



An
Bord
Pleanála

Inspector's Report ABP-305169-19

Development	Point of dispute of bond amount in relation to condition no. 21 of permission ABP 302344.
Location	Verille Retreat, Vernon Avenue, Clontarf, Dublin 3.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2038/18
Applicant(s)	MKN Property Group.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	MKN Property Group.
Observer(s)	None.
Inspector	Sarah Lynch

1.0 Site Location and Description

- 1.1. The site is located in Clontarf, Dublin 3 to the northeast of the city centre. The rectangular shaped site accommodates a number of buildings including Verville House, a protected structure, which dates from the 1740's and a number of outbuildings in the northern section of the site.
- 1.2. Verville House is a large three-storey over garden level building with an elongated plan. The site is bounded to the north by Vernon Avenue, to the west by the rear gardens of the houses fronting onto Grosvenor Court, to the south and south-east by the open space associated with Grosvenor Court and to the east by the more recent 3-4 storey apartment block (Verville Court).
- 1.3. Vehicular access is off Vernon Avenue and area is predominantly residential, with a small shopping area on the Howth Road c.500m to the west and Killester station (Dart) a similar distance to the northwest. Proposed Development

2.0 Planning Authority Decision

2.1. Decision

The Board determined to grant permission under ABP ref: 302344 for the proposed development subject to standard conditions. Of relevance to this appeal is condition no. 21 as follows:

No. 21. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing with the planning authority, to secure the replacement of any trees within the public realm damaged or removed in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to secure the replacement of any trees within the public realm. The form and amount of security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory reinstatement of trees within the public realm which are damaged or removed arising from the proposed development

2.2. **Planning Authority Reports**

2.2.1. Planning Reports

- The planners report was consistent with the decision of the planning authority.

2.2.2. Other Technical Reports

Of relevance to this assessment is the submission made to the development by Dublin City Council Parks and Landscape Section as follows:

- The Parks & Landscape Services report of 17/7/18 notes the submission of additional information and that no changes have been made to the proposal. It objects to a grant of permission as it will have a direct negative impact on the existing trees and fails to provide public open space. It is considered that the proposal would have a negative impact on the amenity of the area and would, therefore, be contrary to the Z2 zoning objective and development plan standards.

2.3. **Prescribed Bodies**

- None

2.4. **Third Party Observations**

- None

3.0 **Planning History**

- ABP.302344 – Permission was granted for the provision of 72no. apartments over 4 blocks.
- PL 29N. 245083 - permission granted for the provision of 12 no. residential units, the conversion of the existing outbuilding into 1 no. mews ABP 302344-18 Inspector's Report Page 11 of 53 dwelling and the conversion of the

existing Verville Retreat building into 6 no. apartments on 28th September 2015.

- PL29N.226256 – permission granted for alterations to a previously approved residential development (involving an increase in the total number of residential units from 43 to 45) and all associated site works.
- PL29N.217909 - permission granted for the provision of 58 no. residential units and the refurbishment of Verville Retreat and outbuildings and all ancillary site works including the provision of 85 no. car parking spaces with access off Vernon Avenue.

4.0 Policy and Context

4.1. Development Plan

Dublin City Development Plan 2016-2022

Dublin City Council Development Contribution Scheme 2016-2020

4.2. EIA Screening

- 4.3. The appeal is in relation to a failure to agree the terms of a bond. The requirement for EIA therefore does not arise.

5.0 Points of dispute

5.1. Points of dispute

MKN Property Group dispute the specified bond amount determined by Dublin City Council in relation to Condition no. 21 of permission 302344.

The grounds of dispute have been prepared by Vervdev Limited and the issues raised can be summarised as follows:

- Dublin City Council have not provided any justification for the sum required.
- An arborists report has been prepared, test trenches note that tree roots are present within the site.

- Permission has been granted for a basement car park at this location.
- Monterey cypress are not suitable to this location and are non-native.
- The trees pose a health and safety risk should they fall.
- Two previous permission granted the removal of these trees, this was noted in the inspector's report for 302344.
- Existing trees can not be replaced with like for like and the replacement cost should therefore be for semi-mature trees which are of a size and form that will enhance the open space and cost of safely removing the existing trees.
- A realistic cost is €21,600.
- A proposed phasing includes removing all trees in October 2019 and replanting November 2019.

5.2. Planning Authority Response

Dublin City Council have prepared a response to the grounds of dispute which can be summarised as follows:

- DCC Parks and Landscape services consider the bond value requested to be necessary for suitable replacement of the public trees.
- The impacts of the development on the trees may lead to branch fall or overall tree collapse and as a result the trees will require monitoring over time.
- The removal and replacement of trees may take multiple interventions and as such costs will rise.
- All replanting will maximise tree size and maturity.
- The proposed costs are broken down and include the following:
 - Tree risk assessment by qualified and experienced arboriculturist.
 - €500 per visit , 10 visits over 5 years = €5,000
 - Tree removal - €600 per tree = €6,600
 - Tree replacement allowing for nursery visits – cost per tree €10,000, 11 trees will cost €110,000
 - Anticipated cost €121,600.

- Contingency costs - €12,160
- Total bond - €130,000.

5.3. **Observations**

- None

5.4. **Applicants response**

5.5. The applicants have responded to Dublin City Council's response as follows:

- The existing trees are in poor condition and are not actively maintained by DCC.
- Permission for a basement carpark on site as well as serves traversing the site which have a real possibility of affecting the trees.
- Following on from a correspondence with DCC in relation to the justification for proposed bond no information was received by the applicant.
- The trees valued at replacement are not transportable by road in Ireland.
- The established norm is to replace with semi-mature trees suitable for the location.
- Evidence is requested in relation to the imposition of such a bond elsewhere.
- The bond is excessive.
- The proposed methodology of valuation and replacement does not hold up to scrutiny as the proposed trees are un-transportable and unlikely to establish easily and therefore arbitrary and not based in fact.
- The bond to complete the entire development should the developer fail to do so equates to €68,000. It should therefore be evident that the bond for tree replacement of €130,000 is not in line with the remainder of bond terms.

6.0 **Assessment**

6.1. This is an appeal against the sum of a bond required under condition no. 21 of the Board's decision to grant permission for the construction of 72 no. apartments over 4 blocks and a basement carpark.

6.2. Under Section 34(5) of the Planning and Development Act 2000 as amended the points of detail relating to a grant of permission may be agreed between the planning

authority and the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination.

6.3. Condition no. 21 of permission ABP 302344 requires that prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security to ensure that the trees within the public amenity area are protected or replaced if damaged by the developer.

6.4. Dublin City Council determined to request a sum of €130,000 from the developer in relation to this condition.

6.5. The applicant contends that this sum is excessive and has not been calculated appropriately. The applicant has commissioned a report by a qualified Landscape Architect in which the overall cost of removal of damaged trees and replacement of these trees with semi mature native specimens has been outlined. The following points have been raised within this report;

- It is stated that the breakdown of costs provided by DCC ignores the fact that two tree surveys have been carried out and concluded that the health of the existing trees is poor, and that the development will generate additional impacts which will destabilise the trees, it is contended that any additional inspection and reporting will state the same and is therefore not required.
- The Landscape Architect states that the figure given for the removal of trees is acceptable.
- With regard to the costs for replacement trees DCC have utilised costs for specimen pine which are 9-12 metres in height. These are extremely large specimens which are difficult to establish and would require extensive attention. The Landscape Architect employed by the applicant does not agree with this approach. It is stated within the report completed by Murray & Associates that at present the largest transportable trees in Ireland have a girth of c. 60cm which would require road closure for transportation. To suggest therefore that Dublin City Council intend to purchase and replace 11 much larger species is not a realistic proposition. It is stated that a more realistic option is Scots Pine of 30-35cm girth which would cost in the region of €1,500.

- 6.6. The Landscape Architect goes on to argue that the contingency figure appears to be a rounding figure and is not required. It is concluded that a more realistic replacement cost is in the order of 25-30,000 euro. It is strenuously contended within this report that the proposed bond of €130,000 is far beyond any possible cost of replacement by many multiples.
- 6.7. The Landscape Architects also state that they have never encountered a bond of such magnitude.
- 6.8. Dublin City Council in response to the grounds of appeal state that the removal and replacement of trees will require multiple intervention which will be costly. It is also stated that the Council will maximise the tree size and maturity as well as being of evergreen species to maintain screening and have provided a screenshot of a nursery website whereby a mature pine of 7-9 metres in height costs €6,900 and a Scots Pine with a girth of 90-100cm is £13,250. Costs with regard to tree risk assessment equate to €5,000 and removal of trees equates to €6,600. The total cost with regard to trees is stated at €110,000 and a contingency amount of €12,160 has also been applied.
- 6.9. No information has been provided by DCC in relation to the suitability of the site to accommodate large mature replacement trees and the likelihood of successfully establishing such trees in such a location. Furthermore no information has been provided in relation to feasibility of transporting such trees and the cost of importing such trees from the UK given that costings from a UK nursery are provided for within Council's response.
- 6.10. Based on the limited information provided by the Council, the lack of any substantial justification for a bond of such an exorbitant sum and any information on how such large trees are to be transported and any strong justification for the requirement of such mature trees in the context of potential failure to thrive, I consider the quantum of the bond to be excessive. Having regard to the foregoing I consider the applicant's proposal and justification of same in relation to the ease of transportation and likely potential for semi-mature trees to be transported to be plausible and reasonable in this instance.
- 6.11. As such I consider that the quantum of the required bond should be revised to €30,000 which will include the upper amount of the applicant's proposal.

7.0 Recommendation

I recommend an order as follows:

WHEREAS by order dated the 8th day of January, 2019 An Bord Pleanála, under appeal reference number ABP-302344-18, granted subject to conditions a permission to MKN Property Group, for development comprising the construction of Residential development of 72 no. units in 4 no. blocks with a single level basement, consisting of the change of use of the existing Verville Retreat building from nursing home use to residential use and change of existing former outbuilding to residential use and all ancillary works all at Verville Retreat, Vernon Avenue, Clontarf. Dublin 3:

AND WHEREAS condition 21 attached to the said permission required the developer prior to the commencement of development to lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing with the planning authority, to secure the replacement of any trees within the public realm damaged or removed in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to secure the replacement of any trees within the public realm. The form and amount of security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination

AND WHEREAS the developer and the Planning Authority failed to agree on the above details in compliance with the terms of the said condition and the matter was referred by the developer to An Bord Pleanála on the 15th day of August, 2019 for determination:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, hereby determines that the Board agrees that €30,000 of a bond is within the terms and conditions of the permission and is agreed under condition 21.

Sarah Lynch
Planning Inspector

18th November 2019