



An  
Bord  
Pleanála

## Inspector's Report PL06D.247754

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<b>Development</b>	House and associated site works
<b>Location</b>	Derryclare, Ballycorus Road, Kilternan, Co Dublin.
<b>Planning Authority</b>	Dun Laoghaire Rathdown Co. Council
<b>Planning Authority Reg. Ref.</b>	D16A/0582
<b>Applicant</b>	Robert Patrick Glanville
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	First Party against condition
<b>Appellant</b>	Robert Patrick Glanville
<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 northern side of Ballycorous Road. Ballycorous Road is situated to the east of the village of Kiltiernan. It links Kiltiernan with Brides Glen and Rathmichael to the east. There is extensive single house development along Ballycorous Road.
- 1.2. The site area is 0.4ha. It comprises the plot of an existing dwelling. The existing dwelling is a detached property.

## 2.0 Proposed Development

- 2.1. House and associated site works

## 3.0 Planning Authority Decision

### 3.1. Decision

- The planning authority decided to grant permission subject to a number of conditions. Condition 10. 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 €45,620.40 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
- E.H.O – no objections

## 4.0 Planning History

**D15A/0466** – Outline permission was granted for for the construction of a new, detached, two storey dwelling house, new vehicular entrance from the Ballycorus

Road, new waste treatment systems and percolation areas and associated site works. Condition no. 13 specified that;

13. That a financial contribution shall be paid by the proposer on submission of detailed plans for permission consequent on the grant of outline permission 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.

**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.

## 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. 10 of Reg. Ref. D16A/0582. 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 appellant requests that the Board amend the condition to exclude the payment should the applicant or an immediate member of his family retain the property in their ownership for a period of seven years.
- It is set out in the appeal that the applicant Mr Glanville should be considered exempt in relation to the Scheme 49 Supplementary Development Contribution Scheme.
- Sub Section B of the Exemptions states,

*“8. 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 the full levy becomes payable.”*
- Two recent appeals are cited PL06D.247024 and PL06D.246582. Under Reg. Ref. D16A/0154 permission was granted for two dwellings at No. 13 Glenamuck Cottages. An appeal was lodged in respect of the Section 49 contribution condition (PL06D.247024).
- The Board in determining that case imposed a contribution on Unit No. 13 A but amended the condition in respect of Unit No. 13 B to state,

*“(b) The proposed dwelling Unit Number 13B, when completed shall be occupied as a place of permanent residence by Keith Coogan as outlined in the application documents and the submitted Statutory Declaration. If Keith Coogan disposes of the property within seven years of the date of the final grant of planning permission, the full Section 49 Supplementary Development Contribution Scheme for the Glenamuck Distributor Road Scheme & Surface*

*Water Attenuation Ponds Scheme levy for a residential dwelling shall be paid to the planning authority.”*

- The reasons and considerations provided by the Board state that *“it is considered that a proper application of the Scheme will enable an exemption for the son of the landowner in this instance, if it is he who takes up the permission on one of the new residential units. It is not considered that the applicant himself qualifies for an exemption on the other new residential unit is not considered a replacement dwelling.”*

- In the appeal case PL06D.246582 the applicants Barbara and Bernadette Dwyer sought permission for design amendments to a previously approved house and removal of a condition in relation to an earlier permission.

- Condition no. 3 required that the applicant Bernadette Dwyer retain the property for seven years and there would be a reprieve from payment. The Inspector recommended the removal of the condition. The Board amended the wording of the condition.

*“The proposed dwelling when first completed shall be occupied as a place of permanent residence by either or both of the applicants.”*

- The case planner set out the definition of native in the planning report.
- Policy RES:16: Management of One-Off Housing – Applicants can establish to the satisfaction of the Planning Authority a genuine need for an additional dwelling in the rural areas 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.
- The applicant was informed as part of the clarification of further information that regarding the Glenamuck District Distributor Road Scheme and the Surface Water Attenuation Ponds Scheme a native to the area is defined as an applicant whose parents’ address is within the boundary of that Section 49 Supplementary Development Contribution Scheme on the applicant’s birth certificate. The Planning Authority stated that the applicant had moved to Derryclare when he was 14 and lived there permanently since 1986.

Therefore, the Planning Authority determined that compliance had not been demonstrated and that a section 49 levy shall be attached.

- The case Planning Officer provided clarity as to the origin of the definition of native as it applies to the Section 49 Contribution Scheme. Native is defined in the Oxford Dictionary as ‘a person born in a specified place or associated with a place by birth, whether subsequently resident there or not.’ The Planning Authority applied the definition in relation to the Section 49 Scheme that one of the parents’ addresses being within the Section 49 Scheme area at the time of birth would reasonably exempt a person from requiring to pay the contribution.
- In relation to the County Development Plan definition of native it is stated in the Planning Officers’ Report that the definition is noted but that it does not apply. As set out in the Planning Officers’ Report, the definition of “native” is different if ones place of birth was Kiltiernan for those on lands zoned Objective A, with the definition changing to those having spent substantial periods of their lives in Kiltiernan for those whose lands are zoned Objective Zoning B.
- In relation to the applicant’s case for compliance with the requirements for Section 8 of the Section 49 Scheme. Appendix C of the appeal submission includes Mr Glanville’s Statutory Declaration which states that the landholding has been in his ownership since 1985 and previously it was owned by his parents.
- It is envisaged that the applicant’s daughter Clare Glanville and her family will develop and live in the new dwelling.
- It is requested that the Board amend the wording of condition No. 10 to omit the requirement to pay the levy subject to the property not being disposed of within seven years of the date of the final grant.

## 6.2. The Planning Authority Response

- The Planning Authority state that the application is for permission consequent of outline permission and that the subject of the appeal the Section 49

Contribution Condition was included in the grant of outline permission and that therefore the appeal should be dismissed.

- The appeal refers to definitions relevant to the interpretation of the Section 49 Scheme. However, the Planning Authority consider that there is a misinterpretation of the definitions where it states “*The Case Officer suggests one is a “native” if one’s place of birth was Kilternan for those on lands zoned Objective A, with the definition changing to those having spent substantial periods of their lives etc, in Kilternant for those whose lands are zoned Objective Zoning B*”.
- The Planning Authority state that different definitions do not apply to different zonings, but that different interpretations apply to policies regarding “Management of One-off Housing” in the Development Plan and consideration of the exemptions from the Section 49 Contribution Scheme for the LAP lands. The Planning Authority applies the terms of the Section 49 Contribution Scheme on its own merits.
- The appeal refers to precedent cases D16A/0114 and D16A/1054. The Planning Authority state that the following applications D08A/1383, D09A/0163, D15A/0222, D15A/0296, D15A/0771 and D15A/0785 represent their consistent approach to the attachment of Section 49 Contribution conditions. In relation to the cited cases and the current application the Planning Authority state that where the applicant has complied with the terms of the exemption under the Section 49 Scheme an exemption has been applied.

### 6.3. Observations

- There are no observations on the appeal.

## 7.0 Assessment

- 7.1. This application refers to permission for a dwelling at Derryclare, Ballycorus Road, Kilternan, Co Dublin. Condition no. 10 of the permission requires the payment of a contribution of €45,620.40 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 (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 he is a native to the area and therefore he should not be liable for a levy. The applicant Mr Robert Patrick Glanville lives at the existing dwelling Derryclare, Ballycorus Road, Kiltarnan Co. Dublin. He has owned the landholding since 1985 and has lived there for the past 31 years.
- 7.5. It is stated in the appeal submission that Mr. Glanville has been resident at the site since 1953, some 63 years. Appendix D: of the appeal a letter from Clare Glanville the applicant’s daughter provides further detail on the matter. She states she was born in 1971 and at the time of her birth her parents lived in Shankill Co. Dublin. Clare Glanville moved with her parents to the family home at Derryclare, Ballycorus Road in 1985 at the age of 14 and lived there for a period of twenty years until 2005. In 2005 she moved with her husband to a property in Ballyboden.
- 7.6. As stated in the appeal submission the applicant proposes that his daughter Clare Glanville and her family will develop the new dwelling and live in the property to be close to him as he is recently widowed. From the details provided with the application and appeal it would appear that Mr Robert Patrick Glanville lived at Derryclare, Ballycorus Road, Kiltarnan, Co. Dublin from 1953 up until or before 1971 and then he returned to reside there from 1985 to the present day. Furthermore, it is stated that his parents were resident at Derryclare, Ballycorus Road, Kiltarnan, Co.

Dublin. Clare Glanville lived for twenty years at the property which had been the home of her father and her letter states that her paternal grandparents were from Derryclare, Ballycorus Road.

7.7. Condition no. 10 specifies,

*“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 10th 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 €45,620.40 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 Scheme cannot be appealed to An Bord Pleanala 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.”*

7.8. 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.

- 7.9. There is reference to two recent appeal cases concerning the Section 49 Supplementary Development Contribution Scheme for the Glenamuck District Distributor Road and Surface Water Attenuation Ponds in the current appeal. Those are PL06D.246582 and PL06D.247024. In relation to appeal case PL06D.246582 an appeal was lodged against the Section 49 Development Contribution. The Board determined that both applicants were native to the area and amended the wording of the condition which removed the requirement to pay the contribution unless the property was disposed of within seven years of the grant of permission
- 7.10. In relation to appeal case PL06D.247024 an appeal was lodged in respect of the Section 49 contribution condition where permission was granted for two dwellings at No. 13 Glenamuck Cottages. In that case the Board determined that the applicant did not qualify for an exemption but that his son did qualify for an exemption under the terms of the Scheme and the wording of the condition was amended.
- 7.11. 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.
- 7.12. Part (8) of the Development Contribution Scheme refers to the exemptions to the Scheme in respect of single residential developments and requires that the applicant is native to the area and has close family ties with the area.
- 7.13. The applicant Mr Robert Patrick Glanville having lived at Derryclare, Ballycorus Road for the last 31 years and indeed previous to that from 1953, does I consider constitute a 'native' of the area. Furthermore, the applicant's daughter Clare Glanville having lived at Derryclare, Ballycorus Road for a period of 20 years and having close family ties with the area with her father and paternal grandparents also

being from that that location does I consider constitute that Clare Glanville is a 'native' of the area. Accordingly, I determined that the applicant Mr Robert Patrick Glanville and his daughter Clare Glanville 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. 10 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 and Surface Water Attenuation Ponds, and the circumstances of the application, it is considered that a proper application of the scheme will enable an exemption for the applicant Robert Patrick Glanville or the applicant's daughter Clare Glanville in this instance, if she takes up the permission on the dwelling.

## 10.0 Condition

10. The proposed dwelling, when completed shall be occupied as a place of permanent residence by either the applicant or the applicant's daughter Clare Glanville, as outlined in the appeal documentation. If the applicant or Clare Glanville disposes of the property within seven years of the date of the final grant of planning permission, the full section 49 Supplementary Development Contribution Scheme for the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme levy for a residential dwelling shall be paid to the planning authority.

**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

6<sup>th</sup> of March 2017