

# An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** PL06D.246582

**Development:** Amended house and remove condition.  
15 Glenamuck Cottages, Glenamuck Road  
Carrickmines Dublin 18.

### Planning Application

Planning Authority: Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.: D167A/0114

Applicant: Barbara & Bernadette Dwyer

Planning Authority Decision: Grant with conditions

### Planning Appeal

Appellant(s): Barbara & Bernadette Dwyer

Type of Appeal: Applicant vs Condition 3

Observers: None

Date of Site Inspection: 8<sup>th</sup> August 2016

**Inspector:** Hugh Mannion

## **1.0 SITE LOCATION AND DESCRIPTION**

Glenamuck Road links the M11 in the northeast to Kiltiernan to the southwest; Glenamuck Cottages is a cul de sac off the road to the south about ½ way along. The houses are generally single storey semi-detached buildings. There are about 8 two storey houses at the end of the cul de sac arranged around a turning head. The road is relatively narrow and most houses have opened up a drive way to provide off-street parking. The speed limit is 50kph, there is public lighting but no median line.

The existing house on site is a semidetached single storey building with a wide section of undeveloped road frontage to the north-western side of the site. The overall site area (which is proposed to serve the existing and new house) is 0.2147ha.

## **2.0 PROPOSED DEVELOPMENT**

The proposed development comprises the provision of minor alterations and revisions to elevations and plans of an approved single storey house including the construction of a new gated entrance and associated works and the removal of condition 11 of a permission granted under application reference number DA08/1383 at 15 Glenamuck Cottages, Glenamuck Road, Carrickmines, County Dublin.

## **3.0 PLANNING HISTORY**

Under application reference number DA08/1383 permission was granted for a single storey house at the rear of the existing house at 15 Glenamuck Cottages, Glenamuck Road, Carrickmines, County Dublin.

## **4.0 PLANNING AUTHORITY DECISION**

### **4.1 Planning and technical reports**

**Transportation Planning** recommended a grant of permission with conditions.

**Drainage Planning Section** reported no objection.

The **planning report** on file recommend a grant of permission subject to conditions.

## 4.2 Planning Authority Decision

The planning authority decided to grant permission subject to a number of conditions. Condition 3 is as follows;

The proposed dwelling when first completed shall be occupied as a place of permanent residence by the applicant, Bernadette Dwyer. If the applicant disposes of the property within 7 years of the date of final grant of planning permission the full section 49 Supplementary Development Contribution Scheme for Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme levy for a residential dwelling shall be paid by the applicant.

**Reason:** It is considered reasonable that the payment of a contribution be required in respect of the provision of the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme which will benefit 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 planning authority.

## 5.0 GROUNDS OF APPEAL

The grounds of appeal may be summarised as follows;

- The site is part of an area around Glenamuck Cottages zoned for low density residential development in the Kilternan/Glenamuck LAP. In order to facilitate such development the planning authority made a section 49 Development Contribution Scheme.
- The applicant has been unable to raise finance to carry out the development granted under D08A/0383. The applicant has close family ties with the area which should make her exempt from the requirement to pay the levy under the 49 Development Contribution Scheme.
- The Development Management Guidelines advise against imposing occupancy conditions. In this case the condition refers to an elderly member of the family and inhibits making use of the permission.

- Condition number 3 radically alters the nature of the development in contravention of the advice set out at section 7.7 of the Development Management Guidelines.
- Condition number 3 does not follow the wording of occupancy conditions set out at 4.7 of the Sustainable Rural Housing Guidelines in that it should have included a reference to other members of the immediate family who might avail of the permission.
- In a nearby case (D09A/0163 – 13 Glenamuck Cottages included a provision for another member of the applicant’s family to occupy the dwelling. This was replicated in several other grants of permission.

## **6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL**

### **6.1 Planning Authority Response**

The planning authority commented on the appeal as follows;

- Under D08A/1383 the planning authority determined that the then applicant, Barbara Dwyer, was not a native of the area for planning purposes and a contribution condition was imposed.
- The Barbara Dwyer did not appeal the contribution condition in the original application; therefore the condition is correctly applied in the current case.
- A contribution condition has been applied in other cases in the area where the contribution scheme applies.
- The condition has not in any way altered the nature of the development applied for.
- The condition should not be widened to apply to non-natives of the area.

## **6.2 Observations on grounds of appeal**

There are no observations on the appeal.

## **7.0 POLICY CONTEXT**

The site is medium density residential development in the Kiltiernan/Glenamuck Local Area Plan 2013.

The site is within the boundary of drawing number PL-08-293 attached to the Section 49 Supplementary Development Contribution Scheme for the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme.

## **8.0 ASSESSMENT**

### **8.01 Background**

**8.02** This application refers to modifications to a previously permitted house and removal of a condition of that previous permission. That condition required the payment of a contribution under the Section 49 Supplementary Development Contribution Scheme for the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme. In my view that element of the application is not a valid application under Section 34 of the Planning and Development Acts. This is so because applications for permission must refer to development within the meaning of section 3 of the Act; the removal of a condition attached to a previous permission is not development within the meaning of section 3 and therefore may not be subject to an application for permission under the Acts.

**8.03** Nevertheless since the Board has accepted the appeal in this instance I set out an assessment below.

### **8.04 Planning Applications**

**8.05** Permission was granted under planning register reference number D08A/1383 to Barbara Dwyer for the construction of a house to the rear of 15 Glenamuck Cottages, Carrickmines, Dublin 18. That grant of permission included a condition number 11 which required the payment of a contribution of €43,448.00 under the terms of the Supplementary Development Contribution Scheme. That condition was not appealed.

**8.06** On the 30<sup>th</sup> July 2014 the planning authority extended the lifetime of that permission until the 23<sup>rd</sup> September 2019.

**8.07** The cover letter submitted with the application (see OTE solutions letter dated 18<sup>th</sup> February 2016) states that Barbara Dwyer has been living at 15 Glenamuck Cottages “for the past few years” and that Bernadette Dwyer was born and raised in 15 Glenamuck Cottages. Barbara Dwyer’s grandmother has recently passed away.

**8.08** The appeal letter states that the planning authority’s original assessment (in D08A/1383) that Barbara Dwyer was “was not born and brought up in the area” in not correct. The appeal makes the point that Barbara Dwyer has a very strong connection by birth that extends back generations. However the appeal does not clarify for the Board where she was born and brought up and does not claim that she was born and brought up in 15 Glenamuck Cottages. It is not clear therefore that she is native to the areas as required by the scheme.

#### **8.09 Section 49 Supplementary Development Contribution Scheme.**

**8.10** Section 49 supplementary development contribution schemes provide for the levying of additional contributions on new development within specific areas in order to fund specific infrastructure projects. The Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme sets out detailed costings and apportions these over several types of developments, including residential.

**8.11** The adopted development contribution scheme provides that there should be a levy of €43,448.00 per residential unit. The proposed development is a residential unit.

**8.12** The adopted development contribution scheme provides an exception (see exemption 8 in copy attached) to the general requirement to pay a levy in relation to “single residential developments where the applicant is native to the area and has close family ties with the area, unless the property is disposed of within seven (7) years, in which case the full levy becomes payable”. It is possible, therefore to distinguish two conditions which would give rise to an exemption from the requirement to pay the levy; (1) the applicant must be native to the area, and (2) have close family ties to the area.

**8.13** Having regard to the material submitted with the appeal I am satisfied that Bernadette Dwyer fulfils both of these conditions. However the other applicant, Barbara Dwyer, on the basis of the material submitted with the appeal has not demonstrated that she is a native of the area. I conclude therefore that fulfilment of both conditions set out in the adopted supplementary development contribution scheme is necessary to avoid the payment of the contribution under the scheme and that Barbara Dwyer does not satisfy both conditions.

**8.14** Notwithstanding the foregoing occupancy conditions are, generally, appropriate to grants of planning permission for houses where the subject development is stated to relate to a rural based activity or occupation or to other circumstances provided for in the Sustainable Rural Housing Guidelines. In the present case the site is within the development boundary set out in a local area plan, is zoned for residential development and covered by a supplementary development contribution scheme. I conclude therefore that an occupancy condition is not appropriate in this case.

**8.15** Section 49(3) of the Act (by applying section 48 (1)(b)) provides that an appeal may only be made to the Board “where the applicant under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority”. It appears that the planning authority has distinguished between the applicants by requiring one to reside in the house and thereby strayed outside the terms of the adopted supplementary development contribution scheme and inappropriately conflated an occupancy condition with the provisions of the scheme. I conclude therefore that the planning authority it has not properly applied the scheme and that the Board should remove the condition 3 as provided for in the draft order below.

## **9.0 CONCLUSIONS AND RECOMMENDATION**

Having regard to the foregoing I recommend removing condition 3 for the reasons and considerations set out below.

## **REASONS AND CONSIDERATIONS**

The proposed development comprises a dwelling house to which the provisions of the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Section 49 Supplementary Development Contribution Scheme apply. Having regard to the nature of condition 3 attached to the grant of planning permission the Board is not satisfied that the planning authority has properly applied the terms of the supplementary development contribution in this case and, therefore, that condition 3 should be removed.

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**Hugh Mannion**  
**Planning Inspector**  
**9<sup>th</sup> August 2016**