



An
Bord
Pleanála

Inspector's Report

ABP-319447-24

Development	Retention permission for garden shed/store and all ancillary site works to facilitate same.
Location	40 Clybaun Court, Clybaun Road, Knocknacarra, Galway, H91 H3VF
Planning Authority	Galway City Council
Planning Authority Reg. Ref.	24/60016
Applicant(s)	David Mortimer
Type of Application	Retention
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	First Party – Condition no. 3 Financial Contribution only.
Inspector	Kathy Tuck

1.0 Site Location and Description

- 1.1. The appeal relates to no. 40 Clybaun Court, a suburban residential street of primarily semi-detached dwellings with some detached dwelling terminating in a cul-de-sac located in the Knocknacarra area, c.15km from the city centre.
- 1.2. No. 40 is a detached two storey dwelling which is served with car parking to the front and private amenity space to the rear. The site has a north-eastern orientation and addresses an area of public open space.

2.0 Proposed Development

- 2.1. The development consists of the retention of a garden shed/store and all ancillary site works to facilitate same.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority recommended a grant permission subject to conditions. The conditions are generally standard. Condition 3, the condition under appeal is as follows:

'Within 8 weeks of the issuing of the final grant of permission a financial contribution shall be paid to the Planning Authority of €2,471 (Two thousand four hundred and seventy-one Euro).

Reason: It is considered reasonable that the developer should contribute towards the cost of provision of public services facilitating the proposed development. The use or return of this contribution shall be carried out as provided for in Section 48 of the Planning & Development Act 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report reflects the decision to grant permission subject to conditions. The report provides for a breakdown of the development contribution which has been calculated against the Galway City Council 2020-2026 Development Contribution Scheme and is given as:

- $90 \times 1.25 \text{ (retention)} \times 21.97 = \text{€}2,471 \text{ Euro.}$

3.2.2. Other Technical Reports

Active Travel: No objections or conditions.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

None

4.0 Planning History

- | | |
|----------------------|--|
| PA Ref 10/295 | Retention Permission GRANTED for the retention for revisions of house type 'B' as constructed on site No's. 41 & 42 as previously granted under Pl. Ref. 07/829 and 08/224. |
| PA Ref 08/224 | Permission GRANTED for a revised layout showing a revision to the western boundary and change of layout of the same 9 houses, previously granted Full Planning Permission under Pl. Ref. 07/829. |
| PA Ref 07/829 | Permission GRANTED for 3 no. two storey detached and 6 no. two storey semi-detached houses and all associated services access to site from Clybaun Court Estate. |
| PA Ref 07/620 | Permission REFUSED for 3 no. two storey detached and 6 no. two storey semi-detached houses and all associated services, access to site from Clybaun Court Estate. |

5.0 Policy Context

5.1. Galway City Development Plan 2023-2029

5.1.1. The subject site is zoned under Objective R which 'seeks to provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.'

5.1.2. Chapter 3 refers to 'Housing and Sustainable Neighbourhoods'. Chapter 11 refers to Land Use Zoning Objectives and Development Standards and Guidelines. It is considered that these are the most relevant chapters relative to the development.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal was lodged against condition no. 3 of PA Ref 24/60016 (permission for retention) which relates to a Section 48 contribution of €2,471. The appellant submits that the Planning Authority have incorrectly applied the contribution for the following reasons:

- Section 48(1) of the Act (as amended) does not allow any provision for a local authority to impose a financial contribution where no infrastructure is required.
- There are a number of discrepancies in the Galway City Council Development Contribution Scheme with the regard to labelling and references which makes it unclear.
- the "definition of waivers and reductions" category of the Development Contribution Scheme state that Domestic extensions to dwellings including 'granny flats', shed/store /garages used solely for purposes

incidental to a dwelling house shall be provided a reduction rate of 100%.
And as such there is no contribution applicable in this instance.

6.2. **Planning Authority Response**

A response from the Planning Authority was received on the 12th July 2024, following a request under Section 132 of the Act from An Bord Pleanála which related to the financial contribution breakdown as follows:

- 90×1.25 (retention) $\times 21.97 = \text{€}2,471$ (euro).

6.3. **First Party response to Planning Authority response dated 12th July 2024**

Points of note include:

- The Planning Authority did not set down the necessary detail or the basis for the determination of the contribution sought by the board,
- No symbols in the calculation. A copy of the planning report which is indicative of the summary manner in which the development contribution was assessed was submitted.
- The adopted development contribution scheme clearly sets out that there is a 100% reduction for shed/storage/garage used solely for the purpose incidental to a dwelling/house.
- There is nowhere in the Planning and Development Act, 2000 under Section 48 that permits a planning authority to impose a penalty clause for a retention application therefor the scheme is fundamentally flawed.

7.0 **Assessment**

- 7.1. A first party appeal against Condition no. 3 of Planning Authority Reference 24/60016 was made under the provisions of Section 48(10)(b) of the Planning and Development Act, 2000 as amended, and therefore the Board is restricted to consideration of Condition No. 3 only. My assessment is confined to the application of the terms of the Galway City Council Development Contribution Scheme 2020 – 2026 and any index related increase that may be in place.

- 7.2. Condition no. 3 required that a financial contribution of €2,471 be paid in respect of public infrastructure and facilities benefiting the development as provided for in the Development Contribution Scheme. The Planning Authority applied this contribution on the basis of the area of the development at 21.97q m and at a levy rate of €90 per sq.m. Given that this application was seeking permission for retention permission the rate was also increased by 1.25 times.
- 7.3. The appellant raised concern over the lack of clarity within the Development Contribution Scheme with regard to the labelling of tables and reference being made to such. I have reviewed the subject Scheme and note there are discrepancies in the labelling of tables that could give rise to some confusion. Notwithstanding I am of the view that irrespective of any waiver or reductions set out, the Development Contribution Scheme is clear and concise regarding applications for retention planning permission. The scheme clearly states *“No reductions in whole or in part shall apply to permissions for retention of development. All such development contributions will be charged at a multiple of 1.25 times the applicable rate of development contributions.”*
- 7.4. In this instance, the application is for the retention of works which the Planning Authority recommended permission for retention be granted and did not raise concern pertaining to the nature or scale of development to be retained.
- 7.5. Having regard to the foregoing I consider that the planning authority were correct in their application of the current Development Contribution Scheme and therefore the grounds of the appeal relating to this matter should be dismissed.

8.0 Recommendation

- 8.1. I recommend that the Planning Authority be directed to retain condition no. 3 of Planning Authority Ref 24/60016 for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the current Galway City Development Contribution Scheme 2020-2026 which states that any waiver or reduction for retention development shall not apply for applications for retention permission and having regard to the nature of the

application subject to this appeal which is seeking retention permission, I consider that the Planning Authority have correctly applied the terms of the Development Contribution Scheme by conditioning a contribution for 21.97 sq.m of retained development and recommend Condition no.3 of PA Reg 24/60016 shall be retained.

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.

Kathy Tuck
Planning Inspector

30th August 2024