



An
Bord
Pleanála

Inspector's Report ABP-304668-19

Development	Alterations to three already permitted houses and retention of alterations to 4 houses.
Location	Lands south of Stocking Avenue, Woodtown, Dublin 16.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0096
Applicant(s)	Ardstone Homes Limited
Type of Application	Permission and Retention.
Planning Authority Decision	Grant permission subject to conditions.
Type of Appeal	First Party v Development Contribution Condition.
Appellant(s)	Ardstone Homes Limited
Observer(s)	None
Date of Site Inspection	13 th September 2019
Inspector	Paul O'Brien

1.0 Site Location and Description

- 1.1. The subject site comprises an area of land with a stated area of 0.175 hectares located to the south of Stocking Avenue, which is located to the south of the M50 at this point. The site rises steeply on a north west to south east axis from Stocking Avenue.
- 1.2. Housing construction was underway on the day of the site visit and the development named as White Pines is progressing to the north and south of Stocking Avenue. The subject site therefore only forms a small part of the overall development lands on Stocking Avenue.

2.0 Proposed Development

- 2.1. The proposed development consists of relatively minor alterations to previous permissions, most recently under SD17A/0443, as follows:
 - Retention of alterations to houses no. 4,6,8 & 10. The alterations include reduction in brickwork, removal of canopies, alteration/ removal of windows, alteration to roof lights and other minor works.
 - Proposed alterations to houses no. 2, 12 & 14. The alterations include reduction in brickwork, removal of canopies, alteration/ removal of windows, alteration to roof lights and other minor works. The alterations to House no. 14 result in the loss of a bedroom such that it is proposed to be a four-bedroom unit.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to conditions. The conditions are generally standard. Condition number 2 limits the duration of this permission to that under SD17A/0443, namely the 6th of September 2019. Condition 8, the condition under appeal is as follows:

The developer shall pay to the planning authority a financial contribution of €11,989.69 (eleven thousand nine hundred and eighty nine euros and sixty nine

cents), in respect of public infrastructure and facilities benefiting development within 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 2016 – 2020, made under Section 48 of the Planning and Development Acts 2000 – 2011 (as amended).

The contribution shall be paid prior to commencement of development, or in such phased payments as the planning authority may facilitate. Contributions shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced as outlined in the South Dublin County Council Development Contribution Scheme 2016 – 2020.

Reason: The provision of such facilities will facilitate the proposed development. It is considered reasonable that the payment of a contribution be required, in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report reflects the decision to grant permission subject to conditions. House no.14 was identified as losing a bedroom going from a five bedroom to a four-bedroom unit and in addition the submitted plans indicated a loss of 6.7 sq m of storage area, it was therefore recommended that the attic space be converted for storage use by way of condition.

- 3.2.2. The calculation of the financial contribution is on the basis that of the 7 houses to be modified only one, No.14 was to have a revised floor area and the floor area of 132.60 sq m x €90.42 = €11,989.69.

3.2.3. Other Technical Reports

Environmental Health Department: No objection subject to conditions.

Roads Department: No objection.

3.3. Objections

None.

4.0 Planning History

P.A. Ref. SD17A/0443 refers to a March 2018 grant of permission for amendments to a permitted residential development (originally permitted under **P.A. Ref. SD04A/0393** and **ABP Ref.PL06S.212191**) at Stocking Avenue, D16. The development refers to 7 out of a total permitted 122 units and provides for alterations to the permitted house types, revised façade treatment, waste storage facilities, car parking spaces, boundary treatment and street lighting in addition to landscaping and infrastructure works.

P.A. Ref. SD17A/0359 refers to an April 2018 grant of permission for modifications to a permitted development with regard to 99 houses out of a total permitted 122 units and provides for alterations to the permitted house types, revised façade treatment, waste storage facilities, car parking spaces, boundary treatment and street lighting in addition to landscaping and infrastructure works.

P.A. Ref. SD10A/0041 and **ABP Ref. PL06S.237857** refers to a March 2011 Order granting a change of approved house type with regard to 122 houses in lieu of 130 permitted houses.

P.A. Ref. SD04A/0393 and **ABP Ref. PL06S.212191** refers to a September 2005 Order granting a ten-year permission for 690 units and all site works on a site of 22.97 hectares at Stocking Avenue. This application was the parent permission and was subsequently modified by **P.A. Ref. SD05A/1013**, **P.A. Ref.SD05A/1014**, **P.A. Ref.SD07A/0628**, **P.A. Ref.SD08A/0105**, **P.A. Ref.SD09A/0016**, **P.A. Ref.SD09A/0318** and **P.A. Ref.SD10A/0041/ ABP Ref. PL06S.237857** in addition to the more recently described applications above.

Ref. ABP-304670-19 and **P.A. Ref. SD19A/0099** refers to a concurrent appeal on a financial contribution with respect to works to 34 houses and retention permission for alterations to 65 houses.

5.0 Policy and Context

5.1. Development Plan

5.1.1. Under the South Dublin County Council Development Plan 2016 – 2022, the subject site is zoned RES-N ‘To provide for new Residential Communities in accordance with approved Area Plans’.

5.1.2. **Chapter 2 Housing** refers to housing development. **Chapter 11 Implementation** includes *Section 11.3.1 RESIDENTIAL* which sets out dwelling standards.

The South Dublin County Council Development Contribution Scheme 2016 – 2020 is of relevance to the appeal, please see copy attached as appendix to this report.

5.2. National Guidance

- *Development Contributions – Guidelines for Planning Authorities* (DoECLG, 2013)

5.3. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant has engaged the services of Tom Phillips + Associates to prepare a first party appeal under the provisions of Section 48(10)(b) of the Planning and Development Act 2000 as amended, against Condition no. 8 of SD19A/0096 only. Condition No. 8 is a Financial Contribution condition and states:

The issues raised include:

- The phased payment of financial contributions was has being agreed between Ardstone Homes and the South Dublin County Council with respect to P.A. Ref. SD17A/0359.
- The subject application is only for minor alterations to P.A. Ref. SD17A/0359 and there is no change in unit numbers and no increase in floor area; there is an actual reduction of 34.8 sq m of the permitted floor area.
- Condition no. 8 is considered by the Appellant to be ultra vires as the Planning Authority are seeking contributions in respect of development that have already been paid.

NOTE: The appellant has referred to ‘..modifications to houses permitted under Reg. Ref. SD17A/0359 on a site of 0.175 ha...’. This reference is incorrect, the correct P.A. ref. is SD17A/0443.

6.2. Planning Authority Response

- No further details to add.

7.0 Assessment

- 7.1. This is an appeal made under the provisions of Section 48(10)(b) of the Planning and Development Act, 2000 as amended, and therefore the Board is restricted to consideration of Condition No. 8 only and cannot consider the proposed development *de novo*. The assessment is therefore confined to the application of the terms of the South Dublin County Council Development Contribution Scheme 2016 – 2020 and the index related increase of January 2019.
- 7.2. Condition no. 8 required that a financial contribution of €11,989.69 be paid in respect of public infrastructure and facilities benefiting the development as provided for in the Development Contribution Scheme. The Planning Authority applied this contribution to the one house (no. 14) that was to be modified. House no. 14 – Type H, is to lose a bedroom going from a five bedroom to a four-bedroom unit and a consequential reduction in floor area from 167.4 sq m to 132.6 sq m.
- 7.3. From the submitted plans it is clear that the 7 units forming the subject development are the same as the 7 assessed under P.A. Ref. SD17A/0443. A financial

contribution was conditioned under the grant of permission under P.A. Ref. SD17A/0443 and therefore the applicant/ developer has already met their financial requirements in this regard. There is no increase/ decrease in unit numbers and the revisions to these houses result in only one unit (House no.14) having a modified floor area, a reduction of 34.8 sq m. The Planning Authority have applied a contribution on the entire floor area of this revised house. I note Item 10 (xxvi) of the Definitions, Exemptions and Reductions of the Development Contribution Scheme which refers to *'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 alterations to this house is minor and the removal of a bedroom still leaves this as a four bedroom house. I do not consider the alterations to be material.

- 7.4. The subject application relates to 7 no. houses and a contribution was only applied to one of these units. However, as the applicant has already paid a contribution in accordance with Section 48 of the Planning and Development Act 2000 as amended, I consider that the Planning Authority in conditioning a further contribution under Section 48 have incorrectly applied the terms of the South Dublin County Council Development Contribution Scheme 2016 – 2020. This condition therefore, should be omitted.

8.0 Recommendation

- 8.1. It is considered that the planning authority incorrectly applied the terms of the South Dublin County Council Development Contribution Scheme 2016 – 2020 in requiring a contribution by way of condition for a house that has already been conditioned to apply such a contribution. It is therefore recommended that the planning authority be directed to omit Condition no. 8 of SD19A/0096.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature of the application which is for modifications to previously approved houses and for which no additional houses or increased floor area is to be provided, I consider that the Planning Authority have incorrectly applied the terms of the South Dublin County Council Development Contribution Scheme 2016 – 2020 by conditioning a contribution for a new house even though this house has already been conditioned to apply such a contribution under SD17A/0443 and in effect the applicant would be paying a double contribution for this house. Therefore, Condition no.8 of SD19A/0096 shall be omitted.

Paul O'Brien
Planning Inspector

18th September 2019