



An  
Bord  
Pleanála

## Inspector's Report PL09.248743

---

<b>Development</b>	Retention of existing building as a residential unit.
<b>Location</b>	Broadleas Commons, Ballymore Eustace, County Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority Reg. Ref.</b>	16/1076.
<b>Applicant</b>	Maria Winders.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Maria Winders
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	None.
<b>Inspector</b>	Philip Davis.

# Contents

1.0 Introduction.....	3
2.0 Site Location and Description .....	3
3.0 Proposed Development .....	3
4.0 Planning Authority Decision.....	3
4.1. Decision .....	3
4.2. Planning Authority Reports .....	4
5.0 Planning History.....	4
6.0 Policy Context.....	4
6.1. Development Plan.....	4
6.2. Natural Heritage Designations .....	4
7.0 The Appeal .....	5
7.1. Grounds of Appeal .....	5
7.2. Planning Authority Response .....	5
7.3. Applicant Response .....	6
8.0 Assessment.....	6
9.0 Recommendation.....	9
10.0 Reasons and Considerations .....	10

## 1.0 Introduction

This is an appeal under S.48(10)(b) of the 2000 Act, as amended, arguing that the Development Contribution Scheme has been improperly applied. It is one of three concurrent schemes on the same landholding – the others being **PL09.248741** and **PL09.248746**.

## 2.0 Site Location and Description

The appeal site is located in Broadleas Commons, a townland characterised by extensive rural sprawl extending south from the village of Ballymore Eustace. The appeal site is a 0.18 hectare site some 2-km south of Ballymore Eustace with a building in use for residential, part of a larger landholding including dwellings and stables.

## 3.0 Proposed Development

*The development to be retained consists of the continued use of the existing building as a residential unit. (The change of use of residential use to stables (c.174.9 m<sup>2</sup>) and the change of use from storage shed (c.50m<sup>2</sup>) was never implemented). The development, for which retention permission is sought, also includes the construction of a vehicular access to the main road, and all associated site works.*

## 4.0 Planning Authority Decision

### 4.1. Decision

The planning authority decided to grant permission subject to 15 no. conditions. Condition 15 set a S.48 development contribution of €11,245.00.

## 4.2. **Planning Authority Reports**

### 4.2.1. Planning Reports

- The planning report notes two concurrent applications on the landholding, both for retention.

### 4.2.2. Other Technical Reports

A Development Contribution calculation attached to the planners report states that it is in Band 1, and should be charged at a rate of 50 euro per square metre.

## 5.0 **Planning History**

The planning report states that in 2017 permission was granted (on the larger landholding) for the partial demolition of existing dwelling house and to convert the remainder to stable block and tack room, and to construct a new dormer style dwelling house with barn and all associated site works (**07/2417**).

## 6.0 **Policy Context**

### 6.1. **Development Plan**

The site is in open countryside without a specific zoning designation. There is a recorded monument close to the site (KLD029-014001), a standing stone.

### 6.2. **Natural Heritage Designations**

The closest Natura 2000 site is the Poulaphouca Reservoir SPA, site code 004063, some 3-km to the east. A screening was carried out by the planning authority which concluded that no AA was required.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

- It is submitted that the planning authority has not taken due consideration that the permission does not result in any additional development or strain on existing infrastructure.
- It is acknowledged that Section 12(q) of the Scheme does not allow for an exemption for retention, but states that as it was previously permitted and in use as a residential dwelling, it should be considered as subject to exemption.
- It is noted in this regard that in permission 16/1076 which granted permission for the continued use of the unit, condition 15 related to the payment of a S.48 contribution – refers to 12(g) of the Scheme.
- It is stated that the applicant is on the Council Housing List – it is noted that Section 12(r) that in exceptional circumstances the fee can be reduced at the discretion of the Chief Executive.

### 7.2. Planning Authority Response

- It is noted that the Scheme included the area of the garage – this is exempt, and so the contribution should be reduced accordingly (by 50 square metres) – this should result in a contribution of €8,745.
- It is submitted that as the applicant did not enact 07/2417, then the retention under 16/1076 cannot be considered a change of use type development. It is noted that there is no previous permission for a dwelling on the site on record. If it is pre-1963, paragraph 9(b) of the Scheme states that contributions will be applied in full.

### 7.3. Applicant Response

- It is stated that in 2007 permission was granted for a house and barn (**07/2417**) on the subject site. It was not carried out, which resulted in the need for this retention application (**16/1076**).
- It is submitted that the Planning Authority has not taken due consideration that the permission does not result in any additional development or strain on existing infrastructure.
- It is noted that 12(q) of the Scheme states that no exemptions shall apply to retention permissions.
- It is restated that the established use on the site is residential, even in the absence of a record of the original permission.
- It is restated that Ms. Winder qualifies for an exemption under 12(g).

## 8.0 Assessment

### 8.1. Overview

In assessing this appeal, I consider it important to establish an overview of the planning history of the overall landholding, not just this site, as all three concurrent appeals are interrelated.

There is no record on file of permissions relating to the landholding prior to 2007. A single dwelling was located on the south-western corner of the site (the red lined area in this appeal). This dwelling appears to have been a long established cottage, built at a right angle to the road. The dwelling appears on older OS plans from the early 20<sup>th</sup> Century. Aerial photographs from 2005 show the site undeveloped, apart from the cottage and another building at a right angle to this cottage.

In 2007 the planning authority granted permission (**07/2417**) for a new dwelling on the landholding. This permission was for a new dwelling and to turn the existing house (the one subject to this appeal) on the south-western corner to stables and tack room use. Condition 33 of this permission set a development contribution for the new dwelling.

Subsequent to this, it appears that a series of unauthorised developments took place on the landholding. These included:

- The construction of the permitted dwelling on a significantly larger scale, and on a different design/alignment on the site.
- The existing dwelling stayed (or was reinstated) to residential use, contrary to the permission.
- Two sheds were constructed on the northern corner of the landholding, used partially for agricultural use, and partly for a business operated by the owners of the main house.

The applicants have sought, in three separate permissions, the retention of the permitted dwelling on its existing larger scale and new design/alignment (**16/1074/PL09.248741**), the retention of the two sheds (**16/1075/ PL09.248746**); and the retention of the use of the original dwelling as a residential unit (this appeal).

While other arguments have been raised by the appellants, the core of the appeal against the development contribution is that it is submitted that as these applications are for the 'retention' of previously permitted developments, they are exempt under section 12 of the Scheme.

With regard to the dwelling, the core of the dwelling appears to date to at least the early 20<sup>th</sup> Century. It was not part of the red lined area for planning permission **07/2417**, but it was linked by way of the permission which was essentially for a replacement dwelling. I would consider that the residential use of this dwelling was extinguished in planning terms as soon as the new dwelling on the site was constructed. From that time, any use but the permitted use as stables and tack room was unauthorised.

The applicant has argued that exemption 12(q) applies as the unit was previously permitted and in use as residential:

**12(q) Retention Permission**

No exemptions or waivers shall apply to any developments subject to retention permission save where it applies to a previously permitted development (e.g. temporary permission).

However, I do not consider that this use can be considered to have been 'previously permitted'. The house was an established use on site, and I would consider this use to have been extinguished when the replacement dwelling was constructed. The purpose of 12(q) is clearly to allow an exemption for exceptional circumstances such as for extending time limited conditions. This does not apply in this case as it is a straightforward case of the applicant not carrying out the development in accordance with the plans and specifications and conditions.

The applicant also argues that there should be an exemption or reduction on the basis of 12(g) of the Scheme:

**12(g) Change of Use**

This scheme provides for waivers in the case of Change of Use planning permissions. Kildare County Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.

As the grant of retention permission results in a net increase of one dwelling on the landholding, this clearly does not apply. The previous use of the site as residential is irrelevant as this use was extinguished by the completion of the other dwelling on the landholding.

The applicant also requested that the Board have regard to 12(r) which allows exemptions and reduction in the case of special personal circumstances.

**12(r) Chief Executive**

In exceptional circumstances the required development contribution may be reduced at the discretion of the Chief Executive where this, in his opinion, is warranted, having regard to Government policy in relation to specific classes of development, the particular economic, social or cultural benefits of the development or other exceptional circumstances.



This power to reduce a contribution required by the Scheme is the preserve of the Chief Executive of the Council and as such I would not consider it appropriate of the Board to use its powers under S.48(1)(b) and 139 of the Act as amended to make a direction in this regard. I would note that any decision by the Board would not preclude the Chief Executive from using his/her discretion under 12(r).

I do not consider that any other exemptions would apply. I therefore conclude that the Scheme was correctly applied by the planning authority in principle. I note however that there was a miscalculation in that the garage area was included in the overall contribution. The contribution should therefore be reduced to the sum of €8,745.00.

## **9.0 Recommendation**

I recommend that the Board do not direct the Planning Authority to delete condition no. 15 of 16/1076, but to direct the PA to reduce it to €8,745.00 in accordance with the reasons and considerations set out below.

## 10.0 Reasons and Considerations

The Board considers that the requirement to pay the development contribution is in accordance with the requirements of Section 48 of the Planning and Development Act, 2000, as amended, and the Kildare Development Contribution Scheme 2015-2022. It is considered that the residential use of the site was extinguished with the construction of the dwelling permitted under 07/2417 and so the proposed development does not represent the retention of an existing residential use and it is considered that as such it represents an additional intensification on public infrastructure. As such, it is not exempt under subsection 12 (g) and 12(q) of the Development Contribution Scheme 2015-2022 or any other exemption set out in the Scheme. Accordingly, the Board considers that the sum set out in Condition 15 of permission 16/1076 was correctly applied in principle. It is noted that the contribution included the garage area, which is not subject to a development contribution. The levy as required is therefore €8,745.00 and the Board directs the Planning Authority to alter Condition no. 15 accordingly.

---

Philip Davis  
Planning Inspector

26<sup>th</sup> October 2017.