



An  
Bord  
Pleanála

## Inspector's Report ABP-305396-19

### Development

Retention permission for awning to existing terrace at rear of dwelling. Application to further include planning permission for removal and re-positioning of existing detached shed to facilitate construction of a detached granny flat (47.13sqm) including tapping into existing mains services (serving existing dwelling) and associated site works including wheelchair ramp.

### Location

Rear of 'Greenlawn', Dublin Road (Tiknock Td.), Arklow, Co. Wicklow.

### Planning Authority

Wicklow County Council

### Planning Authority Reg. Ref.

19714

### Applicant(s)

B. Keaveny

### Type of Application

Permission & Permission for Retention

### Planning Authority Decision

Grant subject to conditions

### Type of Appeal

First Party v. Condition

**Appellant(s)**

B. Keaveny

**Observer(s)**

None.

**Date of Site Inspection**

20<sup>th</sup> November, 2019

**Inspector**

Robert Speer

## 1.0 Introduction

- 1.1. This report relates to a first party appeal made under S.48(10)(b) of the Planning and Development Act, 2000, as amended, in respect of Condition No. 2 as attached to the notification of the decision of the Planning Authority to grant permission & permission for retention of the proposed development.

## 2.0 Site Location and Description

- 2.1. The proposed development site is located in an established residential area within the northern confines of Arklow town, Co. Wicklow, approximately 700m north of Bridge Street and the Bridgewater Shopping Centre, where it occupies a roadside position to the west of the R772 Dublin Road in the townland of Ticknock. It has a stated site area of 0.0834 hectares, is triangular in shape, and is presently occupied by a dormer-style bungalow over a basement level with a raised terrace to the rear of same overlooking a lower patio and garden area.

## 3.0 Proposed Development

- 3.1. The subject proposal consists of the following:
- The retention of an existing awning over the raised terrace area to the rear of the dwelling house.
  - The removal and re-construction of a shed.
  - The construction of a detached granny flat (47.13m<sup>2</sup>) and associated site works, including the provision of a wheelchair access ramp and connection to mains services (serving the existing dwelling).

## 4.0 Planning Authority Decision

### 4.1. Decision

- 4.1.1. On 16<sup>th</sup> August, 2019 the Planning Authority issued a notification of a decision to grant permission & permission for retention of the proposed development subject to

8 No. conditions. These conditions are generally of a standardised format whilst Condition No. 2 (the subject of this appeal) states the following:

*'Within four months from [the] date of final grant, the developer shall pay the sum of €1,140 (one thousand, one hundred and forty euro) to the Planning Authority (for the roofed floor area within the terrace) as a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority. The contribution sought is in accordance with Wicklow County Council's Development Contribution Scheme and Section 48(1) of the Planning and Development Act 2000. Where the contribution remains unpaid the monies payable shall be updated in accordance with the Wholesale Price Index as published by the Central Statistics Office on the 1<sup>st</sup> January of each year following the date of the Final Grant.'*

*Reason: The public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof'.*

## **4.2. Planning Authority Reports**

### **4.2.1. Planning Reports:**

States that the terrace awning to be retained and the proposed 'granny flat' will not have a detrimental impact on the residential or visual amenities of the area before recommending a grant of permission, subject to conditions.

In terms of calculating the development contribution applicable in respect of the awning proposed for retention, the report states that the contribution is to be calculated on the basis of the 'urban rate' and further notes that a waiver was previously applied as regards the initial 40m<sup>2</sup> of floor area of the residential extension permitted under PA Ref. No. PRR16/1327. The report proceeds to refer to the 'roofed' balcony area as necessitating a development contribution of €1,140 (i.e. €57 x 20m<sup>2</sup>). Whilst the contribution would appear to have then been excluded at the behest of another staff member, it was subsequently reinstated by way of a handwritten note seemingly on the basis that the area in question was 'fully enclosed'.

#### 4.2.2. *Other Technical Reports:*

*Arklow Area Engineer:* No objection.

#### 4.3. **Prescribed Bodies**

- 4.3.1. *Irish Water:* States that a separate dwelling (granny flat) would require its own individual services for both water and wastewater to be connected independent of the existing dwelling house to the public network.

#### 4.4. **Third Party Observations**

None.

### 5.0 **Planning History**

#### 5.1. *On Site:*

PA Ref. No. 16/1327. Was granted on 5<sup>th</sup> May, 2017 permitting B. Keaveny permission for alterations and extensions to house comprising (a) demolition of front part of pre '1963 flat roof extension to north west gable and kitchen window to (what is now) the front wall of the said extension (b) slated pitched A roof in place of flat roof to pre '63 extension to side / rear (c) terrace / balcony to rear at ground floor level (roof of exempt extension at basement / lower ground level below) (d) dormer to rear slope of main roof.

PA Ref. No. 191053. On 13<sup>th</sup> November, 2019 the Planning Authority issued B. Keaveny with a notification of a decision to grant permission for a single storey extension, at lower ground level together with minor changes to existing fenestration, to rear of existing dwelling including ancillary site works.

### 6.0 **Policy and Context**

#### 6.1. **National and Regional Policy**

- 6.1.1. The '*Development Contributions, Guidelines for Planning Authorities*' published by the Department of the Environment, Community and Local Government in January, 2013 aim 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 was last issued in 2007.

## 6.2. Development Contribution Scheme

6.2.1. The *Wicklow County Council Development Contribution Scheme, 2015* was adopted on 5<sup>th</sup> October, 2015 and includes a list of public infrastructure (please refer to Appendix 1) which is considered to comprise those projects that can be progressed with the funding which it is projected will be received under the Scheme up to 2022 together with any other required funding. The Scheme sets out the basis for the determination of the relevant development contributions, including those instances where a reduction / exemption in the contribution rate may apply, with Tables 4.1, 4.2, 4.3 & 4.4 detailing the rates of contribution applicable in respect of the various classes of infrastructure for specified categories of development. Table 4.2 refers to the development contribution rates applicable in respect of '*Residential – Non Rural*' whilst Section 4.3 of the Scheme details the basis for the calculation of the applicable development contribution with respect to residential extensions.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

- The development contribution sought by Condition No. 2 of the grant of permission has been unjustly applied given that the awning in question comprises a canopy / roof and does not enclose any floor area.
- The report of the case planner dated 15<sup>th</sup> August, 2019 refers to a contribution for the '*roofed balcony area*' with a line struck through this text, although later handwritten notes read '*O.K. fully enclosed – included*'.
- In an effort to resolve the issue in question without recourse to an appeal, the Planning Authority was contacted and subsequently responded by stating that the photographs on file showed that the area beneath the awning was fully enclosed and thus the imposition of the contribution was appropriate.

- Photo No. 7 of the Planner's Report (as numbered by the applicant) clearly shows the open nature of the terrace beneath the awning (as do the accompanying photographs supplied with the grounds of appeal).

## 7.2. **Planning Authority Response**

None.

## 7.3. **Observations**

None.

## 7.4. **Further Responses**

None.

## 8.0 **Assessment**

- 8.1. This is an appeal made under the provisions of Section 48(10)(b) of the Act and therefore the Board is restricted to considering Condition No. 2 alone and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the condition that has been appealed.
- 8.2. From a review of the available information, it would appear that the Planning Authority has determined that the erection of the awning over part of the terraced area to the rear of the existing dwelling house amounts to the construction of a residential extension and thus warrants the imposition of a development contribution pursuant to the provisions of Table 4.2 and Section 4.3 of the Scheme which sets out the basis for the calculation of development contributions with respect to residential development. In this regard, I would refer the Board to the report of the case planner wherein it is stated that the development contribution is to be calculated in accordance with the applicable '*Urban Rate*', seemingly in reference to Table 4.2 of the Scheme i.e. a development contribution rate of €57/m<sup>2</sup>. Further credence is lent to the presumption that '*the roofed floor area within the terrace*' was considered by the Planning Authority to comprise a residential extension given the reference in the planning report to the waiver normally applied in respect of residential extensions under Section 4.3 of the Scheme and the assertion that it was not applicable in this instance as it had already been taken into account in the Planning Authority's earlier determination of PA Ref. No. 16/1327 (which approved the previous alteration and

extension of the dwelling house). Accordingly, on the basis that *'the roofed floor area within the terrace'* amounts to a residential extension in an urban area, it can be ascertained that the development contribution sought by Condition No. 2 has been calculated as follows:

$$\text{Floor Area: } 20\text{m}^2 \times \text{€}57/\text{m}^2 = \text{€}1,140.$$

(It would appear that the Planning Authority has based the foregoing calculation on a 'floor area' of 20m<sup>2</sup> despite the application form referring to the area covered by the awning as equating to 19.94m<sup>2</sup>).

- 8.3. In my opinion, the key issue which requires resolution in the assessment of this appeal is whether or not the awning in question can be considered to comprise a 'residential extension'. In this regard, although the term *'residential extension'* is not expressly defined in the Development Contribution Scheme, I would suggest that a reasonable interpretation of same would involve the provision of additional internal floorspace that would form an integral part of an existing dwelling house with the applicable development contribution calculated on the basis of the reckonable floor area. This would seem to find some degree of support in the report of the case planner wherein reference is made to the *'fully enclosed'* nature of the *'roofed balcony area'* with the reckonable 'gross floor area' (pursuant to Section 4.3 of the Scheme) having been derived from the external measurement of that part of the terraced area to be covered by the awning.
- 8.4. At this point, I would advise the Board that the development in question consists of an open-sided canopy / awning with an adjustable louvred roof system (supported by a fixed steel-frame construction) over a raised terrace area external to the main dwelling house. Although the 'roofed area' is enclosed on two sides by the external walls of the existing dwelling house, with the remainder of the terrace bounded in part by low walling due to its raised construction, I am inclined to suggest that this space is nevertheless exterior to the main house and that the awning does not involve an 'extension' of the living accommodation but rather amounts to the improvement of an external amenity area.
- 8.5. The terrace covered by the awning is presently occupied by a table and patio chairs and is perhaps more comparable in terms of its intended use to a gazebo or similar such construction which would not typically comprise a 'residential extension'. In my



opinion, the 'roofing' of the external terrace for purposes incidental to the enjoyment of the dwelling house does not amount to the provision of a residential extension. Indeed, it is apparent from a review of previous planning applications determined by the Planning Authority that the provision of structures (such as garages and garden sheds) for purposes ancillary to the enjoyment of a dwelling house do not attract a development contribution under the Scheme.

- 8.6. Therefore, on the basis of the foregoing, I am satisfied that the awning in question does not amount to a 'residential extension' and thus does not comprise floor area reckonable for the purposes of the Development Contribution Scheme. Furthermore, in the absence of any other provision under which the subject development could attract a development contribution under the Scheme, I would recommend the removal of Condition No. 2.

## **9.0 Recommendation**

- 9.1. On the basis of the foregoing, I consider that the Planning Authority has incorrectly applied the terms of its Development Contribution and, therefore, it is my recommendation that it should be directed accordingly to remove Condition No. 2 for the reasons and considerations set out hereunder:

## **10.0 Reasons and Considerations**

- 10.1. Having regard to the submissions made on the file, and to the nature of the development to be retained, the Board considered that the terms of the Wicklow County Council Development Contribution Scheme, 2015 had not been properly applied in that the erection of the awning to the existing terrace at the rear of the dwelling house did not constitute reckonable floor area for the purposes of the Scheme.

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Robert Speer  
Planning Inspector

25<sup>th</sup> November, 2019