



An
Bord
Pleanála

Inspector's Report ABP-3007272-17

Question	Point of detail regarding financial contribution condition No 20 of PL06D.245340
Location	Neptune House, Temple Crescent, Blackrock, Co Dublin
Planning Authority	Dun Laoghaire Rathdown County Council
An Bord Pleanála Reg. Ref.	PL06D.245340 (Reg Ref D15A/0286)
Applicant	Crosswaite Development Limited
Type of Application	Permission
Referred Type	Point of Detail Referral
Referred By	Bushnell Investments Limited
Observer(s)	None.
Date of Site Inspection	N/A
Inspector	Mary Crowley

1.0 Introduction

- 1.1. This case is a referral made under section 34(5) of the Planning and Development Act 2000, as amended. This provision provides for matters to be referred to the Board where a point of detail is in dispute between the applicant and planning authority. The referral was received by the Board from Bushnell Investments Limited, and concerns a point of detail regarding Condition No.20 attached to a grant of planning permission issued by An Bord Pleanála (PL06D.245340 (Reg Ref D15A/0286) refers). The condition relates to a Section 48 development contributions.

2.0 Site Location and Description

- 2.1. The subject site is located in Dun Laoghaire and is occupied by Neptune House, a Georgian Villa formerly in institutional use. The site is irregular in shape and is located to the rear (north) of the semi-detached properties fronting Monkstown Road, to the south and west of Monkstown Crescent and to the rear (west) of properties fronting Alma Road. Land uses in the vicinity comprise predominantly of well-established residential neighbourhoods of mixed housing types and apartment developments.

3.0 Background

- 3.1. Dun Laoghaire Rathdown County Council (DLRCC) granted permission subject to conditions for the demolition of annex to Neptune House (Protected Structure RPS440); modifications to house to provide for four apartments; demolition of three-storey block and construction of 13 no. houses at Neptune House, Temple Crescent, Monkstown, Blackrock. The decision was appealed by seven third parties. An Bord Pleanála granted permission subject to 21 conditions. Condition No 20, the subject of this referral, set out the following:

The developer shall pay to the planning authority a financial contribution 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 the

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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.*

4.0 Referral

4.1. Referrers Case

4.2. A submission was made by Bushnell Investments Limited to the Board on 17th November 2017. The Referrers case may be summarised as follows:

- The final grant of permission was dated 31st December 2015. The Referrer has been trying to agree the financial contribution based on Condition No 20 of PL06D.245340 with Dun Laoghaire County Council since 2016 but as yet have not reached a settlement.
- DLRCC have accepted that the 4 no units within Neptune House a Protected Structure are exempt from financial contribution as per their financial contribution scheme under Section 10(i).
- As part of the proposed development the developer demolished a former student block on the site. DLRCC are agreeing that student accommodation is a residential use, but they are arguing that the full student block is one dwelling unit for the purposes of calculating the reduction in financial contributions for this proposed scheme under Section 10(g) of the financial contribution scheme.
- The referrers legal counsel have advised that student units within the block comprising a number of bedrooms around a separate kitchen / sitting room are by definition separate dwelling units, hence the Referrer should be able to avail

of the 50% reduction for replacement dwellings. The student block comprised 12 separate dwelling units and therefore the Referrer is seeking a 50% reduction on 12 no units as follows:

$$€8,580 / 100 * 50 = €4,290 \text{ credit on the 12 apartment units}$$

$$12 \text{ units} \times €4,290 = €51,480$$

$$1 \text{ unit at full price} = €8,850$$

$$€51,480 + €8,580 = €60,060 \text{ owed for the houses}$$

Referrer has already paid €17,160 to DLRCC

$$€60,000 - €17,160 = €42,900$$

Submitted that the amount owned to DLRCC is €42,900 and not €87,516.00 as indicated by DLRCC.

- The submission was accompanied by the following:
 - (a) A copy of the “Final Demand” from DLRCC dated 13th November 2017 requiring payment
 - (b) Copy of letter from DLRCC dated 5th September 2017 noting that the in the 2015 application Reg Ref D15A/0286 the student accommodation did not consist of student flats but of hostel type accommodation and this is in line with a 1988 planning permission where the use of this structure changed from being described as a hostel to a residential home. The Council are of the opinion that the student accommodation constitutes one unit and therefore one unit is being replaced. As the scheme provides that replacement dwellings will be levied at 20%, the Council will credit this account in the amount of €6,864 in respect of replacement dwelling.

(c) Plan indicating Student Units within former Student Block located adjacent to Neptune House

- The submission was accompanied by a legal opinion prepared by Arthur Cox Solicitors that may be summarised as follows:

a) Reference is made to the DLRCC Contribution Scheme 2016-2020 para 9 that sets out the contributions to be paid. It is pointed out that there is a reduction in the contribution in two situations as follows:

10(g) Replacement dwellings or replacement commercial development will be charged 50% on a like for like basis. In this case demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy

10(i) Renovations to restore / refurbish structures deemed to be "Protected Structures" in the County Development Plan, where the Council is satisfied that the works substantially contribute to the conservation or restoration of the structure.

b) Consequently there is a 50% charge for replacement residential dwellings.

c) Submitted that rooms in which students live are residential dwellings. The Cambridge definition of dwelling is "a house or place to live in". The dictionary definition of dwelling is "a house, flat, or other place of residence". A student set is an "other place of residence". Further rooms in which students live are defined as dwelling or housing units in planning legislation. Reference is made to the Planning and Development (Strategic Housing) Act 2016 Section 1(3) defining strategic housing as follows:

(a) The development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses,

(b) The development of student accommodation units which, when combined, contain 200 or more bed spaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon

d) Reference is also made to Article 285(1)(b) of the Planning and Development (Strategic Housing) Regulations 2017 which expressly refers to student accommodation units (plural), not student accommodation unit.

- e) From these definitions, it is clear that in planning law, student accommodation can be housing (it can be strategic housing) and accommodation and units.
- f) The Council have stated in their letter dated 5th September 2017, that the accommodation was a hostel rather than student flats. This was not the case. The use of the building was for student accommodation.
- g) Submitted that the only possible difference between student accommodation and conventional flat is that there are sometimes facilities for recreation in student accommodation and sometimes shared utilities. Nevertheless, there is nothing to stop flats having shared utilities and some have for example St Anne's in Donnybrook has shared heating. All blocks of apartments have shared waste facilities and shared water provisions. The new apartments called Marianella in Orwell Road in Rathgar have shared gym facilities, a shared common room etc.
- h) These 12 student residential units are being replaced by 13 residential units meaning that there should be a 50% charge for 12 of those new housing units as these re replacing 12 student housing units. The charge for the other remaining units should be the normal charge.
- i) It is clear from the above definition and from the many references in DLRCC Development Plan to student accommodation as a residential use that replacing student accommodation units by apartments is a like for like replacement being a replacement of 12 units of residential development by 13 units of residential development.
- j) Estimated that the amount outstanding owned to DLRCC is €42,900.

4.3. Dun Laoghaire Rathdown County Council

4.3.1. Dun Laoghaire Rathdown County Council in their submission to An Bord Pleanála dated **12th December 2017** set out the following as summarised:

- PL06D.245340 (Reg Ref D15A/0286) – Planning permission was granted on the 31st December 2015. It was assessed for financial contributions under the Section 48 Development Contribution Scheme 2013-2015. Exemptions and

Reductions under this Scheme state that “replacement dwellings will be levied at 20%”

- The Multi-Unit Developments Act 2011 defines “residential unit” as a unit in a multi-unit development which:

(a) Is designed for

- (i) use and occupation as a house, apartment, flat or other dwelling and*
- (ii) has self-contained facilities*

Or

(b) Designed and used as a childcare facility and such facility is not intended to primarily share amenities, services and facilities with commercial units in the development

- Also in this Act, a unit shall not be treated as having self-contained facilities unless the unit has bathroom facilities and cooking facilities within it for the exclusive use of the occupants of the unit concerned.
- In the application Reg Ref D15A/0286 the accommodation did not consist of student flats but of hostel type accommodation and this is in line with a 1988 planning permission where the use of this structure changed from being described as a hostel to a residential home. The primary activity associated with all building on the premises was institutional.
- The Planning Authority is satisfied that this block constitutes one unit and therefore in accordance with the Development Contribution Scheme 2013-2015 to which this permission was assessed, one unit is being replaced which is levied at 20% (i.e. €8,750 per unit x 20% = €1,716 payable on one unit only) with remaining houses being levied at the full rate of €8,580.
- The submission was accompanied by the following:
 - a) *Conservation Report on the Impact of the Proposed Development at Neptune House* that accompanied Reg Ref D15A/0286
 - b) Dun Laoghaire Rathdown County Council Development Contribution Scheme 14th May to 31st December 2015

4.4. Further Responses

4.5. There are no further responses recorded on the Referral file.

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative Development Plan is the **Dun Laoghaire Rathdown County Development Plan 2016-2022**. The site is zoned Objective A where the objective is *to protect and/or improve residential amenity*.

5.2. Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020

5.2.1. The above scheme was adopted on 14th December 2015. Section 10 Exemptions and Reductions in respect of specified categories of development states the following:

10(g) Replacement dwellings or replacement commercial development will be charged 50% on a like for like basis. In the case demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy

5.3. Natural Heritage Designations

5.3.1. The site is not located within a designated Natura 2000 site.

6.0 Planning Guidelines

6.1. Development Contributions Guidelines for Planning Authorities (2013)

6.2. The principal aim of the new guidelines is 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 guidance last issued in 2007. It is stated that the primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed.

7.0 Legislation

7.1. Section 34(5) of the Planning and Development Act, 2000, as amended

The relevant section of the Act states:

The conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination.

7.2. Section 48 Development Contributions

Section 48(1) - *A planning authority may, when granting a 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 it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).*

Section 48(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.

(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

Section 48(3)(a) - *A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.*

(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

8.0 Assessment

8.1. Planning permission was granted by An Bord Pleanála (PL06D.245340 refers) on 31st December 2015 subject to 21 conditions for the demolition of annex to Neptune House (Protected Structure RPS440); modifications to Neptune House to provide for four apartments; demolition of three-storey student housing block and construction of 13 no. houses at Neptune House, Temple Crescent, Monkstown, Blackrock. The scheme was assessed for financial contribution under Section 48 Development Contribution Scheme 2013-2015. Condition No 20, the subject of this referral, set out the following:

The developer shall pay to the planning authority a financial contribution 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 the 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.*

- 8.2. DLRCC are seeking outstanding payment of development contribution in the amount of €87,516. The Referrer has been trying to agree financial contributions based on Condition No 20 with Dun Laoghaire Rathdown County Council since 2016 but have yet to reach a settlement. The Local Authority have issued a final demand for payment.
- 8.3. The Board received a first party point of detail referral from Bushnell Investments Limited on 17th November 2017 in relation to the above. The Referrer also provided a legal opinion from Arthur Cox Solicitors stating that 12 out of the 13 permitted residential units are replacement dwellings and should have a 50% development contribution charge only as these new units are replacing 12 existing student housing units. All parties accept that the 4 no units proposed within with Neptune House Protected Structure are exempt from financial contribution as per Section 10(i) of the Contribution Scheme. Therefore this referral relates to the demolition of the three storey former accommodation block at Neptune House and its replacement with 13 no houses.
- 8.4. An appeal may be brought to the Board where the applicant for planning permission under Section 34 of the Act considers that the terms of the Scheme have not been properly applied in respect of any conditions laid down by the Council. The relevant scheme in this case is the Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020 that was adopted on 14th December 2015 (permission granted by An Bord Pleanála on 31st December 2015). Section 10 Exemptions and Reductions of the scheme in respect of specified categories of development states the following:

10(g) Replacement dwellings or replacement commercial development will be charged 50% on a like for like basis. In the case demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy

8.5. Much of this referral case centres on the definition of what is a “replacement dwelling” for the purposes of the Section 48 Development Contribution Scheme with both parties providing detailed arguments that both reference and offer definitions of residential units, dwellings, housing units, nurses accommodation, hostel accommodation, student accommodation and even institutional use as the block was ancillary to St Patricks Infant Hospital. Notwithstanding, the Planning Authority and / or An Bord Pleanála can only apply the terms of the scheme. While Section 10(g) of the Scheme states very clearly that there is a reduction in the contribution towards “replacement dwellings”, and despite lengthy submission from all parties, there is no reference to student accommodation in the scheme save for development charges applicable in new schemes. Therefore I have some reservations that this particular section of the scheme is applicable in this case. However I would draw the Boards attention to the second part of Section 10(g) where it states that *in the case demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy*. I consider this exemption to be more relevant in the consideration of the amount of development contribution payable in this referral.

8.6. In this case the applicant proposes the demolition of a building and its replacement with 13 no houses. Therefore, in my view, 50% of the floor area of the building to be demolished should be offset against the countywide element of the levy. I have had regard to the Planning Appeal file, PL06D.245340 and I note the following:

Area of three storey building to be demolished	1,155 sqm
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Therefore the demolished floor area less 50% can be calculated as follows:

$1,155 - 50\% = 577.5\text{sqm}$

Section 9 of the Scheme sets out the level of contribution to be paid in respect of the different classes of public infrastructure and facilities under three classes of development; (1) per residential unit, (2) per square metre of domestic extension and (3) per square metre of industrial / commercial development. While there is no specific category for residential development per square metre I am satisfied that the amount per square meter for a domestic extension can be applied in this case. Accordingly, in this case the financial contribution that can be offset against the overall levy can be calculated as follows:

$$557.5\text{sqm} \times \text{€}74.10 = \text{€}41,310.75$$

Having regard to Section 9 of the Scheme the financial contribution to be levied against the 13 new houses can be calculated as follows:

$$13 \text{ dwellings} \times \text{€}8,580.00 = \text{€}111,540$$

Having regard to Section 10(g) Exemptions and Reductions, the financial contribution to be levied on the 13 new houses less the 50% of demolished floor area can be calculated as follows:

$$\text{€}111,540 - \text{€}41,310.75 = \text{€}70,229.25$$

- 8.7. Having regard to the Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020 as adopted on 14th December 2015 the outstanding contribution to be paid to DLRCC is **€70,229.25**.
- 8.8. For clarity and completeness I have had due regard to the provisions of the Habitats Directive and conclude that having regard to the source-pathway-receptor model along with the nature of the proposed development I would not consider that an NIS or Appropriate Assessment is necessary in this case.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS Condition No 20 of An Bord Pleanála decision PL06D.245340 (Reg Ref D15A/0286) required that prior to the commencement of development the developer to pay to the planning authority a financial contribution 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. In the event of a default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

AND WHEREAS the developer and the planning authority failed to agree on the amount of development contribution to be paid in accordance with Condition 20.

AND WHEREAS the matter was referred by the developer to An Bord Pleanála on the 17th November 2017 for determination:

AND WHEREAS the Board is satisfied that the matter at issue is the amount of development contribution to be paid

AND WHEREAS the Board had particular regard to the provisions of Section 34(5) of the Planning and Development Act 2000, as amended, the Development Contributions Guidelines for Planning Authorities (2013) and the Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020 as adopted on 14th December 2015.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that Condition 20 should be altered on foot of this referral and the correct application of the Development Contribution Scheme results in a charge of €70,229.25.

10.0 Reasons and Considerations

10.1. Having regard to:

- a) Section 34(5) of the Planning and Development Act 2000, as amended,
- b) The provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 and the Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020
- c) Section 48 of the Planning and Development Act 2000 (as amended),
- d) the submissions on file, and the planning history of the site

10.2. The Board considered it appropriate that the Development Contribution be amended to offset 50% of the floor area of the building to be demolished against the countywide element of the levy to be applied to the 13 new dwellings in line with the applicable exceptions and reductions as set out in Section 10(g) of the Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020 whereby *in the case of demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy*

11.0 MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Mary Crowley

Senior Planning Inspector

18th June 2018

12.0 Appendix 1 - DLRRCC Development Contribution Scheme 2016 - 2020