



An
Bord
Pleanála

Inspector's Report

ABP-310925-21

Development	Retention of detached garage and parking area and change of use of garage to gym/games room.
Location	'Auckland Lodge', Mine Hill Lane, Ballycorous, Kilternan, Dublin 18, (D18C992)
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D21A/0393
Applicant(s)	Robert & Rosemary Allison
Type of Application	Retention and Permission
Planning Authority Decision	Grant
Type of Appeal	First Party against Conditions
Appellant(s)	Robert & Rosemary Allison
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. As this is an appeal in respect of conditions 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 conditions) and the information available on file, a site inspection was not deemed necessary in this instance.

2.0 Planning Authority Decision

2.1. Decision

- 2.1.1. On the 28th June 2021, the Planning Authority issued a notification of their intention to GRANT permission for retention subject to 7 no. conditions. Of relevance to the subject appeal are condition no.s 4,5 and 6.

4: The developer shall, prior to the commencement or otherwise agreed in writing with the Planning Authority, pay the sum of €339.25 to the Planning Authority as a contribution towards expenditure that was / or is proposed to be incurred by the Planning Authority in respect of the provision of Surface Water Public Infrastructure and Facilities benefitting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the scheme in accordance with the SCSi Tender Price index (see Article 12 of the Scheme) commencing from 1 January 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Public Infrastructure and

Facilities benefitting development in the area of the Planning Authority and that is provided, or that is intended will be provided by or in behalf of the Local Authority.

Note on above Condition: Please note that with effect from 1st January, 2014 Irish Water are now the statutory body responsible for both waste and waste water services. Accordingly, the contribution payable has been reduced by the amount of construction associated with these services. Further details / clarification can be obtained from Irish Water at Tel. 1 850 278 278

- 5 The developer shall, prior to the commencement or otherwise agreed in writing with the Planning Authority, pay the sum of €7,766.18 to the Planning Authority as a contribution towards expenditure that was / or is proposed to be incurred by the Planning Authority in respect of the provision of Roads Public Infrastructure and Facilities benefitting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the scheme in accordance with the SCSi Tender Price index (see Article 12 of the Scheme) commencing from 1 January 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefitting development in the area of the Planning Authority and that is provided, or that is intended will be provided by or in behalf of the Local Authority.

- 6 The developer shall, prior to the commencement or otherwise agreed in writing with the Planning Authority, pay the sum of €5,038.44 to the Planning Authority as a contribution towards expenditure that was / or is proposed to be incurred by the Planning Authority in respect of the provision of Community & Parks Public Infrastructure and Facilities benefitting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire

Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the scheme in accordance with the SCSi Tender Price index (see Article 12 of the Scheme) commencing from 1 January 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure and Facilities benefitting development in the area of the Planning Authority and that is provided, or that is intended will be provided by or in behalf of the Local Authority.

2.2. Relevant Planning Authority Reports

- 2.2.1. **Planning Report:** Three structures for which retention permission is sought. Non habitable storage space (26sq.m.) on first floor of detached garage. Development Contributions: 157sq.m. floorspace as stated.
- 2.2.2. **Assessment Detail:** Calculation Details: 157sq.m. for retention, max floor area for levies = 115, 115 x 1.25 retention = 143.75 for levies

3.0 Planning History

- 3.1.1. ABP-308197-20: Permission was GRANTED for the upgrading of the on-site wastewater system from the current septic tank and percolation area to an EPA (2009) compliant comprehensive wastewater treatment system and REFUSED for the retention of the original detached garage (1997) and its subsequent (2020) conversion to habitable accommodation (56 square metres), ancillary to the main dwelling including proposed internal alterations.

4.0 Policy Context

- 4.1. **Planning and Development Act 2000, as amended**
- 4.1.1. 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 benefiting 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.

4.2. Dun Laoghaire Rathdown County Council Development Contribution Scheme 2016 -2020

4.2.1. The Dun Laoghaire Rathdown Council Development Contribution Scheme 2016 – 2020, (under Section 48, Planning & Development Act, 2000 as amended) provides for

1. 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 for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting 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).

4.2.2. Section 9 of the scheme, referring to the level of contribution states that under the Scheme, the contributions to be paid (except where an Exemption or Reduction applies, see Article 10 below) in respect of the different classes of public infrastructure and facilities in the county (excluding the Sandyford Urban Framework Plan) shall be as follows:

Class of Public Infrastructural Development	€ per unit of Residential Development	€ per square metre of Domestic Extensions in excess of 40 sq.m	€ per square metre of Industrial/ Commercial class of Development
Class 1: Community & Parks facilities & amenities	3,290.12	28.41	28.41
Class 2: Roads infrastructure & facilities	5,068.55	43.78	43.78
Class 3: Surface Water Infrastructure	221.33	1.91	1.91
Total of Contributions Payable	8,580.00	74.10	74.10

4.2.3. The Dun Laoghaire Rathdown CC website refers to the indexation of the Development Contribution schemes, stating that from 1st January 2022, there will be an application of an 8.4% increase in levies, in accordance with the SCSi Tender Price Index. The €74.10 figure from the scheme increases to **€91.44**.

4.2.4. Regarding Retention Permissions, the scheme states that “All retention permissions will be charged a multiple of 1.25 times the rates outlined in the Schedules above”.

4.2.5. Regarding EXEMPTIONS AND REDUCTIONS, section 10 of the scheme states: The following categories of development will be exempted from the requirement to pay development contributions under the Scheme, or will be required to pay a reduced contribution:

a) The first 40 square meters of any residential extension, including granny flats, shall be exempt from the contribution scheme. All house extensions in excess of 40 square meters, including family or “granny” flats, shall be assessed at €74.10 per square meter of residential development up to a maximum of 115 square meters reckonable development.

b) Domestic extensions for accommodation of disabled person(s) are exempted in full in cases where a Disabled Persons Grant is approved.

- c) Attic and garage conversions.
- d) Developments by organisations having exemption from income tax and corporation tax under Section 207 of the Taxes Consolidation Act 1997 and currently holding an exemption certificate from the Revenue Commissioners, including registered charities provided that the development is exclusively for the primary purpose of the organisation/charity.
- e) Primary schools, post primary schools, non-commercial community centres, youth centres, and similar non-commercial community related developments.
- f) Social housing units, including those which are provided in accordance with an agreement made under Part V of the Planning & Development Act, 2000, as amended, or which are provided by a voluntary or co-operative housing body, which is recognised as such by the Council.
- g) Replacement dwellings or replacement commercial developments will be charged 50% on a like for like basis. In the case of demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy.
- h) Change of use of an existing premises including “Living Over The Shop” . For clarification purposes any additional floor area will be levied at the appropriate rate.
- i) Renovations to restore/refurbish structures deemed to be “Protected Structures” in the County Development Plan, where the Council is satisfied that the works substantially contribute to the conservation or restoration of the structure.
- j) Reduced rates for temporary permissions to be calculated as follows: 33% of normal rate for permissions of up to 3 years 50% of normal rate for permissions of up to 5 years 66% of normal rate for permissions of up to 10 years.
- k) The non-built elements of recreational facilities (e.g. playing pitches, golf courses).
- l) Broadband Infrastructure (i.e. masts and antennae).
- m) Initial afforestation
- n) Car parking i. Car parking in residential developments. ii. Car parking integrated within a structure is exempt when ancillary to the commercial use of the structure. When not exempt, i.e. when use is non ancillary, it will be measured on the basis of the gross floor area. Ancillary car parking is car parking that accord with the County Development Plan Car Parking Standards. iii. Surface car parking is leviable at 25%

of the Countywide rate. It will be assessed on the basis of each car parking space being 12 square metres.

o) Temporary park and ride permissions is levied at 25%.

p) Agricultural buildings.

q) Renewable energy development with a capacity up to 0.5MW will be exempt. Larger capacity development will be charged at €1000 per each 0.1 MW above an installed capacity of 0.5MW.

r) Substations/Switch Rooms shall be exempt.

s) Ancillary plant rooms (where plant is not core activity/operation) shall be exempt.

For clarification purposes, the following developments will not be exempt from the requirement to pay development contributions: • Third level educational institutions and student accommodation. • Single rural houses.

5.0 The Appeal

5.1. Grounds of Appeal

5.1.1. The first party has lodged an appeal against the imposition of condition no.s 4,5 and 6 of the decision of Dun Laoghaire Rathdown County Council to grant permission. The grounds of the appeal can be summarised as follows:

- The terms of the subject scheme have not been properly applied, in that
 - Section 10(a) stipulates that the assessment should have allowed for the exemption of the first 40sq.m. of the subject works.
 - Under section 9 – retention permission that a penalty charge of 1.25 times the levy rate applies to retention cases, which is understood and accepted
 - Under section 10(c) – retention permissions, garage conversions are exempt.
- It is unfair and unjust to levy the applicants with charges similar to those attaching to high specification domestic extensions, to a low specification home garage / workshop and a domestic covered parking area (31sq.m.)
- The storage area in the roof space over the garage (26sq.m.) which is not part of the footprint and should not be included. This space is non-habitable and incidental to the overall structure of the detached garage.

5.2. Planning Authority Response

- 5.2.1. The grounds of the appeal do not raise any new matter which in the opinion of the Planning Authority would justify a change in attitude to the proposed development.

6.0 Assessment

- 6.1.1. 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.
- 6.1.2. According to the application form submitted to the Planning Authority permission was sought for three listed items: a) retention of detached garage, originally constructed 1997, b) retention of the covered parking area, constructed 2020 and home workshop (to the rear of the detached garage), constructed 1998 and c) change of use of the detached garage to a gym / games room ancillary to the main residence. Section 10(c) of the application form provides the following gross floor spaces of work to be retained:

- garage (56+26)
 - park 31
 - workshop 22,
- total 157sq.m.

- 6.1.3. The appended Assessment Sheet refers to the “max floor areas for levies” of 115sq.m. (as permitted in section 10a of the scheme) and proceeds to calculate that at a rate of 1.25 times (the applicable rate for retention permissions), arriving at a figure of 143.75sq.m.
- 6.1.4. That figure of 143.75 is calculated at the unit price of €2.36 for surface water, €54.03 for transportation and €35.05 for community and parks.
- 6.1.5. Addressing each of the appellants points as follows:

Exemption of the first 40sq.m.

- 6.1.6. The appellant submits that the terms of the subject scheme have not been properly applied as section 10(a) stipulates that the assessment should have allowed for the exemption of the first 40sq.m. of the subject works.

- 6.1.7. Section 10a of the scheme states that ‘the first 40 square meters of any residential extension, including granny flats, shall be exempt from the contribution scheme’. It proceeds to state that all house extensions in excess of 40sq.m. (such as the subject development to be retained) shall be capped at a maximum of 115sq.m. So in effect, the area calculable by the Planning Authority is less than had they exempted the first 40sq.m. In this instance, the applicant fares better in having the maximum floor area applied to their development.
- 6.1.8. Development levies were applied to a floor area of 115sq.m. I am satisfied that this is a correct application of the terms of the development contribution scheme.

Garage Conversion is exempt

- 6.1.9. The appellant states that section 10c of the scheme provides for an exemption for garage conversions. The subject proposal is not a garage conversion, it is for a change of use to a gym / games room. The Board will note that in 2021 (ABP-308197-20) permission was refused for the retention of the conversion of said garage to habitable accommodation, that conversion having occurred in 2020.
- 6.1.10. The currently proposed change of use, is not in any ordinarily understood definition of the term, a ‘conversion’. I am satisfied that the exemption provided in section 10c of the development contribution scheme does not apply to the subject development.

High specification Domestic Extension Levy

- 6.1.11. The appellants submit that it is unfair and unjust to levy the applicants with charges similar to those attaching to high specification domestic extensions, to a low specification home garage / workshop and a domestic covered parking area (31sq.m.).
- 6.1.12. The Board will note that levies applicable to commercial / industrial development are the same rate as those for domestic residential extensions, so the argument of ‘fairness’ is not germane. Notwithstanding that, the development scheme does not distinguish between ‘high specification domestic extensions’ and low specification development, therefore there is no leeway for the Board to consider the scheme has been applied incorrectly.
- 6.1.13. I am satisfied that the scheme has been applied correctly.

Exclusion of non-habitable space over garage

- 6.1.14. The final ground of appeal is that the storage area in the roof space over the garage (26sq.m.) is not part of the footprint and should not have been included in the calculation. The appellant states that the space is non-habitable and incidental to the overall structure of the detached garage.
- 6.1.15. As stated above, the maximum floor area used for calculation is 115sq.m. so the 157sq.m. of floorspace as stated by the applicant in their application form, has already benefitted from a degree of reduction. As above, the area calculable by the Planning Authority is less than the area, had they removed the non-habitable 26sq.m.. In this instance, the applicant fares better in having the maximum floor area applied to their development.
- 6.1.16. As above, I am satisfied that the Planning Authority has correctly applied the terms of the Dún Laoghaire-Rathdown County Council Development Contribution Scheme 2016-2020, as provided for under Section 48, Planning & Development Act, 2000, (as amended) and as indexed as per article 12 of the scheme, to 1 Jan 2022.

7.0 Recommendation

- 7.1. Attach condition no.s 4, 5 and 6 and the reasons therefore.

8.0 Reasons and Considerations

- 8.1.1. It is considered that the planning authority has properly applied the terms of the Dun Laoghaire Rathdown County Council Development Contributions Scheme 2016-2020.

4	The developer shall, prior to the commencement or otherwise agreed in writing with the Planning Authority, pay the sun of €339.25 to the Planning Authority as a contribution towards expenditure that was / or is proposed to be incurred by the Planning Authority in respect of the provision of Surface Water Public Infrastructure and Facilities benefitting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14 th December, 2015. These rates of contribution shall be updated effective
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	<p>from 1 January each year during the life of the scheme in accordance with the SCSi Tender Price index (see Article 12 of the Scheme) commencing from 1 January 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.</p> <p>Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Public Infrastructure and Facilities benefitting development in the area of the Planning Authority and that is provided, or that is intended will be provided by or in behalf of the Local Authority.</p> <p>Note on above Condition: Please note that with effect from 1st January, 2014 Irish Water are now the statutory body responsible for both waste and waste water services. Accordingly, the contribution payable has been reduced by the amount of construction associated with these services. Further details / clarification can be obtained from Irish Water at Tel. 1 850 278 278</p>
5	<p>The developer shall, prior to the commencement or otherwise agreed in writing with the Planning Authority, pay the sum of €7,766.18 to the Planning Authority as a contribution towards expenditure that was / or is proposed to be incurred by the Planning Authority in respect of the provision of Roads Public Infrastructure and Facilities benefitting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the scheme in accordance with the SCSi Tender Price index (see Article 12 of the Scheme) commencing from 1 January 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for</p>

	<p>in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.</p> <p>Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Roads Public Infrastructure and Facilities benefitting development in the area of the Planning Authority and that is provided, or that is intended will be provided by or in behalf of the Local Authority.</p>
6	<p>The developer shall, prior to the commencement or otherwise agreed in writing with the Planning Authority, pay the sum of €5,038.44 to the Planning Authority as a contribution towards expenditure that was / or is proposed to be incurred by the Planning Authority in respect of the provision of Community & Parks Public Infrastructure and Facilities benefitting development in the area of the Authority, as provided for in the Development Contribution Scheme made by Dun Laoghaire Rathdown County Council on the 14th December, 2015. These rates of contribution shall be updated effective from 1 January each year during the life of the scheme in accordance with the SCSi Tender Price index (see Article 12 of the Scheme) commencing from 1 January 2018. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the Table at Article 9 of the Scheme. Outstanding balances may be subject to interest charges.</p> <p>Reason: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks Public Infrastructure and Facilities benefitting development in the area of the Planning Authority and that is provided, or that is</p>

Gillian Kane
Senior Planning Inspector

20 February 2022