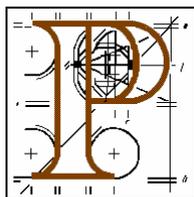


# An Bord Pleanála



## Inspector's Report

**Appeal Reference:** PL06D.241603

**Development:** Sub-division of existing dwelling (protected structure) into two separate dwelling units at Kilbogget House, Shrewsbury Wood, Johnstown Road, Dublin 18.

### Planning Application

Planning Authority: Dún Laoghaire-Rathdown County Council.  
Planning Authority Reg. Ref. D12A/0410  
Applicants: Siobhan Phillips  
Type of Application: Permission  
Planning Authority Decision: Grant permission

### Planning Appeal

Appellants: Siobhan Phillips  
Type of Appeal: First Party  
Observer(s): None  
Date of Site Inspection: No site inspection required

**Inspector:** Donal Donnelly

**Appendices:** Draft Scheme & maps

## **1. BACKGROUND**

- 1.1 This is a first party appeal against the requirements of Conditions 4, 5 and 6 attached to Dún Laoghaire-Rathdown County Council's decision to grant permission for the sub-division of an existing dwelling (protected structure) into two separate dwelling units at Kilbogget House, Shrewsbury Wood, Johnstown Road, Cabinteely, Dublin 18
- 1.2 Condition 4 requires the payment of €3,750 as a contribution under Section 48 of the Planning and Development Act. 2000 (as amended) in respect of the provision of water and drainage public infrastructure and facilities benefiting development in the area of the Planning Authority. Similarly, Conditions 5 and 6 require contributions of €7,500 and €3,750 in respect of the provision of roads public infrastructure and facilities and community & parks public infrastructure, facilities and amenities respectively benefiting development in the area of the Planning Authority, as provided for in the Council's development contributions scheme.
- 1.3 It is considered by Dún Laoghaire-Rathdown Council that public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is reasonable that the developer should contribute towards the cost thereof.
- 1.4 The applicant considers that the charge is contrary to the requirements set out in the 2013 Development Contribution Guidelines for Planning Authorities, which require Planning Authorities to grant waivers for works that substantially contribute to the restoration and upgrade of a protected structure, or where the change of use does not lead to a need for new or upgraded services/ infrastructure.

## **2. PROPOSED DEVELOPMENT**

- 2.1 The proposed development comprises the sub-division into two separate dwelling units over two floors of Kilbogget House, a detached part single part 2-storey over garden level Georgian country house (579 sq.m.) built in 1769 and now set on a 0.134 hectare site.
- 2.2 The proposal will see the south-eastern side of the dwelling including rear annex separated from the main body of the structure (Unit A). This will be facilitated mostly through internal alterations including new dividing partitions in corridors and internal staircases.
- 2.3 Externally, a new side connection will be created using existing granite flags to a new entrance door installed in the ground floor side wall to match the existing entrance door in style and detail. The main Doric portico to the front will be retained as an access to the other dwelling (Unit B).
- 2.4 The proposed development will also include reorganisation of the annex area upper level and provision of an en-suite, connection to existing drainage and landscaping/ planting.

### 3. TECHNICAL REPORTS

- 3.1 The recommendation to grant planning permission, as outlined within the final Planning Report, reflects the decision issued by the Planning Authority.
- 3.2 The Drainage Report states that there is no objection to the proposal and that existing foul and surface water drainage systems will be used.
- 3.3 It is noted under the calculation details for development contributions that the proposal represents residential development comprising the sub-division of the existing dwelling to two dwellings and this is levied as one residential unit.

### 4. PLANNING AUTHORITY'S DECISION

- 4.1 Dún Laoghaire-Rathdown County Council issued notification of decision to grant planning permission for the proposed development subject to seven conditions. Conditions 4, 5 & 6 the subject of this appeal state as follows:

- 4. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of € 3,750.00 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Water & Drainage Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14/12/2009 . Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced. Following commencement, any outstanding balance shall be updated at the 1st of January each year during the life of the scheme in accordance with annual increases in the Wholesale Price Index - Building and Construction Materials published by the Central Statistics Office.

**Reason:** It is considered reasonable that the payment of a contribution be required in respect of the provision of the Water & Drainage Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

- 5. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of € 7,500.00 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14/12/2009 . Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced. Following commencement, any

outstanding balance shall be updated at the 1st of January each year during the life of the scheme in accordance with annual increases in the Wholesale Price Index - Building and Construction Materials published by the Central Statistics Office.

**Reason:** It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

6. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of € 3,750.00 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Planning Authority in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dún Laoghaire-Rathdown County Council on the 14/12/2009 . Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced. Following commencement, any outstanding balance shall be updated at the 1st of January each year during the life of the scheme in accordance with annual increases in the Wholesale Price Index - Building and Construction Materials published by the Central Statistics Office.

**Reason:** It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure, Facilities and Amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

## 7. APPEAL GROUNDS

- 7.1 A first party appeal was lodged against Conditions 4, 5 and 6 only of the Council's decision. Condition 7 is also relevant as this requires the payment of development contributions prior to commencement of development. It is considered that the decision to impose a €15,000 levy is contrary to the requirements set out in the 2013 Development Contribution Guidelines for Planning Authorities for the following reasons:

- Dún Laoghaire-Rathdown Development Contributions Scheme neglects to include any provision for an exemption to the levy for protected structures – this is inconsistent with national policy and with the practice of most planning authorities. These waivers are an effective means of encouraging the restoration and upkeep of our built heritage.

- A determination was made in respect of Kilbogget House for the purposes of Section 482 of the Taxes Consolidation Act, 1997 that the building is intrinsically of significant architectural interest.
- At least two waivers contained in the new Guidelines would apply to Kilbogget House – restoration and protection of a protected structure and change of use that does not lead to the need for new or upgraded services/ infrastructure. Also provision to charge only net additional development in the case of redevelopment projects.
- There is no additional dwelling being built or occupied and there is no infrastructural impact arising from the division.
- There will be no net increase in the size of the building or the number of occupants.
- Owners are committed to living in the property long term and have already spent considerable sums upgrading and restoring a listed property that was in very poor condition on purchase in late 2005.
- Sub-division will protect the house and make it more sustainable for the future – it will be more affordable and feasible for current and future occupants to maintain, heat and restore a family house with fewer windows, rooms and less roof space.
- Large sections of the house are currently unused and unheated.
- Planned improvements include replacement of failing facias, upgrading of heating, insulation, lining of chimneys, repair of plasterwork, etc. - none of this work can proceed if the levy is upheld as it represents a third of the budget for the works.

## **8. RESPONSE**

### Second Party

- 8.1 In response to the first party appeal, the Planning Authority considers that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.

## **9. PLANNING HISTORY**

### Dún Laoghaire-Rathdown County Council Reg. Ref: D99A/0204 (PL06D.111640)

- 9.1 The Board upheld the Council's decision to refuse permission on 13<sup>th</sup> May 1999 for the retention of a boundary fence.

Dún Laoghaire-Rathdown County Council Reg. Ref: D98A/1078

- 9.2 Permission was granted on 13<sup>th</sup> May 1999 for the sub-division of Kilbogget House into 3 no. apartments.
- 9.3 The applicant was required under this permission to pay the sum of £2,250 to the Council towards the cost of road improvement works / traffic management proposals and environmental improvement works in the area which will facilitate the proposed development.

Dún Laoghaire-Rathdown County Council Reg. Ref: D98A/0696

- 9.4 Planning permission was refused on 13<sup>th</sup> October 1998 for the change of use of garden level accommodation from residential to use as a creche with separate access.

**10. DEVELOPMENT PLAN**

Dún Laoghaire-Rathdown Development Plan

- 10.1 The site has a zoning objective 'A: to protect and / or improve residential amenity.'
- 10.2 Kilbogget House is a protected structure.
- 10.3 Details of development contributions are set out in the Dún Laoghaire-Rathdown Development Contribution Scheme 2010-2017.

**11. NATIONAL GUIDELINES**

Development Contributions: Guidelines for Planning Authorities, 2013

- 11.1 It is noted in these Guidelines that Planning Authorities are required to include the following in their development contributions schemes:
- waivers in the case of change-of-use permissions, where change-of-use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure (including, for example, transport infrastructure);
  - waivers in respect of works on protected structures where such works substantially contribute to the restoration or protection of the protected structure (i.e. waiver would not apply, for example, to works for purposes of adding an extension to a protected structure).

## 12. ASSESSMENT

- 12.1 This is an appeal against financial contribution conditions only attached to Dún Laoghaire-Rathdown County Council's decision to grant permission for the sub-division of an existing dwelling (protected structure) into two separate dwelling units at Kilboggett House, Shrewsbury Wood, Johnstown Road, Dublin 18.
- 12.2 Conditions 4, 5 and 6 require the developer to pay contributions totalling €15,000 in respect of the provision water and drainage, roads and community and parks infrastructure, facilities and amenities benefiting development in the area of the Planning Authority, as provided for in the Development Contributions Scheme. The contributions are based on a rate of €3,750 for water and drainage, €7,500 for roads and €3,750 for community and parks facilities and amenities and levied as one additional residential unit.
- 12.3 Under Section 48 10 (b) of the Planning and Development Act, 2000 (as amended), an appeal may be brought to the Board where an applicant for planning permission considers that the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the Planning Authority.
- 12.4 It is the view of the applicant that the decision to impose the development contributions is contrary to the requirements set out in the 2013 Development Contribution Guidelines for Planning Authorities. The applicant highlights that the Dún Laoghaire-Rathdown Development Contributions Scheme neglects to include any provision for an exemption from development contributions for protected structures. In addition, it is submitted that there is no additional dwelling being built or occupied and there is no infrastructural impact arising from the division. Furthermore, there will be no net increase in the size of the building or the number of occupants. Having regard to these factors, the applicant considers that at least two waivers contained in the new Guidelines would apply to Kilboggett House, i.e. *'in respect of works on protected structures where such works substantially contribute to the restoration or protection of the protected structure'*, and *'in the case of change-of-use permissions, where change-of-use does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure.'*
- 12.5 From the outset, I would point out that the Dún Laoghaire-Rathdown County Council Development Contributions Scheme 2010-2017 was adopted on 14<sup>th</sup> December 2009 before the Guidelines came into effect. It is stated in the Guidelines that all planning authorities should commence a review of their existing development contributions schemes by 31<sup>st</sup> March 2013 to ensure compliance with the content of the Guidelines. Dún Laoghaire-Rathdown County Council has prepared a new Draft Development Contributions Scheme but at the time of writing, the 2010-2017 Scheme remains in place.
- 12.6 It is noteworthy that the Draft Scheme does contain exemptions/ reductions for change of use permissions, net additional development and renovations to restore/ refurbish protected structures. However, as noted above, an appeal

may only be brought where the terms of the development contributions scheme have not been properly applied. Section 48(2)(a) states that '*...the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section...*', and not the Guidelines which are intended to provide non-statutory guidance on the drawing up of development contributions. Furthermore, under Section 48(3)(c) it is stated that '*a scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.*' Again, I would emphasise that any reductions/exemptions are those listed within the Scheme which is in place at the time rather than what is recommended in the Guidelines.

- 12.7 Having regard to the above, I consider that the terms of the Dún Laoghaire-Rathdown County Council Development Contribution Scheme, 2010-2017 have been correctly applied and there are no exemptions/ reductions listed in the development contributions scheme presently in place that would apply to the proposed development. The development contributions imposed under Conditions 4, 5 and 6 should therefore stand.

### **RECOMMENDATION**

The Board considered, based upon the reasons and considerations set out below that the terms of the Development Contribution Scheme for the area had been properly applied in respect of Conditions 4, 5 and 6, and that these conditions should stand.

### **REASONS AND CONSIDERATIONS**

The Board considers that the terms of the Dún Laoghaire-Rathdown County Council Development Contribution Scheme, 2010-2017 were correctly applied by the planning authority, and that there are no exemptions/ reductions listed in the Scheme that apply to the proposed development.

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**Donal Donnelly**  
**Inspector**

13<sup>th</sup> May 2013