



An
Bord
Pleanála

Inspector's Report

ABP-305544-19

Development	Construction of (i) Roofed Drafting area (ii) loose shed and concrete yard.
Location	Rathculbin, Kells, Co Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	19506
Applicant(s)	Seamus Griffin.
Type of Application	Retention Permission.
Planning Authority Decision	Grant Retention Permission
Type of Appeal	First Party V Development Contribution only.
Appellant	Seamus Griffin.
Observer(s)	None.
Date of Site Inspection	Not applicable.
Inspector	Susan McHugh

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Rathculbin approx. 3km west of Kells village, Co. Kilkenny.
- 1.2. Access to the site is via a cul-de-sac Local Tertiary Road, LT-10221, which in turn is accessed off the Local Primary Road, LP1022.
- 1.3. There is an existing farmhouse and large farmyard complex on site.

2.0 Proposed Development

- 2.1. The application is for permission to construct:
 - (i) Roofed Drafting area with dairy room, office, plat room, slatted flow channel, collecting yard, extension to slatted tank, meal bin and water storage tank
 - (ii) Loose shed and concrete yard and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The decision of the planning authority was to **grant** planning permission subject to 6 conditions.

Of relevance to this appeal is the following condition;

Condition no. 2

'The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the Local Authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Acts 2000-2018.

The amount of the financial contribution shall be paid upon grant of permission, with the amount of the contribution being the rate of contribution in existence on the date of such grant. In accordance with the current scheme the amount of the contribution

is calculated at €3,462.00 (Three thousand four hundred and sixty two Euro). Any applicable amount is subject to revision with reference to the Wholesale Price Index and to penalty interest in accordance with the terms of Kilkenny County Council's Development Contribution Scheme.

Reason: It is a requirement of the Planning and Development Acts 200-2018 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.'

3.2. Planning Authority Reports

3.2.1. Planning Report

The planning report dated 06/09/2019 is the basis for the Planning Authority decision. It includes;

- Development Contribution Class 10.
- Section 6.2.4 of the County Development Plan 2014-2020 outlines the policy in relation to Agriculture.
- The floor area of the drafting shed extension is 323sqm with a ridge height of 45.9m and is located to the south of the existing farmyard.
- The proposed meal bin is a standalone silo measuring approx. 10m and is located in the north western corner of the proposed drafting shed.
- The proposed loose shed has a stated floor area of 254sqm and a ridge height of 7.2m and is located towards the north east of the farmyard.
- Given the nature, and scale of the proposed development, it is considered acceptable at this location.

3.2.2. Other Technical Reports

Environment Section: No objections subject to conditions.

4.0 Planning History

P.A.Reg.Ref.14/475: Permission **granted** 10/12/2014 for a silage pit, apron and ancillary site works.

The stated floor area of the development was 276sqm, while the stated floor area of existing buildings on site was 2,000sqm. No development contribution conditions were attached.

P.A.Reg.Ref.13/101: Permission **granted** 02/05/2013 to construct a cow cubicle shed with underground slurry storage and ancillary works.

The stated floor area of the proposed agricultural shed was 1,137sqm, with the stated floor area of the existing buildings as 2,000sqm.

Condition no. 2: Section 48 financial contribution of €3,822.00

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative plan is the Kilkenny County Development Plan 2014-2020.

5.2. Kilkenny County Council Development Contribution Scheme 2016-2017

5.2.1. The scheme refers to the basis for determination of contributions, categories of development and rates of charge, change of use applications, exemptions and reductions, and demolition and rebuild/extension of use.

5.2.2. The development contribution scheme outlines that the following contributions are payable with regard to agricultural development excluding horticultural development.

Section	Description of Development	Unit	Rate of Charge
6	Agricultural excluding horticultural Development - €6 per m ² > 500m ² of development area (see limitation)	m ²	€6.00

The limitation in relation to agricultural development is as follows;

‘The contribution shall be payable on all roofed structures, whether open or enclosed. Contributions shall be payable on the cumulative roofed floor area exceeding 500m².’

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal was lodged by ADP Agri Design and Planning Services on behalf of the applicant. It relates to condition no. 2 of the Planning Authority’s decision to grant planning permission which includes the payment of a sum of €3,462.00 in accordance with the Development Contribution Scheme.

6.1.2. The grounds of the appeal can be summarised as;

- A mistake has been made with the rate of development contribution charged.
- Refers to planning files 19/9, 18/524 where no development contribution was charged and 18/550 where a development contribution was only charged on the floor area in excess of 500m². (see attached)
- If this application was to be treated the same as the examples above a contribution of €462 and not €3,462 would apply, calculated as follows;
 - Total floor area 577m² – 500m² free area = 77m²
 - 77m² x €6 = €462
- Even if the cumulative roofed floor area of existing buildings is to be included, the rate is still miscalculated, calculated as follows;
 - Shed 13 and proposed shed B 594m² - 500m² = 94m²

- $94\text{m}^2 \times \text{€}6 = \text{€}564$
- Clarification is required to explain the calculation of the charges applied.

6.2. Planning Authority Response

The Planning Authority in a response dated 11/10/2019 commented as follows;

- Development contributions were calculated under Category 6 of the Kilkenny County Council Development Contribution Scheme 2016-2017.
- The current Scheme in operation by the Council and was adopted on the 20th June 2016 and remains in place until such time as a new scheme is adopted.
- The floor area of the roofed drafting area (323m^2) and loose shed (254m^2) were used as the basis for calculation, i.e. $577\text{m}^2 \times \text{€}6 = \text{€}3,462.00$. As there are already existing roofed agricultural structures $> 500\text{m}^2$, no reduction was allowed, as that scheme states that it is a cumulative roofed area.
- Consider that the terms of the Kilkenny County Council Development Contribution Scheme have been applied correctly when calculating the amount due under Condition No. 2 of P.19/506.
- The appellant makes several references to the county development plan in support of his appeal, which is not relevant in the calculation of development contributions.
- Refute the argument that the Council have changed the charging rate.
- The other buildings in the yard referred to by the appellant and which already have planning permission, were granted prior to the current scheme coming into operation.
- Note that the applicant did received a 500m^2 allowance in respect of P.13/101, copy of calculation sheet attached.

6.3. Applicant Response

A response was lodged by ADP Agri Design and Planning Services on behalf of the applicant. It can be summarised as follows;

- The examples given are from planning files since the adoption of the Development Contribution Scheme 2016-2017.
- Need for consistency in the calculation of development contributions.

7.0 Assessment

- 7.1.1. This is an appeal in relation to the application of a development contribution only. The Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.
- 7.1.2. An appeal may be brought to the Board where an applicant for permission under section 34 considers the terms of the Development Contribution Scheme have 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.
- 7.1.3. The current proposal is for permission to construct;
- (i) Roofed drafting area with dairy room, office, plat room, slatted flow channel, collecting yard, extension to slatted tank, Meal bin and water storage tank, and
 - (ii) Loose shed and concrete yard and all associated site works.
- 7.1.4. The stated floor area of the roofed drafting area is 323sqm and the loose shed is 254sqm (total 577sqm).
- 7.1.5. The calculation sheet submitted by the planning authority indicates that the levy was calculated having regard to Class 6 of the Kilkenny County Council Contribution Scheme. Class 6 refers to agricultural development, excluding horticultural development where a charge of €6.00 per sqm. greater than 500sqm of development area applies.
- 7.1.6. The calculation of the levy of €3,462.00 was based on the floor area of the roofed drafting area and the loose shed which combined gives a total floor area of 577sqm (577sqm x €6.00 = €3,462.00).

- 7.1.7. The Development Contribution Scheme permits an allowance of 500sqm, but the calculation sheet indicates no fee reduction applies, as the floor area is greater than 500sqm as indicated on Drawing No. 03 date stamped 19th July 2019.
- 7.1.8. The applicant submits that an error has been made in relation to the rate of development contribution charged, and that clarification is required to explain the calculation of the charges applied.
- 7.1.9. In support of this assertion the applicant presents two alternative calculations of the levy, accompanied by a revised Proposed Site Layout Drawing No.2 as part of the appeal.
- 7.1.10. The first calculation of €462 is based on an allowance of 500m² to be offset against the total floor area of 577m², thereby requiring a contribution of €462 ($577\text{m}^2 - 500\text{m}^2 = 77\text{m}^2 \times \text{€}6 = \text{€}462$).
- 7.1.11. The second calculation of €564 is based on an allowance of 500m² to be offset against the cumulative roofed floor area of existing buildings. In this regard revised Proposed Site Layout Drawing No.2 annotates the total floor area of the existing Slatted Shed 13 as 340m² combined with the proposed loose shed B 254m² as 594m². A total floor area of $594\text{m}^2 - 500\text{m}^2 = 94\text{m}^2$, thereby requiring a contribution of €564 ($94\text{m}^2 \times \text{€}6 = \text{€}564$.)
- 7.1.12. I have examined the Proposed Site Layout Drawing No. 02 date stamped 19th July 2019 which identifies the proposed buildings shown in green to include;
- Drafting Shed A as an extension to the Milking Parlour 11, and
 - Loose Shed B as an extension to Slatted Shed 13.
- 7.1.13. The Concrete yard A is shown in yellow and annotated as being 579m². This concrete yard connects both shed A and B.
- 7.1.14. There are two separate Plan and Section Drawings No. 03 date stamped 19th July 2019 each of which relate to proposed shed A and B with stated floor areas of 323m² and 254m² respectively. I am satisfied therefore, that the total floor area of the proposed sheds of 577m² is correct.
- 7.1.15. In terms of the cumulative floor area I note from the Proposed Site Layout Drawing No. 02 that the other existing sheds are numbered but the floor areas are not given.

Irrespective I do not accept the logic of as presented by the applicant of taking the cumulative floor area of the existing slatted shed and proposed loose shed in isolation. In terms of the cumulative floor area this would apply to all the existing sheds and proposed sheds.

- 7.1.16. In this regard, and in particular to the allowance of 500m² as provided for under the Development Contribution Scheme the planning authority note in their response to the first party appeal that the applicant did receive a 500m² allowance in respect of a previous planning permission under P.A. Reg.Ref.13/101.
- 7.1.17. I have had regard to the calculation sheet provided by the planning authority in relation to this previous permission, and condition no. 2 which set out the section 48 development contribution in accordance with the terms of Kilkenny County Council's Development Contribution Scheme.
- 7.1.18. I am satisfied that taking account of the existing and permitted sheds on site, and as the applicant has previously availed of the 500m² allowance provided under the Development Contribution Scheme, that in the current case the applicant is not entitled to avail of the allowance in respect of the proposed floor area.
- 7.1.19. The applicant submits that there is a need for consistency in the calculation of development contributions, by the planning authority. In support of the appeal the applicant makes reference to a number of other recent applications where either no development contributions were charged or only on the floor area in excess of 500 m².
- 7.1.20. I have had regard to the cases to which reference is made in the grounds of appeal and the calculation sheets submitted with the appeal, however in respect of the subject appeal I am satisfied that the Development Contribution Scheme has been correctly applied.
- 7.1.21. I note and concur with the planning authority that the reference by the applicant in the appeal to the County Development Plan is in error and should instead refer to the Development Contribution Scheme.
- 7.1.22. I am satisfied, therefore, that the Development Contribution Scheme **has** been correctly applied.

8.0 Recommendation

8.1. I recommend that condition no. 2 should remain as stated by the planning authority.

9.0 Reasons and Considerations

Having regard to

- (a) The submissions made in this appeal
- (b) The provisions of the Kilkenny County Council Development Contribution Scheme 2016-2017 and in particular section 6 of the scheme.

The Board considers that condition no. 2 has been correctly applied and determined in accordance with the Kilkenny County Council Development Contribution Scheme 2016-2017.

Susan McHugh
Senior Planning Inspector

20th March 2020