



An
Bord
Pleanála

Inspector's Report ABP-310666-21

Development

Planning permission is sought for the removal of prefabricated structure and change of use of existing chapel building to residential use and associated works. In addition, retention permission is sought for the demolition of outbuildings and retention as well as completion of external alterations to existing house together with associated works.

Location

"Glenaveena" (formerly known as Stella Maris Convent), Carrickbrack Road, Howth, Co. Dublin.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F20A/0712.

Applicants

Mark Lennon and Nadia Pitt.

Type of Application

Planning Permission & Retention Permission.

Planning Authority Decision

Grant with conditions.

Type of Appeal	First Party.
Appellants	Mark Lennon and Nadia Pitt.
Observer(s)	None.
Date of Site Inspection	16 th day of September, 2021.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The irregular shaped appeal site has a stated 1.79ha area. It is located on the southern side of Carrickbrack Road (R105), and it extends in a southerly direction towards its boundary with the Irish Sea coastline. Its roadside boundary is situated c0.1km to the west of its junction with Thormanby Road and c2.5km as the bird would fly from Howth Harbour in north County Dublin.
- 1.2. Historically the subject site was formerly in use as a 'Sisters of Charity Convent'. The site mainly consists of mature grounds on which is a former chapel building, a period dwelling house and a number of outbuildings that are all situated in close proximity to one another.
- 1.3. The surrounding area is characterised mainly by low-density residential development that benefit from panoramic landscape and coastal views over the Irish Sea, Dublin Bay and Howth Head. The adjoining land to the west of the site for a stretch is devoid of development for a significant distance between the R105 and the coastline.

2.0 Proposed Development

- 2.1. Planning permission is sought for the removal of prefabricated structure and change of use of existing chapel building to residential use and associated works. In addition, retention permission is sought for the demolition of outbuildings and retention as well as completion of external alterations to existing house together with associated works.
- 2.2. According to the planning application form the gross floor space of existing buildings on site is given as 773.8m²; the gross floor space of work to be retained is given as 573.8m² and the gross floor space of any demolition is given as 200m².
- 2.3. On the 7th day of May, 2021, the applicant submitted their response to the Planning Authority's further information request. This consisted of a 'Landscape Plan' and an accompanying statement prepared by Dixon McGaver Nolan, Architects, which includes the following comments:
 - The applicants have never had the intention of creating a second dwelling out of the chapel and they do not feel the need to demolish it to realise this end. Therefore, they will accept any reasonable condition that might be attached to restricting its use.

- In architectural terms it would be a mistake to re-unit the dwelling and the chapel. The main dwelling was a ‘standalone’ structure (Woodworth House) built in the 1860’s which was designed to be viewed in the round. The chapel structure was built a century later and provided a sense of enclosure to the courtyard formed by the house and its outbuildings. This results in a playful juxtaposition of structures.

3.0 Planning Authority Decision

3.1. Decision

Planning permission and retention permission was **granted** by the Planning Authority subject to conditions. Of relevance to the grounds of this appeal is Condition No. 10 which reads:

“Prior to Commencement of development the developer shall pay the sum of €6, 875 (updated at date of commencement of development, in accordance with changes in Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefitting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development”.

The stated reason for this condition reads:

“It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefitting 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

The **final Planning Officer’s report** indicates that they are generally satisfied that the proposal is consistent with the County Development Plan policies subject to safeguards.

The **initial Planning Officer's** report concluded with a request for further information on the following matters:

Item No. 1: Relates to seeking clarity on the change of use of the chapel building. It also seeks the reinstatement of the former link/connection between the chapel and the main dwelling.

Item No. 2: Relates to landscaping and the SAAO Design Guidelines.

3.2.2. **Other Technical Reports**

Water: No objection, subject to safeguards.

Transportation: No objection, subject to safeguards.

Parks: No objection, subject to safeguards.

Conservation: No objection, subject to safeguards.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. During the course of the Planning Authority's determination of this application they received one third party submission which raised various concerns ranging from built heritage, visual amenity, nuisances, foul drainage, adverse impacts on the SAAO, landscaping, boundary treatments through to the need for invasive species to be removed from site.

4.0 **Planning History**

4.1. **Site & Setting:**

4.1.1. No recent and/or relevant planning history.

5.0 Policy & Context

5.1. National

5.1.1. PLANNING AND DEVELOPMENT ACT 2000, as amended.

- **Section 48 Development Contributions**

Section 48 (13) (a) of the Planning and Development Act 2000, as amended, states inter alia that:

Notwithstanding sections 37 and 139, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.

5.2. Local – Development Plan

5.2.1. Fingal County Development Plan, 2017 to 2023, is applicable. Under this Development Plan the site is zoned ‘RS – Residential’. The stated land use zoning objective affecting the buildings on the site and the land between them and the R105 is: “to provide for residential development and protect and improve residential amenity”.

5.2.2. The appeal site lies within a Coastal Landscape Character Type and on the prominent headland of Howth, which is also the subject of a Special Amenity Area Order (1999). Under the SAAO the site is within an area described as ‘Residential Area’.

5.3. Local -

5.3.1. The Fingal County Council Development Contribution Scheme, 2021–2025, as adopted on the 14th day of December, 2020, is applicable. A copy of this scheme has been provided by the Planning Authority in their response to this appeal and is attached to file.

5.4. Natural Heritage Designations

- 5.4.1. The southern and western portion of the site forms part of the Howth Head SAC (Site Code: 000202) and the site lies c22m to the north of Rockabill to Dalkey Island SAC (Site Code: 003000) at its nearest point. There are a significant number of European sites within the wider setting.

5.5. EIA Screening

- 5.5.1. None required under Part 2, Schedule 5 of the Planning & Development Regulations, 2001, as amended. All works sought under this application relate to land outside of the boundaries of the Howth Head SAC (Site Code: 000202).

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. This is a First Party Appeal against the financial contribution levied by the Planning Authority in relation to the proposed development which was granted planning permission and retention permission subject to conditions on the 1st day of June, 2021. The appellant seeks that the Board remove the financial contribution imposed under Condition No. 10 only. On the basis that the subject property being 160years old and benefits from its own septic tank and existing mains water supply. It is further contended that the Council have benefitted from their payment of various taxes.

6.2. Planning Authority's Response

- 6.2.1. The Planning Authority's response includes the following comments:
- Condition No. 10 requires the payment of €6,875.00 in respect of public infrastructure and facilities as provided for under the Development Contribution Scheme for Fingal County Council.
 - The development was assessed by them against the aforementioned scheme.

6.3. Applicant's Response

- 6.3.1. The applicant's response can be summarised as follows:

- This development results in a reduction in floor area and the number of bedrooms in the main dwelling.
- The net result of this application is the de-intensification of the activity at this site. As such the impact on existing and proposed infrastructure would be less.
- Contributions were paid by previous owners when they obtained planning permission.
- The scheme has been mis-applied in this case.
- The Planning Authority's rationale for applying contributions under Condition No. 10 has not been justified by them.

7.0 **Assessment**

- 7.1. The current appeal case before the Board is made under Section 48(10)(b) of the Planning and Development Act, 2000, as amended. I have read the entire contents of the file and have had particular regard to the contents of the current financial contribution scheme adopted by Fingal County Council, the grounds of appeal and the response received from the Planning Authority.
- 7.2. I consider that the only question before the Board in this particular case is whether the terms of the applicable Development Contribution Scheme have been properly applied in this instance in terms of the imposition and the requirements of Condition No. 10 of the Planning Authority's notification to grant planning permission and retention permission under application P.A. Ref. No. F20A/0712.
- 7.3. I have set out previously in Section 3.1 of this report the details of Condition No. 10. I consider that this condition essentially requires the developer to pay to the Planning Authority a development contribution of €6,875, a sum which it sets out in the accompanying reason is required in respect of the public infrastructure and facilities benefitting development in the area of the Planning Authority and which is to be provided, or which is intended to be provided by, or on behalf of them.
- 7.4. I note from the documentation on file that the site benefits from a proprietary waste water treatment system and there is an existing connection to the public mains water supply which serves the existing development on the site.

- 7.5. I further note, despite the built heritage merit of the main dwelling as well as a number of its associated outbuildings within its curtilage to which this application relates, this building and its setting is not afforded any specific protection by way of designation as a Protected Structure or by forming part of an Architectural Conservation Area or otherwise.
- 7.6. The Planning Authority in their response to the grounds of this appeal have not provided the basis of how the sum of monies to be paid under Condition No. 10 was calculated. They indicate however that the development requires the payment of such a contribution that it was assessed on the basis of the current adopted scheme. Further having examined the file I can find no basis for the calculation of Condition No. 10 as part of the Planning Authority's determination of the proposed development.
- 7.7. The 1st Party in their appeal submission indicate that the application sought primarily the removal of a prefabricated building erected in the 1980s and that their dwelling is 160years in age benefitting from its own septic tank as well as mains water supply. It is their view that up until recently the removal of the prefabricated building would not have required planning permission as it would have been considered exempted development. No additional services are to be provided by the Council to serve or benefit the development at this site by way of this application other than those that they have repeatedly paid for through the payment of taxes and the property tax.
- 7.8. In relation to the development sought under this application this I have set this out in full detail under Section 2 of my report above. In summary the proposed development can be described as consisting of a residential development that seeks permission for the removal of prefabricated building which the documentation describes was formerly in residential institution use. This structure was located to the south of the main house and at the time of inspection it had been removed. In addition, retention permission and planning permission is sought for the demolition of outbuildings and links as well as various alterations, demolition, and additions to the main house. These I observed are largely complete and have resulted in the significant reversal of inappropriate later alterations as well as additions that were made to the main dwelling which is dates back to c1860s.
- 7.9. As such there has been a significant reduction in gross floor area of this building by way of bringing it back to mainly its historical overall built form and footprint.

- 7.10. Having regard to the planning application form accompanying this application this reduction in gross floor area is given as 200m² and the remaining buildings on site are given a gross floor area of 573m² with this including the 69m² floor area of what is described as a former chapel building.
- 7.11. Under this application the change of use of this building is sought to ancillary residential and at the time of inspection I consider it was evident that this building is being so used.
- 7.12. This building benefits from a historic water supply by way of it containing a small sink. Historically the site is served by an existing mains water connection and proprietary waste water supply. No changes to this circumstance are proposed by way of this application.
- 7.13. In relation to Condition No. 10 the applicable scheme is the Fingal's County Council Development Contribution Scheme, 2021 – 2025, which under Section 1 sets out the that Sub-Section (1) of Section 48 of the Planning and Development Act, 2000, as amended "*enables a planning authority, when granting a planning permission under Section 34 of the Act, to include conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefitting the development in the area of the planning authority, and that is provided, or that is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities)*".
- 7.14. Under Section 3(b) of the scheme cognisance is had to Subsection (3) of Section 48 of the said Act that in relation to such contribution schemes that these must indicate the contribution to be paid in respect of the different classes of infrastructure and facilities which are provided by any local authority and that these should have regard to "*actual estimated cost of providing the classes of public infrastructure and facilities*".
- 7.15. It further sets out in this regard that the exception to this is where any benefit which accrues in respect of the existing development "*may not be included in any such determination*".
- 7.16. Under Section 6 of the scheme, it sets out the basis for determination of a contribution. With Section 6(a) setting out the amount of costs which are attributable for three classes of public infrastructure and facilities with this referenced to Table A of Appendix 1; Section 6(b) setting out that the contribution relates to the aggregate floor

areas in square metres of projected development with these being correlated to Table B of Appendix 1; and Section 6(c) setting out that development contributions payable per square metre of residential development being determined on a number of factors.

7.17. Under Section 9 of the scheme the level of contribution is set out in monetary terms per square metre for residential development and industrial/commercial development.

7.18. From examination of Condition No. 10 and the applicable scheme I consider that it is probable that the sum of money for which contribution applies relates solely to the change of use of the chapel building which as stated has a given floor area of 69m². In that Section 9 requires in respect of the three classes the following payment to be made:

Class 1

Transport Infrastructure & Facilities:	€54.02
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Class 2:

Surface Water Infrastructure & Facilities	€4.91
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Class 3:

Community & Parks facilities & Amenities	€39.28
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In relation to residential development this equates to a total contribution of €98.21 payable per square metre of Residential Development. This I note is the current applicable rate that has not been subject to any indexation increase as is provided for under Section 9 - Note 2. Thus, in the case of the change of use of the chapel building to ancillary residential this would equate to a sum of €6,776.49. The difference between this figure and the €6,875 contribution sum set out under Condition No. 10 could arise from a different calculation of floor area for the chapel structure and/or any other smaller additions included under this application.

7.19. Under Section 10 the matter of retention permissions is provided for. With such developments being indicated as being charged at multiples of 1.25 times the

appropriate rates for any development in excess of the exemptions provided for under Section 11.

- 7.20. On this point I note that the development description seeks planning permission for the change of use of the chapel building and not the retention thereof.
- 7.21. It would appear from inspecting the interior of the chapel building, a building that appears to date to c1960s, that the use of a chapel building for its intended original purpose ceased with all associated internal fixtures and fittings removed when the former occupants sold the site and the buildings thereon to the applicants. In its current state it is mainly used as storage by the applicants whilst works are on-going on what is internally and externally a substantive renovation of the main dwelling on site. Which I have observed is yet to be completed.
- 7.22. Under Section 11 of the scheme the exemptions and reductions are set out. This includes but is not limited to Section 11(i)(a) which sets out that the first 40m² of domestic extensions is exempt and this figure is the total limited per dwelling.
- 7.23. In addition, Section 11(i)(r) indicates that internal layout alterations where no additional floor area is created and external walls are not being removed and Section 11(i)(v) *“change of use applications are exempt, unless the revised usage constitutes a substantial intensification of use of the building or service”*.
- 7.24. Section 11 further states *“if approval is subsequently granted to convert an exempt structure to habitable accommodation, then the appropriate contribution is applicable”*.
- 7.25. In relation to the above, I consider that there has been a substantial decrease in gross floor area associated with the main dwelling by way of demolition and removal of later additions to it. In particular, the removal of prefabricated structure as well as the link between the main dwelling and the chapel building.
- 7.26. The site in its entirety, including the chapel building for which change of use to ancillary residential, is to be used as one dwelling unit and though the works are yet to be finalised the applicants appear to be living in the main dwelling for a time.
- 7.27. In terms of the nature of use irrespective of substantive removal of 200m² of floor area associated with the main dwelling I note that prior to the applicants purchase it and its associated buildings, including the chapel building was the home of the Stella Maris Convent. This residential religious institution also functioned as a ‘retreat’ for outside

visitors. When the two residential land uses are compared, I consider that the use of 'Glenaveena' as a single dwelling unit there has been a de-intensification of residential land use. As such I consider that the exemption provided for under Section 11(i)(v) of the scheme is applicable in this circumstance as there has been no use intensification associated with the change of use of the chapel building.

7.28. In addition to this the applicants clearly set out that it is not their intention to use the chapel building for separate habitable accommodation either independently or in combination with the main dwelling.

7.29. No internal and/or external alterations are proposed to it.

7.30. They do not propose to attach the chapel building to the main dwelling by way of reconstructing a previous link between the chapel and the main dwelling or otherwise. As such it would form part of the collection of buildings that form a courtyard to the side of the main dwelling and like the other buildings I observed are of incidental to the enjoyment of the main dwelling.

7.31. At the time of my inspection there was no indication that the chapel building was in use as additional habitable accommodation benefitting the main dwelling or otherwise. This I observed to be the case despite the extensive renovation and refurbishment works nearing completion. I observed that the main function of the chapel spaces was for storage though it was apparent that a billiard table was centrally placed in the main space within the chapel. I consider that it is not uncommon for such items to be present within buildings used as ancillary or incidental to the enjoyment of a main dwelling. The chapel contained one sink and no other internal services that would support its use as an independent habitable unit or otherwise.

7.32. The applicants indicate that they are fully willing to comply with the conditions attached to the grant of permission which includes Condition No. 2 which reads as follows:

"The Chapel building shall be used solely for use incidental to the enjoyment of the dwelling and shall not be sold, rented or leased independently of the house and shall not be used for the carrying on of any trade or business".

7.32.1. The contribution scheme provides under Section 11 for circumstances where if approval is subsequently granted to convert an exempt structure to habitable accommodation, then the appropriate contribution then becomes applicable.

7.32.2. I also reiterate that Section 3(b) of the scheme, in a manner consistent with the provisions of Section 48 of the Planning & Development Act, 2000, as amended, sets out that the exception for the payment of such contribution includes in respect of the existing development. Where such development has accrued benefit in respect of public infrastructure and facilities. The change of use of the chapel building has accrued this benefit and would require or indeed place any additional demands on public infrastructure and facilities.

7.33. **Conclusion**

7.33.1. Based on the above considerations I consider that the Condition No. 10 should be omitted on the basis that the change of use and the rationale for applying such a levy is not justified in the scheme where no intensification of use would occur. As such the exemption provided for under Section 11(i)(v) is applicable and this is reinforced by Section 3(b) of the scheme.

7.34. **Appropriate Assessment**

7.34.1. Having regard to nature and scale of the proposal, I consider that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. Having read the submissions on file, had due regard to the provisions of the Development Plan, the applicable Development Contribution Scheme and all other matters arising, I recommend that the planning authority be directed under Subsection (10) (b) of Section 48 of the Planning and Development Act, 2000, as amended, to **omit** the said Condition No. 10 for the following reasons and considerations stated.

9.0 **Reasons and Considerations**

Having regard to:

- (a) The Fingal County Council, Development Contribution Scheme 2021 – 2025 made under Section 48 of the Planning & Development Act, 2000, and as adopted on the 14th day of December, 2020, attached.

- (b) The nature, scale and extent of the development sought and permitted under P.A. Ref. No. F20A/0712 on the 1st day of June, 2021.
- (c) The planning history of the site, including the evolution of buildings and their uses since the construction of 'Glenaveena' in the 1860s.
- (d) An inspection of the site, including the interior of the subject chapel building.
- (e) The fact that Section 3(b) of the Fingal County Council Development Contribution Scheme specifically sets out that existing developments may not be included in any such determination where a benefit has accrued in relation to public infrastructure and facilities.
- (f) The fact that the terms of the Fingal County Council Development Contribution Scheme specifically sets out under Section 11(i)(v) that changes of use are exempt unless the revised usage of the building or service constitutes intensification.
- (g) The fact that no intensification of the chapel building or the residential use of the site would arise by way of the proposed development sought under this application.
- (h) The fact that Section 11 of the Fingal County Council Development Contribution Scheme specifically sets out under Section 11 for the exemption allowed for under Section 11(i)(a) to (v) to be addressed where approval subsequently is granted to convert an exempt structure to habitable accommodation.
- (i) The fact that the grant of permission includes a condition limiting the use of the chapel building to be used solely for use incidental to the enjoyment of the dwelling house. It also sets out that it cannot be sold, rented, or leased independently of the house or used for the carrying on of any trade or business (Condition No.2 of P.A. Ref. No. F20A/0712).

The Board having considered the terms of the applicable Development Contribution Scheme with respect to a contribution in respect of change of use of the chapel building was not correctly interpreted and applied by the Planning Authority in respect of a contribution towards public infrastructure and facilities benefiting development in the area of the Planning Authority.

The Board concluded that a financial contribution was not applicable in this instance based on the exemption provided for under Section 11(i)(v) of the scheme which indicates that changes of use are exempt unless the revised usage of the building or service constitutes intensification.

The Board considered no intensification of use has occurred in this instance having regard to the overall nature, scale, extent, and scope of development sought under P.A. Ref. No. F20A/0712.

The Board therefore directs the Planning Authority to omit Condition No. 10 of P.A. Ref. No. F20A/0712 on the basis of the Development Contribution Scheme being incorrectly applied.

Patricia-Marie Young
Planning Inspector

29th day of September, 2021.