



An
Bord
Pleanála

Inspector's Report ABP 309837-21

Development

Centre of Excellence for Equine Breeding and Training.

Location

Site to the rear and adjacent to the Kilternan Hotel, Aparthotel and Leisure Centre complex at Kilternan, incorporating part of Kilternan Golf Course and adjacent agricultural lands, Co. Dublin

Detail of Reference

Point of detail - condition 15 attached to PL06D.246501.

Referred By

Niginski Property Ltd.

Applicant

Niginski Property Ltd.

Inspector

Pauline Fitzpatrick

1.0 Introduction

This case is a referral made under section 34(5) of the Planning and Development Act 2000, as amended. This provision provides for matters to be referred to the Board where a point of detail is in dispute between the applicant and planning authority. It was received by the Board from Rocktop Consulting Ltd. on behalf of Niginski Property Ltd. and concerns a point of detail regarding Condition No.15 attached to a grant of planning permission issued by An Bord Pleanála under ref. PL06D.246501 (PA ref D15A/0453). The condition relates to development contributions.

2.0 Site Location and Description

The site is part of a larger holding which contains a large commercial premises, the Kiltiernan Golf and Country Club / Kiltiernan Sports Hotel. It comprises a long narrow strip of land in the centre of the holding and has a stated area of 36.9 hectares.

3.0 Background

3.1. Permission was granted under ref. PL06D.246501 for an equine centre with a stated gross floor area of 10,627 sq.m. comprising of:

- a three storey stable / accommodation building to include a total of 160 horse box units, 36 studios for staff, internal and external tracks and viewing areas,
- an agricultural shed of 2,500 square metres,
- a parade circle,
- an equine pool,
- a 1.6km 8m wide exercise track (gallops),

The permission was subject to 15 conditions.

Condition 15:

The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in 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 made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme.

4.0 Referral

4.1. Referrer's Case

The submission by Rocktop Consulting Ltd. on behalf of the referrer can be summarised as follows:

- A submission was made to Dun Laoghaire Rathdown County Council setting out the applicant's response to the requirements of the conditions attached to the permission. A copy of the submission accompanies the referral.
- An invoice from Dun Laoghaire Rathdown County Council was received for the sum of €392,871.03. No discussions were had or agreement made between the parties despite condition 15 stipulating same.
- Dun Laoghaire Rathdown County Council was requested to review the application of the terms of the Development Contribution Scheme to which a response was received (copy attached).
- The Council has assessed the development contributions on the basis of dwellings. The dorm rooms/apartments at the facility are for staff usage, only, as stipulated and conditioned by way of condition 3 attached to the permission.

- The total gross internal floor area of the dorm accommodation measures 1,507 sq.m. taking into consideration the necessary revisions arising from the provisions of condition 2(a) attached to the permission.
- Having due regard to the unique nature of the facility and the accommodation in the form of staff quarters contained within the development and the usage restrictions imposed by condition 3 the referrer is of the opinion that this element of the development should be considered as Industrial/Commercial class of development (€74.10 x 1507 sq.m = €111,568.70)
- The contradictory nature of applying the full residential development charges under the provisions of the Section 48 scheme, normally reserved for standard residential units, and then imposing specific restriction in the use of same is not equitable.

The referral is accompanied by:

- Correspondence from the County Council dated 16/03/21 and 03/02/21 detailing the balance relating to development contributions owing accompanied by an assessment detail setting out how the contribution amount was calculated.
- Submission by applicant to the County Council dated 04/01/21 detailing its response to issues arising in the conditions attached and to the invoice received.

4.2. **Dun Laoghaire Rathdown County Council**

No response received.

5.0 **Policy Context**

5.1. **Development Plan**

Dun Laoghaire Rathdown County Development Plan 2016-2022.

The site is within an area zoned G, the objective for which is to protect and improve high amenity areas.

5.2. **Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020**

The above scheme was adopted on 14th December 2015.

The rates of relevance to this case are as follows:

Class of Public Infrastructural Development	€ per unit of Residential Development	€ per sq.m. of Industrial/Commercial class of Development
Total of Contributions Payable	8,580	74.10

Exemptions and Reductions are set out in paragraph 10.

5.3. **Planning Guidelines**

Development Contributions Guidelines for Planning Authorities (2013)

It is stated that the primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed.

6.0 **Legislation**

Section 34(5) of the Planning and Development Act, 2000, as amended states that conditions under subsection (1) may provide that 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.

Development contributions such as in the present case are imposed in accordance with schemes made under section 48 of the Planning and Development Acts 2000 to 2018 and the Development Contributions Guidelines for Planning Authorities (DoECLG 2013).

7.0 Assessment

The point of detail arising from condition 15 attached to the grant of permission under ref. PL06D.246501 relates to the application of the terms of the development contribution scheme, upon which the referrer and the planning authority did not reach agreement. In default of such agreement the matter has been referred to the Board for determination under the provisions of section 34(5). The referrer is disputing the basis for the calculation of the amount sought by the planning authority under the Section 48 scheme.

The dispute is specific to the development contribution assigned to the residential component. Dun Laoghaire Rathdown County Council in its Assessment Detail has attributed development contributions on the basis of 36 no. residential units and applied the financial contribution for residential development. The referrer contends that the accommodation provides for staff quarters, only, and would more appropriately attract the contribution applicable for industrial/commercial development. Despite being given an opportunity the planning authority has not provided clarification to the Board or made any submission or observation on the referral.

As part of the permitted development a building over 3 floors is proposed. Horse boxes, drying and cleaning rooms and ancillary uses are proposed at ground and 1st floor levels with 36 no. self-contained studios/dorms at 2nd floor level. Each studio is to have its own bed, kitchenette and toilet each with a gross floor area of 32m². The Inspector in her assessment noted that the purpose of the accommodation is to provide temporary accommodation for visiting training staff and jockeys who may be based there for short or long periods. The indicative numbers given estimate a permanent staff of 40 grooms/jockeys and a temporary staff of 10 to 15 with the latter figure varying according to annual cycles and competitions. The period of occupancy would parallel the period of employment. The Inspector considered that there was no reasonable possibility of any separate future use and that the development is also materially different to that envisaged in the Design Standards for Apartments Guidelines that applied at the time of assessment. She considered that there was no indication that the units would be 'let' to the occupants with the inference being that they will be part of the employment package.

By way of condition 2 the Board required the residential units (studio/dorms) to have a minimum floorspace of 40 sq.m. in line with the minimum requirements as set out in above guidance standards for studio apartments. The referrer's submission to the County Council dated 4th January 2021 sets out the alterations required to meet the requirements of the said condition. Condition 3 restricts their use solely by persons employed in, or associated with, the proposed equine development. In particular, they shall not be used as permanent residential accommodation by other persons not employed or associated with the equine development, and shall not be used as tourist accommodation of any kind.

There is no dispute that the provision can reasonably be described as residential and in this regard I note that the definition of use classes set out at 8.3.12 of the Dun Laoghaire Rathdown Development Plan defines residential as "use of a building or part thereof including houses, flats, bedsitters, residential caravans etc designed for human habitation".

The relevant development contribution scheme in paragraph 10 which sets out where exemptions and reductions would apply, does not make any specific reference or allowance for varying forms of residential development ie. whether it is used for permanent or temporary occupation, whether it is attached to a place of employment or whether a cost is incurred by residents in terms of rent etc. The only form of residential for which an exemption applies is social housing.

Therefore, whilst I accept that the residential component is to provide residential quarters for staff employed at the equine centre, only, the accommodation would appropriately be described as residential within the meaning as ascribed to it. The restrictions imposed by condition 3 in terms of occupancy do not change the nature of the use. On this basis I consider that the planning authority was correct in applying the applicable rate for residential to the 36 residential units within the development contribution scheme.

8.0 Recommendation

Following my assessment I recommend an order as follows:

WHEREAS by order dated the 30th day of August 2016 made by An Bord Pleanála, under register reference number PL06D.246501 (D15A/0453)), granted subject to conditions a permission to Luke Comer care of Manahan Planners of 30 Dawson Street, Dublin , for development comprising a centre of excellence for equine breeding and training on a site to the rear (west/northwest of) and adjacent to Kiltiernan Hotel, Aparthotel and Sports Complex at Kiltiernan, County Dublin incorporating part of the former Kiltiernan golf course and adjacent agricultural lands.

AND WHEREAS condition 15 attached to the said permission required:

The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in 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 made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

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 26th day of March 2021 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 the amount payable within the terms and conditions of the permission under condition 15 is €323,418.42 in accordance with the terms and conditions of the development contribution scheme applicable at the date of grant of permission.

REASONS AND CONSIDERATIONS

Having regard to:

- (a) sections 34(5) and 48 of the Planning and Development Acts 2000 as amended,
- (b) the provisions of the Dún Laoghaire-Rathdown County Council Section 48 Development Contribution Scheme adopted by Dún Laoghaire-Rathdown County Council on 14th December, 2015.
- (c) the Dún Laoghaire-Rathdown County Development Plan 2016–2022
- (d) the submissions on file and the planning history of the site

the Board considered that the planning authority had reasonably concluded that the 36 no. self-contained studio/dorm rooms within the permitted development comprised residential development for the purposes of applying a development contribution in accordance with the Development Contribution Scheme.

Pauline Fitzpatrick
Senior Planning Inspector

January, 2022