



An
Bord
Pleanála

Inspector's Report ABP-318147-23

Development	Permission for (a) demolition of the existing dwelling, (b) construction of replacement dwelling, and all associated site works & services.
Location	9 Millbrook Villas, Naas, Co. Kildare, W91 EHW1.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2360058
Applicant(s)	Catherine Farooq
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	First Party v Contribution Condition
Appellant(s)	Catherine Farooq
Observer(s)	None
Date of Site Inspection	None required
Inspector	Clare Clancy

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1.0 Site Location and Description

The site in question is located in Naas, Co. Kildare, approx. 35 m to the east of the designated 'Town Centre' boundary. The site is located in a cul de sac comprising of 3 no. dwellings and accommodates an existing dormer style detached dwelling.

2.0 Proposed Development

The proposed development relates to the following:

- The demolition of the existing dwelling (gross floor space 203 m²).
- The construction of a replacement dwelling (gross floor space 325 m²).
- All associated site development works and services.

The appeal site has a stated area of 0.072 ha and is connected to the adjoining public water and public sewer services.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 08th September 2023, Kildare County Council issued a notification of decision to grant planning permission subject to 8 conditions.

- 3.1.1. Condition no. 8, the subject of this appeal, requires the payment of €20,150.00 as follows:

The applicant / developer to pay to Kildare County Council the sum of €20,150.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022 in accordance with Section 45 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 34 of the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Uisce Éireann.

Reason: *It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilitates benefiting development in the area of the Planning Authority.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Authority's assessment considered that the development proposed was in accordance with the zoning objectives of the site and recommended a grant of permission including a condition regarding the payment of development contributions, as set out in the Chief Executive's Order. The planning report does not provide a rationale in relation to the inclusion of condition no. 8 relating to development contributions.

3.2.2. Other Technical Reports

None relevant.

4.0 Planning History

4.1. Appeal Site

P.A. Ref. 22/420 – Relates to permission granted for an extension to the existing dwelling, new windows and roof lights, and amendments to existing windows.

5.0 Policy Context & Relevant Development Contribution Scheme

5.1. Development Plan

5.1.1. Kildare County Development Plan 2023-2029

- Chapter 15 Development Management Standards
 - Section 15.1.4 Development Contributions – the council require the payment of financial contributions in accordance with the Development Contribution Scheme.

5.2. Local Area Plan

- 5.2.1. Nass Local Area Plan 2021-2027 is the operative plan which came into effect on December 01st 2021.

The site is zoned 'B' – Existing / Infill Residential (R2.6) 'To protect, improve and provide for the future development of the town centre'.

5.3. Kildare County Council Development Contribution Scheme 2023-2029 (adopted 19th December 2022)

- 5.3.1. The Kildare County Council Development Contribution Scheme 2023-2029 adopted 19th December 2022 (hereafter referred to as 'the Scheme') is the operative scheme applied by the Planning Authority at the time of decision. The Scheme sets out the basis for the determination of the relevant development contributions, including circumstances where a reduction / exemption in the contribution rate may apply.

- 5.3.2. The following Sections are relevant:

- Section 8 Level of Contribution – Provides the level of contribution in respect of the various classes of infrastructure for specified categorises of development, being either residential development or non-residential development. In this regard, the following is relevant:

- Section 8.1 Residential Development

- The development contribution rate shall be €62 per square metre.

- 8.2 Extensions to Residential Development

- The first 40 square metres of an extension to a house, including attached garages and conversion of attic to habitable or storage areas shall be exempt. All domestic extensions shall be charged at the residential rate for any area above the first 40 square metre extension. The exemption in this section shall not apply to development for which retention permission is sought.

- Section 10 Exemptions and Reduced Contributions – Details exemptions and reduced contributions available to categories of development from the

requirement to pay development contributions under the Scheme. The following sections are relevant:

- Section 10.3 Supporting Town and Village Centre Development

A 33% reduction of development contributions shall apply to land zoned as 'Town Centre' for all development (including commercial, retail and residential) as designated in statutory local area plans for each of the relevant towns; and villages and settlements as designated in the County Development Plan.

Towns: Town Centre zoning (Naas, Maynooth, Newbridge, Leixlip, Kildare, Athy, Celbridge, Kilcock, Monasterevin, Sallins, Kilcullen, Kill, Clane, Prosperous, Rathangan, Athgarvan, Castledermot, Derrinturn).

Villages: Village Centre zoning (Johnstown, Straffan, Allenwood, Ballitore, Ballymore Eustace, Caragh, Coill Dubh/Coleragh, Crookstown, Johnstownbridge, Kildangan, Kilmeague, Moone, Narraghmore, Roberstown, Suncroft, Timolin).

Lands identified as 'Regeneration Lands' or 'key regeneration sites' in statutory local area plans shall also qualify for an exemption of 33% in development contributions.

- Section 10.10 Replacement Buildings

Contributions will not be applied to permissions for the construction of replacement buildings on the same footprint or the same area as the original building following extensive damage by subsidence, flood or fire. Where extensions are added to such buildings, the contributions rates or relevant exemptions outlined in Section 8.1 or 8.2 shall apply.

5.4. Natural Heritage Designations

5.4.1. The nearest European sites and Natural Heritage Areas in close proximity to the appeal site are the following:

- pNHA Grand Canal (Site Code 002104) approx. 442 metres to the west.
- SAC Red Bog, Kildare (Site Code 000397) which is approx. 8.2 km to the east.

- pNHA Red Bog, Kildare (Site Code 000397) which is approx. 8.2 km to the east.
- SAC Mounds Bog (Site Code 002331) approx. 8.7 km to the west.
- pNHA Mounds Bog (Site Code 000395) approx. 8.7 km to the west.

5.5. EIA Screening

Give the nature of this appeal, it does not constitute a project for the purposes of EIA. Refer to Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party Appeal has been submitted by the applicant Catherine Farooq which is summarised as follows:

- The development contribution levy imposed does not accurately reflect the nature and extent of the subject development and is unwarranted.
- The levy should be revised to take account of the additional floor area only.
- The rationale for the subject dwelling is to replace an aging dwelling with a more modern, efficient dwelling.
- The Development Contribution Scheme adopted 19th December 2022 specifically exempts the levying of development contributions for the demolition and reconstruction of a dwellings.
- The proposed dwelling completely replaces the existing dwelling on the original site footprint and is not an expansion of the original site footprint, and will be rebuilt with an extended floor area.
- The existing floor area of 203 m² should be exempt from the development contribution levy.
- Section 8.1.1 Extensions to Residential Development of the Development Contribution Scheme states that the first 40 m² of a house extension (including garages, attic conversions) are exempt from levy charges. It is submitted that

the levy should only apply to the extended area beyond the first 40 m², in this case 82.2 m².

- No additional pressure on existing services arises from the proposed development.

6.2. Planning Authority Response

Kildare County Council submitted a response to the grounds of the appeal which can be summarised as follows:

- The development contribution is based on the rate of €62 per/m² for the proposed replacement dwelling, as per Section 8.1 of the Development Contribution Scheme 2023-2029, and the proposed floor area of 325 m².
- Section 10.10 of the Scheme states that development contributions will not be applied for replacement dwellings, but only where the replacement dwelling is provided is required to replace the original building following extensive damage by subsidence, flood or fire.
- It is submitted that none of the above circumstances are relevant or arose in this case.
- In relation to Section 8.1.1 of the Scheme, it is submitted that this section is only applicable to domestic extensions. This application relates to a replacement dwelling.
- Condition no. 8 of P.A. Ref. 2360058 is correct, and request that the Board to confirm that €20,150.00 is required for the subject development, in accordance with the Scheme.

6.3. Further Submissions

Catherine Farooq submitted the following further observations to the Planning Authority's comments, on the 20th November 2023 as follows:

- Refers to Section 10.10 Replacement Buildings as per the Scheme and noting that the property was built in the early 1900s which was the subject of frequent back-up / blocked sewerage issues noting that the live mains for two other

properties pass through the house, which has caused back flow in water / foul smell which has flooded / damaged the house on numerous occasions and remains a cause of concern.

- Refers to P.A. Ref. 22/420 which was for refurbishment and extension, but subsequently decided to replace the existing dwelling.

7.0 Assessment

7.1. This is a first party appeal against planning condition no. 8 which requires a development contribution in line with Section 48 of the Planning and Development Act 2000 (as amended).

7.2. Section 48(10)(b) of the Planning and Development Act 2000 (as amended) makes provision for an appeal to be brought to the Board where an applicant for permission under Section 34 of the Act considers that the terms of the relevant development contribution scheme have not been properly applied in regard to a condition included by the Planning Authority.

7.3. This appeal relates to a financial contribution in regard to Condition no. 8 only. I have examined all the documentation in relation to the appeal file and have had particular regard to the operative financial contribution scheme adopted by Kildare County Council, at the time of decision and the grounds of the appeal. I consider that there are two issues in respect of the subject appeal as follows:

- i. Whether or not the terms of the Development Contribution Scheme were correctly applied in this case.
- ii. Whether there are circumstances where no contribution or a reduced contribution may apply.

7.4. Issue No. 1 – Whether or not the terms of the Development Contribution Scheme were correctly applied in this case.

7.4.1. The first party appellant argues that the development contribution imposed does not accurately reflect the nature and extent of the proposed development. I note that the rationale for the proposed replacement dwelling is to provide a more modern and efficient dwelling. In a response to the observations of the Planning Authority, the appellant states that the existing dwelling built in the early 1900s has a 'live mains'

serving adjoining dwellings that passes through the house which has resulted in issues relating to blockages giving rise to water / foul odours, and has flooded / damaged the kitchen and living areas within the exiting dwelling.

- 7.4.2. The Planning Authority applied the level of contribution in accordance with Section 8.1 of the Scheme which refers to residential development. This requires a development contribution at a rate of €62 per square metre (m²).
- 7.4.3. The proposed replacement dwelling will encompass the footprint of the existing dwelling. The existing dwelling has a gross floor area of 203 m² and the proposed replacement dwelling will have a gross floor area of 325 m². It is submitted by the appellant that the application of the development contribution should be applied to the additional floor area of 82.2 m² on the basis of Section 8.1.1 of the Scheme.
- 7.4.4. Section 8.1.1 of the Scheme refers to the carrying out of extension(s) to existing residential development. This provides for an 'exemption' on the first 40 m² of a proposal. A charge at the residential rate is then applied to the additional floor area above 40 m².
- 7.4.5. I consider that the subject development requires the demolition of the existing dwelling on the site and the provision of a new dwelling which constitutes a 'replacement dwelling'. It does not amount to an extension of the existing dwelling on the site. In this regard, I do not consider that Section 8.1.1 of the Scheme applies to this development and I therefore consider that the Planning Authority applied the correct development contribution levy i.e. Section 8.1 of the Scheme, having regard to the foregoing.

7.5. Issue No. 2 – Whether there are circumstances where no contribution or a reduced contribution may apply

- 7.5.1. The argument is also made by the appellant that the Scheme specifically exempts the levying of development contributions for the demolition and the reconstruction of a dwelling. The appellant further states that Section 10.10 of the Scheme should be applicable on the basis that the existing dwelling has been the subject of frequent back-up / blocked sewerage issues, as live mains to two other adjoining properties pass through the appellant's dwelling.
- 7.5.2. I note that Section 10.10 of the Scheme refers to replacement **buildings** that are required where the existing building on a site, on the same footprint or the same area

as the original building was the subject of 'extensive damage', namely subsidence, flooding or fire. It further provides that if such an existing building is extended, then the level of contribution set out in Sections 8.1 or 8.2 of the Scheme shall apply. Section 8.1 relates to residential development and Section 8.2 relates to non-residential development.

- 7.5.3. I note that the existing dwelling is connected to the adjoining public water mains and public sewer. I have reviewed the file details and the planning report and I note that no observations were raised in relation to effluent disposal issues. Furthermore, neither Water Services, the Area Office or Irish Water raise any issues in relation to the appeal site. I can find no evidence in relation to the issues as described by the appellant and it is therefore my view that the existing dwelling on the site has not been the subject of 'extensive damage'.
- 7.5.4. I have reviewed the Contributions Calculation sheet on the file, and while I note that Section 8.1.1 is referenced in the 'Rate Band' box, it is evident to me that the Planning Authority attached condition no. 8 on the basis that the proposed development was calculated at the residential rate of €62 per m² under Section 8.1 of the Scheme. This is also confirmed by the Planning Authority in their observations to the Board on the 01st November 2023. The Planning Authority in their observations further noted that the circumstances outlined in Section 10.10 were not relevant or arose in relation to this case.
- 7.5.5. In relation to a reduced contribution, I have dealt with the relevant sections of the Scheme in Section 7.4 above and have concluded that such a reduction does not apply in this case. I would further note that the lands relating to the appeal site are not zoned 'Town Centre', therefore Section 10.3 of the Scheme does not apply.

8.0 Recommendation

Having regard to the foregoing and to the nature of the proposed development, I consider that the Planning Authority has correctly applied the terms of its Section 48 Development Contribution Scheme, and I therefore recommend that condition no. 8 of P.A. Ref. 23/60058 should be ATTACHED.

9.0 Reasons and Considerations

Having regard to:

- (a) the Nass Local Area Plan 2021-2027,
- (b) the Kildare County Council Section 48 Development Contributions Scheme 2023-2029,
- (c) the submissions made in the appeal,

it is considered that the terms of the Development Contribution Scheme were correctly applied in respect of Condition no. 8, in that the Scheme provides for development consisting of the provision of residential development. It is therefore considered that a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority was warranted for the subject development and that the Planning Authority is directed to attach condition no. 8:

The applicant / developer to pay to Kildare County Council the sum of €20,150.00 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022 in accordance with Section 45 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 34 of the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Uise Éireann.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilitates benefiting development in the area of the Planning Authority.

Clare Clancy
Planning Inspector

07th October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	318147-23		
Proposed Development Summary	Permission for (a) demolition of the existing dwelling, (b) construction of replacement dwelling, and all associated site works and services.		
Development Address	9 Millbrook Villas, Naas, Co. Kildare.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No	✓ No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No	✓	N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____