



An
Bord
Pleanála

Inspector's Report ABP-315326-22

Development

Alterations to previously granted planning permission (SD19B/0332) including alterations to Front Porch, alterations to single storey extension to rear and side, alterations to front elevation and all associated site works

Location

93, Marian Road, Rathfarnham, Dublin 14, D14 F2N4

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

SD22B/0429

Applicant(s)

Niamh Troy and Shane Teefy

Type of Application

Permission (s. 34)

Planning Authority Decision

Grant with Conditions

Type of Appeal

Financial Condition (s. 48)

Appellant(s)

Niamh Troy and Shane Teefy

Observer(s)

None

Date of Site Inspection

14th April 2023

Inspector

Philip Maguire

1.0 Site Location and Description

- 1.1. The appeal site is located along Marian Road (L8303), backing on to Pinewood Park, in Rathfarnham, Dublin 14. The Rosemount Shopping Centre lies opposite the site to the southwest. The surrounding area is predominantly residential. The streetscape is characterised by semi-detached houses of similar form and appearance.
- 1.2. The appeal site is flat and has a stated area of 0.07526ha. It consists of a detached, two-storey house with private amenity space to the rear. The house is recently renovated and includes new extensions to the front, side and rear. The front boundaries are defined by low walls and mature hedgerow. Block walls define the rear boundaries. The rear garden includes a paved area, grass lawn and mature trees.

2.0 Proposed Development

- 2.1. The proposal sought permission for the alteration of a previously permitted house extension under PA ref. SD19B/0332 including alterations to the front porch; single-storey extension to the rear and side; and front elevation.
- 2.2. Section 12 of the Planning Application Form indicates that the floor area of the existing house is 193.10sq.m. It also indicates that 'zero' floor area is to be retained. Section 3 of the Form confirms 'permission for retention' was sought and I note that a retention application fee was paid (Section 22). The submitted drawings include floor plans and elevations of the development permitted under PA ref. SD19B/0332 compared to the 'as built' development. The 'as built' development was verified during my site visit.
- 2.3. The previously permitted enclosed porch projection with flat roof (1.76sq.m) has been replaced with an open portico-type structure with hipped roof. The single-storey extension to the side and rear does not project as far beyond the original rear wall but does wrap around this wall to a greater degree. Minor changes to the front elevation in terms of material finishes are also illustrated and were verified on site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission for the proposed development on 18th November 2022, subject to conditions.

3.1.2. Condition 4 is directly relevant to this appeal. It states:

Financial Contributions.

The developer shall pay to the Planning Authority a financial contribution of €4,963.28 (four thousand nine hundred and sixty three euro and twenty eight cent), 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 2021 - 2025, made under Section 48 of the Planning and Development Act 2000 (as amended). This contribution is to be paid on receipt of Final Grant of Permission.

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

- Planning Report (18/11/22): Basis for the Planning Authority decision. The proposal was deemed to be in compliance with the Council's house extension policy and considered acceptable in the context of the amenities of the area and property in the vicinity.

3.2.2. Other Technical Reports

- Roads (10/11/22): No objection.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Appeal site:

PA ref. SD19B/0332: Permission **granted** in 2019 for a two-storey extension to front and single-storey extension to side and rear of existing dwelling, and new front porch, widening of vehicular entrance and new solar panels to south facing roof slope.

5.0 Policy Context

5.1. National Guidance

5.1.1. Under Section 2 of the Development Contributions Guidelines (DECLG, January 2013), as amended, planning authorities are required to include specific exemptions and waivers in their Development Contribution Schemes, however it states that no exemptions or waivers should apply to any applications for retention of development. It also states that the practice of “double charging” is inconsistent with the primary objective of levying development contributions and reminds Planning Authorities that contributions already levied and paid should be deducted from the subsequent charge.

5.2. Development Contribution Scheme 2021-2025

5.2.1. The Planning Authority decision of 18th November 2022 was made under the South Dublin County Council Development Contribution Scheme (DCS) 2021-2025 which came into effect on 1st January 2021. Article 21 states that this Scheme will remain effective until 31st December 2025 unless a new scheme is made in the interim.

5.2.2. Article 9 of the DCS relates to the ‘level of contribution’ and indicates that a rate of €96.39/sq.m will be applied to residential developments except where an exemption

or reduction applies. This rate was fixed from 1st January 2021 to 31st December 2021 and subject to indexation annually from 1st January 2022 in accordance with the Chartered Surveyors of Ireland Construction Tender Price Index. The Planning Authority website indicates a rate of €119.10/sq.m for residential development with effect from 1st January 2023.

- 5.2.3. Article 11 of the DCS sets out various circumstances where no contribution or a reduced contribution applies. Article 11(i) states that:

The first 40 square metres of an extension to a house (including garages and conversion of attic to habitable areas) shall be exempt (subsequent extensions or extensions above 40 square metres to be charged at the residential rate per square metre). This exemption will not apply to development for which retention permission is sought.

- 5.2.4. Article 11(xxv) relates to revisions or modifications to a permitted development and states that:

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 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).

- 5.2.5. Article 15 of the DCS states that:

The contributions under the Scheme shall be payable prior to commencement of development or as otherwise agreed in writing by the Council. Contributions due in respect of permission for retention will become payable immediately on issue of the final grant of permission. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, subject to the provisions of Note 1 to the table at Article 9 above.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A 1st Party appeal has been lodged by the applicants, Niamh Troy and Shane Teefy. The applicants are appealing against the development contribution of €4,963.28 being applied on the following grounds:

- It is noted that permission to extend and renovate was previously granted under PA ref. SD19B/0332 and a development contribution of €533.47 was made to South Dublin County Council.
- It is stated that some amendments were made over the course of the building work and retention permission was sought and granted under PA ref. SD22B/0429 but with a new contribution of €4,963.28 now being requested.
- It is stated that the 'assessable area' of 47.50sq.m is incorrect as the Planning Authority has charged for the entire utility and kitchen/living area without considering the original kitchen measuring 16.80sq.m and the majority of the 47.50sq.m being permitted under PA ref. SD19B/0332.
- It is claimed that the difference between the two proposals an increase of 1.40sq.m in utility room area and a decrease of 1.80sq.m in kitchen/living area.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Planning Authority confirms its decision.
- The issues raised are covered in the Planner's Report.

7.0 Assessment

7.1. Preliminary Points

7.2. The appeal relates to Condition 4 only, which imposes a development contribution in accordance with the provisions of s. 48 of the Planning and Development Act 2000 (as amended) and as per the terms of the South County Council DCS 2021-2025.

7.3. Section 48 (10)(b) of the Planning Act makes provision for an appeal to be brought to the Board where an applicant considers that the terms of the relevant DCS have not been properly applied in respect of any condition laid down by the planning authority. In that context, the Board is required to apply the scheme as adopted by the Planning Authority and not to evaluate the merits or otherwise of the Scheme itself. Furthermore, as this appeal relates to a development contribution only, the Board cannot determine the application as if it was made to it in the first instance and is confined to considering whether the terms of the Scheme have been properly applied.

7.4. Application of the Scheme

7.4.1. Condition 4 of PA ref. SD22B/0429 requires the payment of the sum of €4,963.28 to South Dublin County Council in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority. The Planning Report of 18th November 2022, the basis for the decision, sets out a Schedule of recommended conditions including Condition 4 which states the total development contribution due. The development contribution calculation is set out in tabular form within the report.

7.4.2. The table is detailed as follows:

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| Planning Reference Number | SD22B/0429 |
| Summary of permission granted & relevant notes: | Residential extension |
| Are any exemptions applicable? | No |
| If yes, please specify: | |
| Is development commercial or residential? | Residential |
| % reduction to rate, if applicable (0% if N/A) | 0 |
| Rate applicable | €104.49 |
| Area of Development (m2) | 47.50 |
| Amount of Floor area, if any, exempt (m2) | 0 |
| Total area to which development contribution applies (m2) | 47.50 |
| Total development contribution due | €4,963.28 |

- 7.4.3. The Planning Report indicates that the 'assessable area' of 47.50sq.m is based on a 9.20sq.m utility and 38.30sq.m living area. It also indicates that no exemptions for retention of habitable spaces apply. This appears to be based on Article 11(i) of the DCS but is not explicitly stated in the report. The Planning Authority's appeal submission states that the issues raised are covered in the Planning Report which infers that they are satisfied that the terms of the Scheme have been properly applied.
- 7.4.4. I have reviewed the documentation associated with the development permitted under PA ref. SD19B/0332 but I have been unable to verify the applicants claims regarding payment of the contribution. I note that the original floor area and the proposed extension were stated in the Planning Application Form as 147.10sq.m and 45.90sq.m respectively. This permission therefore authorised a total floor area of 193.00sq.m.
- 7.4.5. As noted, the subject Planning Application Form does not specify any floor area to be retained, although I have established that it is an application for retention permission. The existing floor area is stated as 193.10sq.m. The 'assessable area' as determined by the Planning Authority includes a large section of floor area within the footprint of the original house including part of a rear projection since demolished, but not clearly stated. The applicants state that this area measured 16.80sq.m and they also suggest that the difference in the two proposals equates to the net decrease in floor area.
- 7.4.6. Having inspected the site and examined the 'as built' drawings against those permitted under PA ref. SD19B/0332, I am satisfied that the former permission materially commenced and was implemented except for the alterations to the side and rear extension, front porch and external finishes owing to design decisions made during construction. I accept that such decisions can be commonplace during the construction phase and there is some merit to the applicants claims in that regard.
- 7.4.7. I do not therefore consider it appropriate to apply development contributions to the 'assessable area' as determined by the Planning Authority for three reasons. Firstly, this area has been incorrectly determined having regard to the obvious error of including part of the floor area of the original house. Secondly, the application of the subject contribution would amount to "double charging" for that the vast quantum of the 'as built' development authorised by virtue of PA ref. SD19B/0332. Finally, having regard to the development applied for, and notwithstanding the applicant's failure to

clearly document the floor area to be retained, which was unhelpful, the only relevant departure is that beyond the rear building line which I have calculated as 12.00sq.m.

- 7.4.8. Article 9 of the DCS sets out a charge of €96.39/sq.m for residential development. This has been index-linked to €119.10/sq.m for 2023. Article 11(i) provides that the house extension exemption does not apply in the case of retention. The applicable development contribution for the extension to be retained is therefore €1,429.20.

8.0 Recommendation

- 8.1. I recommend that the Planning Authority be directed to **AMEND** Condition 4 of PA ref. SD22B/0429 for the reasons and considerations set out hereunder.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the provisions of the South Dublin County Council Development Contribution Scheme 2021-2025, s. 48(10) of the Planning and Development Act 2000 (as amended) and relevant Guidelines, I considered that the terms of the Scheme have not been properly applied in respect of Condition 4 for the following reasons:

- In calculating the area subject of the retention application, the Planning Authority failed to consider the original floor area of the house prior to PA ref. SD19B/0332.
- In calculating the area subject of the retention application, the Planning Authority failed to consider the works carried out by virtue of PA ref. SD19B/0332 which would amount to “double charging”.
- In calculating the area subject of the retention application, the Planning Authority failed to consider the works, and specifically the floor area, that was actually being applied for i.e. the alterations to the extension to the rear of the house.

- 9.1.2. As per the terms of the DCS, the applicable development contribution is:

- 12sq.m extension (to be retained): $12 \times 119.10 = \underline{\underline{€1,429.20}}$
- Total: €1,429.20**

- 9.1.3. I consider that Condition 4 should be amended to reflect the terms of the Development Contribution Scheme (2021-2025) as follows:

10.0 Conditions

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| 4. | <p>The developer shall pay to the planning authority the sum of €1,429.20 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 benefiting development in the area of the planning authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.</p> <p>Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilitates benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by or on behalf of the Local Authority.</p> |
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Philip Maguire

Planning Inspector

26th April 2023