



An  
Bord  
Pleanála

## Inspector's Report ABP-305140-19

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<b>Development</b>	Retain and complete four semi-detached two-storey houses and construct two rear outbuildings
<b>Location</b>	Green Street, Mocmoyne townland, Boyle, County Roscommon
<b>Planning Authority</b>	Roscommon County Council
<b>Planning Authority Reg. Ref.</b>	PD/19/277
<b>Applicant(s)</b>	Robert Clohessy
<b>Type of Application</b>	Retention permission & permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First-Party
<b>Appellant(s)</b>	Robert Clohessy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	N/A
<b>Inspector</b>	Colm McLoughlin

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## **1.0 Site Location and Description**

1.1. The appeal site has a stated area of 0.087ha and is located on the north side of Boyle in north County Roscommon. The site comprises four partially constructed two-storey semi-detached houses, with two houses facing east onto Green Street (L-5129 local road) and two houses facing north onto the access road serving Mockmoyne Heights residential estate. The surrounding area is primarily dominated by residential properties fronting onto Green Street and a number of infill residential developments off Green Street. Ground levels on site increase by approximately 4.5m from Green Street to the western rear boundary, while levels in the immediate vicinity drop steeply in a southern direction towards the town centre.

## **2.0 Proposed Development**

2.1. Retention permission is sought for the following:

- four partially-constructed two-storey semi-detached houses and associated works;

2.2. Permission is sought for the following works:

- completion of four two-storey semi-detached houses;
- construction of outbuildings and retaining wall structures to the rear of house nos.1 & 2 fronting onto Green Street;
- provision of six car park spaces with a dropped kerb along the south side of the access road serving Mockmoyne Heights;
- provision of public open space and all ancillary side development works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1. The planning authority decided to grant permission for the development to be retained and the proposed development subject to 18 conditions, the following of which is pertinent to the appeal:

- Condition No. 17 -

A development contribution in the sum of €17,600 (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office) shall be paid to Roscommon County Council as a contribution towards the expenditure that was incurred or is proposed by the Local Authority in respect of providing public infrastructure and services.

Payment of this contribution is subject to the provisions of the adopted Development Contribution Scheme 2014. Payment shall be made within 6 months of the date of the final grant of permission or prior to the resumption of any development activity on the site, whichever is the sooner unless an alternative timescale is agreed with the Planning Authority.

**Reason:** It is considered reasonable that the developer should contribute towards the expenditure that is proposed to be incurred by the Council in respect of the provision of public infrastructure and services.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The report of the Planning Officer (July 2019) reflects the decision of the planning authority and noted the following:

- the development satisfies the zoning objectives for the site, as set out in the Boyle Local Area Plan 2015-2021, and provides a reasonable level of development relative to the site context;
- the provision of open space, including boundary treatments, would be sufficient;
- it is not envisaged that the development would unduly impact on the existing public road network and the proposal to connect to the existing foul sewer, surface water and water-main networks would be acceptable;
- the development would not be subject to social housing requirements;
- development contributions have not been paid on this site based on an examination of the planning history, therefore a contribution is required for the proposed development.

### 3.2.2. Other Technical Reports

- Area Engineer - no response.

### 3.3. Prescribed Bodies

- Irish Water - no response.

### 3.4. Third-Party Submissions

3.4.1. A submission was received from Thomas J. Flannery, a neighbouring resident of Mockmoyne townland, which can be summarised as follows:

- health and safety concerns arise;
- who will certify the buildings;
- undue visual impact on the townscape.

## 4.0 Planning History

### 4.1. Appeal Site

4.1.1. Pre-planning discussions between representatives of the appellant and the planning authority regarding the development are stated to have taken place in March 2019 under Roscommon County Council (RCC) Ref. 3341. The following planning applications relate to the appeal site:

- RCC Ref. PD/99/745 – permission granted in September 1999 to T&C Developments Ltd. for the demolition of two terraced houses and the construction of 2 no. two-storey terraced houses and four semi-detached houses. Condition 14 of planning reference PD/99/745 states the following:

The developer shall pay the appropriate service charge in respect of connection to the public watermain and public sewer. The amount of the charge shall be in accordance with the prevailing scale of service charges at the date of application for a connection to the services and payment shall be made as part of such an application.

**Reason:** These services will facilitate the proposed development and it is considered reasonable that a contribution should be paid towards the capital cost of their provision.

- RCC Ref. PD/97/178 – permission granted in May 1997 to Thomas Flannery for the construction of 11 houses.

## **4.2. Adjoining Sites**

- 4.2.1. Planning applications for development in the immediate vicinity, primarily relate to infill residential developments dating from the mid-2000s and I am not aware of any recent planning applications in the immediate area that are particularly relevant to this appeal.

## **5.0 Policy & Context**

### **5.1. Local Plans**

#### Boyle Local Area Plan 2015-2021

- 5.1.1. The appeal site is located within the zone 'existing residential', where the objectives primarily aim to protect and enhance the residential amenities, services and facilities of the area. Residential use is permitted in principle on these lands. The following sections of the Local Area Plan are relevant to the development subject of this appeal:

- Section 3.1.8.1– Residential Development;
- Section 7.2 – Infrastructure & Services;
- Section 7.13 – Urban Development & Design;
- Section 8.3 – Development Management Guidelines & Standards.

#### Roscommon County Development Plan 2014-2020

- 5.1.2. Relevant chapters within the Development Plan, include the following:

- Chapter 2 – Core Strategy & Settlement Policy;
- Chapter 4 – Infrastructure;

- Chapter 5 – Housing;
- Chapter 9 – Development Management Guidelines & Standards.

#### Roscommon Development Contribution Scheme 2014

- 5.1.3. The terms of the Roscommon County Development Contribution Scheme are applicable to the development. The Scheme includes a host of development types and scenarios where reduced contributions and exemptions would apply.
- 5.1.4. A contribution of €4,400 per house in an urban area applies, comprised of €2,700 towards roads infrastructure (Town and Village Improvements, Public Lighting, Footpaths, Car Parking, Contribution to Capital Schemes, Traffic Management, Drainage, Broadband, Swimming Pool Fund, Fire Services Facilities, Unfinished Housing Estates), €1,100 towards libraries, enterprise, cultural and leisure developments and €900 towards amenity and open spaces (parks, open spaces and cemeteries).

## **5.2. National Guidelines**

#### Development Contributions - Guidelines for Planning Authorities (January 2013)

- 5.2.1. These Guidelines are intended to assist planning authorities to achieve through their Development Contribution Schemes, a balance between the costs of the services provided and the need to support economic activity. Planning authorities are required to include specific exemptions and waivers in their Development Contribution Schemes and the Guidelines also note that these should not apply to applications for the retention of development.
- 5.2.2. Planning authorities are advised that the practice of double-charging is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing planning gain in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

Development Management – Guidelines for Planning Authorities, 2007

- 5.2.3. Section 7.12 of the Development Management Guidelines provides guidance on planning conditions for development contributions. Section 8.12 of these Guidelines refers to appeals regarding development contribution conditions.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. A first-party appeal was submitted on behalf of the applicant solely in relation to the levies applied under Condition 17 of the planning authority's decision. The grounds of appeal can be summarised as follows:

- prior to purchasing the property the appellant discussed the issue of development contribution levies with the planning authority, and they were advised that no development contributions were due;
- correspondence from the planning authority to a vendor of the property was provided to the appellant and is attached with the grounds of appeal, and this states that 'the financial contributions relating to planning reference PD/99/745 have been complied with'. This correspondence remains on the file for planning ref. PD/99/745 and the planning authority clearly overlooked this;
- the fact that no development contributions were payable was instrumental in the appellant's decision to purchase the property.

### **6.2. Planning Authority Response**

- 6.2.1. The planning authority's response to the grounds of appeal can be summarised as follows:

- the rationale for attaching contributions to the development is outlined within the planning officer's report;
- a levy of €4,400 per house applies, resulting in a total contribution requirement of €17,600, as per condition 17 of the permission;



- the houses permitted under planning ref. PD/99/745 were not completed, and their completion is therefore subject to the terms of the current Development Contribution Scheme;
- having reviewed the planning history for the site, the planning authority is satisfied that development contributions have not been paid in respect of the houses at this location;
- there were no planning conditions attached to the previous permission PD/99/745 requiring the payment of development contributions;
- the reference to contributions been complied with in the correspondence attached to the grounds of appeal from the planning authority to the vendor at the time, solely relates to contributions towards connections for water and wastewater;
- the planning authority accepts that no further contribution in respect of water or wastewater would be applicable;
- as per the terms of the Development Contribution Scheme, the requested development contribution does not include financial contributions towards water and wastewater services, and as such, double-charging would not occur;
- the provisions of the Development Contribution Scheme were correctly applied and the requested levy should remain attached to the permission.

### **6.3. Observations**

6.3.1. None received.

## **7.0 Assessment**

7.1. Under Section 48(10)(b) of the Planning & Development Act 2000, as amended (hereinafter referred to as 'the Act'), an appeal may be brought to the Board where an applicant for planning permission considers that the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the planning authority.

- 7.2.** Condition 17 of the subject permission requires the developer to pay contributions totalling €17,600 towards expenditure that was incurred or is proposed by the planning authority in respect of providing public infrastructure and services. The grounds of appeal solely contest the attachment of this condition. Consequently, I am satisfied that the appeal can be confined to the matters concerning the specific condition that the first party has appealed and that this appeal can be treated under Section 48(13)(a) of the Act.
- 7.3.** Permission for the four partially-constructed semi-detached houses on the appeal site was initially granted by the planning authority in September 1999 under planning reference PD/99/745. The grounds of appeal assert that the appellant purchased the appeal site following review of planning matters relating to the development on site, including whether or not financial planning contributions were outstanding for the development. The appellant acquired correspondence from the planning authority addressing, inter alia, whether or not financial contributions were applicable to the development under planning reference PD/99/745. This correspondence states that the financial contributions relating to planning reference PD/99/745 have been complied with and the appellant asserts that this information was pivotal in their decision to purchase the property.
- 7.4.** In initially attaching condition 17 to the permission, the planning authority stated that this would be applicable because Section 48 levies had not been paid for the development on site. The planning authority assert that the correspondence attached to the grounds of appeal referring to planning reference PD/99/745, relates solely to development contributions towards water and wastewater connections. Condition 14 of planning reference PD/99/745 refers to service charges in respect of connections to watermains and sewers. The planning authority accept that contributions towards water and wastewater to serve the development are not applicable under the terms of the current Roscommon Development Contribution Scheme and the contributions requested are clearly to cover other infrastructures and services provided for under the planning authority's current Development Contribution Scheme.
- 7.5.** The overarching purpose of Section 48 of the Act is to provide a consistent, clear and transparent method of levying development contributions on particular development proposals. From the outset the developer should be able to anticipate any development contribution when applying for planning permission. Therefore, it is

incumbent upon the planning authority to include specific statements with regard to contributions to be imposed. When adjudicating on appeals made under Section 48 of the Act, the Board is limited solely to considering whether or not the terms of the Development Contribution Scheme has been properly applied.

**7.6.** I am satisfied that the Roscommon Development Contribution Scheme 2014 clearly breaks down and sets out the manner in which contributions for development of the nature and scale proposed and to be retained would be applied. The €4,400 contribution per house in an urban area does not seek contributions towards connections to watermains and sewers and the Development Contribution Scheme clearly states that 'no development contributions are to be levied locally for water and wastewater projects'. The appellant has applied for retention permission to retain four partially completed houses and the information on file would suggest that financial contributions for connections to watermains and sewers for this development are not outstanding. However, the appellant has also sought full planning permission to complete these four houses and the Development Contribution Scheme allows for contributions to be applied for development of the nature and scale proposed in order to contribute towards infrastructure and services, including for example, roads, libraries and open space, which have not been levied under the previously enacted permission on the site. The correspondence from the planning authority refers to the status of contributions for the previous permission on site (RCC Ref. PD/99/745) and does not negate the potential for contributions to be applied for further developments on site, such as the subject proposed development (RCC Ref. PD/19/277). In such circumstances, I am satisfied that the attachment of the condition would not be tantamount to double-charging and that the terms of the Development Contribution Scheme have been properly applied by the planning authority in respect of condition 17 of the permission. Accordingly, condition 17 should remain attached to the permission under RCC Ref. PD/19/277.

## **8.0 Appropriate Assessment**

8.1.1. Having regard to the nature and scale of the proposed development and the development to be retained, the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a

significant effect individually or in combination with other plans or projects on a European site.

## **9.0 Recommendation**

- 9.1.** It is recommended that Condition 17 should be attached for the following reasons and considerations.

## **10.0 Reasons and Considerations**

- 10.1.1. Having regard to the nature and scale of the proposed elements of the development, the planning history for the site and the provisions of the Roscommon Development Contribution Scheme 2014 made under Section 48 of the Planning & Development Act 2000, as amended, including the classes of infrastructure covered for the various categories of development, it is appropriate to request contributions relating to roads infrastructure, libraries, enterprise, cultural development, leisure development, amenity space and open space. In accordance with Section 48 of the Planning & Development Act 2000, as amended, the Board considered that the terms of the Roscommon Development Contribution Scheme 2014 had been properly applied in respect of condition 17 and directs the planning authority to attach condition 17 of Roscommon County Council Planning Ref. PD/19/277, to reflect the nature and scale of the proposed development, the terms of the Roscommon Development Contribution Scheme 2014 and the works required to facilitate the development.

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Colm McLoughlin  
Planning Inspector

19<sup>th</sup> November 2019