



An
Bord
Pleanála

Inspector's Report PL06D.249003

Development	Retention of shed and the proposed erection of a shed and a greenhouse, together with all associated site works.
Location	Kilmurray House, Falls Road, Shankill, Dublin 18
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D17B/0061
Applicant(s)	Peter & Joan McCann
Type of Application	Retention permission and permission
Planning Authority Decision	Grant, subject to 8 conditions
Type of Appeal	Section 48
Appellant(s)	Peter & Joan McCann
Observer(s)	None
Date of Site Inspection	n/a
Inspector	Hugh D. Morrison

1.0 Planning Authority Decision

1.1. Decision

Following the receipt of further information, permission was granted subject to 8 conditions, the following 2 of which are the subject of this appeal:

- Condition 6, which requires the developer to pay €5,034.70 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by this Authority in respect of the provision of the Roads, Public Infrastructure, and Facilities benefiting development in its area.
- Condition 7, which requires the developer to pay €3,267.15 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by this Authority in respect of the provision of the Community and Parks Infrastructure, Facilities, and Amenities benefiting development in its area.

1.2. Planning Authority Reports

1.2.1. Planning Reports

See the Planning Authority's response to the applicants' grounds of appeal.

2.0 Planning History

- D06A/0733: Alterations/extension to existing residence and garage, in the latter case to provide a granny flat: Permitted, subject to conditions, 3 of which related to financial contributions that were the subject of a subsequent enforcement file (FIN 39207) for non-compliance.
- ENF 3716: Enforcement file opened in February 2015 concerning the construction to the rear of the residence without planning permission.

3.0 Policy Context

3.1. Development Plan

Section 2.2.12 and Policy ST32 of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 (CDP) address financial contributions.

3.2. Development Contribution Scheme

The Planning Authority's current Section 48 Development Contribution Scheme (DCS) is for the period 2016 – 2020.

4.0 The Appeal

4.1. Grounds of Appeal

Under Section 48(10)(b) of the Planning and Development Act, 2000 – 2017, the applicant states that the Planning Authority has not properly applied its DCS in attaching conditions 6 and 7 to its grant of permission.

- Thus, in relation to condition 6, as the proposal simply comprises a timber shed and greenhouse, which would be used to, variously, store garden tools and mowers and flowering plants, no benefit would accrue from the provision of Roads Public Infrastructure and Facilities.
- Thus, in relation to condition 7, as the proposal simply comprises a timber shed and greenhouse, which would be used to, variously, store garden tools and mowers and flowering plants, no benefit would accrue from the provision of Community and Parks Infrastructure, Facilities, and Amenities.

4.2. Planning Authority Response

- Under the DCS, domestic storage sheds are not the subject of any exemption from or reduction in development levies and so they are subject to the normal rate of €74.10 per sqm of internal floorspace, i.e. €28.41 towards Communities and Parks, Facilities, and Amenities + €43.78 towards Roads,

Public Infrastructure, and Facilities + €1.91 towards Surface Water Infrastructure.

- Under permitted application D06A/0733, the standard 40 sqm exemption for residential floorspace was expended. The Planning Authority's calculations for conditions 6 and 7 were thus based on the full internal floorspace of the retained shed and the proposed shed, i.e. 32 sqm and 100 sqm, which was then subject to the maximum reckonable floorspace of 115 sqm. Hence,
 - For condition 6: $€43.78 \times 115 \text{ sqm} = €5,034.70$, and
 - For condition 7: $€28.41 \times 115 \text{ sqm} = €3,267.15$.
- The greenhouse was however excluded from the Planning Authority's calculations, i.e. 62 sqm.

5.0 Assessment

- 5.1. The applicants have, under Section 48(10)(b) of the Planning and Development Act, 2000 – 2017, contested the Planning Authority's application of its own DCS in the attachment of conditions 6 and 7 to the draft permission granted to D17B/0061. They state that, as the proposal is for outbuildings that would be used solely in conjunction with their garden, no benefit would accrue to this development from public expenditure with respect to roads and community facilities and so levies in these respects are misplaced. By contrast, they have not appealed condition 5, which imposes a levy towards surface water infrastructure.
- 5.2. The basis of the applicants' appeal is not recognised by the DCS, i.e. the Planning Authority does not have to demonstrate that any particular development would directly benefit from public expenditure in its imposition of specific levies. Rather, if a proposal comes within the categories of development cited by the DCS, then the relevant levy can be imposed. In this respect, levies which are general development contributions differ from special development contributions, where payment is linked to specified works that the Planning Authority needs to undertake to facilitate the proposal going ahead.
- 5.3. The proposal is for the retention of an existing shed and the construction of a proposed shed and greenhouse. The proposed shed would be attached to the

existing shed and the greenhouse would, in turn, be attached to the proposed shed. All three buildings would form a row of buildings which is/would be freestanding within the rear garden to the applicants' dwelling house. Photographs on the file illustrate that this row is physically separate, apart from a timber boarded fence, from a row of buildings to the south west that appear to be attached to a garage that was extended and converted to form a granny flat under D06A/0733.

- 5.4. Under Section 9 of the DCS, three categories of development are referred in connection with the imposition of levies, i.e. units of residential development, domestic extensions, and industrial/commercial classes of development. The first of these categories refers to new dwellings only and the second refers to domestic extensions as distinct from freestanding domestic outbuildings. The current proposal would thus *prima facie* lie outside these two categories, while the third does not refer to residential/domestic development at all.
- 5.5. Neither the Planning and Development Act, 2000 – 2017, nor the Planning and Development Regulations, 2001 – 2017, provide a definition of the term domestic extension. Under Class 1 of Part 1 of Schedule 2 to Article 6 of these Regulations, a description of what an extension to a house entails is given, i.e. "...the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house." Under Class 3 of Part 1 of Schedule 2 to Article 6, freestanding domestic outbuildings lie within its description, i.e. "The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure." If it is assumed that the descriptions contained in these Classes is mutually exclusive, then the defining characteristic of a new build extension is its physical attachment to a house and the defining characteristic of a domestic outbuilding is that it is freestanding.
- 5.6. In the present case, it could be argued that the proposal entails the extension of a residential/domestic use into the subject row of buildings. However, Section 9 of the DCS does not refer to use *per se* but only in conjunction with the provision of either units of residential development, i.e. dwellings, or domestic floorspace. Thus, in the latter case, which is relevant to this appeal, the emphasis is upon the provision of

physical floorspace and so I consider that the above distinction drawn from the Regulations holds good.

- 5.7. In the light of the above discussion, I conclude that the DCS does not address freestanding domestic outbuildings, such as those that are the subject of the current proposal, and so it provides no basis upon which to impose levies on these outbuildings.
- 5.8. Notwithstanding, the foregoing conclusion, if the Board takes a different view on the applicability of the DCS to the current proposal, then the following matters need to be considered:
- The Planning Authority has made a distinction between the existing and proposed sheds on the one hand and the greenhouse on the other. Thus, while the floorspace comprised in the former is levied, the floorspace comprised in the latter is not. No explanation for this distinction has been provided.
 - The Planning Authority has deemed the proposed shed to have a floorspace of 100 sqm, whereas the notation on the submitted plans states that this is 97 sqm and the figure cited in the completed forms disaggregates to 97 sqm, i.e. 159 less 62. Again no explanation for the choice of figure has been provided.
 - Under Section 9 of the DCS, levies on retention floorspace are to be the subject of a multiplier of 1.25. This multiplier does not appear to have been applied. Under Section 10(b), a maximum of 115 sqm of domestic floorspace should be levied in extension situations. The Planning Authority has applied this maximum. However, in doing so, it has treated the 97 sqm of proposed floorspace on a par with the 32 sqm of retained floorspace, thereby departing from the DCS. While the DCS is silent on how to handle a mixture of proposed and retained floorspace where the maximum applies, a reasonable approach would perhaps be to contract each element on a *pro rata* basis, i.e. roughly one quarter retained (28.75 sqm) and three quarters proposed (86.25 sqm) of 115 sqm.

6.0 Recommendation

That the Planning Authority be instructed to omit conditions 6 and 7 from its draft permission granted to D17B/0061.

7.0 Reasons and Considerations

It is considered that, under the Development Contribution Scheme 2016 – 2020 of Dun Laoghaire-Rathdown County Council, the Planning Authority has mis-applied this Scheme in imposing conditions 6 and 7 upon its draft permission granted to D17B/0061 and so the omission of these two conditions from this permission is warranted.

Hugh D. Morrison
Planning Inspector

23rd October 2017