



An
Bord
Pleanála

Inspector's Report ABP-300759-18

Question	Point of detail regarding financial contribution Condition No. 8 of PL06D.245271
Location	Saint Catherine's, Falls Road, Shankill, Co Dublin
Planning Authority	Dun Laoghaire Rathdown County Council
An Bord Pleanála Reg. Ref.	PL06D.245271 (Reg Ref D15A/0215)
Applicant	Brian Carroll
Type of Application	Permission
Referred Type	Point of Detail Referral
Referred By	Brian Carroll
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. It was received from Brock McClure, Planning & Development Consultants, on behalf of the applicant Brian Carroll, and concerns a point of detail regarding Condition No.8 attached to a grant of planning permission issued by An Bord Pleanála (PL06D.245271 (Reg Ref D15A/0215) refers). The condition relates to the payment of a supplementary development contribution.

2.0 Site Location and Description

- 2.1. The subject site comprises the garden of an existing dwelling, St. Catherine's on the southern side of Falls Road, Shankill, Co. Dublin. Existing development at this location consists of large houses on substantial plots. The site is bounded to north by the Falls Road, to the south by a steep bank and by Stonebridge Road, to the west by residential properties and to the east by residential properties and a site which is the subject of a separate application to the Planning Authority.

3.0 Background

- 3.1. Dun Laoghaire Rathdown County Council (DLRCC) refused permission for the construction of six bedroom dwelling with a stated floor area of 409 sqm, detached car port with a stated floor area of 28.5 square metres, new vehicular entrance onto public road, connection to mains water and a wastewater treatment system and polishing filter unit. DLRCC considered that the proposal would result in the intensification of traffic exiting the proposed development onto the Falls Road. The decision was appealed by the first party. An Bord Pleanála granted permission subject to 8 conditions. Condition No 8, the subject of this referral, set out the following:

The developer shall pay to the planning authority a financial contribution in respect of Luas Line B1-Sandyford to Cherrywood in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission*

4.0 Referral

4.1. Referrer's Case

4.1.1. A submission was made by Brock McClure, Planning & Development Consultants, on behalf of the applicant Brian Carroll on 22nd January 2018. The Referrers case may be summarised as follows:

- The amount levied by the Planning Authority (€67,435.07) in Condition No 8 (Section 49 Supplementary Development Contribution) has not been calculated correctly. Submitted that the correct amount to be levied having regard to the terms of the scheme is €15,385.88
- It is stated that the Scheme “*shall apply within an area of 1,992 hectares, which is a catchment area approximately one kilometre on either side of the proposed LUAS B1 line*”. Part 13 of the Scheme details the level of contribution payable and certain types of development that are exempt from the requirements to pay the levy. It states that “*one off housing will be*

assessed on the area of the curtilage of the premises as determined by the Planning Authority”.

- Submitted that the site on the Falls Road should be considered as “one off housing” based on the rural low density character of the area, the fact that the new dwelling is not connected to foul or water mains and its location outside the 1km catchment area for the Section 49 Levy.
- The assessment of the levy based on €351,774 per hectare on the overall site area is fundamentally incorrect as this calculation is clearly intended for commercial multi-unit development. The permitted development is a single family home in a low density area that has a distinct rural character. Submitted that it is the very definition of a “one off dwelling”.
- The Councils position that the entire site area is used for calculations in all cases is contrary to the purpose and intent of the Section 49 Scheme where the wording clearly allows scope for the Planning Authority to determine the appropriate area to be levied.
- As the extent of curtilage is not defined in Planning Legislation it is submitted that the net floor area of the new dwelling is the appropriate benchmark for calculation purposes. Submitted that it is not simply correct to base the levy on the entire site area when only the area of the single family home is relevant to the assessment.
- As a “one off dwelling” the levy payable under the scheme should be calculated as follows:

The net area of the permitted dwelling is 437.5sqm

The contribution rate is €351,774 per gross hectare = €35.17 per sqm

Contribution payable to comply with Condition No 8 = €15,386.88

4.2. Dun Laoghaire Rathdown County Council

- 4.2.1. Dun Laoghaire Rathdown County Council in their submission to An Bord Pleanála dated **15th February 2018** submitted copies of correspondence / documentation between DLRCC Bonds and Contributions Section and the applicant dating back to 2016 referring to monies paid to DLRCC, outstanding monies owed, correspondence from the applicant disputing Condition No 8 and changes to the applicants address

for correspondence. It is also stated that the DLRCC Bonds and Contributions Section will revisit the assessment details of 22nd March 2017 and respond accordingly with any observations / submissions in relation to the dispute between the Planning Authority and the Referrer within the prescribed timeframe. It is noted that there is no further submission response recorded on the appeal file.

4.3. **Further Responses**

4.4. There are no further responses recorded on the 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 Section 49 Development Contribution Scheme for Extension of Luas Line B1 – Sandyford to Cherrywood**

5.2.1. The above scheme was adopted on 13th January 2003 (incorporating amendments to Clause 13(in bold italics) as adopted by the County Council at its meeting on 13th May, 2013 – to be effective for all decisions from 14th May, 2013 – 14th December 2015. Section 13 Level of Contribution sets out exemptions and reductions in respect of specified categories of development including the following

‘one off’ housing will be assessed on the area of the curtilage of the premises as determined by the Planning Authority

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 49 Supplementary Development Contributions

Section 49(1) A planning authority may, when granting a permission under section 34, include conditions requiring the payment of a contribution in respect of any public infrastructure service or project—

(a) specified in a scheme made by the planning authority (in this section referred to as a ‘supplementary development contribution scheme’),

(b) provided or carried out or proposed to be provided or carried out—

(i) by a planning authority,

(ii) where the provision of the infrastructure concerned is an objective in the development plan of a planning authority, or of a planning scheme of the Dublin Docklands Development Authority under section 25 of the Dublin Docklands Development Act 1997, by a public authority, or, pursuant to an

agreement entered into by a public authority with any other person, by that person, or (iii) pursuant to an agreement entered into by a local authority with any other person, by that person,

and

(c) that will benefit the development to which the permission relates when carried out.

Section (2)(a) The amount, and manner of payment, of a contribution under subsection (1) shall be determined in accordance with a supplementary development contribution scheme.

(b) A supplementary development contribution scheme shall specify—

(i) the area or areas within the functional area of the planning authority, and

(ii) the public infrastructure project or service, to which it relates, and more than one such scheme may be made in respect of a particular area.

(c) A supplementary development contribution scheme may make provision for the payment of different contributions in respect of different classes or descriptions of development.

Section (3A) Notwithstanding subsection (3) and section 48(10), the Board shall consider an appeal brought to it by an applicant for permission under section 34, in relation to a condition requiring the payment of a contribution in respect of a public infrastructure service or project specified in a supplementary development contribution scheme, where the applicant considers that the service or project will not benefit the development to which the permission relates and section 48(13) shall apply to such an appeal.]

8.0 Assessment

- 8.1. Planning permission was granted by An Bord Pleanála (PL06D.245271 refers) on 5th November 2015 for the construction of six bedroom dwelling with a stated floor area of 409 square metres, detached car port with a stated floor area of 28.5 square metres, new vehicular entrance onto public road, connection to mains water and a wastewater treatment system and polishing filter unit at of Falls Road, Shankill, Co. Dublin. The scheme was assessed for a financial contribution under Section 49 Supplementary Development Contribution Scheme for Extension of Luas Line B1 –

Sandyford to Cherrywood. Condition No 8, the subject of this referral, set out the following:

The developer shall pay to the planning authority a financial contribution in respect of Luas Line B1-Sandyford to Cherrywood in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission*

- 8.2. The applicant, Brian Carroll, has been trying to agree financial contributions based on Condition No 8 with DLRCC but have yet to reach a settlement. The applicant submits that the amount levied by DLRCC has not been calculated correctly. DLRCC are seeking a payment of €67,435.07. The applicant considers that the correct amount is €15,385.88. The Local Authority have issued a final demand for contributions to be paid in the amount of €67,435.08.
- 8.3. The Board received a first party point of detail referral from Brian Carroll on 22nd January 2018 in relation to the above. The applicant refers to the DLRCC Section 49 Supplementary Development Contribution Scheme and points out that “one off housing will be assessed on the area of the curtilage of the premises as determined by the Planning Authority”. The applicant submits that the site should be considered as “one off housing” based on the rural low density character of the area, the fact that the new dwelling is not connected to foul or water mains and its location outside the 1km catchment area for the Section 49 Levy. The assessment of the levy based on €351,774 per hectare on the overall site area is considered to be fundamentally

incorrect. Submitted that as a “one off dwelling” the levy payable under the scheme should be calculated as follows:

The net area of the permitted dwelling is 437.5sqm

The contribution rate is €351,774 per gross hectare = €35.17 per sqm

Contribution payable to comply with Condition No 8 = €15,386.88

- 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 Supplementary Development Contribution Scheme for the Extension of LUAS line B1 that was adopted on 13th January 2003 (incorporating amendments to Clause 13 as adopted by the County Council at its meeting on 13th May, 2013 – to be effective for all decisions from 14th May, 2013 – 14th December 2015. Part 13 of the Scheme details the level of contribution payable and certain types of development that are exempt from the requirements to pay the levy. Attention is drawn to the final category that states as follows:

“One off housing will be assessed on the area of the curtilage of the premises as determined by the Planning Authority”.

- 8.5. I have considered the information on file and I accept, in line with DLRCC and the applicant that this is a “one off” house for the purposes of the S49 Scheme. While DLRCC has not explicitly stated the “curtilage of the premises” in their correspondence I refer to the Assessment of Financial Contribution – Luas Levy report dated 10th February 2016 where it states that the Red Boundary Area is 1917.5 sqm / 0.1917ha. This appears to be the figure that DLRCC have used to assess the contribution levy as follows:

$1917.5 \text{ sqm} \times \text{€}35.17 \text{ per sqm} = \text{€}67.438.48$

- 8.6. While the “curtilage of premises” infers an area larger than the area of the permitted structures, having regard to Part 13 of the Scheme where it states explicitly that the area shall be determined by the Planning Authority it remains that it falls to DLRCC in this case to determine the “curtilage of premises”. Having regard to the Supplementary Development Contribution Scheme for the Extension of LUAS line B1 I am satisfied that the Planning Authority, DLRCC have applied properly applied the terms of the scheme in that they have determined the curtilage of the premises.

Accordingly the outstanding Section 49 Contribution to be paid is €67,435.08 (as stated by DLRCC).

- 8.7. 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 (a continued use) 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. 8 of An Bord Pleanála decision PL06D.245271 (Reg Ref D15A/0215) required that prior to the commencement of development the developer to pay to the planning authority a financial contribution in respect of Luas Line B1-Sandyford to Cherrywood in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under Section 49 of the Planning and Development Act 2000, as amended. 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 supplementary development contribution to be paid in accordance with Condition 8.

AND WHEREAS the matter was referred by the developer to An Bord Pleanála on the 22nd January 2018 for determination:

AND WHEREAS the Board is satisfied that the matter at issue is the amount of supplementary 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 Section 49 Development Contribution Scheme for Extension of Luas Line B1 – Sandyford to Cherrywood adopted on 13th January 2003 (incorporating amendments to Clause 13 as adopted by the County Council at

its meeting on 13th May, 2013 – to be effective for all decisions from 14th May, 2013 – 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 8 should not be altered on foot of this referral and the correct application of the Supplementary Development Contribution Scheme results in a charge of €67,435.08

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 Section 49 Development Contribution Scheme for Extension of Luas Line B1 – Sandyford to Cherrywood
- c) Section 49 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 Section 13 of the Dun Laoghaire Rathdown County Council Section 49 Development Contribution Scheme for Extension of Luas Line B1 – Sandyford to Cherrywood whereby *‘one off’ housing will be assessed on the area of the curtilage of the premises as determined by the Planning Authority* and was satisfied that the Planning Authority, Dun Laoghaire Rathdown County Council in this case had determined the “curtilage of the premises” in the Assessment of Financial Contribution – Luas Levy report dated 10th February 2016 as being that of the Red Boundary Area stated as 1917.5 sqm / 0.1917ha and where a supplementary contribution levy of €67,435.08 would apply.

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 - Dun Laoghaire Rathdown County Council Section 49
Development Contribution Scheme for Extension of Luas Line B1 –
Sandyford to Cherrywood**