



An  
Bord  
Pleanála

## Inspector's Report ABP307491-20

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<b>Development</b>	Retain as-constructed dwelling house.
<b>Location</b>	Cloghna, Kilkenny Road, Carlow.
<b>Planning Authority</b>	Carlow County Council
<b>Planning Authority Reg. Ref.</b>	PL20/77
<b>Applicant(s)</b>	Mark Mulhern
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	First Party V Contribution Condition
<b>Appellant(s)</b>	Mark Mulhern
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	None
<b>Inspector</b>	Hugh Mannion.

## **1.0 Site Location and Description**

- 1.1. The site has a stated area of 0.41ha and is located down a cul de sac which has a junction with the R448 Carlow/Kilkenny regional route to the west of the site.

## **2.0 Proposed Development**

- 2.1. Retain revisions to a house permitted under reference 01/167 at Cloghna, Kilkenny Road, County Carlow.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority granted permission subject to a condition (condition 6) which required the payment of €4,925.00 as a contribution towards the costs of the provision of local authority services which facilitate the development.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planner's report recommended a grant of permission as set out in the manager's order.

#### **3.2.2. Other Technical Reports**

- 3.2.3. None

## **4.0 Planning History**

- 4.1. Planning permission was granted for a house on this site under 01/167. That house was not constructed in accordance with the plans and particulars which has given rise to this application for retention under reference 20/77.

## **5.0 Policy and Context**

### **5.1. Development Plan**

The Carlow County Council Development Contribution Scheme 2017-2021 is the applicable development contribution scheme.

### **5.2. Natural Heritage Designations**

Not relevant

### **5.3. EIA Screening**

Not relevant

## **6.0 The Appeal**

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

- The appeal relates solely to the contribution required in condition 6.
- The amount of €300 payable towards the garage to be retained is not disputed.
- Section 19 of the Development Contribution Scheme provides for the calculation of contributions on the basis of floor area. This application does not provide for any additional floor area over and above that permitted under PL01/167.
- The application form stated that no floor area is to be retained, the planning authority accepted that statement and therefore should not have subsequently applied the contribution based on floor area.
- Therefore, the development contribution scheme was incorrectly applied.

## 6.2. Planning Authority Response

- The application is for retention and therefore the Development Contribution Scheme requires the application of the full rate. There are no exemptions in the case of retention applications.
- There was no previous charge levied in relation to reference 01/167 so that double charging does not apply in this case.

## 6.3. Observations

- Not applicable.

## 6.4. Further Responses

6.5. None

## 7.0 Assessment

7.1. This is an appeal against a contribution condition imposed by Carlow County Council under the adopted Carlow County Council Development Contribution Scheme 2017-2021. Section 48(10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be made to the Board by an applicant for permission where the applicant considers that the terms of the adopted development contribution scheme have not been properly applied by the planning authority.

7.2. Condition 6 included a charge of €300 for the garage to be retained which the applicant does not dispute and which I consider is in accordance with the Carlow County Council development contribution scheme.

7.3. Section 19 in the development contribution scheme provides that rural houses should be charged contributions on a sliding scale of €15 per m<sup>2</sup> for the first 125m<sup>2</sup> of floor area, €20 per m<sup>2</sup> between 120m<sup>2</sup> and 200m<sup>2</sup> and €25 per m<sup>2</sup> for floor areas in excess of 200m<sup>2</sup>. The application form states that the floor area the subject of the

application is 250m<sup>2</sup> and additional 30m<sup>2</sup> for the garage. The planning authority applied the scale of charges as;

150m<sup>2</sup> x €15 for €1,875.00

75m<sup>2</sup> x €20 for €1,500.00

50m<sup>2</sup> x €25 for €1,250.

- 7.4. This gives a subtotal of €4,625 (add in €300, undisputed for the garage) for a total of €4,925.00.
- 7.5. The planning authority makes the point that no contribution was paid in relation to the permitted development under 01/167 so double charging does not arise. The applicant makes no case that the planning authority is mistaken on this point.
- 7.6. The applicant relies on the argument that the application refers to the retention of external and internal alterations to a previously permitted development but that a floor area is not the subject of this retention application.
- 7.7. Planning documents (for example; planning guidelines for planning authorities, County and City development plans and local area plans and Development Contribution Schemes) must be read for their ordinary meaning. It is a statutory duty of planning authorities to make development contribution schemes and such schemes should be clear enough in their meaning that a non-specialist developer can reasonably accurately anticipate what level of development contribution would fall payable in any particular case.
- 7.8. In the present instance the Carlow Development Contribution Scheme states that contributions will be paid by developed on rural housing on a m<sup>2</sup> basis as I have summarised above. Reductions are set out within the scheme but for clarity paragraph 26 of the scheme confirms that “applications for retention will be charged at the full rate under the scheme. Exemptions or reductions will not apply to retention applications”. The applicant makes the point that the application refers only to internal and external alterations and not to floor area and that an application fee was not calculated on the floor area but accepted by the planning authority, therefore the

planning authority is now in error applying a floor area based calculation to the contribution required under the Development Contribution Scheme.

- 7.9. In this case an application to erect a house was granted permission under planning reference 01/167. The house was not constructed in accordance with the plans and particulars and by applying for planning permission the applicant acknowledges that the as-constructed house was unauthorised development. The application for retention of a house attracts the contribution amounts set out at point 1 of the Schedule of Contributions at section 19 of the development contribution scheme. The claim that the planning authority is inconsistent in calculating application fees as against calculating development contribution fees is neither here nor there; the planning authority is bound to apply the terms of the development contribution scheme as made.
- 7.10. I consider that it would undermine the ordinary meaning of wording of the development contribution scheme to accept that a distinction could be made between the external and internal alterations made to a house and the meaning of a 'house' as used in the scheme as a basis for levying contributions. However the application is described it is the fact is that this application is an application for retention of a house as constructed. A by-product of confining the meaning of the application to only the elevations of the house as constructed would be that the floor area as constructed remains unauthorised development for which a separate planning application should be made.
- 7.11. I conclude that the planning authority properly applied the scheme and that the Board should direct the planning authority to attach condition 6 unamended.

## **8.0 Recommendation**

- 8.1. I recommend that the planning authority be directed to attach condition 6.

## 9.0 Reasons and Considerations

A development contribution is payable on foot of a grant of planning permission for a rural house in accordance with Point 1 of Section 19 the Schedule of Contributions set out in the Carlow County Council Development Contribution Scheme 2017-2021 and Section 26 of the Scheme provides that retention applications will be charged at the full rate set out in the scheme and that no exemptions or reductions would apply to retention applications. This application is for the retention of a rural house to which the scheme applies and the planning authority has applied the scheme properly.

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Hugh Mannion  
Senior Planning Inspector

27<sup>th</sup> November 2020