



An  
Bord  
Pleanála

## Inspector's Report RP09.RP2152

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| <b>Development</b>                  | Point of detail in relation to Condition no. 16 of Planning Reg. Ref. 13/347 |
| <b>Location</b>                     | Newtown, Kildare, Co. Kildare  |
| <b>Planning Authority</b>           | Kildare County Council   |
| <b>Planning Authority Reg. Ref.</b> | 13/347   |
| <b>Referral</b>                     |  |
| Referral Type                       | Point of detail referral   |
| Referred by                         | Paul Cornish   |
| Owner/Occupier                      | Paul Cornish   |
| <b>Inspector</b>                    | Ciara Kellett  |

## 1.0 Introduction

This case is a referral made under section 34(5) of the Planning and Development Act 2000, as amended. It was received by the Board from Paul Cornish, and concerns a point of detail regarding Condition no.16 attached to a grant of planning permission issued by Kildare County Council (Reg. Ref. 13/347). The condition relates to development contributions.

## 2.0 Site Location and Description

The site to which the referral relates is located c. 2km south of Kildare Town. 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 Referral

Under Reg. Ref. 13/347 Kildare County Council on 1<sup>st</sup> August 2013 granted planning permission for the following:

- 1) Retention of single storey garage to side of dwelling.
- 2) Conversion of garage to storey and a half Granny Flat.
- 3) New single storey extension connecting Granny Flat to dwelling.
- 4) Removal of dormer roof of dwelling and replacement with new dormer roof with apex level 1.81m above previous, and two new storey and a half gables to front of building with new window and door openings throughout.
- 5) Rearrangement of ground floor layout in dwelling, new effluent treatment system and all associated site development works.

Condition No. 16 states:

*The applicant/developer to pay to Kildare County Council the sum of €14,559.48 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 7<sup>th</sup> September 2011 in accordance with Section 48 of the Planning and Development Act 2000 as amended. The amount payable under this condition shall be fully index-*

*linked from the date of grant of permission. Payments of contributions are strictly in accordance with Paragraph 17 of Development Contribution Scheme adopted by Kildare County Council on 7<sup>th</sup> September 2011.*

**Reason:** *It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority.*

## 4.0 The Referral

### 4.1. Referrer's Case

A submission was made by the applicant and was received by the Board on 5<sup>th</sup> July, 2017. The Referrer's case can be summarised as follows:

- Submits that at all times the financial contribution was not properly calculated or applied.
- Immediately upon receipt of the Notification of Decision to Grant, the referrer instructed that a query be raised with the Planning Authority regarding the calculation of the financial contribution.
- On the basis of engagement with the Planning Authority no formal appeal was lodged to the Board.
- Following continued engagement with the Authority, the Authority wrote to the Referrer to state that they had revised the contribution to €11,631.48.
- Referrer submits that the financial contribution should be €6,104.16. States that while the Authority notes that there was no evidence that the first floor attic use of the dwelling had the benefit of planning permission, it fails to consider or note that the use of the first floor for habitable purposes had been in existence for over 30 years having been converted under the legislation of the day (Section 4(1)(g) of the 1963 Act). This constituted exempted development.
- Consider proper method of calculation is by reference to the difference in the area subsequent to the extension compared to before. Drawings were

submitted by architect clearly showing what already existed including the previously converted attic.

- Planner's Report also fails to properly acknowledge the independent arrangements in relation to surface water which would result in the rate to be applied being reduced to €64.80.
- Considers that at all times the position of the referrer is that the development contribution as imposed was not fairly or properly applied. There has been serious confusion from the numerous payment requests received by the referrer. Four differing amounts were quoted.
- Water, surface water and waste water are provided/dealt with on site by the referrer.
- The Council have failed to take account of the fact that the development comprised of the renovation and alteration of the existing structure, and the contribution should be calculated by reference to the additional area alone.

#### 4.2. **Response on behalf of Kildare County Council**

The Council responded to the referral. In summary it states:

- Notes referral has been lodged under Section 34(5) of the Planning and Development Act, 2000, as amended. Contends that this submission does not qualify for assessment under the provisions of Section 34(5). Contribution amount is clearly set out in Condition 16 of Reg. Ref. 13/347. It does not state that the amount is to be agreed between the applicants and the Planning Authority, or that failure to reach agreement may result in a referral to An Bord Pleanála for determination.
- Notwithstanding this, addresses each point made by the referrer.
- Copy of Planner's Report attached with calculation therein (Appendix B). No exemption certificate (Section 5) was provided with the application submitted. The stated floor area on application form (Appendix C) for existing dwelling is recorded as 247.2sq.m, floor area of house granted under Reg. Ref. 74/1000 is confirmed as 130sq.m and 42.1sq.m for garage which are considered exempt from charges having been previously permitted, calculation as follows:

- Existing area of development 247.2sq.m
- Less exempted area 172.1sq.m (house and garage previously permitted)
- Area of existing development without planning permission 75.1sq.m, and considered to be subject to retention permission under item 4 of development description.
- Area of proposed development as stated on form is 123.8sq.m
- Total area now with benefit of planning permission 371sq.m of which contribution charges apply is 75.1sq.m + 123.8sq.m = 198.9sq.m.
- Calculation of 198.9sq.m @ €73.20 = €14,559.48.
- Rate reduced to account for own water and waste from €120 to €73.20 per sq.m.
- Confirm that when originally calculating charge, 40sq.m exemption not taken into account. Following referrers query, amount corrected to €11,631.48. Further letters about different balances outstanding due to indexation and error in indexation rate in August 2014.
- Each planning application granted permission with financial contributions attached are required to maintain their own surface water on site, and in addition to pay for a contribution towards public surface water drainage services. An instruction by the Board to provide an exemption where none exists in the Development Contribution Scheme would seriously impede on the reserved functions approved by Members of Kildare County Council.
- Applicants were not charged for water and waste.
- As no exemption certificate was provided with the application lodged, the planner determined the area for which retention was applicable based on documentation submitted by the applicant.
- The applicants failed to appeal the Decision of the Council to the Board, an opportunity available to all applicants who contend that their financial contributions have been incorrectly calculated. A request to the Planning Authority to review the calculations would not have prevented the applicants from lodging an appeal.

- Submit that while the Council has issued responses to the items raised, it contends that this referral is outside the jurisdiction of the Board.

#### 4.3. Further Responses

The referrer responded to the Planning Authority submission addressing each point made by the Council. In summary, it is stated:

- Maintain attic area is exempt under the provisions of the 1963 Act.
- Consider data used in calculations of the Council extracted from application form was not fully comprehended.
- Consider it unfair that the new owners are being levied for works done by the previous owners.
- Reference made to numerous errors made in calculating levies.
- Council never raised a query regarding an Exemption Certificate for the attic conversion.
- Query why water and waste services are discounted but surface water is not.

#### 5.0 Policy Context

The current Kildare County Council Development Contribution Scheme 2015 – 2022, was adopted on 5<sup>th</sup> November 2015. At the time of the subject planning application, the 2011 – 2018 scheme was in effect.

##### 5.1. Kildare County Council Development Contribution Scheme 2011 – 2018.

Paragraph 11 of the Development Contribution Scheme (the Scheme) refers to 'Level of General Contributions for Kildare County Council effective from 08/09/2011'.

It states that contributions will be applied to residential extensions by determining the floor area of the extension, less 40sq.m and applying the relevant rate per square metre thereafter. It notes that floor area of 40.1- 80sq.m will be charged at €60 per sq.m and 80.1sq.m + will be charged at €120 per sq.m. A breakdown of the

contribution is provided including an amount for water, waste water and surface water.

Paragraph 12 refers to Change of Use/Modification/Retention Applications. With respect to retention applications, it is stated:

- (i) development contributions will not be applied where a valid application is received for retention of minor alterations and where there is no increase in floor area.
- (ii) Where development contributions have not been previously paid, applications will have contributions applied based on proposed floor area of permitted development.
- (iii) For pre - 1963 development, contributions will be applied in full.
- (iv) An application for retention of an extended area to that originally granted where contributions have been paid in full will have contributions applied to the extended floor area only. No exemptions will apply.

Paragraph 18 refers to Exemptions and Reductions. Section (j) states that where a private water supply or waste water system is provided, those elements will be deducted at the appropriate rate.

## 5.2. **Section 34(5) of the Planning and Development Act, 2000, as amended**

The relevant section of the Act states:

*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.*

## 5.3. **Section 4(1)(g) of the 1963 Planning and Development Act.**

Section 4 of the Act states:

- (1) The following shall be exempted developments for the purposes of this Act:

(g) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render such appearance inconsistent with the character of the structure or of neighbouring structures;

## 6.0 Assessment

### 6.1. Summary of Facts

Having reviewed the documentation submitted by both the referrer and the Planning Authority, I consider that the key facts of the case may be summarised as follows:

- Planning Permission was granted in August 2013 for modifications and extension to an existing dwelling subject to a condition requiring a specified Development Contribution.
- Development Contribution of €14,559.48 was levied by the Planning Authority based on the floor area over and above what had previously been granted permission under Reg. Ref. 74/1000, with a reduction applied having regard to applicants own water and waste systems i.e. instead of standard €120 per square metre, €73.20 per square metre applied.
- Calculation of contribution queried by the applicant upon receipt of Notification of Decision to Grant permission.
- Referrer states that no appeal was lodged with the Board on the basis of engagement with the Planning Authority.
- Planning Authority revised the Development Contribution to €11,631.48 to allow for a 40sq.m exemption.
- Referrer considers that the first floor attic bedroom, which was added over 30 years ago, is exempt development, and should not be included in the floor area calculation subject to a Development Charge. Considers that a deduction in the rate should include a reduction for Surface Water, as well as water and waste water.



- Referrer considers new floor area is 134.2sq.m (less 40sq.m exemption) at a rate of €64.80 results in a Development Contribution of €6,104.16.
- Planning Authority consider that the referral does not qualify for assessment under Section 34(5) of the Planning and Development Act 2000, as amended, as the amount was clearly set out in the condition, and it does not state that upon failure to reach agreement a referral may issue to the Board for determination.

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*”. Condition number 16, the subject of this referral did not make provision for the development contribution to be 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.

However, should the Board consider otherwise, I set out below my assessment of the case.

I consider that there are two issues to be addressed: 1. Exemptions and Reductions to be applied per square metre, and 2. The area to be subject to that rate.

## 6.2. Exemptions and Reductions to be applied.

- 6.2.1. The referrer considers that the Planning Authority did not provide for exemptions and reductions with respect to Surface Water. The Planning Authority Development Contribution Scheme (the Scheme) requires a contribution of €120 per square metre for residential extension developments greater than 80.1sqm. There is no dispute that the development floor area is in excess of 80.1sq.m.
- 6.2.2. Section (j) of Paragraph 18 of the Scheme states that where a private water supply or waste water system is provided, those elements will be deducted at the appropriate rate. In this case €25.20 and €21.60 are the respective reductions which results in a charge of €73.20 per square metre.

- 6.2.3. There is no reduction provided for in the Scheme with respect to applicants managing their own surface water. Therefore, I do not consider that the apportionment for surface water which is included in the overall rate should be omitted.
- 6.2.4. In conclusion, I consider that a reduction is provided for water and waste water, but there is no reduction for surface water provided for in the Scheme, and the correct rate to be applied is €73.20 per square metre.

### 6.3. Area subject to Development Contribution.

- 6.3.1. The referrer considers that the correct area to be subject to a development contribution should be the “new” area which is part of the extension. The referrer states that the first floor attic bedroom was added over 30 years ago, and was considered to be exempt development at the time.

The referrer considers that the original floor area including the first floor was 189.3sq.m. This is made up of 130.1sq.m of ground floor (per original permission) and 59.2sq.m of attic/first floor.

The total floor area of permitted construction is 190.5sq.m at ground floor, and 133sq.m at first floor. This results in a “new” floor area of:

$190.5\text{sq.m} + 133.0\text{sq.m} = 323.5\text{sq.m}$  less original floor area of  $189.3\text{sq.m} = 134.2\text{sq.m}$  of “new” floor area.

Referrer considers that area to be levied is  $134.2\text{sq.m}$  less  $40\text{sq.m}$  (exempt) =  $94.2\text{sq.m}$ .

- 6.3.2. The Planning Authority considers that the area originally granted planning permission under Reg. Ref. 74/1000 was  $130\text{sq.m}$  + garage area of  $42.1\text{sq.m}$ . The application form submitted states that the floor area for the original dwelling is  $247.2\text{sq.m}$ .

The calculation for the charge was based on:

Existing area of development (as per planning application form) =  $247.2\text{sq.m}$

Area already permitted under Reg. Ref. 74/1000 ( $130\text{sq.m} + 42.1\text{sq.m}$ ) =  $172.10\text{sq.m}$

Area deemed to be without permission:  $247.2\text{sq.m} - 172.10\text{sq.m} = 75.1\text{sq.m}$

Area of proposed new development as stated on the application form is  $123.8\text{sq.m}$ .

Total area to which charges will apply is  $75.1\text{sq.m} + 123.8\text{sq.m} = 198.9\text{sq.m}$

Planning Authority consider that the area to be levied is  $198.9\text{sq.m}$  less  $40\text{sq.m}$  (exemption) =  $158.9\text{sq.m}$

- 6.3.3. It appears that the original area of the dwelling itself is  $189.3\text{sq.m}$  (ground floor of  $130.1\text{sq.m}$ , plus attic/first floor of  $59.2\text{sq.m}$ ). The Planning Application form states  $247.2\text{sq.m}$  is the existing area – a difference of  $57.9\text{sq.m}$ . There is no information on file to explain this difference, however the garage is not included in the referrer's calculation of  $189.3\text{sq.m}$  and the application seeks retention of a garage.
- 6.3.4. It is noted that the original converted attic/first floor area is  $59.2\text{sq.m}$ . The referrer considers that this area should be exempt from the requirement to pay development contributions at all because it was built over 30 years ago.
- 6.3.5. The referrer includes a copy of a referral decision of the Board with a 1997 date, Ref. PL28.RF.0794, with respect to the installation of "velux" rooflights and whether the conversion of attic space into a bedroom at 6 Glencairn Park, Rossa Avenue, Bishopstown, Cork is or is not development or exempted development. The Board decision considers that the conversion of attic space into a bedroom is not a material change in the use of the dwelling house and is not development, and accordingly the question of whether it is exempt development does not arise.

I have read the Inspector's Report, and the Board's decision, as well as other referral cases (see below). The RF0794 case involves a single storey low pitched house. It is stated that the applicant installed roof lights in the rear roof space, and converted the attic to a bedroom. In this case, the Inspector considers the conversion of the attic space with regard to the 1994 Regulations. It is noted that the Regulations refer to an extension to a dwelling house, or the conversion for use as part of the dwelling house, of any garage, store or shed or similar structure. It is stated that in this case there is no extension involved. The Inspector further notes that the attic space is an integral part of the planning unit, which is a dwelling house and it is not in a structure attached to that dwelling house. The Inspector considers the issue is whether its conversion for use as a bedroom is a material change of use and considers it is not, in the context of the overall planning unit and having regard to the scale of the

change in relation to the overall scale of the house. The Inspector considers that the conversion of attic space to a bedroom does not consist of a material change in the use of the structure, and is therefore not development, which the Board concurred with.

- 6.3.6. Other relevant cases with respect to the planning status of converted attics which I have reviewed, include a number whereby the attic was being converted at the same time as the dwelling was being constructed. The Board considered that in these cases, the conversion was not exempt development. According to the referrer, the subject attic was converted in the 1980's – after the dwelling's construction.
- 6.3.7. Cases of a similar nature include PL04.RL2520 (October 2008) which considers that an attic conversion is an exempted development, albeit the question related to the addition of rooflights originally. The Inspector considered that the character of the structure had not changed to a two storey dwelling, as the building remained a bungalow in visual and design terms regardless of internal use.
- 6.3.8. PL61.RL3435 (May 2016) referred to a domestic extension but it was noted that an attic had also been converted and should be included in the overall figures, with respect to the exemption limit of 40 square metre. The Inspector notes that the use of the attic for habitation purposes does not involve an addition to the footprint, floor area or volumetric space within the dwelling and is considered not to come within the description "extension", and therefore, was not included in calculating the total floor area having regard to the limit of forty square metres of extension to the house provided for in Class 1 Part 1 of the Planning and Development Regulations. The Board considered that the domestic extension was exempt as it comes within the scope of Class 1 of Part 1 of Schedule 2 of the Regulations.
- 6.3.9. Having regard to the above, I consider that conversion of the attic is not an extension and therefore, should be excluded from the Development Contribution calculations for an extension.
- 6.3.10. I conclude that the extension area to be subject to Development Contributions should be calculated as follows:
- Overall area as stated on application form is 247.2sq.m.

- Less original area permitted by Reg. Ref. 74/1000 of 172.1sq.m, and less attic conversion of 59.2sq.m, which results in an area of 15.9sq.m subject to Development Charges, plus “new” area of 123.8sq.m which gives a total “new” floor area of 139.7sq.m.
- The 40sq.m exemption results in a floor area subject to Development Charges to be 139.7sq.m – 40sq.m = 99.7sq.m.

6.3.11. I conclude that a Development Charge of 99.7sq.m x €73.20 is €7,298.04 is applicable in this instance.

## 7.0 Recommendation

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

I recommend that the Board alter the Development Contribution condition no.16 to read as follows:

*The applicant/developer to pay to Kildare County Council the sum of €7,298.04 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 7<sup>th</sup> September 2011 in accordance with Section 48 of the Planning and Development Act 2000 as amended. The amount payable under this condition shall be fully indexed from the date of grant of permission. Payments of contributions are strictly in accordance with Paragraph 17 of Development Contribution Scheme adopted by Kildare County Council on 7<sup>th</sup> September 2011.*

**Reason:** *It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority.*

**WHEREAS** by order made by Kildare County Council on 1<sup>st</sup> day of August 2013 under register reference 13/347, granted permission subject to conditions to Patricia and Paul Cornish for development consisting of Retention (1) single storey garage to side of dwelling, (2) conversion of garage to storey and a half granny flat, (3) New single storey extension connecting granny flat to dwelling, (4) Removal of dormer roof of dwelling and replacement with new dormer roof with apex 1.81 metre above

previous and two, new storey and half gables to front of dwelling with new window and door openings throughout, rearrangement of ground floor layout, new effluent treatment system and all associated site development works at Newtown, Kildare;

**AND WHEREAS** Condition 16 attached to the said permission required the applicant to pay to Kildare County Council the sum of €14,559.48 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 7<sup>th</sup> September 2011 in accordance with Section 48 of the Planning and Development Act 2000 as amended. The amount payable under this condition shall be fully index-linked from the date of grant of permission. Payments of contributions are strictly in accordance with Paragraph 17 of Development Contribution Scheme adopted by Kildare County Council on 7<sup>th</sup> September 2011. **Reason:** It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority;

**AND WHEREAS** the applicant and the planning authority failed to agree on the details of the Development Contribution as set out in Condition 16;

**AND WHEREAS** the matter was referred by the applicant to An Bord Pleanála on the 5th day of July, 2017 for determination;

**AND WHEREAS** the Board had particular regard to the provisions of 34(5) of the Planning and Development Act 2000, as amended, and the Kildare County Council Development Contribution Scheme 2011 – 2018;

**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 Condition 16 should be altered on foot of this referral and the correct application of the Development Contribution Scheme results in a Development Contribution charge of €7,298.04.

## 8.0 Reasons and Considerations

### 8.1. Having regard to:

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

- (b) The provisions of Kildare County Council Development Contribution Scheme 2011 – 2018,
- (c) Section 4(1)(g) of the Planning and Development Act 1963,
- (d) the submissions on file, and the planning history of the site

The Board considered it appropriate that the Development Contribution be amended to apply to the difference in the area subsequent to the extension compared to the area of the permitted dwelling, garage and converted attic/first floor.

## 9.0 **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.

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Ciara Kellett  
Senior Planning Inspector.  
11<sup>th</sup> October, 2017.