



An  
Bord  
Pleanála

## Inspector's Report PL06F.248344

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<b>Development</b>	Retention of attached garage at side of existing house to the north west, extension to rear and an open carport to side of north west elevation.
<b>Location</b>	Hill Road, Adamstown, Garristown, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F17B/0008
<b>Applicant</b>	Thomas and Teresa Murphy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Thomas and Teresa Murphy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	29 <sup>th</sup> June 2017
<b>Inspector</b>	Niall Haverty

## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.1737 ha, is located c. 900m south east of Garristown village in a rural area of north Fingal. The site is roughly square in shape and is located on the northern side of the L5040 local secondary road. The site is bounded by agricultural lands to north, east and west, while there are a number of dwellings and farm complexes to the south, on the opposite side of the L5040. The site has an elevated position (c. 140m AOD) and has panoramic views of County Meath to the north.
- 1.2. The site comprises an existing single storey detached house and associated private open space. The house is parallel to the road and incorporates a garage element to the west, a covered car port area to the west of this, and a lean-to style extension to the rear, which extends beyond the eastern side gable of the house. The boundaries of the site are defined by hedgerows, fencing and mature trees.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the retention of the following development at an existing house:
  - Garage to side of the existing house, with area of 29 sq m and height of 5.925m.
  - Extension to rear of the existing house, with area of 22 sq m and height of 3.295m.
  - Open car port to side of the existing house, with area of 31 sq m and height of 2.905m.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Fingal County Council decided to grant planning permission subject to five conditions. Condition 5, which forms the basis of this appeal, states:

The developer shall pay the sum of €6,630.00 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments and the provision of security to ensure payment shall be agreed in writing with the planning authority prior to the commencement of development.

**Reason:** It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.

### 3.2. **Planning Authority Reports**

3.2.1. The Planning Officer's report can be summarised as follows:

- Retention of garage, extension and car port is acceptable in principle.
- Car port is visually innocuous in the context of the screened nature of the site.
- Garage harmonises with existing dwelling in terms of design, scale and materials. Its visual impact is acceptable.
- Extension does not give rise to any planning concerns.
- Development is not overbearing and does not give rise to any overlooking or overshadowing of adjoining property.

### 3.3. **Other Technical Reports**

3.3.1. **Water Services:** No objection subject to conditions.

3.3.2. **Transportation Planning:** No objection.

### 3.4. **Prescribed Bodies**

3.4.1. **Irish Water:** No objection subject to conditions.

### **3.5. Third Party Observations**

3.5.1. None.

## **4.0 Planning History**

4.1. I am not aware of any relevant recent planning history on the appeal site or in the surrounding area.

## **5.0 Policy Context**

### **5.1. Fingal Development Plan 2017-2023**

5.1.1. The site is governed by the policies and provisions contained in the Fingal Development Plan 2017-2023. The site is zoned 'RU', to protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage.

### **5.2. Fingal County Council Development Contribution Scheme 2016-2020**

5.2.1. Section 10 of the Fingal County Council Development Contribution Scheme 2016-2020 outlines exemptions and reductions and the following is noted:

- 10(ii): for clarification purposes:
  - (a) Exemptions and reductions shall not apply to permissions for retention of development.

### **5.3. Development Contributions Guidelines for Planning Authorities 2013**

5.3.1. In respect of retention permission, Section 2 of the Guidelines states:

- However, no exemption or waiver should apply to any applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A first party appeal against Condition 5 was made on behalf of Thomas and Teresa Murphy by Edward Brady & Associates. The grounds of appeal can be summarised as follows:

- Appeal relates to development contribution condition.
- House has been family home of applicants since being constructed in 1973.
- Purpose of planning application was to put all planning matters in order, as the house will be used as collateral/guarantee in connection with the Fair Deal nursing home system.
- Condition 5 is unreasonable and unaffordable. Fee does not apply to other applications for extensions up to 40 sq m and to apply these charges to retention applications only is unjust.
- Development of a domestic extension up to 40 sq m is usually exempt. This extension is 22 sq m. Development of garage up to 25 sq m is usually exempt. This garage is 29 sq m.
- Car port is a simple structure that is open on 3 sides and in poor condition. It was included in application to avoid confusion, and can be demolished. Board is asked to condition removal of car port.
- Development is in place for more than 30 years, and Planning Authority are precluded from issuing enforcement notices.
- If new, the development would mostly be covered by planning exemption areas. Car port can be considered a canopy/awning and is therefore exempt.
- Development contributions are excessive for pensioners seeking to put legal matters in order for future medical reasonable.

### 6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Condition 5, which required the payment of €6,630, was calculated on the basis of 82 sq m at a rate of €80.85 per sq m.
- Section 10(ii) of the Development Contribution Scheme 2016-2020 states that exemptions and reductions shall not apply to permissions for retention of development.
- This provision was incorporated as required by the Development Contributions Guidelines for Planning Authorities issued by DHPCLG.

### 6.3. Observations

- None.

### 6.4. Other Responses

6.4.1. The applicants' response to the Planning Authority's submission can be summarised as follows:

- Condition 5 leaves the amount of the levy to be adjusted to the date of commencement. The commencement date was over 30 years ago and the planning authority should have applied their Tender Price Index accordingly.
- Assessment by Chartered Accountant utilising CSO's Consumer Price Index inflation calculator indicates that the equivalent value of €6,200 in March 1987 was €3,240.
- Reduced figure is still excessive given circumstances and nature of development.
- Car port has deteriorated further and applicant requests that it be conditioned to be removed.

## **7.0 Assessment**

### **7.1. Nature of Appeal**

- 7.1.1. This is an appeal in relation to the application of a development contribution only. The Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.
- 7.1.2. An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of a Development Contribution Scheme has not been properly applied in respect of any condition laid down by the planning authority. In this appeal the issue to be considered is whether the terms of the Scheme have been properly applied.

### **7.2. Application of Development Contribution Scheme**

- 7.2.1. Having reviewed the submitted drawings and inspected the site, I note that the car port is a flat-roofed timber structure attached to the gable wall of the garage area for which retention permission was also sought. The car port is entirely open to the front and rear, while the side of the car port is comprised of the timber boundary fence to the site. This boundary fence is comprised of horizontal timber boards, with small gaps in between, and a c. 150mm gap between its bottom edge and the ground. There is also a gap between the roof of the car port and the gable wall of the garage area.
- 7.2.2. Having regard to the fact that the structure is fully open to the elements to front and rear, and spans from boundary fence to gable wall, I consider that it comprises a covered external area, rather than constituting internal floor area. In this regard I note that Note 2 of the DCS states that:
- “The floor area of proposed development where buildings are involved shall be calculated as the gross floor area. This means the gross floor area determined from the internal dimensions of the proposed buildings, including the gross floor area of each floor including mezzanine floors.”
- 7.2.3. I therefore do not consider that the terms of the development contribution scheme were correctly applied insofar as the car port is concerned, since it does not

comprise floor area. I consider that no development contributions are payable for this element of the development to be retained.

7.2.4. With regard to the other elements for which retention permission was sought (i.e. the garage and extension), I consider that the terms of the development contribution scheme were properly applied, as both the Fingal DCS and the Development Contribution Guidelines for Planning Authorities 2013 explicitly state that exemptions or reductions shall not apply to applications for retention permission. Indeed, the Guidelines go further and state that planning authorities are encouraged to impose higher rates in respect of such applications. In light of this, the applicant's contention that the development would generally be exempt from development contributions if it were not a retention application is not a material planning consideration. The development has been undertaken, and the provisions of the DCS as they relate to retention applications are therefore applicable in this instance. In my opinion the DCS is clear and unambiguous in excluding development for which retention is being sought from availing of the various reductions or exemptions.

7.2.5. With regard to the applicant's contention that the indexation of the development contribution referred to in condition 5 should be applied backwards, to the date of commencement of the development for which retention was sought in 1987, I do not consider that this would be consistent with the terms of the DCS, which relates to the period 2016 to 2020. Furthermore, since the application was a retention application, no commencement notice was served for the development, and there is no documentary evidence on file supporting the stated date of construction.

7.2.6. In conclusion, I consider that the Planning Authority correctly applied the terms of the DCS with regard to the garage and extension, but did not correctly apply the terms of the DCS with regard to the car port, since it did not result in the creation of any additional floor area.

7.2.7. I consider that the appropriate development contribution in respect of the proposed development, utilising the indexed development contribution rate for 2017, is as follows:

- Garage to side: 29 sq m x €80.85 per sq m = €2,344.65
- Extension to rear: 22 sq m x €80.85 per sq m = €1,778.70



- **Total = €2,344.65 + €1,778.70 = €4,123.35**

## 8.0 Recommendation

- 8.1. I recommend that the Board direct the Planning Authority to AMEND Condition 5 as follows, to remove the area of the car port from the total development contribution payable:

The developer shall pay to the planning authority a financial contribution of €4,123.35 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 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 Development Contribution Scheme made under section 48 of the Act be applied to the permission.

## 9.0 Reasons and Considerations

- 9.1. Having regard to the nature of the subject application, which comprises the retention of a garage to the side of an existing house, an extension to the rear of the house and a car port to the side of the side, the Board considered that the terms of the Fingal County Council Development Contribution Scheme 2016-2020 were properly applied by the planning authority in respect of the garage and rear extension, since the Scheme states that exemptions and reductions shall not apply to permissions for retention of development, but also considered that the terms of the Scheme were not properly applied by the planning authority in respect of the car port, which is a

covered external area that did not entail the creation of additional floor space and which therefore does not give rise to a requirement for a development contribution.

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Niall Haverty  
Planning Inspector

30<sup>th</sup> June 2017