



An
Bord
Pleanála

Inspector's Report

ABP-307060-20

Development	Demolition of substandard cottage to allow for the construction of a replacement house
Location	Tullagower , Cooraclare , Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	19547
Applicant(s)	Philip McNeill
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party v. Condition
Appellant(s)	Philip McNeill
Observer(s)	None
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. This is a first party appeal against a financial contribution condition which was attached to the Planning Authority's notification of intention to grant permission for development the demolition of a substandard cottage to allow for the construction of a replacement house. As this is an appeal in respect of a condition requiring a financial contribution, the provisions of section 48 of the Planning and Development Act 2000 apply and the Board is restricted to considering this matter alone and cannot consider the matter de novo. I have therefore confined my assessment to the condition in question.
- 1.1.2. Having regard to the nature of the appeal before the Board (i.e. first party against condition) and the information available on file, a site inspection was not deemed necessary in this instance.

2.0 Proposed Development

- 2.1.1. On the 4th July 2019, planning permission was sought for the demolition of an existing substandard cottage and the construction of a replacement dwelling.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 30th March 2020, the Planning Authority issued a notification of their intention to GRANT permission subject to 14 no. conditions. Condition no. 14 of the permission states:

"Prior to the commencement of development, the developer / applicant shall pay a contribution of €5549.00 to Clare County Council (Planning Authority) in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provide for or intended to be provide 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. At the time of payment, the contribution will be subject to any applicable adjustment in accordance with the relevant provisions of the Planning Authority's development contribution scheme in place at the time of payment, Any contributions owing post commencement of development may be subject to interest penalties. **Reason:** It is

considered appropriate that the developer / applicant should contribute towards the cost of public infrastructure and facilities benefitting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with section 48 of the Planning and Development Act 2000, as amended and that level of contribution payable should be adjusted at a rate in the manner specified in that scheme.”

3.2. Planning Authority Reports

- 3.2.1. **First Planning Report:** Existing dwelling is of a design that exemplifies the vernacular architecture of County Clare. Demolition is not supported. Applicant to be requested to consider retention / renovation. FI requested.
- 3.2.2. **Second Planning Report following Receipt of FI:** Existing dwelling considered to be beyond repair. Proposed development is acceptable.

4.0 Recent Planning History

- 4.1.1. **PL03.210617:** Appeal against condition no. 3 of a decision by Clare County Council. The Board decided that the terms of the contribution scheme had not been properly applied in respect of condition no. 3 . The Boards reason and considerations stated that having regard to the fact that the proposed development involves the relocation of a permitted holiday home within revised site boundaries, it is considered appropriate that an allowance be given for the previous payment of a contribution towards the supply of piped water. The Board also concluded that the Development Contribution Scheme does not require the payment of any contribution in respect of the proposed restoration/extension of the existing cottage.

5.0 Policy Context

- 5.1. **Planning and Development Act 2000, as amended**
 - 5.1.1. Section 48 of the Planning and Development Act 2000, as amended provides as follows:

48.—(1) A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of

a local authority (regardless of other sources of funding for the infrastructure and facilities).

(2) (a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

(c) A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

(3) (a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

Section 48(10) provides:

(10) (a) Subject to paragraph (b), no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

(b) An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

(c) Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal. provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

5.2. Clare County Section 48 Development Contribution Scheme 2017-2023

5.2.1. The Clare County Council development contribution scheme provides for development contribution charges for residential development as follows in an area outside a rural village subject as the subject site as follows:

- Roads €4317
- Amenities and community facilities €955
- Flood Relief / Defence & Surface Water Works €277

TOTAL per residential unit €5549

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The applicant states that he wishes to appeal condition no. 14 of the Planning Authority's decision to grant permission. The grounds of the appeal can be summarised as follows:

- Previous payments by the applicant have been made with the installation of ESB power supply and a new water main to provide
- It is submitted that the scheme has not been correctly applied.
- The applicant notes that he previously appealed condition no. 3 when permission was granted under PL03.210617.

- The application consists of the demolition of an existing substandard cottage and its replacement with a new dwelling and WWTS.
- It is submitted that the amount charged is unfair as the permission is for the restoration/ revitalisation of an existing dwelling.
- Permission was previously approved for two houses (P99-1962, P00-2420 and P04-1392 refer). Fees were paid on the 9th Feb 2004.
- Permission was granted to made changes to two houses (P04-1392) without additional charges.
- Before 2005, a 0.71km water main and electrical supply was installed to include for the dwelling under consideration.
- It is submitted that it is unfair to apply a charge when a contribution has already been paid.

6.2. **Planning Authority Response**

- 6.2.1. It is submitted that development contributions were correctly applied as per the development contribution scheme in place. The applicant indicated that the existing dwelling is not habitable and full demolition is proposed. Therefore development contributions were applied as if the site were a greenfield site. The applicant may apply for a refund of contributions paid under PL03.210617.

7.0 **Assessment**

- 7.1.1. Having regard to the provisions of section 48(13)(a) of the Planning and Development Act 2000 as amended, this assessment and recommendation will only relate to the conditions that are subject of the appeal.
- 7.1.2. The subject site and the adjoining two sites to the immediate east have a considerable planning history, starting in 1999 with permission to rebuild the existing cottage and construct two additional houses (P99 1962). An amended design permitted in 2000 (P00 2420) and in 2004 (P04 1392) for all three houses. A second amended design in 2004 (P04 2233) refers only to the subject house. An amended design in 2005 (P05 2019), permission refused in 2006 to demolish the cottage and create a new dwelling in an existing and extended shed (P06 1710), amended design in 2007 (P07 2176), all for the subject house only. From this, it is reasonable

to presume that two of the dwellings permitted in the earlier applications were constructed in 2004, resulting in only the current dwelling on site 3 the subject of the subsequent applications.

- 7.1.3. The applicant states that he paid a development contribution on the 9th Feb 2004, following the imposition of a condition imposed under to P04-1392 relating to all three dwellings. The Boards decision in May 2005 (P04 2233 / PL03.210617) provided that a reduced development contribution was applicable to the third dwelling (the subject house) given a development contribution had been paid for all three houses the previous year. Given that the development permitted under P04 2233 / PL03.210617 was not implemented, one must assume that the reduced charge following the Boards decision was not paid.
- 7.1.4. It is my reading of the appeal, that the applicants case now is that as a development levy was paid in 2004 for the development of all three houses, that he should not be levied under the current application. He states that at some point before 2005 he laid a water main and an electrical supply which included capacity for the subject dwelling.
- 7.1.5. The Planning Authority have stated that they levied the proposed development as a greenfield development as the applicant demonstrated that the existing dwelling is not habitable and requires demolition. The planning report prepared for the application states that development contributions are applicable to an area of 108.52sq.m, namely a roads contribution of €4317, an amenities contribution of €955 and a flood relief contribution of €277, resulting in a total of €5549.
- 7.1.6. The Board will note that the subject application does not refer to the adjoining two sites or dwellings or any services therein. It is a standalone application for development which comprises the demolition of an existing structure and the construction of a new dwelling. The Board will also note that the plans submitted for FI refers to both the complete demolition of the dwelling and the retention of some sections of the dwelling. Whilst the revised public notices clearly states that the dwelling is to be demolished. To further confuse the matter, the applicants appeal refers to the restoration of the dwelling and the demolition of the dwelling. It is my reading of the plans and the subsequent report of the Planning Authority that the existing cottage is to be demolished and a new structure constructed. As the existing

dwelling is not serviced, it is considered that the Planning Authority assessment of the proposal as a greenfield proposal is correct.

- 7.1.7. The development contribution scheme does not make exception or provide for a reduction because some services are available to the subject site by virtue of a previous development. It is considered that the scheme was correctly applied. I note the suggestion by the Planning Authority that the applicant is welcome to request a refund for the development levies paid in 2004. Given the length of time that has elapsed since the payment was made in 2004, the proposed capital programme on which the current scheme is based and the public infrastructure projects which are to be funded by the development contribution scheme, it is considered this is the appropriate mechanism to calculate the proportion of fees paid, if any, to which the subject site may have benefitted from.

8.0 Recommendation

- 8.1.1. Having regard to:

- The nature and scale of the proposed development which involves the demolition of an existing cottage and the construction of a replacement dwelling,
- The planning history on the subject and adjoining sites,
- The provisions of the Clare County Council Development Contribution Scheme 2017-2023 made under Section 48 of the Planning and Development Act 2000, as amended, and the

It is considered that the levy imposed under condition no. 14 has been correctly applied to the proposed development which is a stand-alone development, separate to any planning history in the wider area and which involves the demolition of an existing structure and the construction of a new dwelling. It is considered that the Scheme has been correctly applied, and that condition no. 14 of the decision of Clare County Council be retained in full as per the Managers Order of 30th March 2020.

9.0 Recommendation

9.1. I recommend that Condition no. 14 be retained in full, as per the decision of Clare County Council of the 30th March 2020

14 Prior to the commencement of development, the developer / applicant shall pay a contribution of €5549.00 to Clare County Council (Planning Authority) in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provide for or intended to be provide 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. At the time of payment, the contribution will be subject to any applicable adjustment in accordance with the relevant provisions of the Planning Authority's development contribution scheme in place at the time of payment, Any contributions owing post commencement of development may be subject to interest penalties. **Reason:** It is considered appropriate that the developer / applicant should contribute towards the cost of public infrastructure and facilities benefitting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with section 48 of the Planning and Development Act 2000, as amended and that level of contribution payable should be adjusted at a rate in the manner specified in that scheme.

Gillian Kane
Senior Planning Inspector

10 August 2020