



An
Bord
Pleanála

Inspector's Report ABP-302145-18

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| Development | Modifications to development permitted under refs. 07/1450 & 13/155 - for two-storey residential development of 191 no. dwelling units & creche, and all associated works. |
| Location | Green Road, Southgreen Road, Old Road & Dunmurray Road, Kildare Town, Co. Kildare. |
| Planning Authority | Kildare County Council |
| Planning Authority Reg. Ref. | 17/764 |
| Applicant(s) | Makros Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | First Party |
| Appellant(s) | Makros Ltd. |
| Observer(s) | None |
| Date of Site Inspection | None |
| Inspector | Michael Dillon |

1.0 Site Location and Description

The site, with a stated area of 7.08ha is located on the northwestern edge of suburban Kildare town – in an area known as South Green. It forms part of a larger development site – currently in agricultural use. Access is from Green Road and Hill Road.

2.0 Proposed Development

- 2.1. Permission sought on 30th June 2017, for development comprising modifications to housing development granted permission ref. 07/1450 & 13/155 – to reduce the number of dwelling units to 191, and for creche and associated site works.
- 2.2. Additional information was received by KCC on 30th November 2017.
- 2.3. Additional information was received by KCC on 23rd March 2018.
- 2.4. Additional information was received by KCC on 30th May 2018.

3.0 Planning Authority Decision

By Order dated 26th June 2018, Kildare County Council issued a Notification of decision to grant planning permission subject to 55 no. conditions. Of note is condition 55, which states-

The applicant/developer to pay to Kildare County Council the sum of €1,158,222.77 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th 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 5th November 2015.

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

4.0 Planning History

07/1450: Permission granted (subject to 71 no. conditions) to Makros Ltd. for housing development of 212 units and creche on a site of 7.37ha. An appeal (ref. **PL 09.229110**), was subsequently withdrawn. The final grant of permission issued on 8th August 2008.

13/155: Permission granted to extend permission 07/1450 – which permission expired on 6th August 2018.

5.0 Policy Context

5.1. Development Plan

The relevant document is the Kildare County Council Development Plan 2017-2023. The site is zoned 'C1' – new residential.

There is a non-statutory Draft South Green Framework Plan 2016.

5.2. Natural Heritage Designations

There are no natural heritage designations within or immediately abutting the site.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal from Brock McClure, Planning & Development Consultants, agent on behalf of the applicant, Makros Ltd, received by An Bord Pleanála on 23rd July 2018, can be summarised as follows. This is a 1st Party appeal against a financial contribution condition – no. 55: which required the developer to pay a general development contribution of €1,158,222.77. The applicant is not opposed to the attachment of the condition. The applicant is in discussion with the PA in relation to delivery of key infrastructural items in the area. It is incorrect of the PA to stipulate an amount, until such time as there is a clear understanding of the exact cost and mechanism for delivery of some or all of this infrastructure. The applicant considers that it would be more appropriate to agree the monetary value for this contribution,

with the PA directly, prior to commencement of development. The Board should amend the condition to state that the cost should be agreed with the Council prior to the commencement of development – and the amount stipulated should be removed.

6.2. Planning Authority Response

No response received.

6.3. Observations

None received.

6.4. Further Responses

6.4.1. An Bord Pleanála wrote to KCC, under section 131 of the Planning and Development Act, 2000, as amended, requesting an indication of how the sum mentioned in condition 55 was arrived at – requesting response on or before 1st October 2018.

6.4.2. The response of KCC, received by An Bord Pleanála on 1st October 2018, can be summarised in bullet point format as follows-

- The amount of the contribution is in accordance with the Development Contribution Scheme 2015-2022. The rate of €50 per sq.m was applied to the residential floor area of 22,650.9sq.m – resulting in a total of €1,132,545.00. The commercial (creche) floor area of the scheme, at 472.8sqm, was charged at the rate of €54.31 per sq.m – resulting in a requirement to pay €25,677.77. This sum of €25,677.77 + €1,132,545.00 = €1,158,222.77.
- A special roads levy was not attached to this grant of permission.
- There are on-going discussions with the PA in relation to delivery of key infrastructural elements in the immediate and wider locale. The Transportation Department of KCC has indicated that the amount of contribution set down in condition 55, is payable in full by the developer.

6.4.3. The response is accompanied by a schedule of calculations for the floor areas of all houses and the creche.

6.4.4. The response of KCC was referred to the applicant for comment – on or before 24th October 2018.

6.4.5. There was no response received.

7.0 Assessment

7.1. This is an appeal against a financial contribution. Section 48 of the Planning and Development Act, 2000, as amended, states as follows-

(1) A planning authority may, when granting planning permission under *section 34*, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

(10)(a) Subject to *paragraph (b)*, no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

(10)(b) An appeal may be brought to the Board where an applicant for permission under *section 34* considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

(10)(c) Notwithstanding *section 34(11)*, where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of the planning authority is brought by any other person under *section 37*, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal in accordance with *paragraph (b)* furnishes to the planning authority security for payment for the full amount of the contribution as specified in the condition.

7.2. The effect of section 48(10)(c) is to restrict the Board to consideration of the condition appealed, and the Board cannot look at the appeal *de novo*. The applicant may already have given the PA security for payment of the amount, and permission may have been granted by KCC, by the time the Board comes to adjudicate on the appeal now before it.

- 7.3. Kildare County Council, in its submission to An Bord Pleanála of 1st October 2018, has set forth the manner in which the amount set down in the condition was computed - €1,158,222.77. The calculations would seem to be correct. I note that the applicant did not dispute the manner in which the amount was calculated – rather that there was an amount stipulated at all within the condition – regard being had to ongoing discussions about the delivery of infrastructure in the area. It would seem that some of this infrastructure (the nature of which is not specified) may be delivered by the developer.
- 7.4. Section 48(1) of the Planning and Development Act, 2000, as amended, allows a planning authority to require a developer to pay a financial contribution in accordance with the Development Contribution Scheme in force at the time of development. It is necessary for the PA to stipulate an amount, on the basis that the applicant may not agree with the calculation, and may wish to appeal the condition to An Bord Pleanála. So much seems reasonable. The applicant is requesting the Board to remove the figure specified, so as to allow for ongoing negotiations which may see the figure fall. However, were the Board to do this – there would be a condition requiring payment of a development contribution, with no amount specified. Where the Board does this, there is a facility for resubmitting to the Board for determination – where the parties cannot agree as to the final amount of the contribution. I do not see that this is necessary in this instance. The PA has stipulated an amount to be paid in accordance with section 48(1). This is in the form of a development tax. There is no appeal in relation to attaching such a condition – section 48(10)(a) of the act is quite clear in this regard. An appeal is allowed for under section 48(10)(b), but only where the terms of the scheme have not been properly applied. This is not the case in relation to this appeal. It is open to the applicant/developer and the PA to come to arrangements and agreements over how a development contribution should be paid – in particular where allowance might be made where the developer is providing certain elements of infrastructure which may serve the needs of areas outside of the site. But again, this is a matter for agreement between the parties, and is not the area of concern of An Bord Pleanála. It is also open to the PA to require phasing of payments – again in consultation with the developer.

8.0 Recommendation

I would consider that this appeal to An Bord Pleanála may not be valid at all. However, on the basis that An Bord Pleanála has accepted the appeal as being valid, I would be satisfied that condition 55 of the Notification of decision to grant planning permission by Kildare County Council should be confirmed and restated.

9.0 Reasons and Considerations

Having regard to the provisions of the Kildare County Council Development Contribution Scheme 2015-2022, and the correspondence received by An Bord Pleanála at appeal stage, the Board considers that the terms of the Development Contribution Scheme were correctly interpreted and applied by the Planning Authority. The amount of contribution required under condition 55, of €1,158,222.77 (one million, one hundred and fifty eight thousand, two hundred and twenty two euros, and seventy seven cent) should be restated.

**Michael Dillon,
Planning Inspectorate.**

5th November 2018.