



An
Bord
Pleanála

Inspector's Report RP17.RP2145

Development	Point of Detail regarding Condition No. 24 of LB16/1121.
Location	Lands at Seabury Lawns, Mornington, Drogheda, County Meath.
Planning Authority	Meath County Council.
Planning Authority Reg. Ref.	LB16/1121
Applicant	Urban Life Limited.
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Section 34(5) Referral on a Point of Detail.
Appellant	Urban Life Limited.
Observers	None.
Date of Site Inspection	6 th July 2017
Inspector	Hugh Mannion.

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Background to Dispute	4
4.0 The Referrer's Case	5
5.0 Response on behalf of Meath County Council.....	6
6.0 Other Submissions	6
7.0 Development Plan Provision.....	6
8.0 Assessment.....	7
9.0 Recommendation.....	10

1.0 Introduction

The proposed development comprises alterations to previously approved developments reference SA/50515 (as extended by SA110436) and SA/60549 as (extended under SA110598) and LB/160452 to provide for replacement of 4 permitted two storey semi-detached dwellings and 1 two storey detached dwelling with 2 two storey semi-detached dwellings and a single terrace of dwellings comprising 4 number two storey dwellings, landscaping, boundary treatment and all associated site development works with access off the existing Seabury estate road at Seabury Lawns, Mornington, Drogheda, County Meath.

RP17.RP2146 seeks a determination from An Bord Pleanála under the provisions of section 34(5) on a point of detail relating to a condition attached to a grant of permission under LB/16/1121 regarding the form of financial security which should be provided to ensure the proper completion of a development. Specifically, the planning authority has required a cash sum of €42,000 as security for the satisfactory completion of the proposed development and maintenance until taken in charge by the Council of the services related to the proposed development.

2.0 Site Location and Description

The application site is located at Seabury Lawns, Mornington, Drogheda County Louth. Mornington lies to the south east of Drogheda and is accessed from the R151. The application site is on the southern edge of the village and is part of a block of recent development which is also accessed from the R151 and comprises residential development at Seabury Lawns, The Dunes, Oakview. Bettystown is located about 2kms to the south along the coast. From my site inspection and in the absence of any statement to the contrary I consider that the development the subject of LB/16/1121 is being worked on and is significantly progressed.

3.0 Background to Dispute

Reference SA/50515 - the original permission for the overall site of which the current site forms part was granted on the 19th November 2006 and comprised permission for a crèche and 44 houses with an access to the north to the R151.

Reference SA/60549 – revisions to SA/50515 to include a first floor apartment over the crèche and an additional 4 four bed semi-detached houses with parking/landscaping.

Reference SA110436 – comprising an extension to the lifetime of the permission granted under SA/50515 for 5 years (30th May 2016).

Reference SA110598 - comprising an extension to the lifetime of the permission granted under SA/60549 for 5 years (16th April 2017).

Reference LB/160452 alterations to permission under reference SA/50515 which had its lifetime extended to omit the permitted crèche building and replace with two semidetached houses.

Under Reg. Ref. LB/161121 (the current case) Meath County Council on 12th December 2016 granted permission for development which would consist of alterations to previously permitted development to provide for replacement of 4 permitted two storey semi-detached dwellings and 1 two storey detached dwelling with 2 two storey semi-detached dwellings and a single terrace of dwellings comprising 4 number two storey dwellings, landscaping, boundary treatment and all associated site development works with access off the existing Seabury estate road at Seabury Lawns, Mornington, Drogheda, County Meath.

Condition No. 24 required that:

‘Prior to the commencement of development the developer to lodge with the Planning Authority a cash deposit of €42,000 as security for the satisfactory completion and maintenance until take in charge by the Council of roads, footpaths, water mains, sewers, drains public lighting, open space, landscaping and maintenance of any other services required with the development. In the event of non-completion or maintenance of the services the planning authority shall be empowered to apply the said funds or part thereof for the satisfactory completion of and maintenance as aforesaid of 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. The referrer owns two other sites in the area and the cash deposits required in these cases are (Reg ref SA100361) €84, 714 and (Reg Ref SA110828) €275,975. These are unreasonable demands in the context of a housing crisis.
- 4.2. The Board imposes a standard condition in cases of this type which allows some flexibility as to the type of security to be made available to planning authorities for completion of development. The applicant in the present case wants to lodge a bond from his insurance provider. The Board considers bonds and cash to be interchangeable.
- 4.3. The referrer references 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. These cases demonstrate that the Planning Authority is adopting a contradictory and inconsistent approach in respect of security bonds to ensure the satisfactory completion of development.
- 4.4. The referrer quotes 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". Therefore, the restrictive requirement for a cash deposit in this instance is contrary to the policies and provisions contained in the development plan.
- 4.5. 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”.

- 4.6. It is clear therefore that the Council’s policy documents 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.
- 4.7. The planning authority interprets cash deposit as actual cash while the referrer is of the opinion that a bond has the same effect as a cash deposit and requests that the Board determines that a cash deposit or a bond is acceptable in this case.

5.0 Response on behalf of Meath County Council

The planning authority did not comment on the referral.

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. Section 34(5) states that “the conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination”. The referral documents submitted to the Board confirm that the developer and the planning authority did not agree on the form of the security to be lodged and that the planning authority has opened an enforcement file in the matter. Condition number 24 the subject of this referral did not make provision for the matter of the bond being agreed between the planning authority and the person carrying out the development and therefore it is not open to the person carrying out the development to refer the matter to the Board for determination. I conclude that this referral is therefore invalid and I recommend that it should be deemed so by the Board.
- 8.2. If the Board decides to give consideration to this referral I set out an analysis of broader issues raised in the referral in below and a draft order arising from that analysis.
- 8.3. I have carried out a site inspection and confirm that development is in the process of being carried out on site.
- 8.4. The referral relates solely to condition 24 which required the lodgement of €42,000 as a cash deposit as security for the satisfactory completion of the 2 two storey semidetached houses and a terrace of 4 houses at Seabury Lawns, Mornington, Drogheda, County Meath. The parent permission (Reference SA/50515) for a larger site of which this site forms part provided for the lodgement of a cash deposit of €147,100 to secure the satisfactory completion and maintenance of services. A further permission under SA/60549 related to this (southern element) of the overall site and required compliance with the conditions of the parent permission under Reference SA/50515 but did not specify a bond condition. This permission under SA/60549 had its lifetime extended under reference SA/110598 which attached two conditions; condition 1 specified an additional lifetime of 5 years and condition 2 required the lodgement of a cash deposit of €35,910. A further revision was sought under LB160452 (granted 12th September 2016) on approximately the eastern half

on the current site and this was subject to a cash deposit of €14,000. None of the various bond conditions attached the foregoing permissions were subject to appeal within the appropriate periods.

- 8.5. The referral makes a number of points; the requirement for a cash deposit is onerous in the context of a housing crisis, when determining similar developments the Board imposes a condition which allows for a choice of methods to provide planning authorities with bonds to secure completion of developments, the planning authority's policy set out in the County Development Plan is to allow for flexibility in the type of bond to be lodged for the completion of development and the planning authority has previously granted permission subject to more flexible bond conditions, the planning authority's taking in charge policy allows for this type of flexible approach.
- 8.6. It is the case that there is a shortage of suitably located houses in the state and this shortage is recognised in the recently published *'Rebuilding Ireland – An Action Plan for Housing and the Homeless'* launched by the Government which seeks to increase the housing stock to meet housing demand at affordable prices. Notwithstanding the overall thrust of public policy to which the Board in its deliberations must have regard I do not conclude that the planning authority's efforts to ensure against unfinished housing developments can be set aside on the basis of a many faceted public policy which elsewhere refers to the necessity to support high quality residential place making.
- 8.7. Paragraph 12.4.4 of the Meath County Development Plan 2013 to 2019 states "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". I conclude that the form of the bond required by condition 24 in this case for the satisfactory completion of the development is at the discretion of the planning authority and the planning authority has used its discretion in this case to require a cash deposit. Therefore, the condition does not contravene the development plan.

- 8.8. The Taking in Charge Policy was adopted by the County Council in 2008, predates the County Development Plan and includes a sample condition in relation to security as follows;

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. The planning authority is entitled to prefer its more recently adopted policy in relation to bonds for the satisfactory completion of development as set out in the County Development Plan.

- 8.10. In relation to other decisions by the planning authority where a more flexible form of bond condition was imposed I conclude that the planning authority is entitled to consider each application on its merits within the overall parameters set out in the legislation, national policy and guidance and local County Development Plan policy. Local policy has been clearly flagged in the County Development Plan and I consider that the planning authority acted within its discretionary powers in imposing condition 24 in this case.

- 8.11. There is no onus on a planning authority to adopt the Board's preferred wording of conditions imposed in accordance with section 34 when making decisions under that section.

- 8.12. Paragraph 7.13 of the Development Management Guidelines states 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 (including roads, footpaths, water mains, sewers, lighting and open space) 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. Planning Authorities 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’.

- 8.13. The guidelines express no preference as to the form of the security to be sought and while the primary objective of the advice in paragraph 7.13 is that security should be sufficient to ensure completion of the subject development an important secondary objective is that this avenue should be available to the planning authority “*without costing themselves*”. I conclude therefore that the planning authority has a discretion to apply a bond condition specifying the form and amount it considers appropriate to the particular application.

9.0 Recommendation

I conclude therefore that the planning authority acted within the parameters of national and local policy and that it is entitled at its discretion to impose the condition referred to the Board. I recommend a decision along the lines set out in the draft order below.

Reasons and Considerations

9.1. Having regard to:

- (a) sections 34(5) of the Planning and Development Act 2000, as amended,
- (b) The provisions of Meath County Council Development Plan 2013-2019 and specifically Section 12.4.4 of the Development Plan,
- (c) Meath County Council's Taking In Charge Policy (2008)
- (d) Section 7.13 of the Development Management Guidelines issued by the Department of the Environment, Heritage and Local Government
- (e) the submissions on file, and the planning history of the site

The Board considered that the planning authority had acted within its discretion in relation to the form of security it required in relation to the proposed development in this instance.

WHEREAS Condition 24 of planning authority register reference number LB161121 required that prior to the commencement of development the developer to lodge with the Planning Authority a cash deposit of €42,000 as security for the satisfactory completion and maintenance until take in charge by the Council of roads, footpaths, water mains, sewers, drains public lighting, open space, landscaping and maintenance of any other services required with the development. In the event of non-completion or maintenance of the services the planning authority shall be empowered to apply the said funds or part thereof for the satisfactory completion of and maintenance as aforesaid of any part of the development:

AND WHEREAS the developer and the planning authority failed to agree on the details of the form of the security to be lodged in accordance with Condition 24.

AND WHEREAS the matter was referred by the developer to An Bord Pleanála on the 15th day of October, 2017 for determination:

AND WHEREAS the Board is satisfied that the matter at issue is the form of the security to be lodged with the planning authority for the satisfactory completion and maintenance until take in charge by the Council of roads, footpaths, water mains, sewers, drains public lighting, open space, landscaping and maintenance of any other services required with the development:

AND WHEREAS the Board had particular regard to the provisions of 34(5) of the Planning and Development Act 2000, as amended, the Development Management Guidelines for Planning Authorities (Department of The Environment, Heritage and Local Government 2007), and the Meath County Development Plan 2013 to 2019:

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, determines that Condition 24 should not be altered on foot of this referral for determination.

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.

Hugh Mannion,
Senior Planning Inspector.

12th July, 2017.