



An
Bord
Pleanála

Inspector's Report

ABP-309106-21

Development	Retention of kitchen/dining area, ensuite, conservatory, utility room/hall, first floor attic storage areas, shower room and detached gym.
Location	65 Yellow Walls Road, Malahide, Co. Dublin, K36 KW60
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0540
Applicants	Bernard & Catherine Arkins.
Type of Application	Retention
Planning Authority Decision	Grant Retention
Type of Appeal	Appeal against contribution
Appellants	Bernard & Catherine Arkins.
Date of Site Inspection	None required
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located at 65 Yellow Walls Road, Malahide, Co. Dublin along the northern side of the road 25m east of the junction with Sea Road. The dwelling on site is a semi-detached single storey dwelling similar to others along the road.
- 1.1.2. The site has a stated area of 0.068 hectares.

2.0 Proposed Development

- 2.1. The proposed development comprises retention of kitchen/dining area, ensuite, conservatory, utility room/hall, first floor attic storage areas, shower room and detached gym.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 4 conditions, including:
 - 4 The developer shall pay to the planning authority a financial contribution of €11,714 in respect of public infrastructure and facilities benefiting the 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 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.

Reason: It is considered reasonable that the payment of a contribution be required in respect of public infrastructure and facilities benefiting the development in the area of the planning authority and which is provided or which is intended to be provided by or on behalf of the Local Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planning report recommending permission includes:

- Application for 2 single storey extensions which are located to the side and rear of the existing building; conversion of the attic to provide for a bathroom and storage; and a garden room which is in use as a gym.
- It is considered that the development is in keeping with the existing dwelling and the pattern of development in the area and that it will not detract from adjoining residential amenity.

3.2.3. Other Technical Reports

3.2.4. Water Services Department report includes:

- Applicant is requested to submit a surface water drainage proposal following SuDS principles.
- No surface water/rainwater to discharge into the foul water system under any circumstances.
- Surface water drainage must be in compliance with the Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0, FCC, April 2006.

4.0 Planning History

None stated.

5.0 Legislative and Policy Context

5.1. Planning and Development Act 2000 as amended

Section 48

(11) Where an appeal is brought to the Board in respect of a refusal to grant permission under this Part, and where the Board decides to grant permission, it shall, where appropriate, apply as a condition to the permission the provisions of the

contribution scheme for the time being in force in the area of the proposed development.

5.2. Fingal County Council Development Contribution Scheme 2016 -2020

Applicable rate for residential development - €76.14, to be updated.

10 (ii) For clarification purposes;

(a) Exemptions and reductions shall not apply to permissions for retention of development.

5.3. Fingal County Council Development Contribution Scheme 2021-2025

The operative date of the scheme is from 1st January 2021.

Applicable rate for residential development €98.21

Gross floor area determined from the internal dimensions.

10 All retention permissions will be charged a multiple of 1.25 times the appropriate rates for any development in excess of the exemptions provided for under Section 11 of this Scheme.

11 (i) The following categories of development will be exempted from the requirement to pay development contributions or may pay a reduced rate, as stated, under the Scheme;

(a) The first 40 square metres of domestic extensions. This exemption is cumulative and limited to 40 square metres in total per dwelling.

d) Attic Conversions

(s) Garages and garden sheds.

If approval is subsequently granted to convert exempt structure to habitable accommodation, then the appropriate contribution is applicable.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The first party appeal against condition no 4 has been received from Bernard & Catherine Arkins.

6.1.2. The grounds can be summarised as:

- The kitchen, dining room and ensuite built in 2005 was under the 40 sq m exemption.
- The attic space was already floored for storage when they bought the house.
- They recently decided to sell and made the retention application, but the cost of the contribution has restricted them from selling and the house has been withdrawn from the market.

6.2. Planning Authority Response

The planning authority has responded to the grounds of appeal stating that

Condition 4 requires the payment of €11,714 – 119,27m² x €98.21.

Under Section 10 (ii) of the 2016-2020 Scheme

(a) Exemptions and reductions shall not apply to permissions for retention of development

7.0 Assessment

- 7.1.1. This is an appeal under Section 48 (10) of the Planning and Development Act 2000, as amended. This assessment is therefore confined to the application of the terms of the scheme.
- 7.1.2. The planning authority have advised the Board that the amount of €11,714 applied as a contribution, represents a floor area 119,27m² and a charge per metre square of €98.21. They point out that under Section 10 (ii) of the 2016-2020 Scheme there is no exemption or reduction in the case of retention applications.
- 7.1.3. It is noted that the current rate per metre square of €98.21 is a continuation of the rate in place prior to the commencement of the 2021 - 2025 scheme. The reference to exclusion of exemption or reduction, in the case of retention, was part of the 2016 -2020 scheme, and has not been carried forward in the current scheme. A penalty of 1.25 now applies.

7.1.4. The legislation requires the Board to apply as a condition to the permission the provisions of the contribution scheme for the time being in force in the area of the proposed development.

7.1.5. The scheme currently in force, the 2021-2025 scheme, applies the following exemptions:

(a) The first 40 square metres of domestic extensions. This exemption is cumulative and limited to 40 square metres in total per dwelling.

d) Attic Conversions

(s) Garages and garden sheds.

These exemptions are not excluded on the basis of the application being for retention.

7.1.6. The remaining portion of the development would, in my opinion comprise the utility, side entrance, and conservatory, which would generate a contribution of €2330. After the application of the 1.25 penalty for retention, this comes to a total of €2,913.

8.0 Recommendation

8.1.1. In accordance with the foregoing the planning authority should be directed to amend the condition 4 to read as follows:

The developer shall pay to the planning authority a financial contribution of two thousand nine hundred and thirteen euro (€2913), in respect of public infrastructure and facilities benefiting the 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 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.

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.

9.0 Reasons and Considerations

The Board considered that the terms of the Fingal County Council Development Contribution Scheme 2021-2025 had not been correctly applied.

Planning Inspector

10 March 2020

Appendices:

Appendix 1 Fingal County Council Development Contribution Scheme 2021-2025, extracts

Appendix 2 Fingal County Council Development Contribution Scheme 2016-2020, extracts