



An
Bord
Pleanála

Inspector's Report ABP-317103-23

Development	Domestic shed
Location	Coole, Monasterevin, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	22/1301
Applicants	Trevor and Moira Martin
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	First party vs. s48 contribution
Appellant	Trevor Martin
Observers	None
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site consists of the curtilage of a detached house on the outskirts of the town of Monasterevin. It has a stated area of 0.94ha.

2.0 Proposed Development

2.1. It is proposed to build a detached shed on the site with a stated floor area of 45m².

3.0 Planning Authority Decision

3.1. Decision

The council decided to grant permission subject to 8 conditions, none of which significantly amended the proposed development. Condition no. 8 required the payment of €1,395 under the contribution scheme adopted by the council.

3.2. Planning Authority Calculation

The record of the council's calculation of the levy payable under the contribution scheme states that the applicable rate is that under section 8.1.2 of the scheme which is €31 per square metre. The property already benefited from the provision of a shed under 21/855 therefore the exemption for the first 25m² has not been applied. The amount payable is therefore $45 \times 31 = €1,395$.

4.0 Planning History

Reg. Ref. 21/855 – The council granted permission November 2021 to install a wastewater treatment system on the site and retain the change of use of a garage attached to the house to habitable accommodation.

Reg. Ref. 79/152 – The submissions from the parties refer to a grant of permission for a house on the site.

5.0 Contribution scheme

5.1. **Kildare County Contribution Scheme 2023-2029** – Section 8.1 says the contribution for residential development shall be €62 per square metre. Section 8.1.2 says that the first 25 square metres of garden sheds/garages will be exempt from a contribution with the balance charged at 50% of the residential rate.

6.0 The Appeal

6.1. Grounds of Appeal

- The adopted contribution scheme sets a levy of €31 per square metre for domestic sheds disregarding the first 25m². The correct levy for the permitted shed of 45m² should therefore be €630 *sic* rather than the €1,395 imposed under condition 8 of the council's decision.
- The record of the calculation by the council says that the exemption of the first 25m² has not been applied because of the grant of permission made on the site under Reg. Ref. 21/855. However that permission did not give permission for a shed of any size or description. It authorised a change of use from a garage and store to a granny flat. Therefore the council should not have used it as a basis for not applying the exemption from the levy for the first 25m² of the shed permitted under the current permission.

6.2. Planning Authority Response

- The council consider its calculation to be correct. The original garage was permitted under 79/152 and had the benefit of the exemption at the time. Permission to retain the change of use of that garage to a granny flat was granted under 21/855. Section 9 of the applicable contribution scheme for 2015-2022 did not provide waivers or exemptions for permissions to retain development. Therefore the entire floor area of the shed permitted under the current permission 22/1301 was subject to the levy with no exemptions available.

6.3. Further responses

- The applicant was given the opportunity to respond to the council's response. He stated that the permission 79/152 was for a house with no record of any development contribution being applied to it. No exemption for contributions was applied to the permission granted under 21/855 because it was to retain a development. The basis of the council's calculation in this case is mistaken even if it is concerned that a property should not benefit from an exemption twice, and so previous exemption has been applied to this property. Also, 21/855 was decided as under the contribution scheme prior to the one the current permission was decided under, so arguably this resets any exemptions applied prior to 1st January 2023.

7.0 Assessment

- 7.1. The terms of the applicable contribution scheme in relation to domestic sheds are clearly set out in section 8.1.2. A levy of €31 for each square metre above 25 square metres is payable. The terms of the scheme do not provide for a different basis for the calculation of the levy payable on a domestic shed based on previous grants of permission on the same property. The grounds of appeal are correct in this regard. The terms of the scheme do vary the basis upon which a levy is calculated to extensions to houses in similar circumstances under section 8.1.1 of the scheme, but the current development falls to be considered under section 8.1.2 which does not contain those terms. It might be reasonably inferred that the terms of section 8.1.2 mean that a subsequent application for an extension to an authorised shed or even a subsequent shed on the site should not benefit from a second discount of 25m² from the application of the levy, but that circumstance does not arise in the current case because the previous permissions on the site were for the construction of a house and the extension of its habitable accommodation. So the first 25m² of the shed authorised in this case should be disregarded when the levy is calculated and the rate of €31 should be applied to the remaining 20m². The levy that should be payable in this case is therefore $45\text{m}^2 - 25\text{m}^2 = 20\text{m}^2 \times \text{€}31 = \text{€}620$.

8.0 Recommendation

- 8.1. I recommend that the planning authority be directed to amend condition no. 8 of its decision to the following –

The developer shall pay to the planning authority a financial contribution of €620 (six hundred and twenty euro) 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. The contribution shall be paid prior to the 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 the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 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

9.0 Reasons and Considerations

Section 8.1.2 of the Kildare County Development Contribution Scheme 2023-2029 requires the payment of a contribution in respect of domestic sheds of €31 for every square metre above their first 25 square metres. The terms of the scheme do not make the first 25 square metres of a shed liable to the contribution under section 8.1.2 because of previous grants of permission on the same site for the extensions to the habitable area of a house. So the grant of permission made under Reg. Ref. 21/855 would not justify the application of the levy to the first 25 square metres of the shed authorised in this case.

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"

Stephen J. O'Sullivan, Planning Inspector

25th June 2023