



An
Bord
Pleanála

Inspector's Report

ABP-321760-25

Development	Retention permission for a dormer dwelling and all associated site works.
Location	8B Wayside Cottages, Kilternan, County Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D24A/0868
Applicant(s)	Sarah Fitzsimon
Type of Application	Retention permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Sarah Fitzsimon
Observer(s)	none
Date of Site Inspection	2 nd April 2025
Inspector	Aisling MacNamara

1.0 Site Location and Description

- 1.1. The appeal relates to the site of an existing semi detached dormer dwelling, number 8B Wayside Cottages, Kilternan in County Dublin. The house adjoins 8A Wayside Cottages. These are a set of dormer bungalows constructed within the former rear garden of no. 8 Wayside Cottages. Both 8A and 8B share an access driveway which runs from Wayside Cottages along the side of no.8 to a shared parking area to the front of the houses. Both houses are served by small rear gardens that back onto Suttonfield Court which is currently under construction. On either side of the two rear houses are the rear gardens of the adjoining residential properties of Wayside Cottages. A number of other infill houses have been constructed in the former rear gardens of some of these properties.

2.0 Proposed Development

- 2.1. The description of the proposed development as set out in the site notice is the “retention of a dwelling and associated siteworks”. The description of the proposed development as set out in the submitted application form is “retention of a constructed semi-detached dormer dwelling and associated siteworks (built in accordance with drawings and details of previously approved under D09A/0131)”. The area of the site is 0.0492ha. The floor area of the house to be retained is 155sqm.
- 2.2. A cover letter has been submitted by the applicants parents on behalf of their daughter, the applicant Sarah Fitzsimon. This states that the house is already authorised and that the application is made for the purpose of reducing the Development Contribution Scheme and Supplementary Development Contribution Scheme liabilities in relation to the property. They are requesting that their daughter be afforded an exemption from the need to pay the outstanding contributions owed under the Supplementary Development Contribution Scheme.

3.0 Planning Authority Decision

3.1. Decision

By order of 20th December 2024, the planning authority made the decision to refuse retention permission, for the following reason:

1. *“Having regard to the objective ‘A’ zoning of the site, and policies and objectives set out in the 2022-2028 Dun Laoghaire – Rathdown County Development Plan, it is considered that the development for retention of an existing dwelling cannot be granted permission because the intent of the proposal, which is to avoid liability for Development Contributions under Section 49, would contravene the Section 49 Supplementary Development Contribution Scheme and Surface Water Attenuation Ponds Scheme, in particular section 8 that allows for a Single residential developments where the applicant is native to the area and has close family ties with the area. The Scheme as permitted was for two houses, one of which was granted an exemption. It is not in accordance with the Scheme to apply a second exemption to a second house.*

The proposed development would therefore contravene conditions 11 and 12 of the parent permission D09A/0131.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Case Planner sets out the basis for a recommendation to refuse permission, generally as per the decision.

The report notes that the existing dwelling on the site has been built as per D09A/0131 and that there are no planning issues. It is stated that the purpose of the retention application is to reduce the contributions liability relating to the property.

3.2.2. Other Technical Reports

- Transport – no objection

- Environmental Enforcement – no objection

3.3. Prescribed Bodies

None

3.4. Third Party Observations

None

4.0 Planning History

D09A/0131 – Vincent Fitzsimon – final grant 24th Sept 2009 – permission for construction of two semi detached dormer bungalows on site at rear with vehicular access to side and associated site works.

- Condition 7 requires the developer to pay €8315.22 prior to commencement or as otherwise agreed, towards the cost of public water and drainage infrastructure, as provided for in the Development Contribution Scheme made 21/01/2004.
- Condition 8 requires the developer to pay €11654.44 prior to commencement or as otherwise agreed, towards the cost of public roads infrastructure , as provided for in the Development Contribution Scheme made 21/01/2004.
- Condition 9 requires the developer to pay €9898.22 prior to commencement or as otherwise agreed, towards the cost of public parks and community infrastructure, as provided for in the Development Contribution Scheme made 21/01/2004.
- Condition 11 states that one of the houses shall be first occupied as a place of permanent residence by the applicant or immediate family member and if the applicant / immediate family member disposes of the property within seven years of the date of final grant, the full section 49 supplementary development contribution scheme for the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme levy for a residential dwelling shall be paid by the applicant.

- Condition 12 requires the developer to pay a contribution of €43,448 (subject to interest/ price index change) prior to commencement or as otherwise agreed, towards the cost of the Glenamuck District Distributor Road Scheme and the Surface Water Attenuation Ponds Scheme.

5.0 Policy Context

5.1. Development Plan

The site is within the area of the Dun Laoghaire – Rathdown County Development Plan (CDP) 2022-2028.

The site is zoned in the CDP objective A 'To provide residential development and improve residential amenity while protecting the existing residential amenities'.

The site is within the boundary of the Kilternan Local Area Plan 2013 (now expired).

5.2. Development Contribution Schemes

The current development contribution schemes of Dun Laoghaire - Rathdown County Council, relevant to the development are as follows:

Development Contribution Scheme 2023-2028, adopted under Section 48 of the Planning and Development Act 2000 (as amended)

Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme Supplementary Development Contribution Scheme, adopted under Section 49 of the Planning and Development Act 2000 (as amended).

Exemptions

The following categories of development shall be exempt from the requirement to pay contributions under this Section 49 Scheme:

8. Single residential developments where the applicant is native to the area and has close family ties with the area, unless the property is disposed of within seven (7) years, in which case the levy becomes payable.

When making a case for an exemption from the requirement to pay levies under this scheme, applicants will need to sign a statutory declaration (details set out in the scheme).

5.3. Natural Heritage Designations

The site is not within and does not adjoin any natural heritage designations.

5.4. EIA Screening

Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required. See completed Form 1 and Form 2 attached.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of appeal are summarised as follows:

- The appeal relates to 8B Wayside Cottages. The owner of the house (the applicant / appellant's parents) wish to transfer the house 8B Wayside Cottages to the applicant and she intends to reside in this house as permanent place of residence.
- A background to the appeal is provided: - 8, 8A and 8B Wayside Cottages are owned by the applicants parents. Permission was granted for 8A and 8B under D09A/0131 subject to conditions. The applicant states that section 48 contributions were applied to both houses, that house 8A benefitted from the section 49 waiver and that house 8B is subject to section 49 contributions.
- The applicant states that contributions for 8A have been paid and that contributions for 8B are outstanding. The payments are 'crippling' and enough has been paid. Applicant is motivated by tax avoidance but not tax evasion.

- The development is authorised and therefore permission for retention should be granted.
- Request the following:
 - that they are granted an exemption / waiver from the need to pay s.49 contributions owed on house 8B (a waiver can be applied because the applicant qualifies for a waiver based on her local need criteria), request that occupancy condition be attached in place of a s.49 charge;
 - that as a contingency submission, if the Board decides not to grant the s.49 waiver, that reduced rates are charged;
 - it is requested that the new and current s.48 and s.49 scheme charges are conditioned to allow a switch to a less burdensome planning contract/ permission with reduced rates relative to the original rates;
 - that the Board impose and specify the actual amount to be paid in accordance with the s.48 scheme in place at the time of the Board decision;
 - that regard be paid to the fact that the development is authorised under D09A/0131 and that the Board consider whether the normal penalties for retention permissions should apply including the 25% penalty for retention permissions under the section 48 scheme.
- In support of the appeal, the following information is highlighted / provided:
 - The section 48 and section 49 schemes have been amended and many permissions have had the benefit of the s.49 charges originally imposed at time of final grant being reduced to almost half of the charge burden on the existing 8B property. Details are provided of other similar planning applications in the area. The s.49 charge on 8B is the highest charge ever charged at Wayside Cottages. This is inconsistent, unfair and inequitable application of the burden.
 - Evidence is submitted to show that section 48 and section 49 contributions are being paid in regular instalments during the period to 2011 to 2024 and outstanding balances remain.

- Sarah Fitzsimon would qualify for a waiver under the s.49 scheme as a local person with close family ties. Documentary evidence is submitted.
- The applicant contends that the subject development does not benefit from the infrastructure provided by the s.49 scheme and that Wayside Cottages should be excluded from the scheme or should qualify for a reduced contribution.
- Extracts of legislation and guidelines are provided including the Planning and Development Act 2000 (as amended) and Planning and Development Act 2024, Development Management Guidelines for Planning Authorities 2007 and Development Contribution Guidelines for Planning Authorities 2013.

6.2. Planning Authority Response

The planning authority has responded stating that the Board is referred to the previous planners report and states that it is considered that the grounds of appeal do not raise any new matter which, in the opinion of the planning authority, would justify a change of attitude to the proposed development.

6.3. Observations

None

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all submissions received in relation to the appeal, and inspected the site and having regard to relevant local policies and guidance, I consider that the main issues in this appeal are as follows:

- background to the appeal
- the proposal to retain the house in order to reduce development contributions

7.2. Background to the appeal

- 7.2.1. Under D09A/0131 permission was granted to Vincent Fitzsimon (the applicants father) for the construction of two semi detached dormer bungalows on the site to the rear of 8 Wayside Cottages. As per the information submitted, the development was built as per the drawings and details of the permission. These houses are 8A and 8B Wayside Cottages and both are occupied. Under 09A/0131, conditions were attached to address the provisions of the section 48 (conditions 7, 8 and 9) and section 49 (conditions 11 and 12) schemes in place at the time.
- 7.2.2. The development was subject to the section 49 Supplementary Development Contribution Scheme for Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme. Under this scheme, contributions are owed on development and the scheme sets out categories that are exempt from the requirement to pay contributions. Category 8 of the exemptions is for single residential developments where the applicant is native to the area and has close family ties with the area, unless the property is disposed of within seven years in which case the full levy becomes payable. As per condition 11, no section 49 contribution was charged for one house, subject to the house being occupied by a local person. The house 8A was occupied by the applicant Vincent Fitzsimon and this house therefore received the exemption from the need to pay the contribution. As per condition 12, a s.49 contribution was owed and this relates to the other house which is house 8B.
- 7.2.3. The applicant commenced phased payments and a financial statement is submitted dated 5th December 2024 showing payments during the period 2011 to December 2024. The statement shows an outstanding balance of €4566 with respect to conditions 7, €5909 with respect to condition 8, €5592 with respect to condition 9 and €25,771 with respect to condition 12.
- 7.2.4. The applicant's parents now wish to transfer house 8B to their daughter (the applicant / appellant). The applicant hopes that granting of permission would allow for the application of a new set of less onerous section 48 and 49 conditions under the current schemes. In summary, the applicant / appellant is requesting that the Board give the applicant an exemption or waiver from the need to pay the s.49 contributions on house 8B and that if the Board decides to apply contribution

conditions that it applies conditions for new and current s.48 and s.49 charges to allow a switch to a 'less burdensome planning contract'.

- 7.2.5. At this point, I note that whilst I have some concerns regarding the mismatch between the development description (being for development) and the actual proposal (being for consideration of development contribution conditions), the development description stated in the public notice adequately identifies the proposed works/ use as set out in the submitted drawings and the correct permission type is stated. The application was validated by the planning authority and I cannot say that this was incorrect. The appeal has been validated by An Bord Pleanala and I will therefore progress to consider the appeal.

7.3. The proposal to retain the house in order to reduce development contributions

7.3.1. The retention of the house in principle

- 7.3.2. The development to which this retention application relates, is a development that has a grant of permission. On the basis of the information available, the development appears to have been constructed and used in accordance with the permission. There are no works or change of use that require permission and whilst I am unclear as why retention permission is sought or needed, the site is zoned for residential development in the current county development plan and I am satisfied that the proposal for a house is acceptable in principle.

7.3.3. Can the conditions of the parent permission be amended or removed?

- 7.3.4. At the time of the decision to grant permission under D09A/0131, the applicant did not appeal the development contribution conditions. The developer commenced and completed the development and the houses are now occupied. In doing so, the developer committed to compliance with the financial conditions. The development has not changed. The financial conditions 7,8, 9 and 12 are to be complied with. I do not consider that it is reasonable for them to now be altered retrospectively.

7.3.5. Are there development contribution conditions for the Board to consider?

- 7.3.6. In the subject application, the planning authority have made a decision to refuse permission and there is no grant permission with conditions. There are no section 48 or section 49 conditions for the Board to consider. This aside, I would note that in any first party appeal against development conditions under s.48 or s.49, the Board

would be confined solely to the consideration of whether the terms of a scheme have been properly applied by the planning authority and the Board cannot consider the merits or otherwise of a scheme itself. There is no appeal of conditions to be considered by the Board and therefore there is no consideration of whether the terms of a scheme have been applied properly.

7.3.7. Is there a consolidation of unauthorised development?

7.3.8. The development granted permission under D09A/0131 is subject to the conditions attached to the permission. Conditions 7,8, 9 and 12 all require the payment of financial sums prior to commencement or as otherwise agreed in writing with the planning authority. The developer has submitted a financial statement showing payments with respect to conditions 7,8, 9 and 12 during the period 2011 to 2024. There are still outstanding balances owed on all these conditions. The applicant states that development contributions have been cleared for house 8A (however no letter of confirmation from the planning authority is submitted). Development contributions under conditions 7, 8, 9 and 12 are still owed for the development. Whilst compliance with a planning permission is a matter for the planning authority, on the basis of information available, it appears that whilst the developer has been paying contributions / complying with the condition, the required contributions have not been fully paid and therefore the conditions have not been complied with. The non compliance with conditions is unauthorised development. Therefore, the view can be taken that the proposal to retain the development, which is an unauthorised form of development, would result in the consolidation of this unauthorised development. I note that the matter of enforcement is within the jurisdiction of the planning authority.

7.3.9. The decision of the planning authority

7.3.10. The planning authority has refused permission on the basis that the intent of the proposal which is to avoid liability for development contributions under section 49 would contravene the section 49 supplementary scheme (not in accordance with the scheme to apply a second exemption to a second house) and therefore the proposed development would contravene conditions 11 and 12 of the parent permission D09A/0131.

- 7.3.11. Condition 11 of D09A/0131 states that one of the houses shall be first occupied as a place of permanent residence by the applicant or immediate family member and if the applicant / immediate family member disposes of the property within seven years of the date of final grant, that full section 49 supplementary development contribution scheme for the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme levy for a residential dwelling shall be paid by the applicant. It is stated that Vincent Fitzsimon occupied house 8A after it was built. I am satisfied that the exemption was given to house 8A. This condition has been complied with. I am unclear as to how the granting of permission for the development to retain house 8B would in itself contravene Condition 11 which is essentially an occupancy condition.
- 7.3.12. Condition 12 states that a financial contribution shall be paid towards the cost of the Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme. I am satisfied that this levy is for house 8B. I am unclear as to how the grant of permission for the development to retain house 8B would it itself contravene Condition 12 which is for the payment of a financial contribution. However, I do agree that the proposal to retain the house for the sole purpose to receive an exemption from the need to pay the financial contribution would conflict with condition 12 of D09A/0131 which requires the payment of a financial contribution. Therefore I consider that the development would contravene materially condition 12 attached to the existing permission for development.
- 7.3.13. Considering a grant of permission with new conditions
- 7.3.14. I have considered whether it would be acceptable to consider granting of permission to retain the house subject to a condition 'tying' the permission back to the original parent permission D09A/0131 including the requirement to comply with the condition 7, 8, 9 and 12 of the parent permission. As outstanding balances are owed on these conditions, I consider there would be a need to attach a time restriction for compliance. However, I note the section 48(11) of the Planning and Development Act 2000 (as amended) which states the following: *"Where an appeal is brought to the Board in respect of a refusal to grant permission under this Part, and where the Board decides to grant permission, it shall, where appropriate, apply as a condition to the permission the provisions of the contribution scheme for the time being in force in the area of the proposed development."* I also note section 49(3) which

states that the same shall apply to a supplementary development contribution scheme.

- 7.3.15. I note from the Council's website that a new section 48 Development Contribution Scheme 2023-2028 is now in place and that the section 49 Supplementary Development Contribution Scheme for Glenbamuck District Road Scheme and Surface Water Attenuation Ponds Scheme is in place.
- 7.3.16. The development already has had conditions attached as per the schemes in place at the time of permission. I do not consider that it is appropriate to grant permission and apply conditions for the provisions of the contribution schemes currently in place.
- 7.3.17. Finally, I note the documentary evidence submitted to show that the applicant Sarah Fitzsimon has close connections to the area. The applicant is suggesting that a condition be attached to a grant of permission to restrict occupancy for seven years or else the full s. 49 scheme levy should be paid by the applicant. This is only appropriate in the case where the development qualifies for an exemption. Whilst the development proposal is for a single residential development from an applicant from the local area, the planning history of D09A/0131 cannot be ignored and it is clear that the scheme has already been applied to the development and the house is subject to a levy.
- 7.3.18. Conclusion
- 7.3.19. In conclusion and having regard to the above, I recommend that permission be refused permission on the basis of consolidation of unauthorised development and contravention of condition 12 of PRR09A/0131.

8.0 AA Screening

- 8.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act as amended. The subject site is not located within or adjacent to any European site. The closest European site is the Knocksink Wood Special Area of Conservation located c 2.7km from the site. Having considered the nature, scale and location of the project, I am satisfied that it can be

eliminated from further assessment because it could not have an appreciable effect on a European site. The reason for this conclusion is as follows:

- The nature of the development proposal,
- The location of the development in a serviced urban area, the distance to the Natura 2000 site network and the absence of pathways to any European site.

I consider that the proposed development would not be likely to have a significant effect individually or in-combination with other plans or projects, on a European site and appropriate assessment is therefore not required.

9.0 Recommendation

I recommend that permission be refused, for the reasons and considerations as set out below.

10.0 Reasons and Considerations

1. Having regard to the following:

- the proposal to retain a development 8B Wayside Cottages, which already has the benefit of permission under PRR D09A/0131,
- the details submitted which indicate that the proposal is for the purpose of reducing the financial contributions owed for house 8B Wayside Cottages under conditions 7,8,9 and 12 of PRR09A/0131,
- the details submitted which indicate that conditions 7,8,9 and 12 of PRR09A/0131 have not been fully complied with and therefore it appears to the Board that the proposed development relates to a structure which is

unauthorised and that the proposal to retain the structure would result in consolidation of unauthorised development,

it is inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.

Furthermore, it is considered that the proposal to retain the house for the purpose of seeking an exemption from the requirement to pay a section 49 financial contribution (which on the basis of the information submitted is owed for house 8B) under condition 12 of PRR09A/0131 would contravene materially condition 12 attached to existing permission PRR09A/0131 which requires the payment of a contribution.

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.

Aisling Mac Namara
Planning Inspector

25th April 2025

Form 1

EIA Pre-Screening

An Bord Pleanála	321760		
Case Reference			
Proposed Development	Retention permission for development at this site. The development consists of a semi-detached dormer dwelling and associated site works.		
Summary			
Development Address	8B Wayside Cottages, Kilternan		
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 x	Tick if relevant and proceed to Q2.
		No	Tick if relevant. 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)?			
Yes	x	Class 10(b) of Part 2, Schedule 5 (i) Construction of more than 500 dwelling units (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)	Proceed to Q3.
No			No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required

No	x		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	x		Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	x	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP- 321760
Proposed Development Summary	Retention permission for development at this site. The development consists of a semi-detached dormer dwelling and associated site works.
Development Address	8B Wayside Cottages, Kiltarnan
The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations. This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	- Residential use is compatible with existing uses in this area - Modest size site - Modest domestic scale and intensity of development, - No significant use of natural resources or production of waste, - No significant risk of pollution or nuisance, - No significant risk of accidents / disasters to human health.
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	- Infill domestic residential site within existing built up area, - Local ecology only on site, - No built heritage, - No designated sites at the site.

Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).		Having regard to the following: - Nature and scale of the development, - Lack of significant environmental sensitivities on the site, - Absence of significant in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	x
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	
There is a real likelihood of significant effects on the environment.	EIAR required.	

Inspector: _____ Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)