



An
Bord
Pleanála

Inspector's Report

ABP-304527-19

Development	Continuation of use as Montessori School of part of Donabate Parish Hall - a Protected Structure - and retention of timber screen fencing to children's' play area to the rear.
Location	Donabate Parish Hall, Main Street, Donabate, Co Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F18A/0480.
Applicant	Aine Byrne.
Type of Application	Planning Permission.
Planning Authority Decision	Grant.
Type of Appeal	First Party – Vs – Condition No. 6.
Appellant	Aine Byrne.
Observer(s)	None.
Inspector	Patricia Young.

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1.0 Site Location and Description

- 1.1. This appeal case relates to Donabate Parish Hall, a Protected Structure, that is located on Main Street (R126), in the centre of Donabate village, c63m to the south of Donabate Shopping Centre and c100m to the north east of the entrance to Donabate Train Station. It contains a single storey period detached building that is setback from the road by way of a car parking area. This parking area extends along the sides and rear of the building. The site contains a low stone wall roadside boundary with two separate entrances onto Main Street. The surrounding area has a mixed town centre character.

2.0 Proposed Development

- 2.1. Planning permission is sought for the continuation of use as a Montessori School in part of the Donabate Parish Hall, a Protected Structure, and the retention of timber screen fencing to children's play area to the rear.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Fingal County Council **granted** permission subject to conditions. Condition No. 6 subject of this appeal reads: -

“The developer shall pay to the planning authority a financial contribution of €3,431 in respect of public infrastructure and facilities benefitting the development in the area of the planning 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 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.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefitting 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.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planners Report forms the basis of the Planning Authority’s decision to grant permission.

3.2.2. Other Technical Reports

Water Services: No objection.

Transportation: Further information requested.

Conservation: No objection.

3.3. Prescribed Bodies

3.3.1. Irish Water: No objection.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Site and Setting

4.1.1. None relevant.

5.0 Policy and Context

5.1. Local Planning Policy Provisions

5.1.1. The policies and provisions of the Fingal Development Plan, 2017-2023, apply. The site lies within an area zoned ‘TC’ *“to protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities”*, under the said Plan.

5.2. Other:

5.2.1. The Fingal County Council Development Contribution Scheme 2016 -2020 (under Section 48, Planning and Development Act, 2000, as amended) is the applicable scheme for development in the locality of the appeal site. I note the following sections of the said scheme: -

- Section 6: Sets out the basis for determination of a contribution.
- Section 9: Sets out the level of contribution for residential, commercial and industrial/commercial classes of development.
- Section 10: This sets out exemptions and reductions from the scheme.
- Section 15: This sets out that an appeal may be brought to An Bord Pleanála under Section 34 of the Act.

5.3. Natural Heritage Designations

5.3.1. None relevant.

5.4. EIA Screening

5.4.1. Having regard to the nature, scale and scope of the proposed development within the mature and built-up village centre setting of the Donabate, the nature of the receiving environment, the serviced nature of the site and its surroundings, I consider that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for Environmental Impact Assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows:

- The appellant contends that they recently took over the operation of a pre-school at the subject premises.

- This facility that has been in operation for c12 to 15 years.
- This childcare facility caters for 11 children and 2 no. staff members at one time. Given this scale of operation the sum required for payment under Condition No. 6 is onerous.
- This facility provides a valuable and necessary contribution to the local community.
- This facility does not give rise to an intensification of use.
- It is requested that Condition No. 6 be therefore omitted.

6.2. Planning Authority Response

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

- There is no previous grant of permission for this use.
- Condition No. 6 required that the developer pay a sum of €3,431 in respect of public infrastructure and facilities as provided for in the Development Contribution Scheme. It is calculated as follows:

- Proposed works area in m ² :	47.69.
- Demolition area in m ² :	0.
- Exempted area in m ² :	0.
- Area to be levied in m ² :	47.69.
- Standard Levy €71.94 m ² :	€3,431
- If the Planning Authority's decision is upheld, it is requested that Condition No. 6 is included in the Boards determination.

6.3. Further Responses

6.3.1. The appellants further response can be summarised as follows:

- The Planning Authority in their response to this appeal confirm the basis on which the levy has been calculated but does not respond to the grounds of appeal.

- The application was made to regularise the planning status of the use. It therefore does not increase its use or demand on services.
- The overall building functioned as a Parish Church between 1804 and 1903. Since then it has served as the local parish hall, providing all the functions that such a building would typically provide.
- Applying a development fee to a building where in essence no additional demand is being placed on local services constitutes retrospective application of development contributions to a building which is over 200years old. It is therefore considered to be unfair and outside the intent of the applicable planning regulations.

7.0 Assessment

- 7.1. This assessment relates to a 1st Party appeal against Condition 6 of the Planning Authority's notification to grant permission for a development described as consisting of the continuation of use as a Montessori School (Dandelions) at part of Donabate Parish Hall, a Protected Structure, and the appellant requests that the Board limit its determination of this appeal to the said condition.
- 7.2. The appellant contends that this Montessori School use has been operating at this location for c12 to 15years prior to this application but only recently by the appellant who is seeking to regularise its planning status. They contend that this facility is small with 11 children and 2 no. staff members at any one time. They consider that the requirement to pay the financial contribution set out under Condition No. 6 is onerous, excessive and unfair given the characteristics pertaining to the subject premises and the fact that this application is for retention. They further contend that given the small scale of the facility, the valuable contribution of this facility to the community and the fact that this is a long-established parish hall with the Montessori school not giving rise to any intensification of use as it is existing, and this application is made retrospectively.
- 7.3. The Planning Authority in their response to the appellants grounds of appeal submit how the development contribution levy was calculated according to the provisions set out in their Development Contribution Scheme for this class of development and that such a contribution is required for the type of development proposed in respect of the provision of public infrastructure and facilities. They indicate that this planning

application comes under the scope of the Fingal Development Contribution Scheme, 2016-2020 and that this scheme is applicable to all development contributions payable in respect of planning permission and payments made to the Council after the 1st January 2018, are subject to development contribution rates, and is indexed scheme. Of note non-residential developments increased to €71.94m² in January, 2019.

- 7.4. Section 10 of the scheme sets out several exemptions and reductions to the payment of development contributions. It includes subsection (e) which exempts non-commercial community related developments by voluntary non-profit making groups, clubs or organisations; (p) provides for a reduction of 50% in the rate where the Planning Authority considers that the development is necessary to ensure the protection, conservation or restoration of the structure; through to subsection (r) which exempts change of use applications unless the revised usage constitutes a substantial intensification of use of the building or services. Having considered in detail the exemptions and reductions set out under Section 10 (a) to (r) none of these are applicable to the development sought. Further Section 10(ii)(a) which is pivotal to the development sought states that: “*exemptions and reductions shall not apply to permissions for retention development*”. This application relates to a retention development of a commercial use that operates from the subject premises for profit albeit its purported small scale.
- 7.5. Having regard to the gross floor area of relating to this retention development which is stated to be 47.69m² the current standard levy applicable under the scheme for non-residential development i.e. €71.94m² this gives rise to a financial contribution of €3,430.81. It would also appear that the Planning Authority in a manner consistent with Section 13 of the scheme allowed for phased payment of the financial contribution which I consider reasonable. I can find no provision for rounding of the financial contribution figure within the scheme itself.
- 7.6. In conclusion, I consider that the terms of the Fingal Development Contribution Scheme, 2016-2020, has been properly applied in this case and I recommend that the Condition No. 6 is maintained but subject to amendments which fixes what appears to be an error in the wording of this condition where the word “authority” and “planning” is omitted as well as includes the unrounded monetary sum.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the proposed development and to the nature of the receiving environment, namely an urban and fully serviced location, 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. Based on the reasons and considerations set out under Schedule 1 below, I consider that the terms of the Fingal Development Contribution Scheme, 2016-2020, have been properly applied in respect of Condition 6 of Fingal County Councils notification to grant planning permission for the development sought under P.A. Reg. Ref. No. F18A/0480 for the reasons and considerations set out below. Notwithstanding, this I recommend that the wording be amended to deal with what appears to be two wording omissions in this condition and the rounded monetary sum of €3,431.81. I therefore recommend that the Board direct the Planning Authority to amend Condition No. 6 to read as follows:

The developer shall pay to the planning authority a financial contribution of **€3,431.81** in respect of public infrastructure and facilities benefitting the development in the area of the planning **authority** that is provided or intended to be provided by or on behalf of the **planning** 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 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.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefitting 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

- 9.1. Having regard to Fingal Development Contribution Scheme, 2016-2020, it is considered that the terms of the Development Contribution Scheme were correctly interpreted by the Planning Authority insofar as the proposed development is subject to financial contributions.

Patricia-Marie Young
Planning Inspector

16th day of September, 2019.