



An
Bord
Pleanála

Inspector's Report

ABP-310633-21

Development	Conversion of attic with insertion of two dormer windows smoke ventilation roof window.
Location	27, Farney Park, Sandymount, Dublin 4
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	WEB1348/21
Applicant(s)	Ciara Haskins & Aengus Wilson
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	First Party
Appellant(s)	Ciara Haskins & Aengus Wilson
Observer(s)	None
Date of Site Inspection	28 th September 2021
Inspector	Mary Crowley

Contents

1.0 Site Location and Description.....	3
2.0 Proposed Development.....	3
3.0 Planning Authority Decision	3
3.1. Decision.....	3
3.2. Planning Authority Reports.....	4
3.3. Prescribed Bodies.....	4
3.4. Third Party Observations.....	4
4.0 Planning History.....	4
5.0 Policy Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations.....	5
5.3. EIA Screening	5
6.0 The Appeal.....	5
6.1. Grounds of Appeal.....	5
6.2. Planning Authority Response	6
6.3. Observations	6
6.4. Further Responses	7
7.0 Assessment.....	7
8.0 Recommendation	10
9.0 Reasons and Considerations	10
10.0 Condition No 2	10

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 490 sqm comprises a 2-storey semi-detached dwelling in Sandymount, a predominantly residential area of single family dwellings. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Permission is sought for the conversion of 3 bedroom house (194 sqm) into 4 bedroom house with the conversion of attic space into a habitable bedroom (32 sqm) with insertion of two dormer windows to the rear elevation and one smoke ventilation roof window to rear elevation above the internal stairwell with a new fixed staircase from the first floor to attic space.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Dublin City Council issued a notification of decision to grant permission subject to 10 no conditions. Condition No 2 is of relevance to this appeal as follows:

A development contribution in the sum of €5,929.40 shall be paid to the Planning Authority as a contribution towards expenditure that was and / or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Councils Section 48 Development Contribution Scheme. the contribution is payable on commencement of development. If prior to commencement Development Contribution Scheme or if a new Section 48 Development Contribution Scheme is made by the City Council the amount of the contribution payable will be adjusted accordingly.

Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: *It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administration area of the Local Authority.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Case Planner having considered the proposed scheme recommended that permission be granted subject to conditions. Condition No 2 of the recommendation requested the payment of Section 48 Financial Contribution in the amount of €5,929.40. The notification of decision to grant permission issued by Dublin City Council reflects this recommendation.

3.2.2. Other Technical Reports

- **Drainage Division** – No objection subject to standard conditions

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

3.4.1. None

4.0 Planning History

- 4.1. There is no evidence of any previous appeal on this site. There was a previous planning application on this site that is referenced in the appeal below and summarised as follows:

Reg Ref 4350/16 – Dublin City Council granted permission for a new garage with window, first floor extension over existing garage to the side, single-storey rear extension with internal alterations to layout with 1 no rooflight, new stairs to attic, 2 no velux rooflights to rear, BBQ area to rear garden and widen front gate to 3.6m and associated works subject to 7 no conditions. No financial development contribution condition was attached.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Dublin City Development Plan 2016 – 2022**. The site is on lands zoned Z1 where the zoning objective is *to protect, provide and improve residential amenities*.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature of the development comprising a residential extension located in a built up area zoned for residential development where public water mains and sewerage are available the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The first party appeal has been prepared and submitted by applicant against Condition No 2 (Section 48 Development Contribution) (see Section 3.1 above) and may be summarised as follows:
- Submitted that DCC cannot retrospectively impose financial conditions on a previous grant of planning permission dated 15th February 2017 Reg Ref 4350/16 refers. The matter cannot be revisited.
 - Difficult to comprehend how the conversion of an attic to habitable space will lead to expense by the Planning Authority in respect of public infrastructure and facilities. No additional pressures will be put on public infrastructure and facilities in the area.

- Reference is made to the draft Section 48 Development Contribution Scheme 2020 – 2023. It is unclear how it is proposed that such contributions will be expended which will benefit the area the development is located.
- In the event that the Board concludes that the Council was entitled to impose a development contribution it can only impose a financial contribution on the development under consideration.
- The current development relates to the conversion of an attic. Any development contributions imposed should relate solely to the development under consideration and cannot relate to another development whether permission was granted previously or not. To retrospectively apply such conditions would lead to uncertainty, breach constitutional rights and property rights of citizens.

6.2. Planning Authority Response

6.2.1. Dublin City Council submitted the following as summarised:

- The Development Contribution is applicable
- The contribution applicable is based on the cumulative total of all extensions as stated in the 2020 – 2023 Development Contribution Scheme
- On review of the floor area included in the calculation it was found that the previous extension calculation was overstated by 10.21sqm and the demolition allowance, which was applicable in 2016, wasn't applied.
- The Planning Department would therefore request that a development contribution in the amount of €3054.96 be applied to this development i.e. the floor area of the existing extension is 79.37sqm which is then reduced by 21sqm demolition allowance and 40sqm domestic extension allowance which equals 18.37sqm.
- The floor area of the current extension applied for is 14.8sqm bringing the total cumulative floor area applicable to contribution to 33.17sqm.

6.3. Observations

6.3.1. None

6.4. Further Responses

6.4.1. Applicant response to submission by DCC

- The grounds of the appeal are based on the belief that DCC cannot retrospectively impose a financial contribution on a previous grant of planning permission
- No financial contribution condition was attached under 4350/16
- DCC have now sought to retrospectively impose a financial contribution.
- This is fundamentally flawed and not permissible.
- Any development contribution should relate to the development under consideration.

7.0 Assessment

- 7.1. Further to my examination of the planning file and the grounds of appeal I note that the first party appeal is confined to the development levy set out in Condition No 2 (Section 48 Development Contribution) of the notification of decision of the planning authority to grant permission. Section 48 (13) of the Planning and Development Act 2000 states that an appeal that relates solely to a condition dealing with a special contribution and where no appeal is brought by any other person under Section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance but shall determine only the matters under the appeal. I consider that it is therefore appropriate that this appeal should be confined to the consideration of whether or not the terms of the Dublin City County Council Section 48 Development Contribution were properly applied in this instance.
- 7.2. Condition No 2 seeks payment of a financial contribution in the amount of €5,929.40 in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority in accordance with Dublin City Councils Section 48 Development Contribution Scheme. The full wording of the condition is set out in Section 3.1 above. No calculations are provided in the Case Planners report.
- 7.3. The first party appeal submits that any development contributions imposed should relate solely to the development under consideration and cannot relate to another development whether permission was granted previously or not as in this case.

Reference is made to the previous application on this site; Reg Ref 4350/16 refers. The stated area of the proposed extension in this appeal case is 32sqm.

- 7.4. Dublin City Council in their response to the appeal submitted that on reviewing the floor area included in the calculation it was found that the previous extension calculation was overstated by 10.21sqm and the demolition allowance, which was applicable in 2016, wasn't applied. The Planning Department requested that a development contribution in the amount of €3054.96 be applied i.e. the floor area of the existing extension is 79.37sqm which is then reduced by 21sqm demolition allowance and 40sqm domestic extension allowance which equals 18.37sqm. As the floor area of the current extension applied for is 14.8sqm this brings the total cumulative floor area applicable for contribution to 33.17sqm.
- 7.5. I have had regard to the planning history Reg Ref 4350/16 made available with the appeal file. No Section 48 Development Contribution was attached to this decision to grant permission. Please refer to Section 4.0 above for further details. Please note that in the absence of a complete copy of the history case I have also had regard to the information available on the Council Planning website. In terms of floor area the following can be deduced:

Total Floor Area (new & retained)	198 sqm
Existing Ground Floor	97sqm
Existing First Floor	44sqm
Proposed Development	77sqm (56sqm + 21sqm)
Proposed Ground Floor Extension	51sqm (30sqm + 21sqm)
Proposed First Floor Extension	26sqm
Area to be Demolished	21sqm

- 7.6. The relevant floor extension areas of the current appeal application now before the Board may be summarised as follows:

Floor Area to be Retained	194sqm
Proposed Extension	32sqm

Total Floor Area (new & retained)	226sqm
-----------------------------------	--------

- 7.7. Having regard to the foregoing it would appear that Reg Ref 4350/16 was not exempt from the requirement to pay a Section 48 Development Contribution by reason of floor area i.e. 77sqm less 21sqm is 56sqm which is 16sqm greater than 40sqm. I refer to the Dublin City Council Development Contribution Scheme 2016 – 2020 applicable at the time. Section 12 Exemptions & Reductions states that *the first 40sq meters of extensions to a residential development (subsequent extensions or extensions over and above 40 square meters to be charged at the residential rate per square meter)*; will be exempted from the requirement to pay development contributions under the Scheme. Further, Section 14 states that *where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be charged on the net additional floorspace created*. Therefore 16sqm should have been subject to a financial contribution. However no such condition was attached. Regardless the issue of retrospectively applying a development contribution does not arise as there are no explicit provisions in the Development Construction Scheme or elsewhere to retrospectively impose a financial condition on a decided case that has been built.
- 7.8. In terms of the current appeal case before the Board I refer to the Dublin City Council Development Contribution Scheme 2020-2023. Section 11 Circumstances Where no Contribution or a Reduced Contribution Apply states that *the first 40sq metres of extensions to a residential development (subsequent extensions or extensions over and above 40 square metres will be charged at the residential rate per square metre)*. What is therefore clear is that the proposed development does not fall under the exemptions listed in the scheme as the floor area is in excess of the first 40sqm cumulative area of extension which is exempt (32sqm less 16sqm = 16sqm). It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution for 16sqm in accordance with the Planning and Development Act 2000.
- 7.9. For clarity and completeness I have had due regard to the provisions of the Habitats Directive and conclude that having regard to the source-pathway-receptor model along

with the nature of the proposed development I would not consider that an NIS or Appropriate Assessment is necessary in this case.

8.0 Recommendation

- 8.1. Having regard to the nature of the condition the subject of the appeal and based on the reasons and considerations set out below, I am satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and recommend that the Board directs the Council under subsection (13) (a) of Section 48 of the Planning and Development Act, 2000 to AMEND Condition No 2.

9.0 Reasons and Considerations

- 9.1. Having regard to:

- a) Section 34(5) of the Planning and Development Act 2000, as amended,
- b) The provisions of the Dublin City Council Development Contribution Scheme 2020-2023
- c) Section 48 of the Planning and Development Act 2000 (as amended),
- d) The submissions on file, and the planning history of the site.

- 9.2. It is considered that it would be appropriate to attach a Section 48 Development Contribution (16sqm x €92.10) for development in this instance.

10.0 Condition No 2

The developer shall pay to the planning authority a financial contribution of €1473.60 (one thousand, four hundred and seventy three euro and sixty cent) 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. The application of any indexation required by this condition 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.

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.

Mary Crowley

Senior Planning Inspector

21st November 2021