



An
Bord
Pleanála

Inspector's Report ABP-301683-18

Development	(A) Erection of a dormer extension to side of existing bungalow, (B) Erection of a raised decking area to side of existing bungalow, (C) Retention permission for existing exempted single storey extension constructed to rear of existing bungalow and (D) all associated site development works.
Location	The Willows, Tonlegee, Swords, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F18A/0016
Applicant(s)	Declan and Maria Dermody
Type of Application	Permission and retention permission
Planning Authority Decision	Grant
Type of Appeal	First Party against condition
Appellant(s)	Declan and Maria Dermody
Observer(s)	None
Date of Site Inspection	18 th July 2018
Inspector	Niall Haverty

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.385 ha, is located on the northern side of the R125 Swords to Ashbourne Road, to the west of Swords. A detached single storey house is located on the site, with its front elevation facing south, towards the road. The site is bounded by mature hedgerows to all sides.

2.0 Proposed Development

2.1. The proposed development consists of the construction of a dormer extension to the western side of the existing dwelling and the erection of a raised decking area to the eastern side of the existing dwelling. Both elements are stated as having been previously granted planning permission under F06A/1742. Retention permission is also sought for a single storey extension to the rear of the dwelling. This extension is referred to in the notices and drawings as an 'existing exempted extension'.

2.2. The proposed western extension has a stated gross floor area of 97 sq m, while the proposed decking area extends to 20 sq m. The existing rear extension for which retention permission is sought has a stated gross floor area of 33 sq m.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission. Condition 9, which forms the subject of this appeal, requires the payment of a development contribution of €7,563 to the Planning Authority.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's final report can be summarised as follows:

- Proposed and retained development is considered to be visually acceptable.
- Extensions will integrate with the existing house.

- Proposed development will not give rise to undue overlooking. Adequate separation distances to boundaries are maintained.
- It is not foreseen that raised decking area would have a negative impact on adjoining properties. The area is not accessible from the property via the living room.
- Applicant has provided an acceptable response with regard to wastewater treatment system and surface water drainage.

3.3. **Other Technical Reports**

- Water Services: No objection.

3.4. **Prescribed Bodies**

- Irish Water: No objection.

3.5. **Third Party Observations**

- None.

4.0 **Planning History**

4.1. **Appeal Site**

- 4.1.1. **F06A/1742:** Permission granted in 2007 to erect a dormer extension to side of existing bungalow, erect a raised decking area to side of existing bungalow and all associated site development works.

4.2. **Surrounding Area**

- 4.2.1. I am not aware of any recent relevant planning history in the surrounding area.

5.0 Policy Context

5.1. Development Contributions Guidelines for Planning Authorities, 2013

- 5.1.1. Section 2, 'Supporting Economic Development', states, inter alia, that "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".

5.2. Fingal County Council Development Contribution Scheme 2016-2020

- 5.2.1. Section 10 relates to exemptions and reductions. Section 10(i)(a) states that the first 40 sq m of domestic extensions is exempt and that this exemption is cumulative and limited to 40 sq m in total per dwelling.
- 5.2.2. Section 10(ii)(a) states that for clarification purposes, exemptions and reductions shall not apply to permissions for retention of development.
- 5.2.3. The rate of contribution set out in the Scheme for residential development is €76.14 per sq m. This has subsequently been subject to indexation, and the current rate of contribution is €85.94 per sq m.

5.3. Natural Heritage Designations

- 5.3.1. The appeal site is not located within or in the immediate vicinity of any site with a natural heritage designation. The closest such sites are the Broadmeadow/Swords Estuary SPA (Site Code 004025) and Malahide Estuary SAC (Site Code 000205), both of which are c. 5km to the east, and the Rogerstown Estuary SPA and SAC (Site Codes: 004015 and 000208), which are c. 6.5km to the north east. Malahide Estuary and Rogerstown Estuary are also both pNHAs.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal is a first party appeal regarding Condition 9 of the Planning Authority's decision, which requires the payment of a development contribution. The issues raised in the appeal can be summarised as follows:

- Contribution of €7,563 is unreasonable, as applicants have never been a burden to Fingal County Council and have maintained hedges, verges, trees, septic tank and paid for waste removal.
- Applicants have no pathways, public lighting, bus stops, waste bins or any other services provided to them.
- A contribution of €1,500 would be fair and reasonable where there is no infrastructure at present.

6.2. Planning Authority Response to Appeal

6.2.1. The Planning Authority's response can be summarised as follows:

- The development contribution due was assessed in accordance with the Development Contribution Scheme 2016-2020.
- The contribution was calculated as follows:

○ Proposed works area	95 sq m	
○ Retention area	33 sq m	
○ <u>Less</u> exempted area	<u>40 sq m</u>	(Domestic extension (10)(a))
○ Area to be levied	88 sq m	
○ 88 sq m x €85.95	=	€7,563.00
- Under section 10(ii), exemptions and reductions shall not apply to permission for retention. This provision was incorporated as required by the Development Contributions Guidelines for Planning Authorities.
- The Board is asked to include Condition 9.

6.3. Appellants' Response to Planning Authority Response

6.3.1. The appellants' response to the Planning Authority's response to their appeal can be summarised as follows:

- Given location of the site, it is unfair to burden them with the full contribution cost, especially one that they will get no direct benefit from.

- Appellants have no issue in offering an increased contribution of €2,836 for the retention of the 33 sq m, based on Section 10(ii) of the Development Contribution Scheme.

6.4. Planning Authority Response to Appellants' Response

6.4.1. The Planning Authority's response to the appellants' response can be summarised as follows:

- The Council's Section 48 Development Contribution Scheme is a county wide scheme and all levies applied and collected are accounted for and expended on a county wide basis, on public infrastructure and facilities benefitting development in the entire county area.
- The contribution due was assessed in accordance with the Scheme. Under Section 10(ii) exemptions and reductions shall not apply to permission for retention of development.

6.5. Observations

- None.

7.0 Assessment

7.1. Nature of Appeal

7.1.1. Section 48(10)(b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.

7.1.2. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal, which is whether the terms of the Scheme have been properly applied.

7.2. Application of Development Contribution Scheme

- 7.2.1. Condition 9 requires the developer to pay €7,563 to Fingal County Council as a development contribution in accordance with their Development Contribution Scheme 2016-2020. The appellants initially contended that that a contribution of €1,500 would be fair and reasonable having regard to the level of public services and infrastructure that they benefit from, and have subsequently contended that a payment of €2,836 for the retention element of the development would be reasonable.
- 7.2.2. As this is an appeal under section 48(10)(b), the Board is restricted to considering whether the terms of the adopted Development Contribution Scheme have been properly applied, and therefore the appellants' contentions regarding the level of services that they receive from Fingal County Council are not relevant considerations.
- 7.2.3. With regard to the proposed extension to the west of the existing house, the Planning Authority calculated the development contribution on the basis of a floor area of 95 sq m and allowed an exemption for the first 40 sq m. While I consider that the Planning Authority's approach to the assessment of the contribution due is in accordance with Section 10(i)(a) of the Scheme, I note that the planning application form states that the gross floor space of the proposed extension is 97 sq m, not 95 sq m. It appears, therefore, that the Planning Authority may have made a slight miscalculation in the contribution arising.
- 7.2.4. With regard to the extension to the rear of the house for which retention permission was sought, I note that both the Fingal DCS and the Development Contribution Guidelines for Planning Authorities 2013 explicitly state that exemptions or reductions shall not apply to applications for retention permission. Indeed, the Guidelines go further and state that planning authorities are encouraged to impose higher rates in respect of such applications. While it was contended in the planning application that the existing extension comprised exempted development, the applicants nevertheless sought retention permission for it and therefore the provisions of the Development Contribution Scheme that relate to retention permission are applicable. In my opinion the Scheme is clear and unambiguous in excluding development for which retention is being sought from availing of the

various reductions or exemptions. I therefore consider that the terms of the Scheme have been properly applied in respect of the element of the development for which retention permission was sought.

7.2.5. In conclusion, I consider that the Planning Authority's general approach to the calculation of the development contribution payable was in accordance with the terms of the Scheme, but that the terms of the Scheme have not been properly applied fully, due to the stated gross floor area of the proposed extension being 97 sq m, rather than 95 sq m. I therefore recommend that the Planning Authority be directed to AMEND the condition accordingly. In my opinion, the development contribution payable is as follows:

- Retention area = **33 sq m**
- Stated gross floor space of proposed extension less exempted area:
 $97 \text{ sq m} - 40 \text{ sq m} = \mathbf{57 \text{ sq m}}$ (Domestic extension (10)(a))
- Total area to be levied: $33 \text{ sq m} + 57 \text{ sq m} = \mathbf{90 \text{ sq m}}$
- $90 \text{ sq m} \times \text{€}85.94 = \mathbf{\text{€}7,734}$

7.3. **Appropriate Assessment**

7.3.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and the distance to the nearest European sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. I recommend that the Board direct Fingal County Council to AMEND Condition No. 9 to reflect the stated gross floor space of the proposed extension. The amended Condition should read as follows:

9. The developer shall pay the sum of €7,734 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure

that was and/or that is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the Planning Authority prior to the commencement of development.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.

9.0 Reasons and Considerations

Having regard to

- (a) The nature of the development, which includes existing development for which retention permission was sought, and proposed development for which planning permission was sought;
- (b) The provisions of the Fingal County Council Development Contribution Scheme 2016-2020; and
- (c) The submissions made in this appeal;

the Board considered that the general approach of the Planning Authority to the calculation of the development contribution payable was in accordance with the terms of the Fingal County Council Development Contribution Scheme 2016-2020, but also considered that the stated gross floor space of the proposed extension had not been utilised by the Planning Authority in its calculation.

Niall Haverty
Planning Inspector

20th August 2018