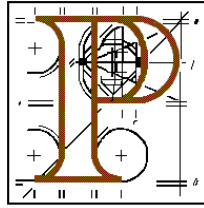


An Bord Pleanála



Inspector's Report

Board Reference : RP 04.RP2125

Details of Reference : Point of detail regarding condition 10 attached to PL 04.243752

Location : Garranefeen, Harbour View, Kilbrittan, Co. Cork.

Referred By : Brendan Ahern.

Owner/Occupier : Brendan Ahern

Planning Authority : Cork County Council

Date of Site Inspection : None

Inspector : Michael Dillon

1.0 INTRODUCTION

This is a referral under Section 34(5) of the Planning and Development Act, 2000, requesting a determination on the appropriate implementation of points of detail relating to condition 10 attached to permission ref. PL 04.243752.

2.0 SITE LOCATION AND DESCRIPTION

The site is located approximately 3km south of the village of Kilbrittan, on the shores of Courtmacsherry Bay in south Co. Cork. A full site description is contained within the attached file ref. PL 04.243752.

3.0 PLANNING PERMISSION

Permission was granted on appeal on 29th January 2015, under reference number PL 04.243752, for demolition of ruin and erection of a dwellinghouse, new entrance/driveway and associated site works, subject to 10 no. conditions.

The condition the subject of this referral is condition 10, which states-

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. 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. 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 the Board to determine the proper application of the terms of the Scheme.

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.*

4.0 THE REFERRAL

4.1 The submission by RKA Consulting Engineers, agent on behalf of the referrer, Brendan Ahern, received by the Board on 22nd January 2016, can be summarised in bullet point format as follows-

- Condition 10 required the amount of development contribution to be agreed between the developer and the planning authority.

- The developer cannot reach agreement with the planning authority in relation to the amount of contribution.
- The Council has required a development contribution for 203sq.m, with an allowance of 40sq.m – resulting in a contribution area of 163sq.m. Based on a rate of €24.49 per sq.m, the amount sought is €3,991.87.
- There is an existing ruin on the site – the area of which is 156sq.m. This should be deducted from the floor area calculable for development contribution i.e. 203sq.m minus 156sq.m = 47sq.m. At the rate of €24.49 per sq.m, the amount should be €1,151.03.
- The Department of Environment, Community and Local Government document “Development Contributions – Guidelines for Planning Authorities (January 2013)”, states in section 2 that Planning Authorities have “provision to charge only net additional development in cases of redevelopment projects (e.g. a redevelopment totalling 200m₂ of which 150m₂ is replacing existing development, contribution should only be levied on the additional 50m₂)”. The Guidelines state that “planning authorities are required to include” this incentive in their contribution schemes.
- The planning authority considered that only floor area of habitable dwellings to be demolished (where the services are still available) could be deducted in the computation of the amount of contribution payable. The planning authority has not been able to indicate where this is stated within the Development Contribution Scheme document.
- The new well and effluent treatment plant will be constructed at the cost of the developer.
- The Director of Services Planning, within Cork County Council, did not consider that the area of the ruin was applicable, as the Guidelines mention “redevelopment projects”.
- The referrer believes that this development is a redevelopment, and complies with the requirements of the Guidelines. The new development retains the character and shape of the existing development on the site. The new house will be clad in stone using stone from the ruin.
- The new development is for a dwellinghouse. The ruin on the site was last used as habitable accommodation (an hotel), and can be interpreted as a house/dwelling per the definition of “house” in planning legislation.
- The existing development is derelict but is substantially intact to roof level, and meets the criteria set out in paragraph 4.8 of the County Development Plan 2014, “Replacement Rural Dwellings and Refurbishment of Derelict Dwellings in the Countryside”.
- The Board should reduce the amount of contribution to €1,151.03.

4.2 The reference is accompanied by copies of the following-

- Correspondence between the referrer and Cork County Council.
- Colour photographs of the ruined building on the site.
- Drawings of ruined building on the site.

5.0 PLANNING AUTHORITY SUBMISSION

There does not appear to be any submission in direct response to the referrer's submission on the file. Cork County Council wrote to the Board on 10th February 2016, including copies of correspondence between the referrer and the Council. Also included is a copy of the Planner's Report (for 04899/14) dated 21st July 2014. Condition 9 required payment of a development contribution of €3,991.87.

6.0 ASSESSMENT

6.1 On 23rd July 2014, Cork County Council issued a Notification of decision to grant planning permission for a house on this site – ref. 14/04899. Condition 9 of this Notification required the developer to pay a development contribution of €3,991.87. This decision was the subject of a 3rd party appeal to the Board (ref. PL 04.243752). The 1st party did not appeal any of the conditions attached to the decision. The Board subsequently confirmed the grant of permission, subject to revised conditions. In particular, condition 10, requiring the payment of a development contribution, did not specify any amount. In default of agreement in relation to the amount to be paid, the matter was to be referred to the Board – which is what has occurred.

6.2 Information on file ref. 04.243752 indicates that the hotel on this site burned down in 1973, and the building has remained a ruin since that time. It would consider that the passage of time has rendered the hotel use abandoned in fact, where there was no evinced intention of resuming it at any particular time. It was stated in *Cork County Council v Ardferf Quarries Product Ltd.* (1982), that an authorised use may be lost or abandoned by a non-user over a period of time so that the resumption of the original use would itself involve a material change. As in the case of *Westmeath County Council v Quirke & Sons* (1996), the reasonable man looking at this ruin would have concluded that the use had been abandoned. The building on site is largely roofless, and cannot be regarded as a residential structure in any form.

6.3 The referrer is not disputing any breakdown of the amount of the development contribution – rather arguing that allowance has not been made for a ruined hotel structure on the site. The response of Cork County Council does not give any indication as to the breakdown of the figure of €3,991.87 which it is seeking from the applicant. There does not appear to be any dispute in relation to the area of the new house

(203sq.m). From perusal of the Development Contribution Scheme for Cork County Council, it is clear that the rate of €24.49 includes roads and amenity only, and does not include water and sewerage – in this instance water and sewerage is being supplied by the developer. The Scheme allows for a reduced contribution – in that the first 40sq.m of residential development is not charged. This was taken into consideration in the calculation of the amount of €3,991.87. The Scheme does not provide for any other reduced level which would apply in relation to the proposed development – in other words, no mention is made of a reduced contribution where it is argued that the proposed development is a replacement/redevelopment.

6.4 The referrer argues that house and hotel are both residential uses. Whilst this is true, planning permission would be required for change-of-use from one to the other, and certainly different conditions would attach to planning permissions for the two different types of residential accommodation. Section 2 of the Planning and Development Act states “house” *means a building of part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied...* There is no reference in this definition to use as an hotel. The ruin on the site is the remains of part of an hotel and not a dwelling. House and hotel uses cannot be conflated – both just happen to be residential in nature. Hostels, hospitals, boarding schools are similarly either entirely or partly residential in nature.

6.5 The referrer contends that Cork County Council has not had regard to the Department of Environment, Community and Local Government document – “Development Contributions – Guidelines for Planning Authorities (January 2013)”. These Guidelines are issued under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and the Board are required to have regard to the Guidelines in performance of their functions under the Planning Acts. Section 2 states- “Planning authorities **are required** to include the following in their development contribution schemes.” Amongst the recommendations for reduced rates and waivers, the referrer draws attention to the following bullet point-

- Provision to charge only net additional development in cases of redevelopment projects (e.g. a redevelopment totalling 200m₂ of which 150m₂ is replacing existing development, contribution should only be levied on the additional 50m₂);

I would not consider that this bullet point would apply to the case under referral, even if it was included within the Development Contribution Scheme for Cork County Council, as I do not consider the ruin on site to constitute development, as the use has be abandoned and there is now a nil use. The ruin on site cannot be considered to be “existing

development”. The word “development” in this context implies a use of some sort. The structure on site is a ruin with a nil use.

- 6.6 The development contribution amount required by Cork County Council (€3,991.87), as provided for by condition 10 of permission ref. PL 04.243752, is reasonable, and there is no reason for the Board to reduce the amount of contribution required on foot of this permission.

7.0 RECOMMENDATION

I recommend an Order in the following terms:

WHEREAS by order dated the 29th day of January, 2015, An Bord Pleanála, under appeal reference number PL 04.243752, granted, subject to conditions, a permission to Brendan Ahern, for development comprising the demolition of an existing ruin and construction of a new four-bedroom, single-storey dwellinghouse, new site entrance to the west of the site, new driveway, new wastewater treatment plant and associated landscaping and site works at Garraneheen, Harbour View, Kilbrittan, Co. Cork:

AND WHEREAS condition number 10 attached to the said permission required the developer to pay a development contribution to the planning authority – amount unspecified:

AND WHEREAS the developer and the planning authority failed to agree on the amount of the contribution, and the matter was referred by the developer to An Bord Pleanála on the 22nd day of January 2016, for determination:

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 amount of development contribution, as provided for by Condition 10 of permission ref. PL 04.243752, is €3,991.87.

REASONS AND CONSIDERATIONS

The Board considered that the hotel use on this site has been abandoned. The structure on the site is a ruin, with a nil use. The structure on site cannot be equated with use as a “house”. The proposed development does not constitute “redevelopment”, as there is not considered to be “existing development” on the site, and therefore, reference to the Section 2 of the document “Development Contributions – Guidelines for Planning Authorities (January 2013)” issued by the Department of Environment, Community and Local Government, is not a relevant consideration. The Development Contribution Scheme of Cork County Council has been properly applied in the instance of this planning permission.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

**Michael Dillon,
Inspectorate**

20th April 2016.