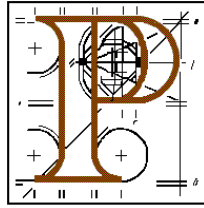


An Bord Pleanála



Inspector's Report

Board Reference: RP2120

Question: Point of detail regarding financial contribution condition no. 3 of PL06S.243797

Location: Crockshane, Redgap, Rathcoole, County Dublin

Referrer: Frank Kehoe

Planning Authority: South Dublin County Council

Planning Authority Reference: SD41A/0130 (PL06S.243797)

Date of Site Inspection: N/A

Inspector: Juliet Ryan

1.0 INTRODUCTION

- 1.1 RP2120 relates to a referral by Mr Frank Kehoe to the Board concerning a point of detail regarding a financial contribution payable under condition no. 3 of PL.06S.243797.

2.0 INSTANT CASE PL06S.243797 (Reg Ref SD14A/0130)

- 2.1 The development to which Condition No. 3 relates is the retention of a relocated dwelling and bicycle unit, revised location for as-built entrance (including wing walls, gates, works), internal access / layout, visibility splays and other works. The planning authority had decided to refuse permission for retention, and subsequent to a First Party appeal, An Bord Pleanála decided to grant permission (May 2015) subject to three conditions, of which condition No. 3 stated as follows:

3. *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.*

- 2.2 The Board is advised that the retention permission included an increase in floor area from the previously permitted 305 sq m to the constructed 324 sq m.

3.0 PLANNING HISTORY

- 3.1 The permission to which the subject referral relates was the last in a number of applications relating to the development of a dwelling on the site. The original grant of permission for a dwelling on the site dated from 2008, and had been subject to three further applications for change of house type, prior to the application for the retention of the constructed house (which, *inter alia*, had been built in a different location from that permitted).
- 3.2 The Planning History has been summarised as follows in the Inspector's Report for PL06S.243797:

SD14A/0005

Permission refused for a similar development for 3 no. reasons:

1. Additional traffic turning movements
2. Road frontage of 12metres creating a suburban type development in a rural area
3. Cut and filling is contrary to Policy H42 in terms of design

SD11A/0101

Permission granted for a change of house design already granted under SD10A/0021

SD10A/0021

Permission granted for amendments to a dwelling house granted planning permission under reference SD08A/0551, changes include:

- Increase in roof height
- Change to an L-shaped layout
- Omission of dormer windows
- Length of dwelling reduced
- Omission of solar panels

SD08A/0551

Permission granted for change of house type granted under Sd08A/0118

SD08A/0118

Permission granted for a single storey three bedroomed dwelling with a floor area of 163sq.m.

SD07A/0076

Permission refused single storey detached dwelling with a treatment system on a similar site to the subject appeal.

4.0 REFERRAL SUBMISSION

4.1 The Referrer considers that he has overpaid the required financial contribution, and is due a refund in the amount of €7,592.08. The main points of his submission may be summarised as follows:

- No agreement in respect of the financial contribution has been reached with the Planning Authority, and therefore should be determined by the Board per Condition No. 3
- The financial contribution amount of €35,151.52 was attached per Condition no. 10 of Reg Ref SD10/A/0021, which is no longer the valid permission for the dwelling (retention applications for it having been refused by the Planning Authority)
- The original contribution was calculated as 304 sq m x €115.63 = €35,151.52
- The Planning Authority has explicitly recognised PL 06S.243797 as the only valid permission
- The pertinent Scheme operative at the date of the ABP decision would result in a calculation of 324 sq m x €85.06 = €27,559.44
- A refund of €7,592.08 is owing

5.0 PLANNING AUTHORITY RESPONSE

None Received

6.0 REFERRER'S FURTHER SUBMISSION

- 6.1 Consequent to a S.126 notice by the Board, the Referrer made a brief submission noting that he understood from the Planning Authority that the only obstacle to the release of the Cash Bond by the Planning Authority was the Board's decision in the instant case. Accordingly, he requested that the matter be expedited.

7.0 ASSESSMENT

- 7.1 Section 48 of the Planning and Development Act 2000, as amended, allows a planning authority when granting permission to include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority. Section 48(2)(a) provides that the basis for the calculation of such contributions shall be set out in a Development Contribution Scheme. Section 48(10) provides that an applicant can only appeal a condition requiring a development contribution in accordance with a Development Contribution Scheme where the applicant considers that the Scheme has not been properly applied. Therefore, the Board's sole remit is not to adjudicate on the merits of the Scheme but to consider whether it has been properly applied. In addition, as this appeal pertains to a point of detail, the Board will not determine the application as if it had been made to it in the first instance but will only determine the matters under appeal and will issue appropriate directions to the Planning Authority when it has determined the appeal.
- 7.2 The instant case is complicated by the fact that an original payment, pursuant to Condition No. 10 of SD10A/0021 was made. Subsequent to the commencement of that development, various modifications to the design of the dwelling were made, which modifications were ultimately permitted under retention permission PL 06S.243797, decided on May 7th 2015.
- 7.3 The Board is referred to the precise wording of Condition No.10 of SD10A/0021 (appended), which required the payment of €35,151.52 prior to the commencement of development. This payment was made, and construction commenced. Subsequently, various modifications were made to the permitted development, including, *inter alia*, a revised location, revised entrance, and additional floor space. These modifications were ultimately permitted by PL 06S.243797. Notably, however, these were revisions and amendments to the permission that had commenced under SD10A/0021. Arising from this, whilst I am satisfied that PL06S.243797 is the valid permission for the purposes of calculating any additional levies associated with the various revisions and

modifications that were granted retention permission, I would consider the levied amount per Condition No. 10 of SD10A/0021 is the pertinent S.48 development contribution that was required to be paid for the development that was originally **implemented**. Notably, this levy was required to be paid in advance of commencement of development. Any changes thereafter are a separate matter. Further, it is noted that Condition No. 10 of SD10A/0021 is not the subject of the instant referral, and the Board has no remit with regard to it.

- 7.4 The crux of the Referrer's case is that the pertinent Development Contribution Scheme has changed since the payment under Condition No. 10 of SD10A/0021, and that the levies due under PL 06S.243797 (i.e. under the South Dublin County Council Development Contribution Scheme 2013-2015) are considerably less than the amount originally paid under SD10A/0021, notwithstanding that the floorspace of the dwelling has increased by 20 sq m. Whilst this may be the case, it would appear to me that the Development Contribution Scheme was correctly applied in the parent permission in 2010, and that changes to the amounts to be levied in the interim are academic, particularly given Condition No. 10's requirement that contributions be paid in advance of commencement of development.
- 7.5 In its grant of permission for PL 06S.243797 the Board attached a standard S.48 condition. It would appear that no levies were required on foot of this by South Dublin County Council, which seems to be reasonable, given that levies payable under the current Scheme would be less than that under the Scheme that was current in 2010. It remains a fact, however, that the 2010 permission is the permission that had originally been implemented, with modifications made thereafter having subsequently been granted retention permission.
- 7.6 The Board is referred to the contents of South Dublin County Council Development Contribution Scheme 2013-2015 (appended). It makes no provision for refunds in cases such as the instant case. Specifically, Subsection 10 (xxv) specifically refers to revisions / modifications and that contributions are payable **at commencement**. In this regard, I would reiterate that the development was commenced under SD10A/0021, and subsequently modified and retention permitted under PL 06S.243797.
- 7.7 Arising from the above, I can see no evidence of the misapplication of the Scheme that was current at the time of the retention permission for revisions / modifications (PL06S.243797).

8.0 CONCLUSION

Having regard to the issues raised in relation to this point of detail, it is considered that the South Dublin Development Contribution Scheme 2013 – 2015 has been correctly applied in the instant case. No additional levies have been requested by the Planning Authority per Condition No. 3 of PL06S.243797, which appears reasonable given that a previous payment per Condition no. 10 of the parent permission (SD10A/0021) had been made. There does not appear to have been any misapplication of the Development Contribution Scheme. In these circumstances, any issues regarding monies that are perceived to be due are therefore beyond the remit of Board.

RECOMMENDATION

Accordingly, I recommend an Order in the following terms:

WHEREAS by order dated the 7th day of May, 2012 An Bord Pleanála, under appeal reference number PL06S.243797, granted subject to conditions a retention permission to Frank Kehoe care of RPS West Pier Business Camp, Dun Laoghaire, County Dublin for various modifications to development permitted under SD08A/0118 and as amended by planning register reference numbers SD08A/0551, SD10A/0021 and SD11A/0101; and for the revised location for the as built entrance (including visibility splays), internal access/layout and all associated works at Crockshane, Redgap, Rathcoole, County Dublin, as amended by further plans and particulars received by An Bord Pleanála on 16th day of February 2015:

AND WHEREAS condition number 3 attached to the said permission required the developer to 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 was to be paid prior to commencement of development or in such phased payments as the planning authority may have facilitated and to be subject to any applicable indexation provisions of the Scheme at the time of payment and the condition required that details of the application of the terms of the Scheme were to be agreed between the planning authority and the developer or, in default of agreement, the matter to be determined by An Bord Pleanála:

AND WHEREAS the developer had previously paid a section 48 development contribution prior to the commencement of development of SD SD10A/0021 and no additional levies were therefore sought by the Planning Authority under Condition No. 3 of PL06S.243797:

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, and based on the Reasons and Considerations set out below, hereby determines that the planning authority correctly applied the terms and conditions of the Development Contribution Scheme 2013-2015, which makes no provisions for refunds and requires contributions to be paid at the commencement of development. Any other issues perceived to arise are beyond the remit of the Board.

REASONS AND CONSIDERATIONS

Having regard to:

- a) section 48 of the Planning and Development Act 2000 (as amended),
- b) the South Dublin County Council Development Contribution Scheme 2013-2015, which requires payment at the commencement of development, based on the permission under implementation
- c) An Bord Pleanála appeal reference number PL06S.243797 (planning authority register reference number SD14A/0130), including condition number 3 of that grant of permission, which permission was granted on the 7th day of May 2015 and
- d) the submissions on file, and the planning history of the site

the Board is satisfied that the terms of the Development Contribution Scheme have been correctly applied by the planning authority.

Juliet Ryan
Senior Planning Inspector
8 September 2016