



An
Bord
Pleanála

Inspector's Report ABP-304670-19

Development	Alterations to thirty-four already permitted houses and retention of alterations to sixty-five houses.
Location	Lands south of Stocking Avenue, Woodtown, Dublin 16.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0099
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 2.29 hectares located to the south of Stocking Avenue and 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. The construction of housing was well advanced on the day of the site visit and the subject development, named as White Pines, is progressing to the north and south of Stocking Avenue. The subject site forms the majority of the development on the southern side of Stocking Avenue.

2.0 Proposed Development

- 2.1. The proposed development consists of minor alterations to previous permissions, most recently under SD17A/0359. 99 units out of a permitted 122 are the subject of this development as follows:

- Retention of alterations to houses no. 1 to 16 & 18 White Pine Dale; no. 16 to 46 (even numbers only) White Pines Crescent and 1 to 32 White Pines Park. The alterations include reduction in brickwork, removal of canopies, alteration/ removal/ addition of windows, alteration to roof lights and other minor works.
- Proposed alterations to the following houses:
 - 33 – 39 White Pines Park
 - 20 – 40 (even numbers only) White Pines Dale
 - 1 – 27 (odd numbers only) White Pines Crescent
 - 48 & 50 White Pines Crescent.

The alterations include reduction in brickwork, removal of canopies, alteration/ removal of windows, alteration to roof lights and other minor works. The alterations to Block H – White Pines Dale (Units 4 & 10), Block H – White Pines Park (Units 4 & 7), Block I - White Pines Crescent (Units 1 & 7), Block K – White Pines Dale (Unit 12) and Block R – White Pines Dale (Units 3 & 5) result in these 5-bedroom units becoming 4-bedroom units.

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/0359, namely the 6th of September 2019. The condition under appeal, number 8, is as follows:

The developer shall pay to the planning authority a financial contribution of €107,907.23 (one hundred and seven thousand nine hundred and seven euros and twenty three 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. The calculation of the financial contribution is on the basis of modification of 9 no. houses permitted under SD19A/0099 and that the floor area of these 9 houses is 1193.40 sq m. The calculation is $1193.40 \text{ sq m} \times \text{€}90.42 = \text{€}107,907.23$.

3.2.2. 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/0359 refers to an April 2018 grant of permission for modifications to a permitted development (**P.A. Ref. SD10A/0041** and **ABP Ref. PL06.237857**) 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. 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. 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.

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.

5.1.3. 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. I note in particular under Definitions Exemptions and Reductions, Item (xxvi) which states:

'Revisions/Modification to a permitted development: An application for permission for 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 contribution payable at commencement will be based on the permission implemented i.e. the original permission or the revised proposal (updated in accordance with the relevant index).'

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/0099 only.

The issues raised include:

- The phased payment of financial contributions has been agreed between Ardstone Homes and 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 313.6 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.

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 €107,907.23 be paid in respect of public infrastructure and facilities benefiting the development as provided for in the Development Contribution Scheme. The Planning Authority have applied this contribution to nine houses (1&7 White Pines Crescent, 3,4,5,10 & 12 White Pines Dale and 4 & 7 White Pines Park) that were to be modified including the reduction in their floor area. These nine units go from five bedroom to four bedroom units. In total there is a reduction of 313.8 sq m of floor area. The other alterations to these houses include a reduction in external elevation brickwork, the omission of front canopies, alterations of windows including resizing (all except 3 & 5 White Pines Dale), omission of window and alteration of roof lights (1&7 White Pines Crescent).
- 7.3. From the submitted plans it is clear that the 99 units forming the subject development are the same as the 99 assessed under P.A. Ref. SD17A/0359. A financial contribution was conditioned under the grant of permission under P.A. Ref. SD17A/0359 and therefore the applicant/ developer has already met their financial requirements in this regard. There is no increase in unit numbers and the revisions to nine houses result in a reduction in floor area. 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 these houses are minor and the removal of a bedroom still leaves these as four bedroom units. I do not consider the alterations to be material.
- 7.4. The subject application relates to 99 no. houses and a contribution was only applied to nine 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/0099.

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/0359 and in effect the applicant would be paying a double contribution for this house. Therefore, Condition no.8 of SD19A/0099 shall be omitted.

Paul O'Brien
Planning Inspector

18th September 2019