



An
Bord
Pleanála

Inspector's Report

ABP-320155-24

Development	Retention of partly constructed two-storey extension and permission for completion of same (the site is within a conservation area).
Location	22 Portobello Road, Portobello, Dublin 8, D08 C5F6
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3574/24
Applicant(s)	Eamon Lewis
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party v Condition no. 2
Appellant(s)	As above
Observer(s)	None
Inspector	Kenneth Moloney

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1.0 Introduction

This is a first party appeal against a financial contribution condition which was attached to the planning authority's decision to grant planning permission for development consisting of a two-storey domestic extension to the rear of an existing house. As this is an appeal in respect of a financial contribution, the provisions of Section 48 of the Planning and Development Act 2000, as amended, apply and the Board is restricted to considering this matter alone and cannot consider the matter de nova. I have therefore confined my assessment to Condition no. 2 of the local authority permission.

Having regard to the nature of the appeal before the Board (i.e. first party against a S. 48 condition), the information available on file, a site inspection of the appeal site was not deemed necessary in this instance.

2.0 Proposed Development

Planning permission is sought for the **retention** of a partly constructed 2-storey residential extension. Planning **permission** is sought for the completion of the partly constructed 2-storey extension.

The domestic extension is two-storey in height to the rear of a single storey terraced house. The total floor area of the domestic extension, the subject of this application, is 67 sq. metres. The ground floor level of the proposed extension is lower than the ground floor level of the existing terraced house.

The floor plan for the proposed extension includes kitchen-dining and living space at ground floor level and TV room / storage at first floor level.

The proposed design includes an internal courtyard and a lightwell at first floor level.

3.0 Planning Authority Decision

3.1. The Planning Authority decided to grant planning permission subject to conditions. The grant of permission includes 1 no. condition, relevant to this first party appeal.

- Condition no. 2 requires the applicant to make a development contribution of €8,702.68.

3.2. Planning Authority Reports

3.2.1. The Planner's report, in summary states;

- The proposal is in keeping with the development plan provisions.

3.2.2. Engineering Department – Drainage Division

- Additional information sought. Applicant is requested to demonstrate appropriate SuDS in all new development.

The Development contribution calculation is not addressed / assessed in the Planning Authority reports.

3.3. Prescribed Bodies

Transport Infrastructure Ireland

- Recommended that in the event of a grant of permission that a condition is included for a Section 49 Contribution Scheme Levy. The proposed development falls within an area set in a Section 49 Levy scheme for Light Rail.

3.4. Third Party Observations

A third-party observation was received from an adjoining property and related to matters of procedure and compliance.

4.0 Planning History

L.A. Ref. 2673/18

- Permission **granted** for (a) as built two-storey extension and (b) completion of building works. Upheld by ABP (ABP-301925-18).

L.A. Ref. 3592/16

- Permission **refused** for retention of partly constructed two-storey residential extension, with alterations to reduce the height of the development, and for the completion of a partly constructed two-storey extension. Upheld by ABP (PL29S.247550).

L.A. Ref. 4295/15

- Permission **refused** for retention of parapet level of 26OD throughout the roof to the rear extension.

L.A. Ref. 3644/12

- Permission **granted** for demolition of existing single storey rear kitchen / bathroom annex, removal of existing rear terrace wall and rear pitched roof only. Granted March 2013.

5.0 Policy Context

5.1. Dublin City Development Plan, 2022 – 2028

Appendix 18 – Ancillary Residential Accommodation

Section 1.1 General Design Principle

It is acknowledged that the development of residential extensions plays an important role in promoting a compact city in line with the core strategy as well as providing for sustainable neighbourhoods and areas where a wide range of families can live.

Applications for extensions to existing residential units should:

- Not have an adverse impact on the scale and character of the existing dwelling
- Not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy, outlook and access to daylight and sunlight
- Achieve a high quality of design

Section 1.2 Extension to Rear

First floor rear extensions will be considered on their merits, noting that they can have potential for negative impacts on the amenities of adjacent properties, and will only be permitted where the planning authority is satisfied that there will be no significant negative impacts on surrounding residential or visual amenities. In determining applications for first floor extensions the following factors will be considered:

- Overshadowing, overbearing, and overlooking - along with proximity, height, and length along mutual boundaries
- Remaining rear private open space, its orientation and usability
- Degree of set-back from mutual side boundaries
- External finishes and design, which shall generally be in harmony with existing.

5.2. Dublin City Council Development Contribution Scheme 2023-2026

The City Council has adopted a development contribution scheme, effective from 1st April 2023 until March 2026, as provided for under Section 48 of the Planning and Development Act, as amended. The scheme refers to the current amount of

development contributions (Section 9), circumstances where no contribution or reduced contribution apply (Section 10 and 11).

5.3. **Natural Heritage Designations**

- None relevant.

5.4. **EIA Screening**

The proposed development does not come within the definition of a 'project' for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. Refer to Form 1 in Appendix 1 of report.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The following is a summary of a first party appeal in relation to condition no. 2.

- The Council based the development contribution charge on a gross floor area of 76.46 sq. m., which is an incorrect calculation as is evident from the provisions of Section 9, Note 2(a) of the Dublin City Council Development Contribution Scheme, 2023 – 2026.
- Applying the correct definition will amount to an extension with a floor area of 66.84 sq. m., the Development charge has been overestimated.
- The net additional floor space principle should apply. In the development at hand 37 sq. m. is the size of the original single story terraced cottage.
- The net additional floor space is 29.84 sq. m. (66.84 sq. m. – 37 sq. m.). which is the relevant area for calculation.
- As per Section 10 of the relevant Development Contribution Scheme, the first 40 sq. m. of an extension is exempt.
- The net additional 29.84 sq. m. falls within the 40 sq. m. exemption provided under the Development Contribution Scheme.

- In relation to Section 12 of the relevant Development Contribution Scheme, a reduction is not sought, but an exemption is sought. The exemption is distinct from reduced rates.
- The 2024 planning application pertains to a technical lapse of the Plan Ref. 2673/18 permission (ABP-301925-18) rather than an unauthorised development.
- In accordance with Section 9 of the Development Contribution Scheme the applicable scheme is the scheme in place at the time of lodgement of the relevant application.
- As the extension had already commenced and was practically complete with walls and a roof structure in place, the current scheme is therefore not applicable in this case.
- It is inappropriate to impose new development contribution conditions on the completed extensions.

6.2. Planning Authority Response

The following is a summary of a response submitted by the Planning Authority.

- The floor area was measured by the Drawing Office as part of the validation process and concluded that the floor area was as levied with the floor area for extension for retention is 76.46 sq. m. (ground floor and first floor).
- It is not clear from the floor plans which parts of the house have already been constructed (retention permission) and which parts are not completed (permission). Therefore, for levy purposes the entire floor space was inputted under the extension for retention.
- Acknowledged that the floor area maybe incorrect, however, this is based on drawings being inconclusive.
- Should the drawings be clarified the floor area would be adjusted and development contribution amended to reflect new floor area.
- However, the contribution applied was not incorrect with regard to the development submitted.

- The proposal is for retention permission for part of the development already built and permission to complete same
- Current Section 48 development contribution scheme (2023 – 2026) states no reductions for permissions in respect of retention permission.
- The development is considered as an application for retention permission, on the basis that the applicant commenced the development without permission with the application submitted to regularise the development, an exemption cannot be applied partially to a development.
- In the case of development considered as two separate permissions, it is requested that the development contribution be applied to the floor area as built and no exemption applied in line with the contribution scheme.
- The floor area of the development to be completed could benefit from the exemption and where it exceeds the 40 sq. m. and a contribution would be applicable to the balance of the floor area.

6.3. **Observations**

- None

6.4. **Further Responses**

The following is a summary of a first party response to the Planning Authority's response.

- The area of original dwelling which is being retained is 24 sq. m. This area has not changed, and no contribution is applied to this which is acceptable.
- The parent permission planning ref. 3644/12 was granted in April 2013 with the contribution applied to this permission, €322.88 which has been paid.
- No contributions were applied to either 2016 or 2018 planning permissions with both including increases to the floor areas.
- The incorrect floor area of 76.46 sq. m. has been applied to this permission.

- The floor area of 67 sq. m. was identified as the floor area for the extension. This calculation was based on a measurement within the external walls to both levels which is typical for a planning application.
- It is noted that the method for calculating the floor area in the development contribution scheme is different.
- When the lightwell is removed from the calculation the useable floor space is €63.27 sq. m.
- The above approach is confirmed by the current Development Contribution Scheme, 2023 – 2026, in Note 2 of page 3.
- Submitted that Dublin City Council used 76 sq. m. instead of 67 sq. m. as a typo. The floor area used also includes the lightwell floor space in this calculation which is incorrect.
- The floor areas are further confirmed by additional submitted drawings.
- The drawings also confirm the following;
 - Extent of original building being retained.
 - Area of rear extension outlined.
 - Extent of construction completed on site.
 - Photographs confirming the extent of construction completed on site.

7.0 **Assessment**

This is an appeal specifically in relation to condition no. 2 of the local authority grant of permission which relates to a Section 48 development contribution charge of €8,702.68.

There are several related issues in respect of this development contribution appeal including the appropriate calculation of the gross floor area for the purpose of the development levy, the original floor area of the existing housing unit, and the floor area of the extension for which the retention provisions is applicable.

In respect of the gross floor area, I would generally agree with the Planning Authority's calculation of 76.46 sq. metres¹ for the total floor area of the ground and first floor extension. However, I would consider, that a more accurate calculation would be 76.907 sq. metres, based on the dimensions as illustrated in submitted drawing no. A-P-10-00 (ground floor plan). These drawings include illustrated measurements of 6.879 metres for the internal depth of the extension, and 5.590 metres for the internal width of the extension, which would give an overall floor area for the two-storey extension of 76.907 sq. metres.

Furthermore, I would consider that the Planning Authority's floor area calculation has not appropriately taken account of the lightwell and courtyard floor areas on the first-floor level of the extension and their appropriate deduction from the calculable total floor area for the purpose of the development levy. I would note that it is evident from the submitted first floor drawing (drawing no. A-P-1001) that the courtyard has a floor space of 5.61 sq. metres, and the floor space for the light well is 3.24 sq. metres (1.127 metres x 2.876 metres). Therefore, I would consider that the appropriate floor area is 76.907 sq. m. minus the combined floor area of the lightwell and the courtyard (8.85 sq. m.). Accordingly, I would consider that this amounts to a total gross floor area of 68.057 sq. metres, for the purpose of calculating the development contribution charge and not 76.46 sq. metres as used by the Planning Authority.

I note that the applicant submits that the floor area is 63.27 sq. metres for the two-storey extension, however I would consider that the onus is on the applicant in this case to adequately demonstrate the floor area calculation, and in this case, I would consider that the applicant has not adequately substantiated their claim in relation to the submitted floor area.

I would consider that the gross floor area for the purpose of calculating the relevant development contribution is 68.057 sq. metres, and this would amount to a revised development contribution charge of €7,746.24 (€113.82 x 68.057 sq. metres).

For the Board's benefit I have summarised the different floor areas, in a table below, submitted by each of the parties and the floor areas reached in this assessment.

¹ Reported in the Planning Authority's response submission.

<u>Floor Areas</u>	<u>First Party</u>	<u>DCC</u>	<u>Inspector</u>
Ground and first floor extension	66.84 sq. m,	76.46 sq. m.	76.907 sq. m.
Lightwell	(- 3.24 sq. m.)		(- 3.24 sq. m.)
Courtyard			(- 5.61 sq. m.)
Total calculable floor area ²	63.6 sq. m.	76.46 sq. m.	68.057 sq. m.
Development Contribution Charge³	€7,238.95	€8,702.68	€7,746.24

In relation to the relevant Development Contribution Scheme, 2023 – 2026, I would note that Section 11 of the contribution scheme includes the following provision.

‘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 floor space created;’

However, I note from the applicant’s response submission that the relevant extension does not involve the demolition of any of the original floor area of the housing unit, and as such the 68.057 sq. metres (calculated above) is therefore the net additional floor space, and as such applicable for the development contribution charge.

In relation to the relevant Development Contribution Scheme, 2023 – 2026, I would note that Section 10 of the contribution scheme which sets out the developments not required to pay development contributions under the scheme includes the following provision.

‘The first 40sq metres of extensions to a residential development (subsequent extensions or extensions over and above 40 square metres will be charged at the residential rate per square metre);’.

² Reduced for first floor lightwell and/or courtyard

³ €113.82 x floor area

However, Section 12 of the Development Contribution scheme includes the following provision.

‘No reductions in whole or in part shall apply to permissions for retention of development.’

I would consider, based on the current planning application, the subject of this appeal, which relates to planning permission for the retention of a partly constructed 2-storey residential extension and also planning permission is sought for the completion of the partly constructed 2-storey extension, it is not possible to separate out the retention and permission component of the application, based on the information available.

Further the applicant has not adequately differentiated between the element of the retention floor area and the permission floor area to support their case. Accordingly, I would consider that Section 12 of the Development Contribution scheme would apply to this appeal as the development is the subject of a retention planning application.

I would conclude that a revised development contribution forms part of condition no. 2.

8.0 AA Screening

Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 Recommendation

10.0 I recommend that the Board based on the reasons and considerations set out below, directs the said Council under subsection (10) (b) of Section 48 of the Planning and

Development Act, as amended, to **AMEND** condition No. 2 so that it shall be as follows:

11.0 Reasons and Considerations

It is considered that:

- a. The terms of the Development Contributions Scheme were correctly interpreted in respect of Condition No. 2, insofar as the development is subject to financial contributions under the Scheme.
- b. The revised development contribution takes account of usable floor space, pertaining to the two-storey extension, in the submitted drawings accompanying the application. Accordingly, it is concluded that condition no 2 shall be amended as follows:

Condition no. 5 (a)

- a. The developer shall pay to the planning authority a financial contribution of €7,746.24 (seven thousand and seven hundred and twenty six euro and twenty four cent) in respect of public infrastructure and facilities benefiting 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. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development

Contribution Scheme made under section 48 of the Act be applied to the permission.

Kenneth Moloney
Senior Planning Inspector

12th December 2024

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-320155-24		
Proposed Development Summary	Retention of partly constructed two-storey extension and permission for completion of same.		
Development Address	22 Portobello Road, Portobello, Dublin 8.		
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	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			
No	✓		✓ No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes	N/A		
No	✓		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			
5. Has Schedule 7A information been submitted?			

No	✓	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ **Date:** _____