



An  
Bord  
Pleanála

## Inspector's Report ABP-304022-19

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<b>Question</b>	Point of Detail regarding financial contribution condition 6 of ABP-300866-18
<b>Location</b>	17 Flemingstown Park, Churchtown, Dublin 14.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D17B/0503
An Bord Pleanála Reg. Ref.	ABP-300866-18
Applicant for Declaration	Ian & Miriam Young
Planning Authority Decision	Refuse permission
<b>Referral</b>	
Referred by	Ian & Miriam Young
Owner/ Occupier	Ian & Miriam Young
Observer(s)	None
<b>Date of Site Inspection</b>	Not Required
<b>Inspector</b>	Mary Crowley

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## 1.0 Introduction

- 1.1. The applicant / referrer is seeking a calculation on Financial Contribution Condition No 6 of An Bord Pleanála decision Reference ABP-300866-18.

## 2.0 Site Location and Description

- 2.1. The subject site has an area of 0.076 ha and is located on the southern side of Flemingstown Park, in the mature residential suburb of Churchtown. Please refer to the history file ABP-300866-18 for further details on site location and associated site photos.

## 3.0 Proposed Development

- 3.1. The planning application submitted to DLRCC sought permission for the construction of a first floor pitched roof extension over an existing contemporary flat roofed extension to the rear of the property. The area of the extension is 78 sq. metres. The extension has a staggered roof profile with a height ranging from 7.2 to 8.1 metres.

## 4.0 Planning Authority Decision

- 4.1. **ABP-300866-18 (Reg Ref D17B/0503)** - DLRCC refused permission for the proposed first floor extension as described above. This decision was appealed by the applicant. An Bord Pleanála granted permission subject to 6 conditions. Condition No 6, the subject of this referral, set out as follows:

*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.*

## 5.0 Planning Authority

5.1. It is reported that DLRCC has issued an invoice, following the submission of the commencement notice, in respect of the financial contribution that is deemed applicable. However a dispute has arisen between the applicant and the Council as to the appropriate method of calculation of the contribution. Accordingly the matter has been referred to the Board by the applicant.

### 5.2. Planning Authority Reports

5.2.1. The following correspondence from DLRCC that issued to the applicant / referrer accompanied the referral, as summarised:

- DLRCC (9<sup>th</sup> July 2018) – Condition No 6 requires the payment of a Section 48 Scheme Development Contributions in the amount of €6,1440.06.
- DLRCC (6<sup>th</sup> November 2018) – Calculation details as follows based on a new floor area of 78sqm new floor area:

Surface water (78sqm x €2.03 = €158.34)

Transportation (78sqm x €46.54 = €3,603.12)

Community & Parks (78sqm x €30.20 = €2,355.60)

Total = €6,144.06

It is stated that the 40sqm exemption allowance was previously availed of under D06B/0422. Therefore 78sqm floor area levied.

- DLRCC (26<sup>th</sup> November 2018) – The proposal was for a construction of a first floor extension over existing single storey structure to the rear of dwelling.

There was no mention in the application of an attic conversion. It is stated that this is additional floor area and not an attic conversion.

- DLRCC (18<sup>th</sup> December 2018) – The Planning Authority is satisfied that the development contribution in the amount of €6,144.06 has been levied correctly. Payment is required.
- DLRCC (22<sup>nd</sup> January 2019) – Balance outstanding at 01/01/2019 is €6,588.43 (including indexation)
- DLRCC (4<sup>th</sup> February 2019) – Request for payment.
- DLRCC (7<sup>th</sup> March 2019) – Final Demand for payment

## 6.0 Planning History

6.1. Aside from ABP-300866-18 (Reg Ref D17B/0503) no planning history has been made available with the referral. However it is documented in the referral that there was a previous planning application on this site for the raising of a flat roof that is relevant to this case and that may be summarised as follows:

- **DLRCC Reg Ref D06B/0422** - Permission granted for demolition of garage, single storey extensions to side and rear of existing dwelling with a total floor area of 115.5 sq. metres, alterations to existing dormer accommodation to include the raising of roof (by 575 mm) to front and 1,350 mm to rear) and general site works.

## 7.0 Policy Context

### 7.1. Development Plan

7.1.1. The operative Development Plan is the **Dun Laoghaire Rathdown County Development Plan 2016 – 2022**. The subject site is zoned A: “*To protect and/or improve residential amenity.*”

### 7.2. Development Contribution Scheme

7.2.1. The relevant contribution scheme is the **DLRCC Development Contribution Scheme 2016-2020** as adopted on the 14<sup>th</sup> December 2015.

### 7.3. Natural Heritage Designations

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

## 8.0 The Referral

### 8.1. Applicant / Referrer's Case

8.1.1. The applicant submitted the following referral to An Bord Pleanála as summarised:

- As set out above the applicant / referrer is seeking a calculation on Financial Contribution Condition No 6 of An Bord Pleanála decision Reference ABP-300866-18.
- Under the Exemptions and Reductions section of the DLRCC Development Contribution Scheme 2016-2022 attic conversions are exempt from contributions. The works being undertaken are therefore exempt and that no financial contributions should apply.
- In the event that the Board concur that a financial contribution applies it is submitted that the Council have erred in their method of calculation. The total habitable area of the extension (including the stairs) is 55.8sqm.
- "Habitable area" is that area of a development as defined in the Technical Guidance document
- The floor area that is deemed non-habitable is not, and cannot ever be made habitable without undertaking significant modifications which themselves would necessitate a further grant of permission.
- Calculations of attic floor space never include under-eaves storage spaces.
- Plans and sections attached which demonstrate the full extent of the habitable space.
- The Council are applying the contribution rat across the entire floor area whether habitable or not. It is submitted that this is erroneous and unfair.

8.1.2. The referral was accompanied by copies of correspondence between DLRCC and the applicant / referrer querying the contribution.

## 8.2. Planning Authority Response

8.2.1. DLRCC submitted the following as summarised:

- Applicant to DLRCC (20th February 2019) – The total habitable area of the extension (including the stairs) is 48.8sqm. Calculations of attic space never include under eaves storage space.
- DLRCC to Applicant (21<sup>st</sup> February 2019) – Permission is for the “construction of a first floor extension over existing single storey structure to the rear of dwelling” and not an attic conversion. The Planning Authority is satisfied that the contribution was levied correctly in accordance with the scheme. There is no exemption for “non-habitable space”.

## 8.3. Further Responses

8.3.1. There are no further responses recorded on the referral file.

## 9.0 Assessment

9.1. In June 2018 An Bord Pleanála granted permission for a first floor pitched roof extension over an existing contemporary flat roofed extension to the rear of No 17 Flemingstown Park, Churchtown, Dublin 14 (ABP-300866-18 (Reg Ref D17B/0503) refers).

9.2. Condition No 6 of that decision and the subject of this referral, requested the payment of a Section 48 Development Contribution Scheme with the details to be agreed between the planning authority and the developer or, in default, the matter was to be referred to An Bord Pleanála for determination.

9.3. DLRCC sought payment in the amount of €6,144.06 with the stated balance outstanding at 01/01/2019 €6,588.43 (including indexation). The applicant disputes this charge and puts forward the following in their referral to the Board:

- Under the Exemptions and Reductions section of the DLRCC Development Contribution Scheme 2016-2022 attic conversions are exempt from contributions. The works being undertaken are therefore exempt and that no financial contributions should apply.

- In the event that the Board concur that a financial contribution applies it is submitted that the Council have erred in their method of calculation. The total habitable area of the extension (including the stairs) is 55.8sqm.

9.4. The relevant contribution scheme in this case is the Dún Laoghaire-Rathdown County Council Development Contribution Scheme 2016-2020, adopted by Dún Laoghaire-Rathdown County Council on 14th December, 2015.

9.5. I propose to deal with this referral under the following headings:

9.6. **Is the permitted scheme an “Attic Conversion”**

9.7. Section 10 Exemptions and Reductions of the Development Contribution Scheme states that a number of categories of development will be exempted from the requirement to pay development contributions including attic and garage conversions.

9.8. I refer to the plans and details accompanying the (ABP-300866-18 (Reg Ref D17B/0503) refers) together with the site photos. As stated, permission was granted for a first floor pitched roof extension over an existing contemporary flat roofed extension to the rear of No 17 Flemingstown Park. The extension has a staggered roof profile with a height ranging from 7.2 to 8.1 metres.

9.9. As documented by DLRCC (21st February 2019) permission was not granted for an attic conversion as there is no attic to begin with and therefore there is no attic to convert. Accordingly the permitted scheme does not benefit from an exemption from the requirement to pay development contributions under this section of the Scheme.

9.10. **Contribution Payable**

9.11. The stated area of the permitted works is 78sqm. Section 10 Exemptions and Reductions of the Development Contribution Scheme states that a number of categories of development will be required to pay a reduced contribution. These include the first 40 square meters of any residential extension. According to the DLRCC Assessment Detail (6<sup>th</sup> November 2018) the 40sqm exemption allowance was previously availed of under D06B/0422. This has not been disputed by the referrer.

9.12. As documented by DLRCC (21<sup>st</sup> February 2019) the gross floor space of the works granted is levied according to the gross floor area confirmed on the application for permission and in accordance with the plans and elevations submitted. There is no exemption for “non-habitable space”. I agree with DLRCC in this regard. I am



therefore satisfied that the contribution was levied correctly by DLRCC and is in accordance with the scheme.

## 10.0 Recommendation

10.1. It is recommended that a development contribution in the amount €6,588.43 (including indexation) be levied in accordance with the DLRCC Development Contribution Scheme 2016-2020 as adopted on the 14th December 2015.

## 11.0 Reasons and Considerations

11.1. Having regard to the:

- 1) Dun Laoghaire Rathdown County Development Plan 2016 – 2022
- 2) Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016-2020 as adopted on the 14th December 2015
- 3) Section 48 of the Planning and Development Act 2000 (as amended) and
- 4) The submissions on file, and the planning history of the site

11.2. The Board considered the permitted construction of a first floor pitched roof extension over an existing contemporary flat roofed extension to the rear of No 17 Flemingstown Park is not an attic conversion and therefore did not benefit from any exemption or reduction in the requirement to pay development contributions under Section 10 of the Scheme. Further the gross floor space of the works granted is levied according to the gross floor area confirmed on the application for permission and in accordance with the plans and elevations submitted. There is no exemption for “non-habitable space”.

11.3. It is considered that a development contribution in the amount €6,588.43 (including indexation) be levied in accordance with the DLRCC Development Contribution Scheme 2016-2020 as adopted on the 14th December 2015.

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**Mary Crowley,**  
**Senior Planning Inspector,**  
**4<sup>th</sup> June 2019**