



An
Bord
Pleanála

Inspector's Report RP06F.RP2140

Details of Referral	Point of Detail regarding Condition No.13 of PL06F.244126
Location	The Bower House, The Bower, Fancourt, Balbriggan, Co. Dublin.
Planning Authority	Fingal County Council.
Referrer	Ballywholan Ireland Limited.
Type of Referral	First Party regarding Condition No. 13 (Point of Detail).
Observer(s)	None.
Date of Site Inspection	None
Inspector	Patricia Calleary.

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1.0 Introduction

- 1.1. **RP06F.RP2140** is a referral which was received by the Board from Ballywholan Ireland Limited. It concerns a point of detail in dispute between the referrer / developer and the planning authority regarding Condition no. 13 attached to a grant permission under Board order ref. no: PL06F.244126.
- 1.2. Condition No.13 of PL06F.244126 requires the payment of a special contribution under Section 48(2)(c) and the referrer is seeking a determination from the Board on the monetary amount required, if any, to comply with the condition as no agreement was reached with the Planning Authority.

2.0 Background to Referral

- 2.1. Under PL06F.244126, An Bord Pleanála granted permission subject to 14 conditions for development for the construction of 4 no. two-storey semi-detached dwellinghouses and the provision of eight car parking spaces off existing mews lane at The Bower House, The Bower, Fancourt, Balbriggan, County Dublin.
 - 2.1.1. Condition No.13, which is the subject matter of this referral, required the developer to pay a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the provision of a footpath. The footpath was to be provided from Bower Lane to Fancourt Heights junction, external to the site.

3.0 The Referral

- 3.1. **Referrer's Case**
 - 3.1.1. The referrer is seeking a determination on the amount payable under Condition No.13, if any, as no agreement has been reached with Fingal County Council in relation to the condition. The referrer notes that Fingal County Council have stated that they do not own the area of land over which the developer was required to make a financial contribution towards the footpath and therefore have been unable to determine the contribution required under Condition No.13.

3.1.2. The referral was accompanied by a copy of a letter from Fingal County Council to the referrer / Brendan Bleeks (of Ballywholan Ireland Ltd) with a copy of the relevant folio and map attached. A copy of email correspondence dated 25th October 2016 and an accompanying letter which was sent by the developer to Fingal County Council seeking to advance the matter were also attached. In that correspondence, reference is made to the inspectors report on the assessment of the appeal PL06F.244126 wherein **the referrer states** that the report referred to Fingal County Council's Transportation section requiring the provision of a footpath over third party lands which were represented to be lands in the ownership / control of the Council and that the Council were willing to facilitate the provision of the footpath over its lands. Reference is also made to the record in the inspectors report of the applicant's willingness to the making of a financial contribution to the cost of the provision of the footpath over third party lands. It is of relevance to clarify that based on my review of the inspectors report under PL06F.244126, it is clear the inspector reference around the footpath is a recount on the applicant's report of verbal discussions which they had with the Council's Transportation Planning Section.

3.2. **Planning Authority's response**

3.2.1. A summary of the **Planning Authority's** response to the referral is set out under as follows:

- Based on information provided, it appears that lands on which the footpath is to be constructed are not in the ownership of Fingal County Council but are in private ownership of Scallon Construction Ltd.;
- Correspondence from the developer to the Development contribution section of Fingal County Council raises the possibility that the amount of the contribution could be nil;
- Fingal County Council decided to refuse permission for the development under F14A/0068 on traffic safety grounds. An Bord Pleanála granted permission on appeal under PL06F.244126 and part of the consideration was that the provision of the footpath would be a means by which the proposal would not constitute a traffic hazard;

- From a review of the information received by the Planning and Strategic Infrastructure department, the department highlights that there is no evidence that the developer has attempted to purchase the land to construct the footpath.

3.2.2. In conclusion, Fingal County Council confirm that it has no budgetary provision to purchase the lands to facilitate the provision of the referenced footpath and there are no proposals to undertake any traffic management works in the area of the subject lands.

3.3. **Referrers Response to Planning Authority's Response**

A summary of the **Referrer's** response to the Planning Authority's response is set out under as follows:

- Under the permission granted, Ballywholan Ireland Ltd. was never obliged to construct the footpath or acquire the lands to accommodate any such works;
- Permission granted requires referrer/developer to contribute to the construction of the footpath;
- In respect of the decision by An Bord Pleanála, the Planning and Strategic Infrastructure states that 'part of the consideration was the provision of a footpath which would be a means by which the proposal would not constitute a traffic hazard'. Referrer states they cannot comment on the correctness of this statement but are of the opinion that the presence or lack of a footpath would not affect the existing sightlines at Bower Lane;
- Remain willing to make a reasonable contribution to the cost of the construction of the footpaths set out in the planning permission;
- Four dwellings are now constructed and determination of this issue is of importance to enable our company to complete house sales.

4.0 Planning History

- 4.1. **Board Order (PL06F.244126/F14A/0068):** On 25th March November 2015, permission was granted on appeal for 4 No. houses with 8 no. parking spaces and associated site works. The Planning Authority had issued a decision to refuse permission for a reason related to the proposed development endangering public safety by reason of a traffic hazard.

5.0 Legislative Context

- 5.1. **Planning and Development Act 2000, as amended.**

- 5.1.1. **S.48(2)(c):** A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

6.0 Policy Context

- 6.1.1. The Fingal County Development Plan, 2011-2017 was the applicable development plan at the time of the assessment of the application and appeal.
- 6.1.2. **Zoning objective:** Under that plan, the site is located within an area which was zoned with the objective 'RS' which seeks to 'Provide for residential development and protect and improve residential amenity'. The 'RS' zoning objective continues to apply to the site under the current Fingal County Development Plan, 2017-2023.

- 6.2. **Fingal Development Contribution Schemes**

- 6.2.1. The current scheme is the Development Contribution Scheme 2016-2020 which came into effect on 1st January 2017. At the time of the granting of permission, the operable scheme was the Development Contribution Scheme 2010-2017. Special contributions are dealt with under S.16 of that scheme as follows:
- A special development contribution may be imposed under Section 48 of the Act where exceptional costs not covered by the Fingal County Council

Development Contribution Scheme 2010 – 2017 are incurred by the Council in the provision of a specific public infrastructure or facility. (The particular works will be specified in the planning conditions when special development contributions are levied). Only developments that will benefit from the public infrastructure or facility in question will be liable to pay the special development contribution. Conditions imposing special contributions may be appealed to An Bord Pleanála.

6.3. Development Contributions – Guidelines for Planning Authorities 2013

- 6.3.1. These guidelines were issued under section 28 of the PDA 2000 (as amended) with a stated aim to provide guidance on the drawing up of development contributions to reflect radical economic changes.

7.0 Assessment

7.1. Scope of the Referral/Role of Board

- 7.1.1. This referral on a 'point of detail' is made under Section 34(5) of the Planning and Development Act, 2000, as amended. It is noted that Section 34(5) states: 'The conditions under subsection (1) may provide that points of detail relating to any grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination'.
- 7.1.2. The point of detail request in this case relates to Condition 13 of PL06F.244126. This permission was granted by the Board on 25th March 2013 following a first party appeal against a decision to refuse planning permission by Fingal County Council under reference F14A/0068.

7.2. Consideration of Condition No.13

- 7.2.1. Condition No.13 provides as follows:

The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000, as amended, in respect of the provision of a footpath from Bower

Lane to Fancourt Heights junction. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: *It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.*

- 7.2.2. The background to the attachment of the special contribution condition is relevant in consideration of this referral. During the PAs consideration of the application, a request for further information issued. Item 4 of that request raised concerns around sight visibility and advised the applicant to consult with the Council's Transportation Planning services section.
- 7.2.3. The response to the request for further information outlined verbal communications held with the Transportation Planning Section who had set out a number of their requirements. One such requirement stated was that it would be necessary to provide a footpath from the junction of Bower lane to the south across the third party lands to the junction. It was also reported by the applicant in their further information response that the Transportation Planning Section *'indicated the land required to do this may be in the ownership of the Council and that the Council might be willing to facilitate the provision of the footpath'*. In the same correspondence, the applicant indicated that they were willing to accept a condition requiring a financial contribution towards the provision of the footpath.
- 7.2.4. The Planning Authority issued a decision to refuse permission on reasons centring around the development would endanger public safety by reason of traffic hazard. At appeal stage, the first party (appellant) provided a traffic survey report which surveyed 90 cars over a 24 hour period and found the average speed was low at 31.5 kph in both the north and south direction.

- 7.2.5. The Board's order, informed by the information on file which included the stated willingness of the applicant to make a financial contribution to the cost of the works, included a condition for a special contribution under S.48(2)(c) of the Planning and Development Act, 2000, as amended in respect of the provision of a footpath from Bower Lane to Fancourt Heights junction.
- 7.2.6. The applicant's reported discussion with the Transportation section as part of the compiling of the response to the further information indicated that in all probability the Council could deliver the required footpath works and the applicant/developer would pay a special contribution towards the cost. It is now clear however that the Council do not have the legal interest in the lands to facilitate the footpath provision and they remain in private ownership. Furthermore, the Council confirm in their response to this referral that it has no budgetary provision to purchase the lands to facilitate a footpath and there are no proposals to undertake any traffic management works in the relevant area and also state that there is no evidence the developer has attempted to purchase the lands on which the footpath would be provided.

8.0 Conclusion

- 8.1.1. The delivery of the footpath is an integral and fundamental element of the permission granted under PL06F.244126. The provision of the footpath is technically possible and based on a review of the information on file, the length of the footpath as specified under Condition No.13 would be c.30m. It is required to be delivered across lands, adjacent to the road which are currently in private ownership. I consider that further detail around the costings for the footpath delivery, to include the cost of acquiring the lands by the PA and any efforts to purchase the land by the applicant to facilitate the delivery of such works are required to enable the Board to determine the amount of the special financial contribution payable condition number 13. On this basis, I have set out my recommendation below.

9.0 Recommendation

- 9.1.1. I recommend that the Board should seek further information under Section 132 of the Planning and Development Act, 2000, as amended, from **the Planning Authority** requiring details and breakdown of costings which would be incurred for the delivery

of the footpath to include the cost of land acquisition, design and construction of the footpath and any other associated costs.

- 9.1.2. I also recommend that the Board should seek further information under Section 132 of the Planning and Development Act, 2000, as amended, from **the referrer**, specifically requiring details of what efforts, if any, the referrer / developer has made to acquire the lands to facilitate the delivery of the footpath (by the Planning Authority) in order to facilitate implementation of the permission which is subject to Condition No.13 attached to the Board's Order PL06F.244126.

Patricia Calleary
Senior Planning Inspector

4th April 2017