



An  
Bord  
Pleanála

## Inspector's Report PL06D.247024

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| <b>Development</b>                  | Construction of two houses                         |
| <b>Location</b>                     | 13 Glenamuck Cottages,<br>Carrickmines, Dublin 18. |
| <b>Planning Authority</b>           | Dun Laoghaire Rathdown Co. Council                 |
| <b>Planning Authority Reg. Ref.</b> | D16A/0154  |
| <b>Applicant</b>                    | Reginald Coogan                                    |
| <b>Type of Application</b>          | Permission   |
| <b>Planning Authority Decision</b>  | Grant.   |
| <b>Type of Appeal</b>               | First Party against condition                      |
| <b>Appellant</b>                    | Reginald Coogan                                    |
| <b>Observers</b>                    | None   |
| <b>Date of Site Inspection</b>      | None required                                      |
| <b>Inspector</b>                    | Siobhan Carroll                                    |

## 1.0 Site Location and Description

- 1.1. The site is located on the western side of Rockville Drive, containing Glenamuck Cottages which is a cul de sac road located off Glenamuck Road. Glenamuck Road situated in Carrickmines, Co. Dublin links the M11 and Kilternan.
- 1.2. The site area is 0.16ha. It comprises a large section of the plot of no. 13 Glenamuck Cottages. This includes a strip extending for 30m to provide separate vehicular access. The existing dwelling is a semi-detached single storey property.

## 2.0 Proposed Development

- 2.1. Construction of two houses

## 3.0 Planning Authority Decision

### 3.1. Decision

- The planning authority decided to grant permission subject to a number of conditions. Condition 14. is as follows;

That a financial contribution shall be paid by the proposer to the Council towards the cost of the Glenamuck District Distributor Road Scheme and the Surface Water Attenuation Ponds Scheme. This contribution to be paid prior to the commencement of the development or in such other manner as may otherwise be agreed with the Planning Authority. The rate of contribution payable shall be that pertaining to the particular year in which implementation of the Planning Permission is commenced. The Supplementary Development Contribution Scheme provides for an annual increase in the levels of contribution payable, as outlined in the scheme, by an indexed rate of 5% compound interest per annum effective from 10<sup>th</sup> November of each year during which the scheme is in force to take account of the aforementioned increase.

The rate of contribution payable in respect of this development, at current contribution rates is €91,240.80, with any outstanding balance being updated at 10<sup>th</sup> November each year during the life of the scheme by 5% compound interest in accordance with the adopted scheme.

It should be noted that contributions assessed in accordance with the Supplementary Development Scheme cannot be appealed to An Bord Pleanála unless the applicant considers the levy referred to in this condition has not been properly applied in accordance with the terms of the Scheme.

REASONS FOR CONTRIBUTIONS: To finance the Glenamuck District Distributor Road Scheme and the Surface Water Attenuation Ponds Scheme, as provided for in the Supplementary Development Contribution Scheme adopted by the Council of Dun Laoghaire-Rathdown on the 10<sup>th</sup> of November, 2008.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

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

#### 3.2.2. Other Technical Reports

- Transport Section – no objections
- Drainage Planning Section – no objection subject to condition
- Irish Water – no objections

## 4.0 Planning History

**D09A/0163** – Permission was granted for 2 no. 3 bed with double garage 1.5 storey detached dwellings to the rear with shared vehicular and pedestrian access to Rockville Drive via existing driveway comprising total GFA of 410 sq m. Condition

no. 11 specified “With respect to site 13A only, the dwelling when completed shall be first occupied as a place of permanent residence by Keith Coogan (as outlined in the submitted Statutory Declaration) or a member of his immediate family. If the property is disposed of within seven (7) years of the date of the 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. 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.”

Condition no. 12 specified “With respect to site number 13B only, a financial contribution shall be paid by the proposer to the Council towards the cost of the Glenamuck District Distributor Road Scheme and the Surface Water Attenuation Ponds Scheme. This contribution to be paid prior to the commencement of the development or in such other manner as may otherwise be agreed with the Planning Authority. The rate of contribution payable shall be that pertaining to the particular year in which implementation of the Planning Permission is commenced. The Supplementary Development Contribution Scheme provides for an annual increase in the levels of contribution payable, as outlined in the scheme, by an indexed rate of 5% compound interest per annum effective from 10th November each year. The levels of contribution will be reviewed annually on the 10th of November of each year during which the scheme is in force to take account of the aforementioned increase. The rate of contribution payable in respect of this development, at current contribution rates, is €43,448.00, with any outstanding balance being updated at 10th November each year during the life of the scheme by 5% compound interest in accordance with the adopted scheme. It should be noted that contributions assessed in accordance with the Supplementary Development Contribution Scheme cannot be appealed to An Bord Pleanála unless the applicant considers the levy referred to in this condition has not been properly applied in accordance with the terms of the Scheme. REASONS FOR CONTRIBUTIONS: To finance the Glenamuck District Distributor Road Scheme and the Surface Water Attenuation Ponds Scheme, as

provided for in the Supplementary Development Contribution Scheme adopted by the Council of Dun Laoghaire-Rathdown on the 10th of November, 2008.”

**D09A/0163E** – Permission was granted for an Extension of Duration until 15/10/2019.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022.

The site is zoned Objective ‘A’ with a stated objective ‘to protect and/or improve residential amenity.’

### **5.2. 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.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The appeal relates to condition no. 14 of Reg. Ref. D16A/0154. It is made pursuant to Section 49(3) of the Planning and Development Act 2000 as amended and relates to the payment of a development contribution under Section 49 of the Act.
- The Section 49 Development Contribution Scheme includes the following exemption “3. House extensions and single replacement dwellings”
- The appellant states that it is a replacement dwelling for the applicant and therefore should be exempt from the Section 49 contributions.

- Section 8 states “Single residential developments where the applicant is native to the area and has close family ties within the area, unless the property is disposed of within seven (7) years, in which case the full levy becomes payable.”
- When making a case for the exemption from the requirement to pay levies under this scheme applicants who are native to the area and have close family ties with the area, applicants will need to sign a statutory declaration.
- The further information requested by the Planning Authority required the submission of a statutory declaration in respect of Reginald & Keith Coogan.
- Keith Coogan was previously granted an exemption on the same site. The Planning Authority did not consider that it applied as he now lives in Sallynoggin.
- No. 13 Glenamuck Cottages is Mr. Keith Coogan’s family home where he was raised.
- The appellant notes that the Planning Authority’s definition of “native” has changed since 2009. However the appellant states that the definition is not provided in the LAP or in the Development Plan.
- The Planning Authority deem that unless the parents address on the applicants birth certificate is 13 Glenamuck Cottage they are not in the Council’s opinion ‘native to the area’.
- The applicant states that both he and his son are native to the area. The applicant resides in no. 13 Glenamuck Cottages. His son Keith Coogan resided at 13 Glenamuck Cottages until he moved out in his early 20’s. He currently lives in Sallynoggin with his family and wishes to build a home in the area he was raised. Keith Coogan lived at no. 13 Glenamuck Cottages from 1977 and attended school locally.
- Keith Coogan was given an exemption from a Section 49 Development Contribution under Planning permission reference D09A/0163. The permission received an extension of duration under reference D09A/0163E. This permission is still valid.

- It is considered that the failure to apply an exemption from Section 49 Development Contributions in this instance is contrary to the Council's own Rural Housing Policy regarding how they consider an applicant to be native to an area.
- The applicant Reginald Coogan has lived at no. 13 Glenamuck Cottages since 1977. He intends to build and reside in unit 13a and sign over the site for 13b to his son Keith to build a home for his family.
- It is stated that the applicant's replacement home is required to meet their long term needs due to Mrs Coogan's disability.
- The amount levied €91,240.80 for two dwellings is totally disproportionate to the cost of a dwelling and would represent around 25% of the cost of building.

## 6.2. Planning Authority Response

- The Planning Authority state that neither dwelling can be considered a replacement dwelling.
- A replacement dwelling infers an existing dwelling is to be removed/demolished. The permission provides two new dwellings with the existing dwelling on the landholding to be retained.
- Regarding the definition of 'native' the Planning Authority state that as it applies to the Development Contribution Scheme it refers to somebody whose parent's address on their birth certificate is within the boundary of the scheme.
- Neither the applicant, nor the other proposed occupant complies with this definition.
- The Planning Authority consider that the inclusion of condition 14 is the appropriate decision.

## 6.3. Observations

- There are no observations on the appeal.

## 7.0 Assessment

- 7.1. This application refers to permission for two houses at no. 13 Glenamuck Cottages, Carrickmines, Dublin 18. Condition no. 14 of the permission requires the payment of a contribution of €91,240.80 under the Section 49 Supplementary Development Contribution Scheme for the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme.
- 7.2. 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.
- 7.3. The adopted development contribution scheme provides eight separate criteria where exceptions to the general requirement to pay a levy apply. Under part (3) there is an exemption in respect to 'house extensions and single replacement dwellings. Under part (8) there is an exemption in respect 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".
- 7.4. The appellant contends that they should be exempt from the Section 49 contribution on the basis that the permitted dwelling no. 13a is a replacement house for the applicant Reginald Coogan and that in relation to the permitted dwelling no. 13b the site will be gifted to Mr Coogan's son Keith Coogan.
- 7.5. Firstly, in relation to part (3) of the exemptions set out in the scheme the dwelling no.13a does not represent a replacement dwelling for Mr. Reginald Coogan as his original home no. 13 Glenamuck Cottages will be retained and will not be demolished/removed. Therefore, I would concur with the assessment of the Planning Authority that the exemption under part (3) does not apply in this instance.
- 7.6. Secondly, in relation to an exemption under part (8) of the development contribution scheme it is stated in the appeal that Keith Coogan is a native to the area and therefore he should not be liable for a levy. He resided at no. 13 Glenamuck Cottages from 1977 from the age of approximately five until his early early 20's and



attended primary school locally in Our Lady of Wayside. He currently lives in Sallynoggin with his family.

- 7.7. Under Reg. Ref. D09A/0163 permission was granted to Reginald Coogan for two dwellings. Condition no. 11 specified that
- 7.8. Condition no. 11 specified *“With respect to site 13A only, the dwelling when completed shall be first occupied as a place of permanent residence by Keith Coogan (as outlined in the submitted Statutory Declaration) or a member of his immediate family. If the property is disposed of within seven (7) years of the date of the 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. 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.”*
- 7.9. Under Reg. Ref. D09A/0163E permission was granted for an extension of duration of the planning permission until the 15<sup>th</sup> of October 2019. Therefore, in relation the permission granted under Reg. Ref. D09A/0163 Keith Coogan was previously determined by the Planning Authority to be a ‘native’. I note that there is no definition of ‘native’ set out in the Glenamuck District Distributor Road Contribution Scheme. In the Dun Laoghaire Rathdown County Development Plan 2016-2022 there is reference to ‘native’ in relation to rural housing policy and it requires that applicants can establish to the satisfaction of the Planning Authority a genuine need for an additional dwelling in the rural area and who are native to the area due to having spent substantial periods of their lives living in the area as members of the rural community and have close family ties with the rural community.
- 7.10. The Planning Authority in their response to the appeal stated that in relation to the definition of ‘native’ as it applies to the Development Contribution Scheme it refers to somebody whose parent’s address on their birth certificate is within the boundary of the scheme. While, the response of the planning authority is noted this definition of ‘native’ is not set out in Section 49 Supplementary Development Contribution

Scheme nor the County Development Plan nor the Kiltiernan/Glenamuck Local Area Plan 2013.

- 7.11. Mr Keith Coogan having lived at no. 13 Glenamuck Cottages from the age of five until well into adulthood, does I consider constitute a 'native' of the area. Furthermore, having regard to the fact that the planning authority previously determined Mr Coogan to be 'native' when considering the imposition of contribution under the terms of the same Section 49 Supplementary Development Contribution I consider that an exemption under part (8) of the development contribution scheme does apply.

## **8.0 Recommendation**

- 8.1. Having regard to the foregoing I recommend that condition no. 14 be amended for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

- 9.1. Having regard to the provisions of the Section 49 Supplementary Development Contribution Scheme for the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme, I consider that an exemption under part (8) of the development contribution scheme applies and a financial contribution should only be liable in respect of one dwelling.

## **10.0 Condition**

14. The developer shall pay to the planning authority a financial contribution of €45,620.40 (forty five thousand six hundred and twenty euro and forty cent) in respect of the Glenamuck District Distributor Road Scheme and the Surface Water Attenuation Ponds Scheme in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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Siobhan Carroll  
Planning Inspector

24<sup>th</sup> October 2016