



An
Bord
Pleanála

Inspector's Report RP17.RP2145

Development	Point of Detail regarding Condition No. 42 of SA/100361.
Location	Lands at Donacarney Great, Donacarney, County Meath.
Planning Authority	Meath County Council.
Planning Authority Reg. Ref.	SA/100361.
Applicant	Urban Life Limited.
Type of Application	Section S.5 Referral on a Point of Detail.
Planning Authority Decision	----
Type of Appeal	Referral on a Point of Detail.
Appellant	Urban Life Limited.
Observers	None.
Date of Site Inspection	None.
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Background to Dispute	3
3.0 The Referrer’s Case	4
4.0 Site Location and Description	3
5.0 Response on behalf of Meath County Council.....	6
6.0 Other Submissions	6
7.0 Development Plan Provision.....	7
8.0 Assessment.....	7
9.0 Recommendation.....	11

1.0 Introduction

RP17.RP2145 seeks a determination from An Bord Pleanála on a point of detail relating to a condition attached to a permission under SA/100361 (duration of permission extended under LB/160136) regarding the type of financial security which should be provided to ensure the proper completion of a development. Specifically, the Planning Authority insists a cash sum must be lodged as security for the proper completion of the proposed development whereas the referrer argues that an appropriate bond from an insurance company or bank would suffice in this instance.

2.0 Site Location and Description

The site to which the reference relates is located centrally within the small village of Donacarney approximately 5 kilometres east of the centre of Drogheda. As the current case relates to a financial condition attached to an extant permission no site inspection was carried out for the purposes of determining the referral.

3.0 Background to Dispute

Under Reg. Ref. SA/100361 Meath County Council on 24th February, 2011 granted planning permission for the following:

- The construction of 13 residential units and
- The construction of 4 retail units and 4 office units subject to 54 conditions.

Condition No. 42 required that:

'Prior to the commencement of development the developer to lodge with the Planning Authority a cash deposit of €84,714, a bond of an insurance company/bank in the form of the current Meath County Council draft bond or other security to secure the satisfactory completion and maintenance of services (including maintenance of services until taken in charge by the authority). The form and amount of security shall be agreed between the Planning Authority and the developer, coupled with an agreement empowering the Planning Authority to apply such

security or part thereof to the satisfactory completion or maintenance of any part of the development.

If the amount of security required by this condition has not been lodged with the Planning Authority within 12 months of the date of this decision, the amount required shall be adjusted in accordance with an increase in the Building House Cost Index, which occurs between the date of this decision and the date on which the condition is satisfied’.

Reason: *To ensure that the development is carried out and completed to an acceptable construction standard.*

Under Ref. No. LB/160136 Meath County Council on the 12th day of April, 2016 extended the duration of the above permission up to a period of 17th December, 2018 (the expiry date of the current county development plan). This extension of duration was subject to one condition that:

‘The developer shall lodge with the Planning Authority a cash deposit (my emphasis) of €84,714 as a security for the satisfactory completion and maintenance until taken in charge by the Council of roads, footpaths, watermains, sewers, drains, public lighting, open space, landscaping or any other services required with the development. In the event of non-completion or maintenance with the services the Planning Authority shall be empowered to apply the said funds and part thereof for the satisfactory completion and maintenance as aforesaid in any part of the development.

Reason: *To ensure that the development is carried out and completed to an acceptable construction standard.’*

4.0 The Referrer’s Case

- 4.1. A submission was made on behalf of the applicant by Stephen Ward, Town Planning and Development Consultant. It was received by the Board on 8th March, 2017. The Referral sets out brief details of the proposed development and specifically cites Condition No. 42 of Reg. Ref. SA/100361 and Condition No. 1 of LB/160136.
- 4.2. The Referrer also wishes to highlight that he owns two other sites in the immediate vicinity where similar type cash deposit conditions were attached. When one

considers the three developments in conjunction, the cash sum required will be €402,689. With the national housing crisis on-going, the requirement for such an enormous cash deposit is a significant impediment on commencing housing schemes and does nothing to incentivise developers. These cash deposits are in addition to development levies attached to any grant of permission.

- 4.3. It is also noted that the option of submitting either a bond or a cash deposit is a standard type condition used by An Bord Pleanála for multi-use in housing developments. Reference is made to a number of recent decisions made by the Board where a standard bond condition is attached. This permits the developer to lodge either a bond or a cash deposit or other security to secure the provision and satisfactory completion and maintenance until the development is taken in charge by the Planning Authority.
- 4.4. Reference is made to other decisions where Meath County Council has granted planning permission for a number of residential schemes which again provides the developer with the option of providing security either by way of a cash deposit or a bond. It is suggested therefore that the Planning Authority is adopting a contradictory and inconsistent approach in respect of financial security bonds to ensure the satisfactory completion of development.
- 4.5. Reference is also made to Section 12.4.4 of the Meath County Development Plan which specifically refers to “a bond or cash lodgement may be required until the development has been completed to the satisfaction of the Council”. It is suggested that the requirement for a cash deposit in this instance is contrary to the policies and provisions contained in the development plan.
- 4.6. Reference is also made to Meath County Council’s “Taking in Charge” policy document. Again reference is made to the requirement of the developer to lodge with the Planning Authority *“a cash deposit, a bond of an insurance company (bank) in the form of the current Meath County Council draft bond or other security to secure the satisfactory completion and maintenance of services (including the maintenance of services until taking in charge by the Authority). The form and amount of the security shall be as agreed between the Planning Authority and the developer coupled with an agreement empowering the Planning Authority to apply such*

security or part thereof to the satisfactory completion or maintenance of any part of the development”.

- 4.7. It is clear therefore that the Council’s policy document that bonds or cash deposits are an acceptable form of security and it is noted that Condition No. 38 of SA/100361 specifically requires the development to be undertaken in accordance with the Council’s “Taking in Charge” policy.
- 4.8. The Referrer is of the opinion that the bond has the same effect as a cash deposit and request that An Bord Pleanála issue its determination to that effect requiring the submission of a cash deposit or a bond to the value of €83,714.
- 4.9. The Referrer would also like to point out the requirement for the payment of such large sums to Planning Authority would represent a very substantial burden on the developer wishing to commence the construction of houses particularly in the context of the other housing developments which have secured planning permission by the developer and the requirement to pay cash deposits in relation to same.

5.0 Response on behalf of Meath County Council

A response was received from Meath County Council on 27th March, 2017. It states the following:

- Details of history files LB/160136 and SA/100361 were submitted.
- It is stated that Meath County Council has not issued any correspondence for a declaration under subsection (2)(a) of Section 5 of the 2000 Act.
- In accordance with the extension of the duration LB/160136 the applicant is listed as Loughcourt Developments Limited, 27 Milltown Road, Ashbourne, County Meath.
- We have not received a declaration in accordance with subsection 2 (of Section 5 of the 2000 Act).

6.0 Other Submissions

There are no other submissions on file.

7.0 Development Plan Provision

7.1. The site is governed by the policies and provisions contained in the Meath County Development Plan 2013 – 2019.

7.2. Section 12.4.4 of the development plan specifically relates to bonds. It states the following:

“To ensure the satisfactory completion of development on a site which has been the subject of a grant of planning permission, a bond or cash lodgement may be required until the development has been completed to the satisfaction of the Council. The bond or cash lodgement may be sequestered in part or in its entirety where the development has not been satisfactorily completed. Meath County Council will determine the amount of such bond or cash lodgement.”

8.0 Assessment

8.1. The nature of the Referral relates to the sole issue of the financial security compliance in respect of a mixed use development at Donacarney, County Meath. The parent permission (SA/100361) provided a number of options in providing financial security for the completion of the development. This included:

- A cash deposit of €84,714.
- A bond of an insurance company/bank in the form of a draft bond.
- Or other security to secure the satisfactory completion and maintenance of services.

8.2. The extension of the duration of permission under Reg. Ref. LB/160136 limited the options available in terms of providing security to a cash deposit only relating to the same amount. The applicant has questioned in his referral to the Board the appropriateness of this sole option on the grounds that:

- (a) The developer in this instance intends to develop a number of other sites in the vicinity which also attracted cash deposits in the form of a security. The cash deposit required for all three developments amounts in excess of €400,000. The requirement to raise such cash is prohibitive and could jeopardise the development of the sites in question.

- (b) It is argued that standard conditions from An Bord Pleanála always allow for the option of providing cash or providing a bond from an insurance provider as security towards the proper completion of the development.
 - (c) Meath County Council are adopting an inconsistent approach in that it permitted, in the case of other developments, an option to provide bonds or cash deposits by way of security.
 - (d) The provision to allow for cash deposits only is contrary to the policy set out in the development plan in respect of bonds and also is contrary to Meath County Council's "Taking in Charge" policy document.
- 8.3. In response to the referral, Meath County Council have not proffered any indication as to why in this instance there has been a change in policy in only permitting cash deposits as a form of security. The Planning Authority's offers no argument as to why the payment of cash deposits are deemed the only suitable form of financial security.
- 8.4. In relation to the first issue raised in the referral, I would agree that the imposition of a cash deposit could place significant financial constraints on a property developer to raise sufficient funds to both develop and complete the project as well as lodge a cash deposit in the form of a security with the Council. The Board will be aware that there is an acute housing shortage particularly in the eastern part of the country and there is a requirement to increase housing supply as expeditiously as possible in the short to medium term. Placing additional financial burdens on developers aiming at increasing the supply of housing through the requirement to provide cash deposit sums as a form of financial security could in my view significantly hinder the provision of such housing. Pillar 3 of the *'Rebuilding Ireland – An Action Plan for Housing and the Homeless'* Programme recently launched by the Government requires the increase in output of private housing to meet demand at affordable prices. In order to achieve this national strategic target additional financial burdens should not be placed on developers in the form of financial securities where appropriate alternatives exist.
- 8.5. The referrer also makes reference to recent examples in different counties where An Bord Pleanála have permitted developments and in dealing with the issue of financial security have permitted development which allow for an option for the developer to

submit security by way of an insurance bond or cash deposit. Reference is made to recent decisions in Louth, Dublin and Meath.

8.6. In addition, I would bring the Board's attention to a recently determined appeal under PL17.247656. This development related to the construction of 20 dwellinghouses at a site in Ashbourne, County Meath. Meath County Council under Reg. Ref. AA/151162 granted planning permission for the proposed development and required the developer to lodge with the planning authority a cash deposit of €110,000 as a security for the satisfactory completion and maintenance of the development. No option other than a cash deposit was provided for in the condition. The Board in determining the appeal on the 12th April, 2017 put in a more standard condition requiring the developer to lodge with the Planning Authority a cash deposit, a bond of an insurance company or other security (my emphasis) to secure the provision and satisfactory completion and maintenance until taken in charge. It is clear therefore in my opinion that in the case of previous developments, the Board considered a more general condition providing the developer with options to be the most appropriate form of bond and condition.

8.7. It also appears that the provision of a security bond in the form of a cash deposit only, may not be in accordance with Section 12.4.4 of the development plan which allows a bond or cash lodgement to be secured to ensure the satisfactory completion of the development. I do acknowledge however that the wording under Section 12.4.4 leaves it to the discretion of the Planning Authority as to whether or not a cash lodgement or security bond may be incorporated into any such condition.

8.8. The Taking in Charge Policy which was formally adopted by the County Council in 2008 includes a sample condition in relation to security. This sample condition states the following:

Prior to the commencement of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company/bank in the form of the current Meath County Council draft bond, or other security to secure to the satisfactory completion and maintenance of services (including maintenance of services until taken in charge by the Authority) the form and amount of security shall be as agreed between the Planning Authority and the developer coupled with an

agreement empowering the Planning Authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development.

- 8.9. It is clear from the wording contained in both the development plan and the Planning Authority's taking into charge policy that it is envisaged that options would be considered in determining the type and form of security permitted.
- 8.10. Finally, I would refer the Board to Section 7.13 of the Development Management Guidelines. In relation to conditions requiring security for completion it is stated that *"it is essential that permissions for residential development are subject to a condition under which an acceptable security is provided by way of a bond, cash deposit or otherwise so as to ensure satisfactory completion. The amount of security, and the terms of which it is required to be given should enable the Planning Authority without costing themselves to complete necessary services to a satisfactory standard. In the event of default by the developer the condition should require that the lodgement of security should be coupled with an agreement that would empower the Planning Authority to realise the amount of the security at an appropriate time and apply it to meet the cost of completing the specified works. The Planning Authority should also ensure that the bond is of sufficient duration to allow them time to inspect the development after the expiration of permission and still call in the bond if necessary. The bond should be refunded on the satisfactory completion of the development"*.
- 8.11. It is clearly apparent from the above guidelines that security in the form of a financial bond is deemed to be an appropriate form of security to ensure that development is adequately completed to the satisfaction of the Planning Authority. The Development Management Guidelines therefore envisage that alternative forms of security could be provided in the case of residential or other development.
- 8.12. Arising from my assessment above therefore I consider that sufficient justification has been made to allow for a security other than merely cash deposits to ensure the satisfactory completion of a development. I consider that the various policy guidance in relation to security bonds issued by both the Department of the Environment Heritage and Local Government and Meath County Council envisage that flexibility can be employed in ensuring adequate financial security for the completion of developments. Furthermore, I consider that it is the policy of An Bord Pleanála to allow more flexible arrangements in determining the most appropriate types of

financial security arrangements to ensure satisfactory completion of developments. Even in the case where Meath County Council have required a cash deposit security arrangement only, the Board in issuing a determination at appeal stage allowed for more flexible arrangements in relation to cash deposits or security bonds will enable the delivery of housing units in a more expeditious manner and this supports and national policy in relation to increasing housing provision. Finally, I note that the Planning Authority in this instance have offered no comprehensive or robust argument defending the use of cash deposits as the only source of financial security to ensure that developments are completed to a satisfactory standard.

9.0 Recommendation

Following my assessment above, I recommend an order as follows:

I therefore recommend that the Board alter the financial security condition to read as follows:

Prior to the commencement of development the developer shall lodged with the planning authority a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the planning authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or in default of agreement shall be referred to An Bord Pleanála for determination.

Reason: *To ensure the satisfactory completion and maintenance of the development until taken in charge.*

Reasons and Considerations

9.1. Having regard to:

- (a) sections 34(5) and 48 of the Planning and Development Act 2000, as amended,

- (b) The provisions of Meath County Council Development Plan 2013-1019 and specifically Section 12.4.4 of the Development Plan,
- (c) Meath County Council's Taking In Charge Policy (2008)
- (d) An Bord Pleanála appeal reference PL06F.247656 (planning authority register reference number AA/151162), and
- (e) Section 7.13 of the Development Management Guidelines issued by the Department of the Environment, Heritage and Local Government
- (f) the submissions on file, and the planning history of the site

The Board considered it appropriate that an option be provided allowing the applicant to lodge with the planning authority an approved insurance company bond or a cash sum or other security to allow the satisfactory completion and maintenance of the development until taken in charge.

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.

P. Caprani,
Senior Planning Inspector.

13th June, 2017.