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## An Bord Pleanála



## Inspector's Report

**Development:** Single storey rear extension and two storey side extension, renovations and modifications to dwelling, Linaro House, Linaro Avenue, College Road, Cork.

### Planning Application

Planning Authority : Cork City Council  
Planning Authority Register Reference : 16/36710  
Type of Planning Application : Permission  
Applicants : John Lane  
Planning Authority Decision : Grant subject to conditions

### Planning Appeal

Appellant : John Lane  
Type of Appeal : 1<sup>st</sup> Party against condition  
Observers : None  
**Inspector** : Pauline Fitzpatrick  
**Date of Site Inspection** : 04/07/16

**Appendix** – Cork City Council General Development Contribution Scheme

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## 1. SITE LOCATION AND DESCRIPTION

Linaro Avenue is a cul-de-sac accessed from College Road to the south-west of Cork City Centre. The cul-de-sac is characterised by a mix of detached two storey dwellings on one side with the lands to the west in use as a Sports Ground. Houses fronting onto Robin Hill Avenue back onto the cul-de-sac to the east.

Linaro House is at the end of the cul-de-sac and is a two storey dwelling served by a large front garden area. The self-contained unit which was to the rear of the dwelling has been demolished. A small detached garage is positioned in the northern most corner of the site. Works on the dwelling have commenced.

## 2. PROPOSED DEVELOPMENT

The application was lodged with the Planning Authority (PA) on the **11/01/16** with further plans and details received **11/03/16** following a request for further information (FI) dated 04/11/16.

The proposal entails the demolition of the self-contained unit to the rear and the erection of a single storey rear extension and two storey side extension to the dwelling. The works also entail alterations and modifications to the existing dwelling.

As per the details provided in the supplementary application form the extension is not in respect of the family home.

By way of FI the applicant states that he is not aware of the planning history of the self-contained unit, confirms that the proposal dwelling is to be used as one unit and that the internal layout has been designed to allow for flexibility of use for future buyers/occupants.

**Note:** An observation to the proposal received by the PA has been forwarded to the Board for its information. The issues raised relate to the maintenance of the line of trees along the site boundary, window openings serving the dwelling, privacy of adjoining property and period of construction.

## 3. TECHNICAL REPORTS

**Irish Water** in a report dated **19/02/16** has no objection subject to conditions.

The **Senior Executive Engineer, Drainage Division** in a report dated **17/02/16** has no objection subject to conditions.

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The **1<sup>st</sup> Planner's** report dated **04/03/16** (countersigned) recommends a request for further information on the planning history of the self-contained unit to the rear of the dwelling, whether a self-contained unit is proposed at ground floor level, submission of a landscaping plan and omission of 1<sup>st</sup> floor bedroom window on southern elevation. The **2<sup>nd</sup> report** dated **06/04/16** (countersigned) following FI notes that the application has indicated that the proposed development is not an extension to the family home and therefore development contributions should be applied. A grant of permission subject to conditions is recommended.

#### **4. PLANNING AUTHORITY'S DECISION**

The PA decided to grant permission for the above described development subject 5 conditions.

**Condition 2** requires the dwelling to be used as a single dwelling unit.

**Condition 5** requires a financial contribution of €4470.61 to comply with the general contribution scheme.

#### **5. GROUNDS OF APPEAL**

The 1<sup>st</sup> party appeal against Condition 5 requiring a financial contribution of €4470.51 can be summarised as follows:

- The Cork City's General Development Contribution Scheme allows for a 100% reduction for an extension to a family home. The intention of the wording may reasonably be interpreted as applying to a single family dwelling, which is the case in this instance, but not necessarily or exclusively one that is occupied by the applicant. This interpretation is implicitly supported by the fact that the planning application fee of €34 pertains to alterations to an existing dwelling regardless of intended ownership. The Board's guide to fees payable deems only residential development of 2 houses or more to be commercial development.
- There is a possibility that the house will be retained and occupied by the applicant as his family home.
- The development will not make any greater demands on infrastructural services than is already the case.
- The commerciality of the proposal is marginal and it is considered inappropriate to impose a disproportionate burden of contribution which would discourage such an initiative.

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## **7. PLANNING AUTHORITY'S RESPONSE TO APPEAL SUBMISSION**

The response can be summarised as follows:

- The development contribution scheme allows for a 100% reduction for extensions to the family home where the applicant has confirmed in the Supplementary Planning Application form that the residence and proposed extension are the family home. Family home is defined under the scheme as the permanent private residence of the applicant. The applicant has indicated on the said form that the dwelling is not the family home and in the further information response makes reference to the fact that the dwelling was acquired with a view to renovation, extension and re-sale on completion. Therefore the scheme has been properly applied.

## **8. OBSERVATIONS**

None

## **9. RELEVANT PLANNING HISTORY**

I am not aware of any previous planning applications on the site.

## **10. DEVELOPMENT PLAN PROVISIONS**

The site is within an area zoned Z04 – Residential, Local Services and Institutional in the current Cork City Development Plan the objective for which is to protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies outlined in Chapter 3 of the plan.

## **11. ISSUES AND ASSESSMENT**

As the appeal is solely against condition 5 pertaining to the application of a development contribution scheme, Section 48 (13)(a) the Planning and Development Act 2000, as amended, refers which requires that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal.

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Condition 5 requires a financial contribution of €4470.61 in accordance with the general contribution scheme. As per the details on file the PA based this requirement on the fact that the dwelling to which the works are proposed is not the applicant's family home and therefore does not comply with the scheme's exemption provisions. The applicant contends that the relevant section of the scheme may reasonably be interpreted as applying to a single family dwelling, but not necessarily or exclusively one that is occupied by the applicant.

Section 1.7 and Table 5 of the General Contribution Scheme details reductions applicable in respect of specified categories of development, in which the following is noted:

100% reduction for **extensions to family home \*\*\*\* (where the applicant has confirmed in the Supplementary Planning Application form that the residence & proposed extension are the family home)**

**\*\*\*\* "family home" means the permanent private residence of the applicant**

As per the Supplementary Application Form submitted with the application the applicant answered no to the question as to whether the application is in respect of an extension to the family home. This is tacitly confirmed by the details provided by the applicant in response to the PA's further information request, in which it is stated that the house was purchased with a view to renovation, extension and re-sale on completion. I note that the applicant's contact address given on the Planning Application Form is Crosshaven, Co. Cork.

I also note that the said supplementary application form highlights the fact that the **'family home must be your permanent private residence'** and that **'your response will determine the level of Development Contribution payable'**.

I submit that both the contribution scheme and the details sought on the supplementary form are quite explicit with no ambiguity arising in interpretation. On the basis of the clear statement that the dwelling is not the applicant's permanent private residence the exemption provided for does not apply in this instance. The statement in the appeal that there is a possibility that the applicant, given certain circumstances, may retain the house as his family home offers no certainty that this may actually occur. Such certainty is necessary to justify the application of the exemption.

However I consider that the following exemption provisions of the scheme are applicable in this instance:

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**Where part of a habitable house or other single residential unit (eg. duplex or apartment unit) is demolished in connection with the provision of an extension and/or other alterations or modifications, an exemption of 100% will apply to the first 40 square metres (only one exemption will apply. Where a property has benefitted from this reduction, subsequent extension over and above the 40 square metres will be charged at the applicable rate).**

Both the contribution scheme and the supplementary application form state that the development contribution is calculated on gross external floor area of all floorspace. From the details provided on the plans accompanying the application the existing habitable floorspace (dwelling and detached living unit, the latter which has been demolished to facilitate the extension) is 152 sq.m. with the proposed floorspace of the dwelling being 260 sq.m. (this differs from the 250 sq.m. figure given in response to question 12 of the planning application form). This gives an increase in floorspace of 108 sq.m. With the application of the exemption for the first 40 sq.m. I submit that the floorspace for which the contribution scheme applies is 68 sq.m.

I therefore calculate the contribution to be €3986.84 (68 sq.m. x € 58.63)

Whilst the applicant queries the equity and appropriateness of the contribution requirement this is not a matter for comment by the Board. I am also of the view that the planning application fee and details provided by the Board on fees payable as referred to by the applicant are not relevant to the assessment of the case.

## **11.0 RECOMMENDATION**

In conclusion having regard to the documentation on file, the submissions received, and the assessment above I recommend that Planning Authority be directed to amend condition 5.

## **DECISION**

The Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended by section 30 of the Planning and Development Act, 2010, based on the reasons and considerations under, directs the said Council, under section 48 (10)(b) of the 2000 Act, to **AMEND** condition number 5 as follows for the stated reasons and considerations.

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## **CONDITION 5:**

The developer shall pay to the planning authority a financial contribution of €3,986.84 (three thousand, nine hundred and eight six euro and eighty four cent) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under

## **REASONS AND CONSIDERATIONS**

Having regard to the terms of the current development contribution scheme and Table 5 which sets out the categories of development for which reductions in respect of specified categories of development area applicable and to the nature of the proposed development, which involves an extension of a dwelling house which is not an extension to a family home, it is considered that the development contribution should be applied with an allowance made where part of a habitable house or other single residential unit is demolished in connection with the provision of an extension and/or other alterations or modifications.

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**Pauline Fitzpatrick**  
**Inspectorate**

**July, 2016**