authority note that permission was granted for retention of modifications to a single –storey as constructed extension previously granted under ref no. 05/3017.
- Section 9(b)(ii) of Development contribution scheme is noted, ‘Development Contributions in respect of retention applications will be applied at the rate of “standard” applications for planning permission. As the proposal was for retention of modifications to a previously permitted extension levies were applied in full, 52sqm @ €50 per sqm equalling €2,600 with a calculation sheet attached.

## 6.3. Further Responses

Vincent JP Farry & Co Ltd on behalf of Patrick & Deirdre Murphy, 23 Standhouse Rise, Morristownbiller, Newbridge, Co. Kildare.

- The appellants note that Planning Authority’s response and the suggestion that they should not benefit from the 40sqm exclusion for extensions. The appellants reiterate the views regarding the application of the development contribution.
- The appellants note that the proposal could be considered under Section 9(a) of the scheme in relation to modifications and incur no charge.

- In regards to Section 9(b)(ii) it is noted that wording used does not state that the 40sqm exclusion for extensions is not applicable.
- The appellants note that if contributions are required that it should be on the basis of 12sqm with the first 40sqm excluded from charge giving a levy of €600 and not €2,600 as charged.

## 7.0 Assessment

7.1. This is an appeal in relation to the application of a development contribution only. The Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.

7.2. An appeal may be brought to the Board under section 34 considers the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the planning authority. In this appeal, the issue to be considered is whether the terms of Scheme have been properly applied.

7.3. The appeal concerns condition no. 2 which states...

2. The applicant/developer to pay Kildare County Council the sum of €2,600 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5<sup>th</sup> November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5<sup>th</sup> November 2015.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

7.4 The proposal is for retention of modifications of a previously permitted extension under ref no. 05/3017. The changes made are a change in the roof profile from a pitched roof to a mono-pitch roof profile, a reduced floor area from 59.91sqm to 52sqm and some changes to elevations/window doors. The relevant Development

Contribution Scheme is the Kildare County Development Contribution Scheme 2015-2022. Section 8 of the scheme set out the rates apportioned to different development types. Section 8(ii) notes that residential extension are charged at a rate of €0 for the first 40sqm (exempt) and a rate of €50 for 41-230sqm, it noted the exemption is cumulative and will only be changed once.

- 7.5 Section 9 relates to Modification/Retention Applications with Section 9(a) in relation to modifications noting that an application to modify a previously permitted development, including change of house type, will be assessed on the basis of the Development Contribution Scheme rates current at the date of issue of the decision to grant permission, with a deduction for any contributions paid on any previously permitted development. Where modifications are deemed to be minor as per the Planner's Report, there is no additional area to that previously granted, and contributions have been received in full on the previous permission, no further contributions will be applied.
- 7.6 Section 9(b) relates to retention applications notes the following
- (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.

7.7 It appears that based on the fact the proposal is for retention of modifications of a previously permitted extension that the Planning Authority have charged 50sqm for the entire floor area of the unit (52sqm) giving a contribution of €2,600. The appellants note that there is scope to apply section 9(a) in that the modifications subject to the application are minor and no further contributions should apply. The appellants further note that the wording of sections 9(b)(ii) mean at the very least contributions should only be charged on the 12sqm with first 40sqm exempt from contributions. It is clear that the intention and application of the contribution by the Planning Authority is on the basis that the proposal is for retention that such nullifies the 40sqm exemption applied to extensions granted permission under the Development Contribution. The main issue here is has the terms of Development Scheme been applied properly.

7.8 I would first note that Section 9(a) in regards to modification does not apply. The proposal is for retention of modifications and if it had for been for modifications of the previous permission with no retention element then such would have applied and no contributions would have been liable. The development proposed for retention should be considered under Section 9(b). I do not consider that Section 9(b)(i) applies as the design of the extension appears to be significantly different than that previously permitted. Section 9(b)(ii) notes that “Development contributions in respect of retention applications will be applied at the rate of “standard” applications for planning permission”, based on the contribution scheme for an extension of this size (52sqm) that is €600 (€50 x 12sqm) as there is no charge on the first 40sqm.

7.9 Section 9(b)(iii) notes that “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”. It is clear that the Planning Authority have applied a contribution that does not include the exemption for the first 40sqm of a residential



extension provided for in the Development Contribution scheme as provided for in the scheme as the proposal is a retention application. I would however consider that the wording of Section 9(b)(iii) does not explicitly state that this is case. Section 9(b)(ii) clearly states retention applications will be charged at the standard rate, which is in this the case of extension does not charge for the first 40sqm of an extension, while Section 9(b)(iii) state that the charge will be based on the proposed floor area of development. Based on the Development Contribution scheme as written the development for retention is liable for a contribution of €600 based on the fact the extension is 52sqm in floor area and the first 40sqm are liable for no charge. The terms of the contribution scheme do not clearly state that the exemption for the first 40sqm for residential extensions no longer applies in the case of retention applications and if this is the intention, then it must be clearly stated in the scheme. It is possible that the Planning Authority's interpretation of the scheme in this case is more harsh and punitive towards residential extensions than it is to other category of development in which there is no exemption for part of the floor area, which does not make sense. It means a commercial development subject to retention may incur the same development contributions as one that is not subject to retention, whereas a residential extension subject to retention would incur higher contributions than one which is not. Notwithstanding such the development contribution scheme does not state that residential extensions that seek retention lose the exemption from charge for the first 40sqm. In this case I do not consider that the Planning Authority applied the terms of the contribution scheme as written and I would recommend that the Planning Authority be directed to amend condition no. 2 as follows...

2. The developer shall pay to the planning authority a financial contribution of €600 (six hundred euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall

be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

## **8.0 Recommendation**

- 8.1. I recommend that Kildare County Council be directed to AMEND condition no. 2 on the grounds that the terms of Kildare County Development Contribution Scheme 2015-2022 have not been properly applied.

An order stating the following should be issued.

## **9.0 Decision**

- 9.1 Having regard to the nature of the condition the subject to this appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reason and considerations set out below, directs said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 (as amended) to AMEND condition no.2 to state the following...

2. The developer shall pay to the planning authority a financial contribution of €600 (six hundred euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of

development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

## **10. Reasons and Considerations**

Having regard to section 8, 9(b)(ii) and (iii) of the Kildare County Development Contribution Scheme 2015-2022, it is considered that terms of the adopted Development Contribution scheme have not been properly applied.

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Colin McBride  
Planning Inspector

01<sup>th</sup> August 2018