



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307940-20

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<b>Development</b>	Construction of house
<b>Location</b>	Barrack Street, Bansha, Co. Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	19601286
<b>Applicant</b>	Frances O'Shea
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party v Development Contribution Only
<b>Appellant</b>	Frances O'Shea
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	17.11.2020
<b>Inspector</b>	Anthony Kelly

## **1.0 Introduction**

- 1.1. This report relates to a first-party appeal against Condition No. 10 of the planning authority decision to grant permission for the development. Condition No. 10 relates to the payment of a development contribution of €5,711.40 in accordance with the Tipperary County Council Development Contribution Scheme 2020. Section 48(10)(b) of the Planning & Development Act, 2000 (as amended) states that an appeal may be brought to the Board where an applicant considers that the terms of the development contribution scheme have not been properly applied.

## **2.0 Site Location and Description**

- 2.1. The site is on Barrack Street in the village of Bansha in south east Co. Tipperary.
- 2.2. The front of the site is occupied by a semi-derelict single storey structure of which the rendered front façade, gables and most of the corrugated roof remains. The remainder of the site is surfaced in concrete. The façade has a vehicular entrance. There are two storey houses attached to both sides of the structure. There are double yellow lines immediately to the front of the vehicular entrance with on-street parking in front of the adjacent house to the north west. There is a pedestrian crossing across the public road immediately south of the site.
- 2.3. The site has an area of 0.02 hectares.

## **3.0 Proposed Development**

- 3.1. Permission is sought for demolition of the existing structure on site and construction of a two-storey house and entrance.
- 3.2. It is proposed to demolish a floor area of 55sqm. The proposed house has a floor area of 89.4sqm.
- 3.3. Further information was submitted in relation to, inter alia, a Flood Risk Assessment. The planning authority required the re-advertisement of the application as significant further information because of the submission of this Assessment. The applicant at

that stage also sought permission to retain the demolition of a building at the rear of the subject property.

## 4.0 Planning Authority Decision

### 4.1. Decision

4.1.1. The planning authority decided to grant permission subject to 10 no. conditions. Condition No. 10 requires the payment of a financial contribution as follows.

10. Prior to development commencing a payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of Tipperary County Council that is provided, or intended to be provided, by or on behalf of the Authority in accordance with the terms of the Tipperary County Council Development Contribution Scheme 2020 made under Section 48 of the Planning and Development Act, 2000 (as amended). The amount of the development contribution under this condition is €5711.40 which is calculated as follows:

Class 2		Rate 220		Area sq. m		Total
Dwelling in town centre	Roads & Community	€31.00	per m2	89.4	m2	€2771.4
Car parking		€3,000	Per space			€3000
Total contributions liable						€5771.4

**Reason: It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contribution Scheme 2020 made under Section 48 of the Planning and Development Act 2000 (as amended).**

### 4.2. Planning Authority Reports

4.2.1. Planning Reports dated 15.01.2020 and 23.07.2020 form the basis of the planning authority decision. The latter report considers that the development complies with the policies and objectives of the South Tipperary County Development Plan 2009, as

varied, and does not have an adverse impact upon the character of the area or the amenities of adjoining properties.

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

**District Engineer** – Comments made on the initial application. The report on foot of the further information response states no further observations from a roads perspective.

**Roads Capital Office** – No comments.

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

**Department of Culture, Heritage and the Gaeltacht** – It is recommended that archaeological monitoring be carried out as a condition of planning permission.

**Transport Infrastructure Ireland** – No observations to make.

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

4.4.1. None.

### 5.0 **Planning History**

5.1.1. There have been previous applications on site as follows.

P.A. Reg. Ref. P37233 – Permission was granted in 1980 for a panel beating shed at rear of garage.

P.A. Reg. Ref. P312271 – Permission was granted in 1989 to change premises to offices/canteen/stores/toilet facilities and yard replacing existing entrance and alterations to garage plus car wash facility.

5.1.2. An exemption from Part V was granted under S97/19/29.

## **6.0 Policy Context**

### **6.1. South Tipperary County Development Plan 2009-2015 (as varied)**

6.1.1. The site is in the village centre area of Bansha as set out in Settlement Plan.

### **6.2. Tipperary County Council Development Contribution Scheme 2020**

6.2.1. The development subject of the application is contained in Class 2 of Section 6.0 (Classes of Development) i.e. a house on appropriately zoned land within the settlement boundary of a village.

6.2.2. Section 9.2 (Calculation of Contribution – Car Parking Facilities) states that where the developer is unable to meet the requirements relating to car parking, a development contribution, commensurate with the shortfall in spaces, shall be paid to the Planning Authority to facilitate the provision of car parking spaces elsewhere. The contribution in lieu of car parking spaces is charged at a rate of €3,000 per space.

6.2.3. Section 10.0 outlines exemptions and reductions from the Scheme. Section 11.0 (Points to Note) states the Scheme aims to avoid any double charging of contributions and so an allowance will be made in respect of pre-existing authorised development in place prior to the introduction of Development Contributions. Section 11.0 also states that where redevelopment of a site is proposed, the contributions applicable shall be the difference between the contribution rate applicable to the authorised existing use/floor area and the contribution payable for the proposed use (where greater).

### **6.3. Natural Heritage Designations**

6.3.1. The closest Natura 2000 site is Lower River Suir SAC approx. 3.5km to the south. The closest heritage area is Bansha Wood pNHA approx. 1.1km to the west.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

The main points made can be summarised as follows:

- The application of a charge of €3,000 is incorrect and there should be no charges for car parking.
- The application was for demolition of a garage and construction of a house. The existing garage is 55sqm and was used as a commercial garage, including panel beating, and therefore the current car parking allowance would be classed as either light industry or manufacturing which has one car-parking space plus one HGV parking space for every 35sqm i.e. 1.57 car-parking spaces and 1.57 HGV parking spaces for the 55sqm. Therefore, the existing garage has an allowance for over three spaces (cars and HGVs).
- The applicant is unable to provide car parking on site but expected the above allowance to be made. The proposed development has a requirement for two spaces.
- The planning authority Planner's Report states that the benefit of the shed to be retained is not deducted for levies as the development is for retention. The retention element does not relate to the proposed development and therefore should not affect the car parking allowances.
- The applicant is not looking for a parking allowance for the shed that was demolished but is looking for the existing 55sqm shed to the front which it is proposed to demolish.

### 7.2. Planning Authority Response

The main points made can be summarised as follows:

- The panel beating development permitted under P.A. Reg. Ref. P37233 was located to the rear of the shed proposed to be demolished. It appears this panel beating shed has been removed/demolished therefore the benefit of the car parking allowance provided for no longer stands and car parking will be levied

for 2 spaces at this location. The shed to be demolished did not benefit from any car parking allowance as it did not operate as a commercial operation. On this basis, no benefit was awarded and a levy of €3,000 was conditioned.

- The Board is requested to uphold the condition.

### **7.3. Observations**

7.3.1. None.

### **7.4. Further Responses**

7.4.1. None.

## **8.0 Assessment**

8.1. The front area of the site is occupied by a semi-derelict shed of which the front wall and most of the corrugated roof remains. The front wall includes a relatively wide and high door. There are double yellow lines and a dished pavement to the front indicating it was used for vehicular access. Permission is sought for a house and an entrance to the side of the house. The proposed entrance has a width of 3 metres. Table 10.2 (Minimum Car Parking Standards) of the South Tipperary County Development Plan 2009 (as varied) requires two spaces per house for a three bedroom house.

8.2. The first planning authority Area Engineer's report assumed that vehicles would be using the proposed entrance because comments were made regarding an increase in vehicular traffic, sightlines and the requirement for a road safety audit given the proximity to the pedestrian crossing. The planning authority sought further information partially on this basis. The applicant's response to the further information request stated that there is no plan to provide car parking on site. The access is only to facilitate the normal operation of the household including the provision of bin storage and to maintain the buffer with the adjoining house. The further information response submitted that the existing facility has an allowance for car parking and, as the area measures approx. 55sqm, this should be used in lieu of any parking charges. The Area Engineer's report based on the further information response stated there were no

further observations. The planning authority required re-advertisement of the planning application because the further information response contained a flood risk assessment. When submitted, the new public notices also included reference to the retention of the demolition of a building at the rear of the subject property which appears to have been included unilaterally by the applicant. The re-advertised public notices were accompanied by drawings from 1989 which outlined a shed to the rear which the applicant believes was demolished on foot of Storm Ophelia (in 2017).

- 8.3. The planning authority's second Planning Report states that the panel beating development permitted under P.A. Reg. Ref. P37233 was located to the rear of the shed that it is proposed to demolish. As it has been removed, the benefit of the car parking allowance provided for no longer stands and car parking will be levied for two spaces. In assessing the development contribution, the Planning Report states that, having regard to the village centre location and Section 9.2 of the Scheme, where car parking cannot be provided on suite, the contributions will be reduced by 50% for the first two spaces i.e. resulting in a €3,000 levy.
- 8.4. The grounds of appeal consider there should be no charge for car parking because the existing garage is 55sqm and was used as a commercial garage. An allowance should be provided for 1.57 car parking spaces and 1.57 HGV parking spaces i.e. an allowance for over three spaces. The grounds of appeal, on a couple of occasions, refers to the 'existing' use of the garage in claiming that the allowance for three spaces should be applied. However, the planning authority response to the grounds of appeal states that the shed to be demolished does not benefit from any car parking allowance as it did not operate as a commercial operation.
- 8.5. I do not consider that the shed to be demolished can claim a car parking allowance. It is unclear as to whether it was or was not previously used as commercial premises, though the front façade would suggest that it was. However, the structure is semi-derelict, and it has no rear wall. While the structure may have historically been in commercial use, I do not agree with the grounds of appeal that the existing use of this structure is commercial, and it therefore benefits from 1.57 car parking and 1.57 HGV parking spaces. Any commercial use no longer exists and has been abandoned.
- 8.6. Two car parking spaces are required for the three bedroom house. A charge of only €3,000 was levied by the planning authority for car parking rather than €6,000 (the



charge is €3,000 per space). The rationale for only charging for one space is because Section 9.2 of the Development Contribution Scheme 2020 allows for a 50% reduction for the first two spaces in a village centre location where car parking cannot be provided on site. However, I consider the planning authority has not accurately applied the terms of the Scheme in relation to Section 9.2. The Scheme clearly states that the 50% allowance for the first two spaces only applies to commercial, office or retail development within the village centre land use zoning. The application is for residential development. The Scheme does not state that a reduction will be given for residential development.

- 8.7. Having regard to the foregoing, I consider that as the structure to be demolished is semi-derelict and there is no existing commercial use, there is no car parking allowance applicable. In addition, I consider that the planning authority misapplied the terms of the Scheme and it does not allow for a 50% reduction in the car parking contribution in the case of a residential development in a village centre location. Therefore, I consider that the contribution required under the Scheme is €8,771.40.

	€ per sqm	Floor Area	Spaces Required	€ per Space	Total (€)
Class 2 House	31	89.4sqm			2,771.40
Car Parking Spaces			2	3,000	6,000
					8,771.40

## 9.0 Recommendation

- 9.1. I recommend that Tipperary County Council be directed to amend Condition No. 10 on the grounds that the terms of the Development Contribution Scheme 2020 have not been properly applied.

## 10.0 Reasons and Considerations

Having regard to:

- The provisions of the Tipperary County Council Development Contribution Scheme 2020; and
- The nature of the existing and proposed developments.

The Board considers that the terms of the Development Contribution Scheme has not been properly applied and Condition No. 10 shall be amended as follows.

The developer shall pay to the planning authority a financial contribution of €8,771.40 (eight thousand seven hundred and seventy one euro and forty cent) in respect of public infrastructure and facilities benefitting development in the area of the planning authority 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 prior to commencement of development or 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Anthony Kelly

Planning Inspector

19.11.2020