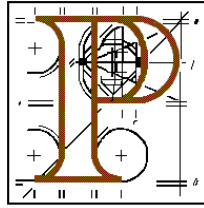


## An Bord Pleanála



## Inspector's Report

**Board Reference:** RP2126

**Question:** Point of detail regarding financial contribution condition no. 9 of PL09.240157

**Location:** 563 Chapel Lane, Newbridge, Co. Kildare.

**Referrer:** Luke Wall

**Planning Authority:** Kildare County Council

**Planning Authority Reference:** UK11/1107

**Date of Site Inspection:** 8<sup>th</sup> June 2016

**Inspector:** Sarah Moran

## **1.0 INTRODUCTION**

- 1.1 RP2126 relates to a referral by Luke Wall to the Board concerning a point of detail regarding a financial contribution payable under condition no. 9 of PL.09.240157.

## **2.0 BACKGROUND TO CURRENT CASE**

- 2.1 The site is located within the built up area of Newbridge, Co. Kildare, north of the town centre. It is on Chapel Lane, off the R445. The site is close to St. Conleth's Church and the Patrician Brothers Primary School. Chapel Lane serves as the access from the R445 to Liffey Drive, a large housing estate to the south of the subject site. The site is occupied by an existing dormer bungalow/1.5 storey house fronting onto Chapel Lane. There is another residential property to the rear, which has a separate vehicular access to Chapel Lane. I note that the original house at the site has been demolished and that the permitted residential development has been constructed.

- 2.2 There are several previous planning permissions relating to the subject site:

09/0414

Lucas De Bhal granted permission on 28<sup>th</sup> September 2009 for bungalow, connection to foul sewer, access road and all associated site works.

09/1082

Luke Wall refused permission on 27<sup>th</sup> January 2010 for demolition of existing bungalow and the construction of a replacement dormer bungalow with one and a half storey element and all associated site works.

10/1189

Luke Wall refused permission on 26<sup>th</sup> January 2011 for demolition of existing bungalow and construction of replacement dormer bungalow with one and a half storey element and all associated site works.

11/487

Luke Wall granted retention permission on 15<sup>th</sup> September 2011 for existing front boundary wall; temporary retention of existing chalet and tarmac area. The PA also granted permission for demolition of existing bungalow and for a replacement dormer bungalow and all associated site works.

## 2.3 Subject Case 11/1107 PL09.240157

- 2.3.1 Permission sought by Luke Wall for demolition of existing house and change of house type from that previously approved under 11/487, to replace the existing bungalow. The PA refused permission on 18<sup>th</sup> January 2012 for one reason relating to design, scale, visual impact and location on a restricted site which would be visually incongruous and out of character with the existing pattern of development in the vicinity. The applicant appealed the decision and the Board granted permission for the development on 27<sup>th</sup> August 2012, subject to 9 no. conditions. Conditions nos. 2 and 3 required amendments to the external finishes and garden layout of the scheme. Condition no. 9 provided a standard, unspecified section 48 development contribution condition, i.e.:

*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.*

## 3.0 REFERRAL SUBMISSION

- 3.1 The main points made may be summarised as follows:
- It is submitted that the PA erred when calculating the contribution.
  - The Development Contribution Scheme changed the day before the subject permission was granted. The application was granted on 9<sup>th</sup> September 2011 and the contribution scheme changed on 8<sup>th</sup> September 2011. The permission was delayed due to a request for further information by Kildare County Council.
  - If the Development Contribution Scheme had been in place when the referrer commenced, he would just have applied for an extension to the front, side and rear. In such an instance, contributions

would have been calculated in accordance with Paragraph 11 of the scheme.

- The original bungalow on the site had to be replaced due to its destruction as a result of a major flood. The reconstruction also gave the applicant the opportunity to construct a BER A rated dwelling and contribute to energy saving in Co. Kildare.
- The PA treated the application as a new build and not a replacement dwelling. Previous application reg. ref. 11/487 specifically mentioned demolition of existing house and construction of a replacement dwelling. The original dwelling had connections to all existing services including foul and surface water.
- The subject decision relates to modest amendments to the approved house.
- The Development Contribution Scheme allows that contributions will not be applied to permissions for the construction of replacement buildings on the same footprint or in the same area as the original building following extensive accidental damage in the instance of subsidence, fire and flood, ref. paragraph 18 of the Scheme. The Scheme is silent as regards the imposition of any development contribution for replacement dwellings.
- It is very unfair and unlucky that the Development Contribution Scheme was adopted just when the subject permission was approved. The goal posts moved and the referrer had no knowledge of this change. The application was delayed by a further information request by Kildare County Council.

#### **4.0 PLANNING AUTHORITY RESPONSE**

4.1 The PA response makes the following main points:

- In accordance with the terms of the Kildare County Council Development Contribution Scheme 2011-2018, levies are set at €20,000 based on the floor area of the subject development at 265.2 sq.m.
- The Scheme was adopted on 7<sup>th</sup> September 2011, with paragraph 2 of same confirming that it will apply to all decisions made after the date of adoption of the scheme. The Board decision PL09.240157 on 27<sup>th</sup> August 2012 saw charges calculated based on the 2011 scheme (details provided).
- The subject planning permission 11/1107 PL09.240157 supersedes all other permissions granted at this site and development contributions are collectable under this reference.
- Details of the site's planning history are provided, including levies imposed on the development granted under 11/487. Condition no. 22 of 11/487 imposed levies of €18,000, based on a floor area of 188 sq.m., in accordance with the terms of the 2011 Development Contribution Scheme. The floor area to be demolished is 111 sq.m.

- Paragraph 18 of the Development Contribution Scheme 2011-2018 provides for an exemption in the case of replacement buildings on the same footprint or the same area of the original building following extensive accidental damage in the instance of subsidence, fire and flood. In such cases, development contributions are to be calculated in accordance with paragraph 11 (residential extensions). Technical reports on file 11/1107 indicate that the applicant was living in a chalet at the rear of the site. There is no documentary evidence to indicate that the house to be demolished was in use nor uninhabitable as a result of a major flood, as suggested by the referrer. No reason was given as to why the house was to be demolished. The PA contends that the subject development is not a replacement dwelling or a residential extension but a new residential development, based on the available details submitted as part of the planning process. This is the first instance whereby the referrer claims that the original house was flood damaged. He therefore does not qualify for any exemption under paragraph 18 of the Development Contribution Scheme.
- The PA records indicate that there is a balance of €20,000 remains outstanding in full. The referrer is advised to arrange payment of same by return. A copy of an invoice for €20,000 issued to the referrer by Kildare County Council on 1<sup>st</sup> October 2015 is submitted. The PA issued further correspondence to the referrer on 4<sup>th</sup> and 18<sup>th</sup> February and 2<sup>nd</sup> March 2016, requiring the outstanding amount.
- The PA believes that the principle of contributions was correctly applied in accordance with the terms of the Development Contribution Scheme 2011-2018, as adopted on 7<sup>th</sup> September 2011.

## **5.0 REFERRER'S RESPONSE TO PLANNING AUTHORITY COMMENT**

### **5.1 The following points are noted:**

- The referrer submits that the subject development is a replacement dwelling and that therefore paragraph 18 of the Kildare County Council Development Contributions Scheme applies.
- The referrer was not required to state that a replacement dwelling was sought under the original planning application, reg. ref. 11/487, which was lodged in May 2011, under a previous Development Contributions Scheme. He became aware that replacement dwellings could avail of this exemption after 11/487 was granted after the 2011 Development Contribution Scheme came into operation.
- The referrer then sought modifications to the 11/487 permission. He would have lodged an application to extend and refurbish the existing single storey dwelling if he could have, however permission was sought for a replacement dwelling as the original had been damaged. He expected that he could avail of the exemption due to the state of the original dwelling.

- The referrer made an insurance claim following significant water damage to the property after it was flooded due to a serious leak. He submits a copy of a letter from ProAdjust Insurance Claim Consultants, dated 4<sup>th</sup> April 2013, in support of this statement. The submitted document is addressed to Lucas de Bhal and details a claim on an incident 'escape of liquids' on 3<sup>rd</sup> March 2013. There is also a subsequent letter by the same company dated 16<sup>th</sup> May 2016, which summarises the damage to the property.

## **6.0 ASSESSMENT**

6.1 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.

6.2 I intend to assess the relevant issues as follows:

- Calculation of development contributions under the Kildare County Council Development Contribution Scheme 2011-2018, as imposed by the PA.
- Assessment of referrer's case.
- Conclusion

### **6.2 Calculation of Development Contributions by the PA**

6.2.1 The subject development was permitted by the Board under PL09.240157 on 27<sup>th</sup> August 2012. Condition no. 9 of the permission required development contributions in accordance with the Kildare County Council Development Contribution Scheme 2011-2018, adopted on the 7<sup>th</sup> September 2011. The permitted development involves the demolition of the existing house at the site and the construction of a new dwelling with a total floor area of 265.2 sq.m. The PA imposed the standard development contribution for residential development, as required by paragraph 11 of the Scheme, calculated as follows:

Residential Development > 220 sq.m.	D.C. Scheme Requirement € / sq.m.
Roads	5,800.00
Water	4,200.00
Waste Water	3,600.00
Surface Water	1,400.00
Recreation & Amenity	4,200.00
Community	800.00
<b>Total</b>	<b>€20,000.00</b>

6.2.2 I note from the available documentation on file the following sequence of events and correspondence between the referrer and the PA:

- The Kildare County Council Development Contribution Scheme 2011-2018 was adopted on 7<sup>th</sup> September 2011. The new Kildare County Council Development Contributions Scheme 2015-2022 was subsequently adopted on 5<sup>th</sup> November 2015, however it is not relevant to the subject case.
- Under 11/487, Luke Wall was granted permission for retention of front boundary wall, temporary retention of chalet and tarmac area. Permission was also granted for demolition of the existing bungalow and for a replacement dormer bungalow and all associated site works. The PA issued a notification of a decision to grant permission on 15<sup>th</sup> September 2011.
- The Board granted permission for a revised development at the site under 11/1107 PL09.240157 on 27<sup>th</sup> August 2012.
- Kildare County Council issued an invoice on 1<sup>st</sup> October 2015 for total development contributions of €20,000 in respect of the permission granted under 11/1107.
- Kildare County Council issued correspondence to Luke Wall on 16<sup>th</sup> October 2012, 9<sup>th</sup> November 2015, 4<sup>th</sup> February 2016 and 18<sup>th</sup> February 2016, seeking the outstanding balance of €20,000 in respect of condition no. 9 of 11/1107 PL09.240157. The PA issued a letter providing further clarification on 2<sup>nd</sup> March 2016.

### 6.3 Assessment of Referrer's Case

6.3.1 The referrer submits that the relevant Development Contribution Scheme was incorrectly applied as Kildare County Council did not apply a relevant exemption. The exemption in question is stated in paragraph 18(e) of the Scheme as follows:

*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 accidental damage in the instance of subsidence, fire and flood. In the case the floor area of such a replacement building exceeding the floor area of the original building, development contributions, calculated in accordance with paragraph 11 (Residential Extension), shall be payable. No exemption will be applied.*

Paragraph 11 'Extensions – Residential' states:

*Contributions will be applied to extensions by determining the floor area of the extension, less 40 sq.m. and applying the relevant rate per square meter thereafter as follows: gross floor area 200 sq.m. – 40 sq.m. (exempt) = 160 sq.m. net floor area @ €120.00 per sq.m. ... This exemption is cumulative and will only be granted once.*

The referrer also submits that this exemption did not apply under the previous Kildare County Council Development Contribution Scheme, which was in place when the original application 11/487 was lodged.

- 6.3.2 The referrer states that the original house at the site was extensively damaged by a flood in March 2013. He submits correspondence from ProAdjust Insurance Claim Consultants, which details the relevant insurance claim, in support of this statement. The claim refers to 'escape of liquids' at the house on 3<sup>rd</sup> March 2013. A statement on file by ProAdjust, dated 16<sup>th</sup> May 2016, provides the following outline of events at the site:

*"This loss refers to a leak from mains pipe feeding tank in the attic space at the insured risk which has resulted in extensive damage to the property. The ceiling in the living room (directly below where the water tank is located) has sustained the most extensive damage and had collapsed to the floor. The ceiling fell onto the furniture and the wall paper was peeling off the wall. Water damage to ceilings/walls/floors/kitchen/decoration and contents throughout the entire property as a result. The plumber found that over the weekend the pipe had pulled away from the fitting allowing the outflow of water."*

If the exemption provided by paragraph 18(e) is applied, a revised development contribution for the permitted development may be calculated as follows, based on the figures provided in paragraph 11 of the Scheme. I note that the stated total floor area of the original bungalow at the site is 111 sq.m. (as per the application form of reg. ref. 10/1189). The chargeable floor area is therefore 265.2 sq.m. – 111 sq.m. = 154.2 sq.m. Paragraph 18(e) states that no exemption will be applied, therefore the first 40 sq.m. is not exempt.

Floor Area > 80.1 sq.m.	D.C. Scheme Requirement € / sq.m.	Charge €
Roads	34.8	5,366.16
Water	25.20	3,885.84
Waste Water	21.60	3,330.72
Surface Water	8.40	1,295.28
Recreation & Amenity	25.20	3,885.84
Community	4.80	740.16



<b>Total</b>	<b>€120.00</b>	<b>€18,504</b>
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6.3.3 The PA states that the subject permission supersedes the previous permission relating to this site as granted under reg. ref. 11/487, therefore conditions imposed under that condition are no longer relevant. I agree with this point. I note the PA statement that the issue of flooding did not arise in the course of the assessment of the subject case 11/1107 PL09.240157, I also note the documentation submitted by the referrer in support of his statement of flood damage. On the basis of the documentation submitted, I accept that the property was subject to “*extensive accidental damage in the instance of subsidence, fire and flood*” in March 2013. However, the relevant permission 11/1107 PL09.240157 was granted by the Board on 27<sup>th</sup> August 2012, prior to the above incident taking place. The exemption provided in paragraph 18(e) of the Development Contribution Scheme therefore did not apply when the permission was granted. I conclude on this basis that the relevant Development Contribution Scheme was correctly applied and that the outstanding development contribution of €20,000.00 is the correct amount.

## **7.0 CONCLUSION**

7.1 Having regard to the issues raised in relation to this point of detail, it is considered that the Kildare County Council Development Contribution Scheme 2011-2018 was correctly applied in this instance. The exemption provided in paragraph 18(e) did not apply when the relevant permission was granted by the Board on 27<sup>th</sup> August 2012, as the accidental flood damage did not occur at the site until 3<sup>rd</sup> March 2013. I therefore conclude that the PA has correctly applied the Development Contribution Scheme with regard to the existing property at the site when the subject permission was granted. It is recommended that the Board determine that Kildare County Council correctly applied Condition No. 9 of PL09.240157 and that the amount payable by the referrer should remain at €20,000.00.

## RECOMMENDATION

Accordingly, I recommend an Order in the following terms:

**WHEREAS** by order dated the 27<sup>th</sup> day of August, 2012 An Bord Pleanála, under appeal reference number PL09.240157, granted subject to conditions a permission to Luke Wall care of MD Gilligan Architect of Belgrave Building, Unit W4-D1, Ladytown Business Park, Naas, County Kildare for development consisting of change of house type, previously approved under planning register reference number 11/487. The new house type will replace the existing bungalow and will consist of a four bedroom, storey and a half/dormer dwellinghouse, landscaping, boundary treatments and all associated site development works at 563 Chapel Lane, Newbridge, County Kildare:

**AND WHEREAS** condition number 9 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 and the planning authority failed to agree on the said details of the application of the terms of the Scheme in compliance with the terms of the said condition and the matter was referred by the developer to An Bord Pleanála on the 11<sup>th</sup> day of March, 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 planning authority correctly applied the terms and conditions of the Development Contribution Scheme 2011-2018 and that the outstanding contribution required to be paid in respect of An Bord Pleanála appeal reference number PL09.240157 should be €20,000.00.

## REASONS AND CONSIDERATIONS

Having regard to:

- a) section 48 of the Planning and Development Act 2000 (as amended),
- b) the Kildare County Council Development Contribution Scheme 2011-2018 and the Exemptions and Reductions set out therein and, in particular, to the provisions under paragraph 11 relating to residential development and under paragraph 18(e) relating to exemptions for flood damaged property,
- c) An Bord Pleanála appeal reference number PL09.240157 (planning authority register reference number 11/1107), including condition number 9 of that grant of permission, which permission was granted on the 27<sup>th</sup> day of August 2012 and
- d) the submissions on file, including the available information regarding the accidental flood damage that occurred at the site on 3<sup>rd</sup> March 2013, subsequent to the above permission;

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

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**Sarah Moran**  
**Senior Planning Inspector**  
**14<sup>th</sup> June 2016**