



An
Bord
Pleanála

Inspector's Report

ABP-305356-19

Development	Permission for retention of an existing stud farm development.
Location	Ballykelly, Monasterevin, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18/1547
Applicant	Laurence Byrne
Type of Application	Permission for Retention
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant	Laurence Byrne
Date of Site Inspection	28.11.2019
Inspector	Anthony Kelly

1.0 Introduction

This report relates to a first-party appeal against Condition No. 9 of the planning authority decision to grant permission for retention of the development. Condition No. 9 relates to the payment of a development contribution of €5,000 in accordance with the Kildare County Council Development Contribution Scheme 2015-2022. Section 48(10)(b) of the Planning & Development Act, 2000 (as amended) states that an appeal may be brought to the Board where an applicant considers that the terms of the development contribution scheme have not been properly applied.

2.0 Site Location and Description

- 2.1. The appeal site is located on the Regional Road (R414) approx. 1.3km north east of Monasterevin. This is a rural area, primarily agricultural in nature, but with some one-off rural housing.
- 2.2. The subject site is accessed off a straight section of the R414. There is an approx. 100 metres long access roadway perpendicular to the R414 which accesses the main bulk of the application site area which includes a 500sqm stable building which is externally finished in rendered block and dark green galvanised material.

3.0 Development Description

- 3.1. The application sought permission for retention for:
 - A splayed entrance
 - A gravel access road from the entrance to the farmyard
 - A 500sqm, 6 metres high general farm building including stables
 - Timber post and rail fencing
 - Hardstanding turning area/yard.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission for the development subject to 9 no. conditions. Condition No. 9 requires the payment of a development contribution as follows;

9. The Applicant/Developer to pay to Kildare County Council the sum of **€5,000** being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

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

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

4.2. Planning Authority Reports

4.2.1. Planning Reports dated 19.02.2019 and 27.08.2019. Following the submission of further information, which included a proposal to provide a sealed precast concrete farm effluent tank to hold soiled water arising from the washing down of the stables, the Planning Officer considered that the development was acceptable in principle and complied with the provisions of the County Development Plan 2017-2023.

4.2.2. The Planning Report, for Condition 9, states "Levies: 500m² stables". The actual calculation of the development contribution is a separate 'Development Contributions Calculations' sheet, also dated 27.08.2019, which cites a €10 per sqm applicable rate, cites part of Section 9 (iv) and also cites Section 9(b)(ii) in the 'Calculations' section and from this gives a calculation of "500sqm X €10 = €5,000.00".

4.2.3. Other Technical Reports

Municipal District Engineer – No objection subject to conditions.

Environmental Health Officer – No objection.

Roads, Transportation and Public Safety – No objection subject to conditions.

Water Services – No objection subject to a condition.

Environment – No objection subject to a condition following an initial further information recommendation.

Enforcement – The Planning Report states that the Enforcement Section had no objection.

4.3. **Prescribed Bodies**

Irish Water – No objection with a standard observation made.

4.4. **Third Party Submissions**

None received.

5.0 **Planning History**

The Planner's Report indicates that there has been no recent relevant planning application on site. It appears the planning application was submitted on foot of enforcement notice UD6976.

6.0 **Policy Context**

6.1. **Kildare County Development Plan 2017-2023**

The site is in an unzoned area. Section 10.4.10 (Rural Enterprises) of the Plan states that such areas shall be deemed to be primarily agricultural. Section 10.5.4 (Policies: Equine Industry) sets out nine policies (Policies EQ 1 – EQ 9) which support the equine industry.

6.2 **Kildare County Council Development Contribution Scheme 2015-2022**

- 6.2.1 Section 8 of the Scheme sets out the contributions for fourteen different development types which are to be applied to all planning permissions. None reference agricultural development of any type. Subsection (xiv) (Miscellaneous Developments), which is development not listed elsewhere in Section 8, will have a per square metre 'built' rate of €27.51.
- 6.2.2 Section 9 refers to 'Modification/Retention Applications' and subsection (b) specifically relates to retention applications. Inter alia, the Scheme states as follows:
- (ii) Development contributions in respect of retention applications will be applied at the rate of "standard" applications for planning permission.
 - (iii) Where development contributions have not previously been paid, applications for retention of development will have contributions applied, based on the proposed floor area of the permitted development...
- 6.2.3 Section 12 (Exempted and Reduced Contributions) (o) (Equine) states that the first 600sqm of non-residential development on any equine landholding will be exempt and the contribution thereafter will be at a rate of €10 per sqm. This exemption is cumulative and will only be granted once on any landholding. Subsection (q) (Retention Permission) states that no exemptions or waivers shall apply to any developments subject to retention permission save where it applies to a previously permitted development e.g. temporary permission.

6.3 **Natural Heritage Designations**

The closest natural heritage designated area is the Grand Canal pNHA approx. 1.2km to the west. The River Barrow and River Nore SAC is approx. 2.3km to the south west.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

The first party makes the following points in their appeal against Condition No. 9 of the planning authority decision to grant permission:

- The appeal does not question the principle of the decision to grant permission and relates solely to the contribution required under Condition 9.
- It is contended that Condition 9 is out of the ambit of the Development Contribution Scheme and the appeal is submitted pursuant to s.48(10)(b) of the Planning & Development Act on the basis the scheme has been improperly applied.
- The Board is requested to limit analysis of this case to financial issues.
- The appeal references Section 12(o) and Section 9(b) of the Scheme.
- The Board's approach in ABP Reg. Ref. PL09.222386 is referenced (a decision made by the Board in February 2007).
- None of the subsections within Section 9(b) authorise the imposition of a development contribution in this instance. Subsections (i), (iii) and (iv) are not considered to be applicable to the subject development.
- Kildare Co. Co. often takes the view that all retention applications are automatically charged regardless of the text of the Scheme. A similar case was addressed by the Board under ABP Reg. Ref. PL09.301704 and the Inspector's Report is reproduced at length.
- Section 9(b)(ii) is relevant which empowers the planning authority to charge a levy which is based on the standard equine rate. 12(o) is also relevant.
- The planning authority erred by failing to apply the exemption for the first 600sqm as provided for in the Scheme. This exemption should also apply to applications for retention.
- The Council is likely to suggest that Section 9 of the Scheme withdraws exemptions on all retention applications but 9(b)(ii) expressly and explicitly states that contributions on submissions of this nature should be applied at the rate of standard applications.
- It is submitted that the Board is statutorily bound to apply the text of a Scheme as it has been adopted and it was not open to the planning authority to impose a charge that was not authorised.
- A nil contribution should be required in this application.

7.2. Planning Authority Response

The planning authority response can be summarised as follows:

- Development contributions have been applied in accordance with the Scheme with specific reference made to Section 12(q) and Section 9(b)(ii).
- As this is a retention application, contributions have been correctly calculated at the residential rate of €50 per sqm.
- Reference to PL09.301704 in the appeal documentation refers to a completely different case where an exemption was applied.

7.3. Further Responses

A further response was received from the appellant on foot of the planning authority's response. This can be summarised as follows;

- Section 12(o) of the Scheme specifically excludes the first 600sqm of non-residential development on any equine landholding. As the subject structure has a floor area of 500sqm it does not attract a levy.
- In relation to PL09.301704 the planning authority response mistakenly infers the Board declined to impose a charge on the basis that the size of that development had reduced relative to the area of a previously permitted proposal. However, the basis for the Board's decision turned on its interpretation of section 9(b)(ii).
- The appellant disagrees with the planning authority position that space which is non-chargeable in the first instance where permission is sought becomes subject of a levy in the case of retention applications.
- Under PL09.301704 the Board concluded that floorspace which is excluded for calculations purposes under the definition in the Scheme does not suddenly become chargeable on an application for retention.

8.0 Assessment

8.1. The development is for permission for retention of a stud farm development including a 500sqm general farm building housing stables. This is a first party appeal in

relation to Condition No. 9 which requires payment of a financial contribution of €5,000.

- 8.2. An appeal may be brought to the Board where an applicant considers that the terms of a Development Contribution Scheme has not been properly applied in respect of any condition laid down by the planning authority. In this appeal the issue to be considered is whether the terms of the scheme have been properly applied.
- 8.3. Section 9(b)(ii) of the Development Contribution Scheme 2015 states that, for retention applications, contributions will be applied at the rate of 'standard' applications i.e. the Scheme makes no distinction between applications for permission or permission for retention. Section 12(o) states, with specific regard to equine structures which it is considered that this structure is, that the first 600sqm of non-residential development on any equine landholding will be exempt and a contribution thereafter will be at a rate of €10 per sqm.
- 8.4 The subject structure has a floor area of 500sqm and, therefore, this is below the 600sqm threshold for contributions to be applicable. The planning authority's calculation for contributions as set out was that the 500sqm were levied at €10 per sqm; €5,000. In its response to the appeal the planning authority notes Subsection (q) (Retention Permission) states that no exemptions or waivers shall apply to any developments subject to retention permission save where it applies to a previously permitted development e.g. temporary permission. Therefore, the planning authority believes that Section 12(q) removes the exemption that appears to be given under the terms of Section 9(b)(ii).
- 8.5 The Development Contribution Scheme is therefore not explicitly clear in so far as it relates to the subject appeal. Section 9(b)(ii) refers specifically to applications for retention and states that contributions will be applied at the rate of 'standard' applications. 'Exemptions and Reduced Contributions' (Section 12) lists a number of such cases and subsection (o) states that the first 600sqm of non-residential development on any equine landholding will be exempt. There is no suggestion in the Planning Report or the response to the appeal that there is other non-residential development on this landholding. If development contributions for retention applications are to be applied at the rate of 'standard' applications, then I consider that the exemption afforded equine floor space is also applicable to an application for

retention. If it is the intention that the 600sqm exemption for equine floor space no longer applies in the case of retention applications then I consider that it must be clearly stated in the Scheme. The issue in the current application is similar to the issue in ABP Reg. Ref. ABP-301704-18 (referred to in the appeal documentation as PL09.301704). Notwithstanding that this related to a domestic extension as opposed to an equine development the Board agreed with the Inspector's recommendation that the Kildare County Council Development Contribution Scheme 2015-2022 does not clearly state that a normal exemption no longer applies in the case of retention applications.

- 8.6 I consider that Section 9(b)(ii) allows for the 600sqm exemption under Section 12(o) to apply to retention applications and Section 12(q), in the context of the ambiguity that arises when read in conjunction with Section 9(b)(ii), does not, on its own, adequately provide for levies to be charged on this application under the terms of the Scheme. In this case I do not consider that the planning authority applied the terms of the contribution scheme as written and I recommend that the planning authority be directed to remove Condition No. 9.

9.0 Recommendation

I recommend that Kildare County Council be directed to remove Condition No. 9 on the grounds that the terms of the Development Contribution Scheme 2015-2022 have not been properly applied.

10.0 Reasons and Considerations

Having regard to:

- (a) The provisions of the Kildare County Council Development Contribution Scheme 2015-2022 which includes, in Section 12(o), an exemption for the first 600sqm of non-residential development on any equine landholding;

(b) Section 9(b)(ii) of the Scheme which states that development contributions in respect of retention applications will be applied at the rate of 'standard' applications for planning permission; and

(c) The floor area of the subject development of 500sqm;

The Board consider that the terms of the Development Contribution Scheme have not been properly applied and the condition shall be omitted.

Anthony Kelly
Planning Inspector

10.12.2019