



An
Bord
Pleanála

Inspector's Report 311173-21

Development	Extension, alteration and change of use of former crèche building to provide 1-bedroom family flat with connection to existing house.
Location	No. 5 Glendara, Kill, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	21/772
Applicant(s)	Denis & Mary Donegan
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party v. Condition
Appellant(s)	Denis & Mary Donegan
Observer(s)	None
Date of Site Inspection	N/A
Inspector	Louise Treacy

1.0 Site Location and Description

1.1. The subject site has a stated area of 612 m² and is located at No. 5 Glendara, Kill, Co. Kildare. It is a corner site in an established residential estate and accommodates a 2-storey, semi-detached dwelling with an attached single-storey garage to the side and off-street car parking to the front. A single-storey detached garage building (formerly used as a crèche facility) and attached shed structure are located in the rear garden and extend perpendicular to the rear elevation of the dwelling towards the rear site boundary. A low rendered wall and mature hedging extend around the front and side boundaries of the site.

2.0 Proposed Development

2.1. The proposed development consists of the extension, alteration and change of use of the existing single-storey detached former crèche building to provide a new one bedroom (plus study) family flat, to include single-storey pitched roof rear extension to replace existing small shed, a flat roof glazed link extension connecting the new family flat to the rear of the existing semi-detached two-storey dwelling house; a new pedestrian and vehicular entrance from the side boundary, a new car parking space to the side and other associated internal and external alterations to facilitate works including new drainage connections, works to site boundaries and landscaping.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Notification of the Decision to Grant Permission subject to 10 no. conditions issued on 22nd July 2021.

3.1.2. Condition No. 10 requires the payment of a Section 48 development contribution in the amount of €10,416.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. Basis of Planning Authority's decision.

3.2.3. **Other Technical Reports**

3.2.4. **Water Services:** No objection subject to condition.

3.2.5. **Roads, Transportation and Public Safety Department:** No objection subject to conditions.

3.2.6. **Area Engineer:** No objection subject to conditions.

3.3. **Prescribed Bodies**

3.4. **Irish Water:** No objection subject to conditions.

3.5. **Third Party Observations**

3.5.1. None.

4.0 **Planning History**

4.1. No recent history.

5.0 **Policy and Context**

5.1. **Kildare County Development Plan 2017-2023**

5.2. **Family Flats**

5.2.1. The development management standards concerning family flats are set out in Section 17.4.9 of the development plan. Applications for such developments shall have regard to the following requirements:

- Documentary evidence shall be included to demonstrate the need for a family flat.
- The proposed unit should be linked directly to the main dwelling by a connecting door.
- Accommodation must be subsidiary to the main dwelling in scale and only in exceptional cases will more than one bedroom be permitted.
- Any external doors permitted (to provide access to private / shared open space or for escape from fire) shall be limited to the side or rear of the house.

5.2.2. It is normal procedure to include conditions in any grant of permission that the family flat cannot be sold, conveyed or leased separately from the main residence, and that when the need for the family flat no longer exists the dwelling must be returned to a single dwelling unit.

5.3. **Natural Heritage Designations**

5.3.1. None.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. A first party appeal has been lodged by Patrick M. Kerr Architecture on behalf of the applicants in relation to Condition No. 10 of the Notification of the Decision to Grant Permission only. The grounds of appeal can be summarised as follows:

- It is unclear how the Planning Authority has obtained the floorspace calculations for the purposes of the development contribution.
- The proposed extension has a stated floor area of 26.8 m², and as such, falls below the 40 m² exemption for residential extensions under Section 8 (ii) of the Section 48 Development Contribution Scheme, 2015. No previous extensions have been provided.
- The proposed development also provides for the change of use of the existing crèche into a family flat of 48.6 m². Section 12 (g) of the Development Contribution Scheme states that Kildare County Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.
- The proposed development is non-material and will result in a decrease in demand on infrastructure, reverting to a single dwelling with no increase in occupancy levels.

- The crèche was constructed to the rear of the house in 1980 under planning reg. ref. 79/640. It is understood that development charges were levied and discharged under this planning permission.
- No development contributions should arise in this instance.

6.2. Planning Authority Response

- 6.2.1. A response to the appeal was received from Kildare County Council on 16th September 2021. It is submitted that planning permission was not granted for the former crèche use on the site. It is further submitted that under Section 9 (b) (ii) of Kildare County Council's Development Contribution Scheme 2015-2022, development contributions in respect of retention applications will be applied at the rate of standard applications for planning permission. Under Section 12 (q) of the scheme, no exemptions or waivers shall apply to any development which is subject to retention permission.
- 6.2.2. The Planning Authority agrees that the incorrect development contribution was attached under Condition No. 10 of the Notification of the Decision to Grant Permission. It is submitted that the additional floor area provided by the proposed link between the existing dwelling and the family flat (26.8 m²) is exempt from development contributions under Section 8 (ii) of the scheme, but that a contribution of €50 per m² applies to the former crèche floor area (48.6 m²). This results in a revised development contribution of €2,430.

6.3. Observations

- 6.3.1. None.

6.4. Further Responses

- 6.4.1. A response to the Planning Authority's submission was received from Patrick M. Kerr Architecture on behalf of the applicants on 6th October 2021. It is submitted that the existing structure within the rear garden was granted planning permission as a garage and utility room under planning authority reg. ref. 79/640. The structure was used as a crèche in the mid-1980's but this use ceased in 2005 and the structure

reverted to its permitted use. Therefore, it is submitted that the Planning Authority is incorrect to state that the existing structure is an unauthorised structure.

- 6.4.2. As such, it is submitted that no development contributions arise in this instance, as the floor area of the new extensions is below 40 m² and the existing structures have the benefit of planning permission.

7.0 Assessment

- 7.1. This is a first party appeal against Condition No. 10 as attached to the Planning Authority's Notification of the Decision to Grant Planning Permission which requires the payment of a development contribution of €10,416 on foot of the proposed development.
- 7.2. Following my examination of the planning file and grounds of appeal, I consider it appropriate that the appeal should be confined to Condition No. 10 only. Accordingly, I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted and that the Board should determine the matters raised in the appeal only in accordance with Section 139 of the Planning and Development Act 2000, as amended.
- 7.3. The applicants' agent submits that no development contribution requirement arises on foot of the proposed development, given that the proposed extension is below the 40m² exemption provided for under the Kildare County Council Development Contribution Scheme 2015-2022. It is submitted that the proposed change of use is also exempt, as the development does not require new/upgraded infrastructure.
- 7.4. In responding to the grounds of appeal, Kildare County Council acknowledges that the incorrect development contribution was attached under Condition No. 10 of the Notification of the Decision to Grant Permission. The Planning Authority agrees that the proposed link extension between the main dwelling and existing single-storey structure in the rear garden is exempt from development contributions. However, it is also submitted that there is no record of planning permission being granted for the (former) use of the existing structure as a crèche facility, and as such, an exemption shall not apply to any development which is subject to retention permission. Thus, it is considered that a development contribution of €2,430 arises based on a rate of €50 x 48.6 m² (floor area of former crèche use).

- 7.5. In responding to the Planning Authority's submission, the applicants' agent states that the existing garage/utility room structure in the rear garden was granted planning permission under planning authority reg. ref. 79/640. While it is acknowledged that the structure was used as a crèche in the mid-1980's, this use ceased in 2005 and the structure reverted to its permitted use. As such, it is considered that the Planning Authority is incorrect in its assertion that the existing structure is unauthorised.
- 7.6. In considering the foregoing, I note that residential extensions of 40 m² or less are exempt from the requirement to pay development contributions under Section 8 (i) of the development contribution scheme. The Planning Authority has acknowledged that no development contribution requirement arises on foot of: (i) the proposed link extension between the existing dwelling and the single storey-structure in the rear garden, and (ii) the proposed rear extension in place of the existing shed (combined floor area of 26.8 m²). Having reviewed the terms of the development contribution scheme, I am also satisfied that no development contribution arises on foot of the new build elements of the proposed development.
- 7.7. In considering the planning status of the existing structure in the rear garden, I note that it was granted planning permission under planning authority reg. ref. 79/640 as identified by the applicants' agent. While limited details of the application are available on the Planning Authority's website, I am satisfied that the existing structure has the benefit of planning permission. While the applicants' agent acknowledges that the permitted structure was previously used as a crèche, I note that this use ceased in 2005 and the structure has since reverted to its permitted use. As such, I do not agree with the Planning Authority's assessment that the existing structure is unauthorised given that it is currently being used in accordance with its permission.
- 7.8. Thus, I consider that the proposed change of use of the existing structure to a family flat is exempt from the requirement to pay development contributions. In reaching this conclusion, I note that Section 12 (g) of the Development Contribution Scheme states that the Planning Authority will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing

infrastructure. In this regard I note that the existing structure is located on a serviced residential site and that it will serve an occupant of the existing dwelling house.

- 7.9. Thus, I consider that no development contributions arise on foot of the proposed development, and as such, the Planning Authority should be directed to omit Condition No. 10 of the Notification of the Decision to Grant Planning Permission.

8.0 Recommendation

- 8.1. I recommend that the Planning Authority be directed to omit Condition No. 10 for the reasons and considerations set out hereunder.

9.0 Reasons and Considerations

- 9.1. It is considered that the Planning Authority incorrectly applied the terms of the Kildare County Council Development Contribution Scheme 2015-2022, including Section 8 (ii) which provides that no development contributions arise in relation to domestic extensions of 40 m² or less and Section 12 (g) which provides that no development contributions are payable for a proposed change of use where no new/upgraded services or infrastructure or significant intensification of demand on existing infrastructure arises.

Louise Treacy
Planning Inspector

24th January 2022