



An  
Bord  
Pleanála

## inspector's Report ABP-303270-18

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<b>Development</b>	Construction of 29 residential units, 1 office unit, 2 retail units, car park and refurbishment, extension and change of use of public house
<b>Location</b>	0.42 ha, Site at the junction of Main Street & Boherboy Road, Saggart, Co. Dublin.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD18A/0202
<b>Applicant(s)</b>	Thomas McMullen
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Thomas McMullen
<b>Observer(s)</b>	Phairc Mhuire Residents Saggart
<b>Date of Site Inspection</b>	07 <sup>th</sup> March 2019
<b>Inspector</b>	Colin McBride

## 1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.42 hectares, is located at the junction of Castle Road and Boherboy Road in the centre of Saggart Village. The site is occupied by a vacant two-storey structure along the Castle Road frontage (north) formerly in use as a public house. The remainder of the site is vacant and was formerly occupied by a service station. Boundary treatment consists of metal fencing. The site is defined by Castle Road to the north, Boherboy to the west and the service road for Phairc Mhuire to the south. Phairc Mhuire is an existing housing development to the south mainly comprising two-storey dwellings. To the east runs an area of public open space that is accessible from both Phairc Mhuire to the south and Castle Road to the north.

## 2.0 Proposed Development

2.1. Permission is sought for the construction of a mixed use development consisting of 29 no. residential units (comprising 2 no. 1-bed units; 16 no. 2-bed units and 11 no. 3 bed units (including terraces and balconies)) an office unit (100sqm), 2 no. retail units (87sqm and 154sqm), ancillary bin stores (16sqm) and bike storage area (29sqm) across 4 no. Blocks (Blocks A to D); the breakdown for the individual Blocks is as follows; Block A (2 storeys (1497sqm)) 7 no. apartment and 7 no. duplex apartments; Block B (3 storeys (851sqm)) 4 no. apartments and 4 no. duplex apartments; Block C (3 storeys (777sqm)) 6 no. apartment and 2 no. retail units; Block D (2 storey (243sqm)), the refurbishment, alteration and extension of the existing 2 storey former public house (including demolition of a 3sqm rear lean to) and its change of use to 1 no. office unit and 1 no. apartment, with new bin stores and a bike store to the rear.

2.2. The development will consist of the provision of private open space, communal and public open space; surface car parking (30 no. spaces); signage; all hard and soft landscaping including boundary treatments; SUDS measures including attenuation

tanks; PV panels; changes to levels; and all other associated site excavation and site development works above and below ground. Vehicular access will be from Pairc Mhuire to the south with existing perpendicular parking along the road replaced with 4 no. perpendicular spaces on Pairc Mhuire and 2 no. parallel car parking spaces on the eastern side of Boherboy Road. Some amendments were made in response to further information including changes to the parking layout.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission granted subject to 29 conditions. Of note is the following condition...

Condition no. 12

The applicant shall provide a financial contribution of €10,000 for the refurbishment of the existing signal controlled junction at the junction of Boherboy Road and Saggart Main Street.

Reason: In the interests of traffic safety.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

Planning Report (24/07/18): Further information required including revised design proposals to address concerns regarding number of units, open space provision, car parking provision and layout, concerns regarding height of certain blocks and orientation of units. Additional information as also required regarding surface water attenuation and foul drainage.

Planning Report 22/11/18): The development was acceptable in terms of design, scale and layout and was deemed to be satisfactory in the context of the visual amenities of the area, the amenities of adjoining properties. The proposal was also considered acceptable in regards to traffic impact and to be in accordance with the proper planning and sustainable development of the area. A grant of permission was recommended subject to the conditions outlined above.

### 3.2.2. Other Technical Reports

Water Services (04/07/18): Further information including details of surface water attenuation system.

Irish Water (05/07/18): Further information including details regarding foul drainage.

DoCHG (05/07/18): Condition requiring pre-development testing.

Roads Department (16/07/18): No objection subject to conditions.

Conservation Officer (20/07/18): Observations regarding design and visual impact.

EHO (27/02/18): No objection subject to conditions.

Department of Defence (07/11/18): Given proximity to Casement Aerodrome to operation of cranes should be co-ordinated with the Air Corps Traffic Services.

Water Services (14/11/18) No objection subject to conditions.

Irish Water (15/11/18): No objection.

### 3.3. Third Party Observations

Seven submission were received from residents/property owners in the vicinity. The issues raised on the submission can be summarised as follows...

- Excessive height and scale relative to the village and adjoining development.
- Existing traffic congestion issues would be made worse.
- Requirement for a right hand turning lane from Boherboy Road onto Main Street.
- Inadequate levels of parking for the proposal and the removal of existing parking at Phairc Mhuire inappropriate.
- Overdevelopment of the site.
- Impact of overshadowing on adjoining properties.
- The design of the proposal out of keeping with the village character.

- Adverse impact on existing adjoining amenity space due to overshadowing.

## 4.0 Planning History

PL06S.246386: Permission refused for Demolition of public house, construction of petrol filling station forecourt, underground fuel tanks, retail, off licence area, car parking, car wash, and signage. There was one reason for refusal which is as follows...

1. Having regard to the appeal site's prominent location in the historic Saggart Village at a cross roads with frontages to Main Street and Boherboy Road, to the provisions of the current South Dublin County Development Plan, to the planning history of the site and to the nature, extent, and location of the proposed development which represents a standardised approach to filling station design, it is considered that the proposed development would comprise an inadequate design response to this village centre site, would seriously injure the character of Saggart Village and would not generate the type of activity required to sustain the development of a vibrant village centre. Furthermore, the Board is not satisfied, particularly in the absence of a high quality scheme incorporating some elements of street frontage development, that the demolition of the former public house and the contribution it makes to the streetscape had been justified. The proposed development would, therefore, seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.

## 5.0 Policy and Context

### 5.1. Development Plan

The relevant Development Plan is the South Dublin County Development Plan 2017-2023. The site is zoned 'VC' with a stated objective 'to protect, improve and provide for the future development of village centres'.

## 5.2. Natural Heritage Designations

None in the vicinity

## 5.3. EIA Screening

Having regard to nature of the development comprising a mixed use development consisting of 29 no. apartment and 2 no. of retail units there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A first party appeal has been lodged by Tom Phillips Associates on behalf of the Thomas McMullan. The grounds of appeal are as follows...

- The appeal concerns the application of condition no. 12 relating to a contribution of €10,000 to refurbish the signalised junction of Saggart Main Street and Boherboy Road.
- It is noted that condition no. 28 requires a Section 48 Development Contribution of €255,981.00 with €63,955.25 of this relating to roads infrastructure and facilities.
- The appellant notes that Special Contributions may be applied under Section 48(2)(c) where exceptional costs not covered by the scheme are incurred by any local authority in respect of public infrastructure or facilities which benefit the proposed development. It is noted that condition no. 12 is not warranted and the reason given for the condition is vague with inadequate justification provided for this contribution.

- It is noted that the Councils Contribution Scheme provides for contributions to facilitate the works under condition no. 12 and that double-counting has occurred.
- It is noted that Section 19 of the Council's scheme states that special contributions are levied only on developments that will benefit from the public infrastructure or facility in question. It is noted that no details of specific exceptional costs are provided the Planning Authority in the condition.
- It is noted that the Development Management Guidelines (Section 7.12) state that for special contribution conditions a basis for the calculation must be explained in the planning decision. It is noted that this also the case under Section 48(2)(c) of the Planning and Development Act, 2000 (as amended).
- The appellant received an email (after querying the condition, no copy on file) the Council to provide detail of how the contribution was calculated and note that the contribution is quarter of the cost of refurbishing the signalised junction (€40,000 total) and that no justification was provided for such or the Section of the Act which applies.
- It is noted that this contribution is not a correct application of the Council's Development Contribution Scheme, the Planning Act and is contrary to the Development Management Guidelines.
- It is also noted that the Traffic Report submitted with the application does not indicate that any capacity issues would arise at the Saggart Village junction.
- The appellant request that condition no. 12 be omitted.

## 6.2. Applicant Response

A response has been received from Tom Phillips on behalf of the applicant Thomas McMullen.

- The response notes that the Planning Authority's response to the appeal relates solely to condition no. 28 regarding the Section 48 Development Contribution.

- It is noted that the appeal relates to condition no. 12 and that the response from the Planning Authority does not defend or support the continued application of condition no. 12. The appellant reiterates that the contribution under condition no. 12 is unreasonable and has no legislative basis under the Planning Act and is contrary the Development Management Guidelines.

### 6.3. Planning Authority Response

A response has been received from South Dublin County Council.

- The response indicates how the financial contribution for development in question was calculated. The response outlines how the Section 48 Development Contribution of €255,981.00 under condition no. 28 was calculated based on the Council's Development Contribution Scheme.

### 6.4. Observations

An observation has been submitted by the Phairc Mhuire Saggart Residents.

- It is considered that the development is contrary Development Plan Policy objectives UC3, Objective 1 and 2.
- There are existing traffic congestion issues and the proposal would exacerbate such.
- The entrance onto Phairc Mhuire is inappropriate as there is already congestion at this location.
- The number of parking spaces provided is inadequate.
- The height of the development is excessive and will have an adverse impact on natural light to adjoining dwellings.
- There are existing unoccupied units in Saggart Village with more units not required.
- The proposal entails loss of parking spaces used by Phairc Mhuire residents with existing issues regarding inadequate parking in the area likely to be exacerbated.



- The scale and proximity to existing amenity space (east) of the proposal would have an adverse impact on the quality of such space due to reduced light.

## 7.0 **Assessment**

7.1 At the outset, I wish to point out that following consideration of the documentation on the appeal file and the site location and context, I am satisfied consideration of the proposal on a de novo basis, (that is as if the application had been made to the Board in the first instance), is unwarranted and that it is appropriate to determine the appeal in accordance with the provisions of Section 139 of the Planning and Development Act, 2000 as amended.

7.2 The appeal concerns the application of condition no. 12, which requires that...

The applicant shall provide a financial contribution of €10,000 for the refurbishment of the existing signal controlled junction at the junction of Boherboy Road and Saggart Main Street.

Reason: In the interests of traffic safety.

The appeal site is in the centre of Saggart Village and at the junction of the Main Street and Boherboy Road. The proposal will access onto Phairc Mhuire, which in turn accesses onto Boherboy Road, There is an existing signalised junction at the intersection of Main Street, Castle Road, Boherboy Road and Mill Road. The condition relates to refurbishment of this signalised junction.

7.3 The wording of the condition fails to indicate under what Section of the Planning Act the contribution under which is applied. It is notable that a section 48 Development Contribution of €255,981.00 was applied under Condition no. 28. The condition appears to be Special Development Contribution, which would be under Section 48(2)(c) of the Planning and Development Act. There is no relevant Supplementary Contribution Scheme (Section 49) in force that it could come under. The condition should really specify under what legislative provision the condition is being applied.

7.4 Under Section 48(2)(c) of the Planning and Development Act, 2000 (as amended) the following is noted...

48(2)(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by the scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

Under Section 7.12 of the Development Management Guidelines the following is noted...

“A condition requiring a special contribution must be amenable to implementation under the terms of section 48(12) of the Planning Act; therefore it is essential that the basis for the calculation of the contribution should be explained in the planning

decision. This means that it will be necessary to identify the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Circumstances which might warrant the attachment of a special contribution condition would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it. Where the benefit deriving from the particular infrastructure or facility is more widespread (e.g. extends to other lands in the vicinity) consideration should be given to adopting a revised development contribution scheme or, as provided for in the Planning Act, adopting a separate development contribution scheme for the relevant geographical area. Conditions requiring the payment of special contributions may be the subject of appeal”.

7.5 I would firstly note that there has been a failure on the part of Planning Authority to adequately explain the basis for the calculation of the contribution in the planning decision which is required under the Development Management Guidelines. The wording of the condition does not even identify it as a special development contribution under Section 48(2)(c). The appellant notes that correspondence it has had post decision with the Planning Authority indicates that the contribution is quarter of the cost of refurbishing the signalised junction (total €40,000). No details of this are provided in document form on the file and the Planning Authority in their response to the appeal failed to even address the issue raised in the appeal (condition no. 12) and instead gave a breakdown of the calculation for the Section 48 Development Contribution under condition no. 28, which is not subject to this appeal.

7.6 The question that arises is whether the development contribution is justified as special development contribution under Section 48(2)(c) of the Act. As noted earlier such is in relation to where specific exceptional costs not covered by the scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. The contribution is in relation to refurbishment of the existing signalised junction in the centre of the village. Under the South Dublin County Council Development Contribution Scheme 2016-2020 residential development and commercial development is liable for contributions based on floor area under 4 categories including Roads & Infrastructure Facilities. Under Condition

no. 28 a figure of €255,981.00 was charged as Section 48 Development Contribution based on the terms of the Development Contribution Scheme with €63,995.25 of this apportioned to roads & infrastructure facilities. The condition subject to appeal appears to have come from the Roads Department report as one of the conditions recommended among others.

7.7 I would question whether the contribution sought under condition no. 12 is a specific exceptional cost not covered by the scheme. The refurbishment works of an existing signalised junction can be classified as roads and infrastructure facilities with the adopted contribution scheme providing for such and a contribution for such applied under Condition no. 28. The proposed development would increase traffic generated at this location and such traffic would use the existing signalised junction. I do not however consider that the Planning Authority has justified the refurbishment works at junction as being specific exceptional costs attributable solely to the proposed development. I would note that the wider area would benefit from the refurbishment the signalised junction and that other development in the area are likely to be the subject to development contributions under the scheme including provision for roads and infrastructure facilities. As noted above the Development Management Guidelines note that Special Development Contributions “would include where the costs are incurred directly as a result of, or in order to facilitate, the development in question and are properly attributable to it”.

7.8 I would consider that the Planning Authority have failed adequate demonstrate that the contribution under condition no. 12 does not fall under the category of roads and infrastructure facilities for which a contribution (under condition no. 28) has been charged under the adopted Development Contribution Scheme. The Planning Authority have failed to demonstrate that the works referred to under condition 12 are specific exceptional costs attributable to the proposal development in accordance with Section 48(2)(c) of the Planning and Development Act, 2000 (as amended). The Planning Authority have also failed to properly explain the logic and reasoning for the contribution in accordance with Section 7.12 of the Development Management Guidelines and have had the opportunity to do so in response to the appeal. I am of the view that the works in questioned are covered under the adopted Development Contribution Scheme under the category of Roads & Infrastructure

Facilities and that the works in question do not constitute specific exceptional costs attributable to the proposed development under Section 48(2)(c) of the Act. The application of condition no. 12 is improper, is in not in accordance with the adopted Development Contribution scheme, Section 48(2)(c) of the Act and would be contrary to Section 7.12 of the Development Management Guidelines.

## **8.0 Recommendation**

8.1. I recommend that South Dublin County Council be directed to OMIT Condition no. 12

## **9.0 Reasons and Considerations**

The application of condition no. 12 is improper as the works in question do not constitute specific exceptional costs attributable to the proposed development and are works that are covered under the category of 'Roads & Infrastructure Facilities' under the adopted South County Dublin Development Contributions scheme and a Development Contribution in this regard has been applied under Condition no. 28. The application of condition no. 12 is in not in accordance with the adopted Development Contribution scheme, Section 48(2)(c) of the Planning and Development Act, 2000 (as amended) and would be contrary to Section 7.12 of the Development Management Guidelines.

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Colin McBride  
Planning Inspector

13<sup>th</sup> March 2019