



An  
Bord  
Pleanála

## Inspector's Report ABP318062-23

### Development

Alterations to previous planning permission under PL Ref. 22/885. 1. Retain existing & original roof and reconfigure first floor layout within existing roof heights. 2. Alterations to existing floor layout and elevations to accommodate new floor configuration. 3. Retain existing single storey projections to rear dwelling and incorporate into dwelling as ancillary uses. 4. New entrances to each house and all associated site works.

### Location

203a Moorfield Park, Newbridge, Co. Kildare.

### Planning Authority

Kildare County Council.

### Planning Authority Reg. Ref.

23/60019.

### Applicant(s)

Natalia Syrenkova.

### Type of Application

Permission.

### Planning Authority Decision

Grant permission with conditions.

<b>Type of Appeal</b>	First Party v Financial Contribution condition
<b>Appellant(s)</b>	Natalia Syrenkova.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	N/A.
<b>Inspector</b>	Des Johnson.

## 1.0 Site Location and Description

- 1.1. The site is located on the south-eastern side of Moorfield Park, approximately 650m south of Newbridge Shopping Centre. The houses are two storey semi-detached and the site adjoins No 203 at the end of a row. There is open space adjoining the site to the north-east.

## 2.0 Proposed Development

The proposal is for alterations to previous planning permission under PL Ref. 22/885. (1). Retain existing & original roof and reconfigure first floor layout within existing roof heights. (2). Alterations to existing floor layout and elevations to accommodate new floor configuration. (3). Retain existing single storey projections to rear dwelling and incorporate into dwelling as ancillary uses. (4). New entrances to each house and all associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

By Order dated 24<sup>th</sup> August 2023 (PL Ref 23/60019), the Planning Authority decided to grant permission subject to 9 conditions. Condition 9 reads as follows:

*The Applicant/Developer to pay Kildare County Council the sum of **E7,068.00** being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19<sup>th</sup> December 2002 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 34 of the Development Contribution Scheme adopted by Kildare County Council on 19<sup>th</sup> December 2002.*

**Note:** Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Uisce Éireann.

**Reason:** It is considered reasonable that the Developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

Other conditions of note are:

Condition 2 – Apart from the departures authorised by this permission, the proposed development is to be carried out in full accordance with the terms and conditions of Reg. Ref: 22/885.

Condition 4 – Restricts No. 203a to be used as one single dwelling unit.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning Report states that “The Principle of alterations to a previously permitted domestic extension is considered to be acceptable having regard to the existing residential zoning on the application site”. The Report recommends 8 conditions in total, but does not include a financial contribution condition.

#### 3.2.2. Other Technical Reports

Engineer, Water Services, and Transportation reports raise no objection..

### 4.0 Planning History

**Register Reference 21/1775** – Permission granted for demolition of existing extension to side of existing house, construction of new two storey to form new end of terrace dwelling, construction of single storey projections to rear of each dwelling, and new entrances to each house and all associated site works.

The decision is dated 25<sup>th</sup> May 2022 and includes 15 conditions. Condition 15 requires a financial contribution of E3,100.00 in accordance with the Development Contribution Scheme adopted on 5<sup>th</sup> November 2015.

**Register Reference 22/885** – Permission granted for alterations to design previously granted under planning Ref. No. 21/1775. Development to be carried out in 2 phases. Phase 1 to include construction of new 2.0m high wall/fence to form separate rear open spaces to both units, removal of proposed rear extension permitted under Reference 21/1775, and reconfiguration and alterations to existing floor layouts permitted under Reference 21/1775. Phase 2 to include the development of the proposed new second unit adjoining the original dwelling.

The decision is dated 20<sup>th</sup> July 2022 and includes 15 conditions. Condition 15 requires a financial contribution of E1,850.00 in accordance with the Development Contribution Scheme adopted on 5<sup>th</sup> November 2015.

## **5.0 Policy and Context**

### **5.1. Development Plan**

Kildare County Development Plan 2023-2029 took effect on 28<sup>th</sup> January 2023..

#### Development Contribution Scheme

Kildare County Council Development Contribution Scheme 2023-2029 was adopted on 19<sup>th</sup> December 2022. It was in effect at the time of making the decision to grant permission on 25<sup>th</sup> August 2023. The Scheme was made under Section 48 of the Planning and Development Act 2000, as amended, which enables Planning Authority's to attach conditions to a planning permission granted under Section 34, requiring the payment of a financial contribution in respect of public infrastructure and facilities in the area of the Planning Authority, that is provided or intended to be provided by, or on behalf of the Local Authority.

The Scheme lists Classes of Public Infrastructure and Facilities (Section 6), and provides a basis for Determination of a Contribution (Section 7). The required contribution rate for residential development is E62 per sqm. For extensions to residential development the first 40 sqm is exempt. Above 40 sqm the rate of E62 applies.

Kildare County Council Development Contribution Scheme 2015-2022 was made under section 48 of the Planning and Development Act 2000 as amended. The scheme applied a rate of E50 sqm for residential development with the first 40 sqm exempted.

### **5.2. Natural Heritage Designations**

Not relevant.

### 5.3. EIA Screening

Not relevant.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal relates to Condition 9 only of the Planning Authority's decision under Register Reference 23/60019, and the grounds of appeal may be summarised as follows:

1. Three planning applications have been applied for at this location, and the permissions granted have three different levies attached by way of conditions. The contribution being appealed relates to a 'new dwelling unit' and should be exempt from levies under the 'Development Contribution Waiver Scheme'. This appeal arises as a waiver can only be applied for following a final grant of permission, and as the levies issued under Refs. 23/60019, 22885 and 21/1775 are not acceptable.
2. Section 10 of the Scheme refers to exemptions. Section 10.10 relates to 'Replacement Buildings' (following substantial damage caused by subsidence & flood). There was subsidence at 203, Moorefield Park; this contention is supported by a letter dated 20<sup>th</sup> January 2021 from JMG Engineering Services giving the opinion that , following an inspection, that wall movement 'is a direct result of the escape of water'. A separate letter dated 4<sup>th</sup> June 2021 from Percy & Associates refers to an insurance claim for E 25,459.93.
3. Section 10.6 of the Scheme refers to Change of Use. There is no need for upgraded infrastructure or significant demand on infrastructure.
4. Condition 9 should be removed. If it is to remain, it should be revised to confirm that the levies would be exempted under the 'Development Contribution Waiver Scheme'.

## 6.2. Planning Authority Response

Development Contributions were calculated under the Kildare County Council's Development Contribution Scheme 2023-2029, Section 8.0 (Development Contributions in respect of Residential applications applied at the rate of E62 sqm). The total floor area of 114 sqm x E62 = E7,068.

There are two live permissions associated with this development – 22/885 and 21/1775 and development contributions remain outstanding on both. These contributions were calculated based on the previous Scheme at a rate of E50 sqm, and the applicant got the benefit of the demolition area of 77 sqm reduced from the calculation on Reference 22/885.

To avoid overcharging, upon receipt of confirmation regarding commencement of development, the Planning Authority will restructure the contributions reflecting the development to be constructed.

The Development Contribution Temporary Waiver applies to all permitted residential development that commences on site between 25<sup>th</sup> April 2023 and 24<sup>th</sup> April 2024 and is completed not later than 31<sup>st</sup> December 2025. The Scheme does not apply to domestic extensions, renovations or refurbishments of existing dwellings.

## 7.0 Assessment

This is a first party appeal against a Financial Contribution condition (Condition 9 of Register Reference 23/60019). No other conditions are appealed by the first party and there are no third party appeals made under Section 37 of the Planning and Development Act 2000, as amended (the Act). Under Section 48(10) of the Act, an applicant for permission granted under Section 34, may bring an appeal where it is considered that the terms of an adopted Development Contribution Scheme may not have been properly applied.

- 7.1. The Kildare County Development Contribution Scheme 2023-2029 was adopted on 19<sup>th</sup> December 2022. The Scheme was in effect at the time of the planning authority's decision under Reference 23/60019. The Scheme was made under section 48 of the Act and provides the basis for financial contributions to be attached to planning permissions granted under section 34. Contributions may relate to

General Development Contributions (section 48 – Principal Contribution Scheme), and Special Development Contributions (section 48(2)(c)). Supplementary Development Contributions may be charged under section 49 of the Act. The condition under appeal relates to a General Development Contribution under section 48 of the Act.

7.2. I submit that the sole consideration for the Board in this appeal, is whether Condition 9 of the permission granted under Reference 23/60019 reflects the correct application of the adopted Development Contribution Scheme in effect at the time of the making of the decision. The grounds of appeal refer to levies attached to permissions under References 22/885 and 21/1775. I note that the conditions containing these levies, applied under the previous Contribution Scheme, were not appealed. This assessment relates to Condition 9 of Reference 23/60019.

7.3. The adopted Development Contribution Scheme 2023-2029. includes, in Section, 10.0 a list of categories of development which are exempt from the requirement to pay development contributions under the Scheme or which can obtain reduced contributions under the Scheme. *Replacement Buildings* are listed in section 10.10 stating that contributions will not be applied to permissions for the construction of replacement buildings on the same footprint or the same area as the original building following extensive damage by subsidence, flood or fire. Based on the information submitted, I submit that the permitted development in this case does not fall within the intent of section 10.10 of the Scheme relating to replacement buildings

There are three planning permissions relating to Nos. 203 and 203a, Moorfield Park. The permission granted under Reference 21/1775 included the construction of new two storey to form new end of terrace dwelling, and the provision of two new entrances to serve nos. 203 and the new end of terrace dwelling (203a). The permission attached, by way of condition, a financial contribution of E3,100.00 in accordance with the Development Contribution Scheme adopted on 5<sup>th</sup> November 2015. Subsequent permissions granted under 22/885 and 23/60019 were for amendments to the original ‘parent’ permission (21/1775), which included a second dwelling. The financial contribution attached to Reference 21/1775 was calculated at the rate of E50 per sqm and a floor area of 139 sqm. This permission was granted on 25<sup>th</sup> May 2022 and is extant. In these circumstances, I contend that the financial contribution required by way of Condition 9 ,of Reference 23/60019 should have



account of the financial contribution of E3,100.00 conditioned under the 'parent' permission Reference 21/1775. The application form for the current proposal indicates a gross floor area of 169 sqm. I recommend that the difference of 30 sqm between the floor area approved under Reference 21/1775 and that permitted under 23/60019 should be calculated at the rate of E62 sqm in accordance with the Development Contribution Scheme 2023-2029, giving a total financial contribution of E4960.00.

7.4. The Planning Authority states that, in order to avoid overcharging, upon receipt of confirmation regarding commencement of development, the Authority will restructure the contributions reflecting the development to be constructed. I contend that such an approach is unsatisfactory and does not meet the requirement for a planning condition to be clear, precise and enforceable. In addition, in the event of disagreement over the final amount, there would not appear to be any recourse for the first party to lodge a further appeal.

7.5. The appellant contends that a Development Contribution Temporary Waiver should apply if Condition 9 is to remain. The waiver applies to all permitted residential development that commences on site between 25<sup>th</sup> April 2023 and 24<sup>th</sup> April 2024 and is completed not later than 31<sup>st</sup> December 2025. The Scheme does not apply to domestic extensions, renovations, or refurbishments of existing dwellings. Applications for a waiver must submit an Application Form with an associated Commencement Notice, and the local authority will then assess the suitability for inclusion in the Waiver Scheme. I submit that the Waiver Scheme is separate from the Financial Contribution Scheme made under Section 48 of the Planning and Development Act 2000 as amended. I submit that it would not be appropriate for the Board to amend Condition 9 to contain reference to the separate Waiver Scheme

7.6. **Conclusion.**

I conclude that the Kildare County Development Contribution Scheme 2023-2029 was adopted and in effect at the time of the making of the decision to grant permission. The financial contribution requirement under Condition 9 should be adjusted to have account of the financial contribution requirement by way of condition 15 of permission granted under Register Reference 21/1775, and the total floor area being permitted under Register Reference 23/60019. The permitted

development does not fall within Section 10 Exemptions and Reduced Contributions of the Kildare County Development Contribution Scheme 2023-2029, which was in effect when the permission under Register Reference 23/60019 was granted.

## 8.0 Recommendation

I recommend that Condition 9 be amended to require a financial contribution of **E4960.00**.

## 9.0 Reasons and Considerations

Having regard to nature of the permitted development, the planning history relating to the site, to the provisions of the Kildare County Development Contribution Scheme 2015-2022 and to the provisions of the Kildare County Development Contribution Scheme 2023-2029, it is considered that the financial contribution requirement contained in Condition 9 of Reference 23-60019 should be amended to **E4960.00**.

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Des Johnson  
Planning Inspector

6<sup>th</sup> February 2024

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.