



An
Bord
Pleanála

Inspector's Report

ABP-307724-20

Development	Retention of a two storey dwelling.
Location	1, Cypress Park, Templeogue, Dublin 6W
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD20A/0070
Applicant(s)	Avest Cypash Limited
Type of Application	Retention Permission
Planning Authority Decision	Grant Permission for Retention subject to Conditions
Type of Appeal	First Party against conditions (s.48 appeal).
Appellant(s)	Avest Cypash Limited
Observer(s)	None
Date of Site Inspection	16 th October, 2020.
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located within an established residential area and comprises a site with an existing two storey semi-detached dwelling. The surrounding area is characterised by similar two storey semi-detached housing of similar design and finishes to that which is on the appeal site.
- 1.2. The stated area of the appeal site is 0.027 ha.

2.0 Proposed Development

- 2.1. The application is for the retention of the existing two storey house on the appeal site. The house for retention is a three bedroom semi-detached unit with a stated floor area of 123 sq. metres. The external finishes are a mixture of plaster and brick and the finishes are generally consistent with those of surrounding houses.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 7 no. conditions. The conditions attached to the decision issued are generally standard in nature and, in the context of the subject appeal, the condition of note is Condition No.7 which requires the payment of a financial contribution of €11,855.97 under the provisions of the adopted s.48 Development Contribution Scheme 2016-2020.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer notes the nature of the proposed development, the internal reports received and the zoning of the site for residential use (Objective RES). Report states that the principle of a house on the site is considered to have been established under Ref. SD17A/0444 and that the development for which retention is now sought is generally consistent with the development permitted under Ref. SD17A/0444. Stated that the design and layout of the house is consistent with

the requirements of Quality Housing for Sustainable Communities and the provisions of the development plan. A grant of permission consistent with the Notification of Decision which issued is recommended. Under the heading of Development Contributions the report states that the proposal is for a three bedroom dwelling. There is no further discussion of the status of the development or contributions levied or paid under previous permissions.

3.2.2. Other Technical Reports

Roads Department – No objection subject to conditions.

Drainage Department – Further information recommended regarding surface water drainage. No objection on the basis of flood risk subject to conditions.

3.3. Prescribed Bodies

None referred to in the report of the Planning Officer or on file.

3.4. Third Party Observations

None received.

4.0 Planning History

The following planning history is referenced in the report of the Planning Officer:

South Dublin County Council Ref. SD17A/0444 – Permission granted for modifications to the existing dwelling to include removal of part of the existing part single storey part two storey side extension and construction of a single storey rear extension and associated internal works and alterations to the front garden wall / entrance.

Adjacent Sites

South Dublin County Council Ref. SD06B/0940 – Permission granted for variation to planning permission SD05B/0720 single storey extension to rear, attic conversion including new dormer to rear, new roof light to the front and widening of the vehicular access at No.7 Cypress Park.

South Dublin County Council Ref. SD16B/0202 – Permission granted for the demolition of existing single storey annex to the side of existing house and related works and for the construction of a boundary wall to sub divide the site and for the construction of a three storey four bedroom detached house at No.46 Cypress Grove Road.

5.0 Policy Context

5.1. Development Plan

The appeal site is located on lands that are zoned Objective RES, under the provisions of the *South Dublin County Development Plan, 2016-2022*, where the stated objective is *'to protect and / or improve residential amenity'*.

Section 2.4.0, 11.3.2 and Policy H17 of the plan promote the principles of residential consolidation and infill.

Paragraph 11.3.2(i) specifically relates to design criteria for infill sites with 11.3.2 (ii) setting out additional criteria to be met for infill developments in side or corner gardens.

Policy H17 Objective 3 states

'To favourably consider proposals for the development of corner or side gardens within the curtilage of existing houses in established residential areas, subject to appropriate safeguards and standards identified in Chapter 11.'

Section 11.3.1 of the plan relates to residential standards including privacy.

Paragraph 11.3.20 sets out the minimum open space standards for houses.

5.2. Natural Heritage Designations

The site is not located in or close to any European sites.

5.3. EIA Screening

Having regard to the limited scale of the proposed development incorporating a single additional dwelling and the design including the proposal that the house would be connected to the public water supply and drainage network, 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

The following is a summary of the main issues raised in the first party grounds of appeal:

- That the unit has been in existence since the 1970s.
- A previous grant of permission (Ref. SD17A/0444 was granted for modifications to the existing dwelling to include removal of existing part single and part two storey side extension and construction of a single storey rear extension and associated internal works and alterations to front garden wall / entrance.
- That financial contributions for Ref. SD17A/0444 were paid in full as per condition No.12 of that permission.
- That the property was completed without the rear extension and therefore the subject application for retention was made. This permission effectively altered Ref. SD17A/0444 in that the side extension was demolished and the rear extension permitted was not built. Therefore no extra building work is permitted under this permission and no new service connections made.

6.2. Planning Authority Response

Response submission received from the planning authority states that it confirms its decision and that the issues raised in the appeal have been addressed in the planners report. Also stated that having reviewed the file '*SDCC has no further*

details to add regarding the calculation and levying of the financial contributions on planning application SD20A/0070'.

7.0 Assessment

7.1. The following are considered to be the main issues relevant to the assessment of the subject appeal:

- Principle of Development
- Financial Contribution
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. The appeal site and house are located within an established residential development. The house on the site was originally constructed in the 1970s along with other houses in the development and it would appear that it was subsequently modified with the addition of a two storey side extension.
- 7.2.2. Under Ref. SD17A/0444 permission was granted for the demolition of this side extension and the construction of a single storey rear extension to the house at No.1 and for the construction of 2 no. detached houses to the north. The current application is for the retention of the works to the house at No.1 as undertaken which did not include the addition of the rear extension.
- 7.2.3. The site is located on lands that are zoned Objective RES under the provisions of the *South Dublin County Development Plan, 2016-2022*, where the stated objective is *'to protect and / or improve residential amenity'*. The development as completed and for which retention is now sought is in my opinion consistent with this zoning objective.

7.3. Financial Contribution

- 7.3.1. The basis of the appeal submitted is that Condition No.12 attached to Ref. SD17A/0444 required the payment of financial contribution under section 48 of the act and in accordance with the adopted development contribution scheme. It is contended by the first party that the current application does not involve any additional works, however Condition No.7 appears to be levying a contribution for an extension despite a contribution for such works having been required under Ref. SD17/0444.
- 7.3.2. Permission for the house on the site at No.1 was originally granted permission in the 1970s. On the basis of the information available, it would also appear that the side extension that was demolished under ref. SD17A/0444 was constructed a significant period of time ago. It is unclear whether a financial contribution was levied at the time of the original permission or the side extension and if so what the amount was. In any event, if contributions were required they would have pre dated the introduction of development contribution schemes in accordance with the Planning and Development Act, 2000.
- 7.3.3. The basis for the assertion of the first party that they should not be liable to a development contribution on the current application is that they have already paid a development contribution in respect of the works to No.1 under Ref. SD17A/0444. No clear documentary information is however provided by the first party or the planning authority regarding the basis of the calculation that was undertaken to come up with the figure of €23,961.30 specified in Condition No.12 of this permission. I have examined the record online for this application and I cannot see any calculation. I also note that the floor area figures cited under ref. SD17A/0444 make reference to an existing floor area (No.1) of 142 sq. metres and demolition of 35 sq. metres (presumably the side extension). This would imply that the original un extended floor area of No.1 Cypress Park was 107 sq. metres. The figure cited in the current application for retention is however 123 sq. metres.
- 7.3.4. In terms of the application of the development contribution scheme to Ref. SD17A/0444, the wording of condition No.12 indicates that the figure of €23,961.30 was on the basis of the 2016-2020 Contribution Scheme. The figures cited in the application form for SD17A/0444 indicate that the combined floor area of the

proposed two new houses to the north of No.1 are 276 sq. metres, and that the existing house at No.1 (with rear extension) is 132 sq. metres. I am not able to source the residential rate per square metre of residential floorspace that applied in 2017 and this would have been different to the current (2020) figure of €96.39 due to changes in the construction price index. However, using the current rate of €96.39 per square metre, the 276 sq. metres of new build permitted under Ref. SD17A/0444 would have required a contribution of €26,603, more than the €23,961.30 that was applied. It therefore appears to me that the calculation made for the financial contribution specified in Condition No.12 attached to Ref. SD17A/0444 did not make any provision for the house at No.1 Cypress Park which is the subject of the current appeal. From the plans in respect of Ref. SD17A/0444, the single storey rear extension that was not constructed had a floor area of c.29 sq. metres and would therefore have been exempt from a requirement for a contribution as per the exemptions provide for in Paragraph 10(ii) of the adopted scheme. For this reason, and on the basis of the information made available, I do not consider that the case made by the first party that they have already made a contribution in respect of the works to No.1 Cyprus Park which are the subject of the current application for retention can be substantiated.

- 7.3.5. The situation would therefore appear to be that the original house at No.1 Cyprus Park was permitted as part of a larger development in the 1970s. The house was subsequently extended with the addition of an extension to the side and rear. Permission was granted as part of Ref. SD17A/0444 for works that included the demolition of this side extension and the construction of a single storey rear extension and that no financial contribution in respect of these works was required. The current application is for the retention of the completed development at No.1 which has been undertaken without the rear extension.
- 7.3.6. The issue arises therefore as to whether this should be exempt from the requirement to pay a development contribution on the basis that it is reverting to the layout of the house as originally permitted in the 1970s. Alternatively, the fact that the first party is now applying for retention permission could be interpreted to mean that retention is being sought for the entire residential unit as constructed and that this brings it within the scope of the *South Dublin County Council Development Contribution Scheme 2016-2020*. It is this latter approach which has been adopted by the Planning

Authority in its decision on Ref. SD20A/0070 and the addition of Condition No.7 requiring the payment of €11,855.97. On balance I consider that the Planning Authority are correct in this approach. Works to the house at No.1 Cypress Park were undertaken that were not in compliance with the permission granted under Ref. SD17A/0444 and such that retention permission is now required. In my opinion this brings the entirety of the residential unit into consideration and, given that no contribution was previously paid in respect of No.1 under ref. SD17A/0444, it is correct that a contribution in respect of the entire floorspace to be retained (123 sq. metres) would be applied as per the provisions of the adopted 2016-2020 Development Contribution Scheme. I have read the scheme and, given the specific circumstances of this case, I do not consider that there is any basis for an exemption.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, and based on the reasons and considerations set out below, it is recommended that the Planning Authority be directed that Condition No.7 attached to Ref. SD07A/0444 would remain attached to the final grant of permission.

9.0 Reasons and Considerations

Having regard to the following:

- The wording of the adopted *South Dublin County Council development Contribution Scheme, 2016-2020* under which the financial contributions attached by the Planning Authority to Refs. SD17A/0444 and SD20A/0070 were calculated,
- To the circumstances of this case where, on the basis of the information presented by the parties and available on file, it appears that works to the house at No.1 Cypress Park were not included in the calculation of the contribution of €23,961.30 specified in Condition No.12 attached to ref. SD17A/0444, and
- The fact that the current application the subject of this appeal is for retention of the two storey dwelling on site (stated floor area 123 sq. metres),
- To the absence of any clear exemption provided for under the adopted scheme,

It is considered appropriate that a financial contribution would be paid in accordance with the terms of the adopted development contribution scheme and that this contribution would be calculated on the basis of the stated floor area of the house to be retained (123 sq. metres) and the current rate per sq. metre of residential development as specified in the current version of the 2016-2020 Development Contribution Scheme that came into effect on 1st January, 2020 which is €96.39 per sq. metre. It is therefore considered that the terms of the South Dublin County Council development Contribution Scheme, 2016-2020 have been correctly applied by the Planning Authority.

Stephen Kay

Planning Inspector

19th October, 2020