



An  
Bord  
Pleanála

## Inspector's Report ABP-315728-23

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<b>Development</b>	House.
<b>Location</b>	Cleaghmore , Ballinasloe , Co. Galway.
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	2261062
<b>Applicant(s)</b>	Mark Kelly
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	First Party V Development Contribution Condition
<b>Appellant(s)</b>	Mark Kelly
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	None
<b>Inspector</b>	Darragh Ryan

## 1.0 Site Location and Description

The existing dwelling house is in the townland of Cleaghmore, Ballinasloe, Co. Galway. The site is located along a ribbon of houses within the town of Ballinasloe. The houses in this area are characterised by 1970's style bungalow dwellings.

The dwelling is located on a serviced cul de sac road with existing public lighting, footpath and existing sewer connection.

## 2.0 Proposed Development

Retention permission was sought for existing dwelling and layout on site as constructed.

### 2.1. Decision

Retention permission was granted on site subject to 6 conditions.

### 2.2. Planning Authority Reports

#### 2.2.1. Planning Reports

Report 1 a further information request sought to give a planning history of the site and to provide context for the retention application.

Report 2 notes the response to further information and that permission was granted for a semi-detached dwelling on the proposed site and adjacent site under Planning reference 223 & 224 in 1971, however the current dwellings were constructed as detached units in place of what was granted under original permission.

Principle of retention considered acceptable subject to 6 conditions.

The relevant condition to this appeal can be summarised as follows:

“The applicant/developer shall pay €3,074.50 to the Planning Authority, unless a phased payment schedule has been agreed in writing, with the Planning Authority. This charge has been calculated using the Development Contributions Scheme adopted by Galway County Council in accordance with

the provisions of Section 48 of the Planning & Development Act 2000. The makeup of this sum is detailed in the list below.

Sub Area 1

Recreation and Amenity: €2,152.00

Roads: €7.50 x 123sqm = €922.50

Total: €3,074.50”

#### 2.2.2. **Other Technical Reports**

None

#### 2.2.3. **Prescribed Bodies**

None

#### 2.2.4. **Third Party Observations**

None

### 3.0 **Planning History**

#### **Existing Site**

Planning Authority Reg Ref 223- Permission granted 22<sup>nd</sup> February 1971 subject to conditions for the erection of semi-detached bungalow.

#### **Adjacent Site (east)**

Planning Authority Reg Ref 224- Permission granted 22<sup>nd</sup> February 1971 subject to conditions for the erection of semi-detached bungalow.

### 4.0 **Policy Context**

#### 4.1. **Development Plan**

##### **Galway County Development Plan 2022 – 2028**

- Chapter 3 Placemaking, Regeneration & Urban Living
- Chapter 15 Development Management Standards

## **Galway County Development Contribution Scheme 2016**

- Charges for Residential Units in sub-area 1

Sub Area 1. Towns and Villages with adopted Local Area Plans, and development within the GTPS.

### **Section 28 Guidelines Development Contributions**

Retention Permission

... no exemption or waiver should apply to any applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications.

### **Ballinasloe Local Area Plan 2022 – 2028**

Town located on Residential Zoned lands within the Ballinasloe Local Area Plan 2022 -2028

## **5.0 The Appeal**

### **5.1.1. Grounds of Appeal**

The appellant seeks to have condition 6 of the final grant of permission omitted. This condition references the application of a €3,074.50 contribution. The appellant contends that the contribution has been applied in error. Under Planning file reference 223 & 224 granted on the 22<sup>nd</sup> of February 1971 to Patrick Duane, permission was granted for the construction of a semi-detached dwelling for the applicant and his brother at the time. These units were never constructed, two individual detached units were constructed in there place. The current application before the Board is an attempt to regularise the planning on site following the deaths of the appellants parents.

- 5.1.2. It is set out that it would be unfair to retrospectively apply a development contribution on the house 51 years after it was constructed. No enforcement proceedings were ever enacted, and it would be wrong in law to seek to apply for the development contribution. According to the appellant the Act provides the following with respect to Planning Contributions “the planning authority shall have regard to the actual estimated cost of providing the class of public infrastructure & facilities. The

determination may not include any benefit that accrues in respect of existing development”.

- 5.1.3. The argument is further made that if contributions were applied in this instance, then development contributions on existing houses (pre 2001) where planning permission is sought for extensions could also be applied.

The dwelling house has been in situ 51 years. The retention of permission does not require new or upgraded services or increase demand on existing infrastructure. The appellant states: “Council can only apply conditions requiring the payment of the contribution provided for in the scheme on all decisions to grant permissions granted after the commencement of the scheme.”

It based on the above that the appellant seeks to have conditions removed.

5.1.4. **Applicant Response**

None

5.1.5. **Planning Authority Response**

None

5.1.6. **Observations**

None

5.1.7. **Assessment**

This is a first party appeal solely against a development contribution condition (condition 6) attached to the decision by Galway County Council to grant permission for the proposed development and no other appeals have been lodged.

- 5.1.8. Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. In this instance, the Board, to its consideration of the merits of condition number six only.

- 5.1.9. I refer to the Galway County Development Contribution Scheme, as the ‘scheme’. I note that the scheme has not recently been reviewed and the Galway County Development Scheme 2016 is still currently in force. The current scheme does not

list retention applications as being exempt from planning contributions, however consideration of context with respect to other exemptions outlined and relevant Section 28 Guidance with respect to Development Contributions shall form the basis of this assessment.

#### 5.1.10. **Development Contribution (Condition 6)**

The current proposal refers to retention of existing dwelling on site as constructed. The principle of permission was assessed under a 1971 application. The site is located within the town of Ballinasloe and is zoned residential. The dwelling is located on a serviced cul de sac road with existing public lighting, footpath and sewer line.

5.1.11. Within Part 4 of the Development Contribution scheme there are certain minor exemptions with respect to residential and change of use applications.

These include:

- No charges on extensions to residential properties.
- When considering the demolition and construction of a new residential unit, a proportional fee will be determined, taking into account the proportion of floor area from the existing habitable house that will be exempted in relation to the upcoming development.

The above exemption allows for account to be taken for existing residential m<sup>2</sup>. In other words where an applicant is granted permission to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be charged on the net additional floorspace created.

It can therefore be deduced that the exemption never intended contributions to be levied for an existing residential use. Considering the aforementioned circumstances, I consider that applying development contributions for the existing dwelling would be in error and not correct in the context of the above exemption.

5.1.12. Furthermore, the nature of the retention application relates to house design and layout only. The dwelling as constructed is a detached dwelling in place of semi – detached dwelling that was granted under original application in 1971. The principle of the development of a residential unit was accepted at that time. The dwelling was

not constructed wholly without appropriate consent. However, the design and layout changed significantly from what was granted.

I consider, therefore, that no development contributions should be levied in this instance.

5.1.13. I note the claim by the appellant the Council can only apply conditions requiring the payment of the contribution provided for in the scheme on all decisions to grant permissions granted after the commencement of the scheme. This is not relevant to the appeal, as the development which relates to this application is for a retention application.

I further note the guidance with respect to the Section 28 Guidelines for Development Contributions in relation to retention permission that, no exemption or waiver should apply to any applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications.

As stated in previous points although this application refers to a retention application, the retention is for the dwelling and layout as constructed which differs from what was granted in the original application. The principle of the development was established in 1971 and a dwelling was constructed on foot of this permission.

5.1.14. I am satisfied, therefore, that the levy as proposed, is not warranted and should be removed. The terms of the Galway County Development Scheme have been applied in error in this case, and the appeal should be upheld and condition 6 omitted.

## **6.0 Recommendation**

It is recommended that the Planning Authority be directed to remove condition number 6, for the reasons and considerations hereunder.

## **7.0 Reasons and Considerations**

Having regard to

- (a) the terms of the Galway County Council Development Contribution Scheme 2016;

(b) the general arrangements regarding payment of development contributions and provided for within the scheme including in particular the exemption provision in relation to residential development and,

(c) granting of permission under P.A. ref 223 and subsequent construction of the subject house.

It is considered that the said Development Contribution scheme have not been properly applied such that Condition Number 6, attached to P.A ref 22/61062 should be removed.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Darragh Ryan

Planning Inspector

10/10/23