



An  
Bord  
Pleanála

## Inspector's Report ABP300233-17.

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| <b>Development</b>                  | Permission for retention of no 23 and no 23A Fairhill as individual properties on their own individual boundaries.<br>Permission for the provision of a front pedestrian entrance from Fairhill Road to No 23A. |
| <b>Location</b>                     | 23 & 23A Fairhill, The Claddagh.<br>Galway.   |
| <b>Planning Authority</b>           | Galway City Council.  |
| <b>Planning Authority Reg. Ref.</b> | 17/250.   |
| <b>Applicant(s)</b>                 | Pat Larkin.   |
| <b>Type of Application</b>          | Grant permission.   |
| <b>Planning Authority Decision</b>  | Grant Permission subject to conditions.   |
| <b>Type of Appeal</b>               | First Party   |
| <b>Appellant(s)</b>                 | Pat Larkin.   |
| <b>Observer(s)</b>                  | None  |
| <b>Date of Site Inspection</b>      | 21 <sup>st</sup> February 2018.   |
| <b>Inspector</b>                    | Brid Maxwell.   |

## **1.0 Site Location and Description**

1.1. The appeal site has a stated area of 0.0193 hectares is located within the inner residential neighbourhood area of Claddagh in Galway City. The site is occupied by a two storey pair of dwellings in turn attached to a three storey apartment building.

## **2.0 Proposed Development**

2.1. The application seeks permission for retention of No 23 and 23A Fairhill as individual properties on their own individual site boundaries. Application details outline that the existing development of two separate dwellings were constructed pre 1963 as a pair of semi-detached dwellings. Both dwellings have independent front door and independent pedestrian access gate on the front boundary. Application documentation outlines that the properties were incorrectly registered hence the application for permission to enable separate folio registration.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated 24<sup>th</sup> October 2017, Galway City Council issued notification of its decision to grant permission and 11 conditions were attached which included the following:

Condition 2. Within 6 months of the final grant of planning permission, a financial contribution of €8,639. (Eight thousand six hundred and thirty-nine Euro) shall be paid by the developer to Galway City Council towards the cost of provision of public services in the area which facilitates the development.

Condition 3. Within 6 months of the final grant of planning permission, a financial contribution of €2,500. (Two thousand five hundred euro) to be paid to Galway City Council towards the provision of public transport facilities.

Condition 6. A new rear party boundary wall shall be erected between Dwelling's No 23 and 23A. The wall shall be made up of concrete blocks and shall be capped and plastered.

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

#### **3.2.1. Planning Reports**

Planner's report asserts that the case presents a unique set of circumstances given the apparent construction pre 1963 and operation as two independent units without a negative impact on the residential amenity of the local area. Permission was recommended subject to conditions.

Development Contributions calculation is based on creation of a separate unit 23A with a stated floor area of 54sq.m. €8,639 and a parking transport contribution €2,500.

### **4.0 Planning History**

None

### **5.0 Policy Context**

#### **5.1. Development Plan**

The Galway City Development Plan 2017-2023 refers. The site is zoned "R" residential.

#### **5.2. Natural Heritage Designations**

Galway Bay Complex SAC Site Code 00268. (Within .2km)

Inner Galway Bay SPA Site Code 004031. (Within .5km)

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party appeal is against the two financial contribution conditions of the decision. The grounds of appeal are outlined as follows:

- Dwellings were constructed pre 1963 as a pair of semi-detached dwellings.
- Contributions are unjustified.
- Arguably subdivision of the folio did not require a grant of planning permission however as a new pedestrian entrance was required to replace the communal pedestrian entrance for separate site identity it was decided to retain both properties as individual properties on their own individual boundaries for future clarification.
- Section 48 relates to new development and as the development has been in existence for 70 years contributions should not apply.

### 6.2. Planning Authority Response

6.2.1 In response to the appeal the Planning Authority asserts that it is not known if the dwellings were constructed pre-1963. The various occupants of the dwellings have benefitted from use of public services for many years. As is the norm, development contribution was levied in respect of the development. However, considering the contents of the first party appeal and given the uniqueness of the situation, on balance it is considered that a 50% reduction of the normal development contribution and parking contribution would be appropriate.

## 7.0 Assessment

7.1 As this is a first party appeal against a financial contribution condition applied under Galway Development Contribution Scheme the provisions of Section 48 of the Planning and Development Act 2000 as amended apply and the Board cannot

consider the proposed development de novo. The Board's remit in appeals against financial contribution conditions is restricted to the proper application of the adopted scheme. I note that the Galway Development Contribution Scheme 2008-2012 as referred to in Manager's Order dated 11 April 2014 continues to be in place pending ongoing review and finalisation of the development contribution scheme.

7.2 I note that Section 48 provides that

*"S48(1) A planning authority may, when granting a planning permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided or that is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).*

*2(a) Subject to paragraph (c) the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section and a planning authority may make one or more schemes in respect of different parts of its functional area.*

*(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development."*

7.3 According to the Galway Development Contributions Scheme 2008-2012 the following contributions apply to:

- Residential element.

Unit sizes under 73m<sup>2</sup> = €8,639

Unit sizes 73m<sup>2</sup> and under 125m<sup>2</sup> = €9,739

Unit sizes 125m<sup>2</sup> and over = €10,831

- Where no parking is provided in conjunction with residential and commercial development, *"an additional transportation charge of €2,500 will apply per "normal unit generated"*.

- The additional transportation charge *"will only apply to any additional areas specified in the Galway City Development Plan, 2011-2017"*. (I note that the current

Galway City Development Plan 2017 – 2023 also indicates that the transportation charge will apply to inner residential areas).

- Exemptions/reductions rate will apply to certain specified types of development which include, *“Community Facilities, Protected Structures involving conservation works, Social Housing and Voluntary Housing”* in respect of which, *“No Charge”* is applicable. Affordable housing and supported accommodation will be subject to 50% of rate.

7.4 The first party within the grounds of appeal argues that contributions are unwarranted on the basis that the development arguably did not require planning permission given its construction pre 1963. It is also argued that Section 48 contributions apply only to “new development”. I note that the wording of Section 48 does not specifically refer to “new development” rather, refers to “a grant of permission under Section 34”. Therefore, on the basis that the application was made and permission granted under Section 34, I consider that it is appropriate that development contributions should apply.

7.5 I note the basis for the Council’s calculation whereby the contribution is levied in respect of the smaller unit 23A which has a stated floor area of 54 sq.m. thus applying a contribution of €8,639 and a transportation contribution of €2,500 (given location of the site within an inner residential neighbourhood). I note the submission of the Acting Director of Services, Planning, Economic Development, Community and Culture, Climate Change and Environment, dated 15<sup>th</sup> December 2017, in response to the first party grounds of appeal. The submission asserts that given “the uniqueness of the situation”, a *“50% reduction of the normal development contribution and parking contribution would be appropriate in this case”*. I note that the scheme does not specifically refer to a discretionary approach however I would note that the *“Development Contributions Guidelines for Planning Authorities* Department of the Environment, Community and Local Government January 2013 which issued under section 28 of the Planning and Development Act 2000 (as amended) and to which Planning authorities and An Bord Pleanála are required to have regard in the performance of their functions

under the Planning Acts, promote a “*flexible and proactive approach*” in the application of development contribution schemes. On balance I consider that the approach as outlined is reasonable.

## 8.0 Recommendation

8.1 Having reviewed the application documents, the grounds of appeal and the planning authority’s development contribution scheme I consider that the terms of the Development Contribution Scheme have been properly applied in respect of contributions payable in relation to the proposed development. On the basis of the interpretation of the terms of the scheme described above and taking the observations on the appeal, in particular the submission of the Acting Director of Services Planning Economic Development, Community and Culture Climate Change and Environment, dated 15<sup>th</sup> December 2017, into account, it is recommended that the planning authority be directed to attach Conditions No 2 and 3 subject to the application of a 50% reduction.

## REASONS AND CONSIDERATIONS

It is considered that in accordance with the terms of the Development Contribution Scheme, a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority was warranted for the subject development. Having regard to the contents of the submission from the planning authority Director of Services (Planning Economic Development, Community and Culture Climate Change and Environment), dated 15<sup>th</sup> December 2017, it is considered that the amendment of conditions 2 and 4 to reflect the 50% reduction would be in keeping with the terms of the Galway City Council Development Contribution Scheme 2008 - 2012 and appropriate in this instance.

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Bríd Maxwell  
Planning Inspector

5<sup>th</sup> March 2018

