



An  
Bord  
Pleanála

## Inspector's Report PL01.249413

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<b>Development</b>	Retention of House and site boundaries as constructed and all ancillary site works and services.
<b>Location</b>	Radharc na Coile, Oakpark, Carlow
<b>Planning Authority</b>	Carlow County Council
<b>Planning Authority Reg. Ref.</b>	17/185
<b>Applicant(s)</b>	Patrick James MacGlinchey
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party v Condition
<b>Appellant(s)</b>	As Above
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	N.A.
<b>Inspector</b>	Kenneth Moloney

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## **1.0 Introduction**

- 1.1. This is a first party appeal against a financial contribution condition which was attached to the planning authority's decision to grant planning permission for development consisting of the retention of a dormer style dwelling house and site boundaries as constructed.
- 1.2. As this is an appeal in respect of a financial contribution, the provisions of Section 48 of the Planning and Development Act, 2000 – 2010, apply and the Board is restricted to considering this matter alone and cannot consider the matter de nova. I have therefore confined my assessment to Condition no. 10 of the local authority permission.
- 1.3. Having regard to the nature of the appeal before the Board (i.e. first party against a condition), the information available on file, a site inspection of the appeal site was not deemed necessary in this instance.

## **2.0 Proposed Development**

- 2.1. The proposed development consists of the retention of a dormer style dwelling house. The overall floor area of the subject house is 226 sq. metres and the floor plan comprises of living space and 3 no. bedrooms at ground floor level and 3 no. bedrooms at first floor level.

### 3.0 Planning Authority Decision

Carlow County Council decided to **grant** planning permission subject to 10 no. conditions. Condition no. 10 is relevant to the appeal submission.

**Condition no. 10** states that *'A development contribution in the sum of €7,939.75 set out hereunder to be paid within one month of the date of permission for this development. An interest charge will apply from the date permission was granted to the actual payment date, at the rate of 5% per annum (0.0137% per day) rounded to the nearest Euro. The first 90 days' interest or part therefore will be discounted'.*

**Reason;** In order to contribute to the cost of the Local Authority Services which facilitate the development.

#### 3.1. Planning Authority Reports

3.1.1. The main issues raised in the planner's report relevant to condition no. 10 are as follows;

##### Area Planner

- Section 19, Class 2(a) of the Development Contribution is relevant.
- Section 26, Applications for retention will be charged at the full rate under the scheme.
- Exemptions or reductions will not apply to retention applications.
- Contribution charge applicable as 226.85 sq. m. X €35 = €7,939.75.

3.1.2. Internal Reports; -

- Carlow Municipal District Office; - No objections from a roads perspective.
- Water Services / Environment – No objections. Proposal not served by services.
- Chief Fire Officer; - No objections.

- Environment and Water Services – Additional information sought in relation to the wastewater treatment system.
- Roads – No objection.

### 3.2. **Third Party Observations**

None.

## 4.0 **Planning History**

- L.A. Ref. PL. 9367 – Permission **granted** on the **10<sup>th</sup> September 1990** for house, garage and septic tank. The floor area of the house is 252 sq. metres and the garage has a floor area with 15 sq. metres. The dormer bungalow includes two dormer windows and velux windows at roof level. Permission granted subject to 19 no. conditions. No development contribution condition.
- L.A. Ref. PL. 9575 – Permission **granted** on the **9<sup>th</sup> April 1991** for retention of a dwelling house and septic tank. Permission granted subject to 14 no. conditions.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

The operational Development Plan is the Carlow County Development Plan, 2015 – 2021.

### 5.2. **Development Contribution Scheme**

The relevant Development Contribution Scheme is the Carlow County Council Development Contribution Scheme, 2017 – 2021, adopted 13<sup>th</sup> February 2017.

Section 19 of the Scheme sets out the Schedule of Contributions for the different development descriptions.

### 5.3. **National Guidelines**

The Development Contributions, Guidelines for Planning Authorities, 2013, aims to provide non-statutory guidance on the drawing up of development contributions to reflect the radical economic changes that have impacted across all sectors since the last guidance in 2007. The guidelines aim to achieve a greater level of consistency in development contribution schemes on a national basis providing enhance clarity to inform investment decisions.

Section 2 sets out guidance in relation to retention permission. It is stated as follows *'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**

The following is the summary of a first party appeal submitted by the Dean Design on behalf of Patrick James MacGlinchey;

- This appeal is in relation to condition no. 10.
- There were 3 no. planning permissions on the subject site.
- CW9367 in 1990 (permission sought for dwelling house), ref. 9575 in 1991 (retention for dwelling house) and the current application before the Board.
- The appellant has not made any alterations or material changes to the property in 26 years and has paid all contributions requested by the Local Authority since the construction of the house.
- The floor area of the dwelling has not altered since its construction.

- It is submitted that the appellant is retired and for economic reasons needs to downsize his property and wishes to sell the property.
- The Board are requested to grant permission and remove condition no. 10.

## 7.0 Planning Authority Response

- Development contribution applied in accordance with relevant Development contribution scheme.
- Contribution as per condition no. 10 is €7,939.75.
- No contribution applied under previous history files.

## 8.0 First Party Response

None

## 9.0 Assessment

As referred to in the introduction above this appeal assessment solely assesses Condition no. 10 of the planning authority's decision. Condition no. 10, stated above, requires the applicant to make a financial contribution of €7,939.75 to the local authority for the provision of infrastructure.

I would acknowledge that Section 48 (3) (a) of the Planning and Development Act, 2000 – 2010, sets out that the Development Contribution Schemes shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities. The Board must ensure, in the appeals process, that the scheme has been applied appropriately. I would consider that the legislation in this case provides that the Board, in considering the type of appeal, must decide whether the terms of the Development Contribution Scheme have been properly applied by the Planning

Authority. It cannot enquire into, nor determine, any issue relating to the rights or wrongs of the Scheme itself.

The relevant development contribution scheme is the Carlow County Council, Development Contribution Scheme, 2017.

The appeal submission in relation to condition no. 10 argues that the applicant has already obtained planning permission for his house in 1990 and 1991 and therefore a development contribution would not be required in this current application.

The current application is for the retention of a dwelling house. I would note from the photographs of the existing house, placed on the file, that there are some material external differences from the permitted house to the actual constructed house.

These differences include the omission of 3 no. velux roof windows to the front roof plain. The three permitted bedrooms at attic level were never constructed. The floor area of the existing constructed house is 226.85 sq. m. whereas the house granted permission has a floor area of 252 sq. metres. Additional information response and submitted drawings also outline that that gable elevations to the north west and the south west were constructed differently to that permitted.

The Development Contributions, Guidelines for Planning Authorities, 2013, are clear in relation to their guidance for retention permission. The Guidelines state that no exemption should apply to any application for retention of development. Separately I would note that the relevant Development Contribution Scheme for the subject development, i.e. Carlow County Council Development Contribution Scheme, 2017 – 2021, refers to retention applications. Section 26 of the Development Contribution Scheme states the following;

*'applications for retention will be charged at the full rate under the scheme. Exemptions or reductions will not apply to retention applications'.*



I would note from the planning history documentation on the file that no development contribution was previously paid and therefore the issue of double charging would not arise.

Section 19 of the Carlow County Council Development Contribution Scheme, 2017 – 2021, sets out the development contribution charges for the different types of the development. Section 19 (a) advises that the development charge for Urban Residential Development within Carlow Town and Environs is €35 per sq. m. Therefore, allowing for the floor area of 226.85 sq. m. the appropriate development contribution charge is €7,939.75.

I would therefore recommend that condition no. 10 is retained.

## 10.0 Recommendation

The Board based on the reasons and considerations set out below, directs the said Council under subsection (10) (b) of Section 48 of the Planning and Development Act, 2000 – 2010, to **RETAIN** condition No. 10 so that it shall be as follows:

### **REASONS AND CONSIDERATIONS**

It is considered that:

The terms of the Development Contributions Scheme were correctly interpreted in respect of Condition No. 10, insofar as the development is subject to financial contributions under the Scheme, having regard to advice of Development Contributions, Guidelines for Planning Authorities, 2013.

### **Condition no. 10**

The developer shall pay to the planning authority a financial contribution of €7,939.75 (seven thousand nine hundred and thirty-nine euro and seventy-five cent) in respect of public infrastructure and facilities benefiting development in 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. The contribution shall be paid within six months of this order 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 the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act, 2000 – 2010, 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.

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Kenneth Moloney  
Planning Inspector  
2<sup>nd</sup> May 2018