



An
Bord
Pleanála

Inspector's Report

ABP-312462-22

Development	Retention for Garden Room.
Location	23 The Avenue, Robswall, Malahide, Co Dublin, K36 NP46
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21B/0356
Applicant(s)	Orly & Michael McCarthy
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Orly & Michael McCarthy
Observer(s)	None
Date of Site Inspection	None required
Inspector	Una Crosse

1.0 Site Location and Description

- 1.1. The subject development site comprises the central two-storey residential property in a three unit terrace located on the Avenue in Robswall which is a residential development located to the southeast of Malahide in North County Dublin.

2.0 Proposed Development

- 2.1. The proposal relates to the proposed retention of a single storey timber cladded structure located to the rear of the rear elevation of the property in the rear garden. It incorporates a room and a shed located within the same structure with separate entrances and has an area of 19.83 sq.m.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted permission subject to 6 conditions.

Condition 6, subject of this appeal, requires the payment of **€2,435** as follows:

The developer to pay to the planning authority a financial contribution of €2,435 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 payment 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 the public infrastructure and facilities benefiting 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 planner's report recommended a grant of permission as set out in the manager's order. There is no reference to the development contribution.

3.2.2. Other Technical Reports

3.2.3. None of relevance.

4.0 Planning History

4.1. None of relevance

5.0 Policy and Context

5.1. Development Contribution Scheme

The Fingal County Council Development Contribution Scheme 2015-2022 is the applicable development contribution scheme.

Section 9(a) refer to the Level of Contribution where it is outlined that the € rate per sq.m of residential development is €98.21. Note 4 refers to the calculation of extensions to existing developments stating "*that new extensions to existing developments will be charged at the above rates also (subject to Section 11(a))*".

Section 10 refers to Retention Permissions noting that "*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*".

Section 11 outlines exemptions and reductions stating at part (i) that "*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*".

The following subsections are considered relevant:

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

(s) “Garages and garden sheds. If approval is subsequently granted to convert exempt structure to habitable accommodation, then the appropriate contribution is applicable.”

5.2. Natural Heritage Designations

Not relevant

5.3. EIA Screening

Not relevant

6.0 The Appeal

6.1. Grounds of Appeal

- Happy that permission granted for garden room/shed but appealing the financial contribution noting not appealing the overall decision, just the requirement to pay a financial contribution.
- Without planners report difficult to be clear how Fingal came to the figure of €2,435 however if Contribution Scheme is reviewed, Section 9(a) outlines continuation rate for residential is €98.21 per sq.m.
- Section 10 of Scheme states 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 the Scheme.
- Using calculation of €98.21 per sq.m 19.83sq.m = €2,435.
- Scheme incorrectly applied as Section 11 lists exemptions (a) to (v) with two of relevance.
 - (a) first 40 sq.m of domestic extensions – exemption is cumulative and limited to 40 sq.m in total per dwelling.
 - (s) garages and garden sheds.
- The garden room is both an extension of the house and a garden shed with cumulative floor area of garden room plus any previous house extension does not

exceed 40 sq.m and based on Section 11(a) development is exempt from any contribution for permission application with no contribution payable.

6.2. **Planning Authority Response**

The response from the Planning Authority is summarised as follows:

- Permission granted under F21B/0356;
- Condition 6 requirement applicant pay sum of €2,435 in respect of public infrastructure and facilities in accordance with Development Contribution Scheme.
- No provision in the scheme for applying an exemption under Section 11 for a development of this type.
- Residential rate of €133.07 (retention) over an area of 18.3 sq.m = €2,435.

6.3. **Further Response by Applicant**

The applicant was afforded the opportunity to respond to the Planning Authority's response to the appeal and it can be summarised as follows:

- In interest of fairness where the PA needed to have the requirement for permission pointed out to them and where the development would otherwise be exempt and therefore free from contribution, invidious to levy the charge.
- Made reasonable attempts to understand requirements making phone calls/emails before construction began and had no reason to believe there was a requirement for planning permission.
- Not aware of any requirement for the estate and so were not in doubt that it was required and therefore did not apply for a declaration of exemption.

7.0 **Assessment**

- 7.1. This is an appeal against a contribution condition imposed by Fingal County Council under the adopted Fingal County Council Development Contribution Scheme 2021-2025. Section 48(10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be made to the Board by an applicant for permission

where the applicant considers that the terms of the adopted development contribution scheme have not been properly applied by the planning authority. This appeal relates solely to the development contribution condition, and I propose to deal with the appeal in that manner. It should be noted that conditions attached to the parent permission for the development (F00A/1009) limited Class 1 & Class 3 exempted development. However, this is not relevant per se to the application of the development contribution.

- 7.2. Condition 6 requires that a contribution of €2,435 is made to the Council. From the Planning Authority's response to the appeal dated 7 April 2022 this is calculated on the basis of a retention rate of €133.07 per sq.m over an area of 18.3 sq.m. The applicant provides an opinion of the calculation in their grounds of appeal as follows: 19.83 sq.m x €98.21 (per sq.m being the rate for new residential) x 1.25 (being the retention rate in Section 10) which is a total of €2,434.38 which if rounded up would be €2,435. I would note that there is no reference to a retention rate of €133.07 per sq.m in the Development Contribution Scheme. In addition, if the residential rate of €98.21 per sq.m was increased by 1.25 to provide a retention rate this would be €122.76 per sq.m. I am therefore not clear where the PA's €133.07 per sq.m comes from.
- 7.3. However, the question of whether the contribution is applicable in the first instance is of primary concern. This is a very minor 'extension'/garden room-shed structure of less than 20 sq.m (19.83 sq.m to be exact) which requires permission by reason of limitations on the parent permission as outlined above. While referenced as a garden room/shed it can be appropriately referred to as a 'domestic extension'. Section 11 of the Development Contribution Scheme outlines the exemptions from the scheme and it is clearly stated at Section 11(a) that "*the first 40 square metres of domestic extensions*" are exempt. It is clarified that this exemption is cumulative and limited to 40 square metres in total per dwelling meaning that all previous extensions must be included in the calculation. The subject dwelling has not been previously extended therefore the 19.83 sq.m is well below the 40 sq.m threshold for the application of the scheme. Furthermore, in respect of the retention rate, the Scheme is very clear that the 1.25 rate for retention comes into effect for any development in excess of the exemptions in Section 11. Therefore, as the proposal does not exceed the exemption rate of 40 sq.m, then the retention rate cannot be applied to the proposal.

7.4. Therefore, on the basis of the incorrect application of the Scheme, the Planning Authority should be directed to delete Condition 6.

8.0 Recommendation

8.1. I recommend that the planning authority be directed to delete Condition 6.

9.0 Reasons and Considerations

A development contribution is not payable, as per the Fingal County Council Development Contribution Scheme 2021-2025, on foot of a grant of planning permission for the retention of an extension/garden room development where section 11 subsection (a) of the aforementioned scheme specifically provides for an exemption of contributions for extensions that do not exceed 40 sq.m. Furthermore, the retention rate is only applicable to the area of a development in excess of the exemption in this case any area above 40 sq.m. As the development comprises 19.83 sq.m it is within the remit of the exemption and does not exceed the area to which the exemption applies for the purposes of (a) applying a contribution and (b) applying a retention rate. The planning authority has therefore erred in its application of the scheme and Condition 6 should be deleted accordingly.

Una Crosse
Senior Planning Inspector

3 May 2022