



An
Bord
Pleanála

Inspector's Report ABP-306827-20

Question	Consists of planning retention for a 666m ² agricultural pack house, packing shed and fridge unit for which planning permission has been granted for a 502m ² pack house and machinery store ref no F13A/0015 with the curtilage of a protected cottage.
Location	Drishoge, Oldtown, Co Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F18A/0069
Applicant for Declaration	Millview Farm
Referral Type	Point of Detail Referral
Referred by	Millview Farm
Owner/ Occupier	Millview Farm
Observer(s)	None
Date of Site Inspection	Not Required
Inspector	Angela Brereton

1.0 Introduction

- 1.1. This case is a referral under section 34(5) of the Planning and Development Act 2000, as amended. It was received by the Board from Millview Farm and concerns a point of detail relative to the payment of the development contributions as per Condition 4 which was attached to a grant of planning permission issued by An Bord Pleánála Ref. ABP-301557-18 and Fingal County Council (Reg.Ref.F18A/0069).

2.0 Site Location and Description

- 2.1. The appeal site is located in the Drishoge approximately 2 kilometres to the south-west of Ballyboughal and 2 kilometres to the south-east of Oldtown, both of which are small villages in north County Fingal. The site is approximately 8 kilometres north-west of Swords.
- 2.2. The site is located on the western side of a narrow country road. It has a stated area of 4.25 hectares. A small laneway links the subject site with the access road which is referred to in the planner's report as "Drishoge Lane". The laneway provides access to a number of agricultural structures and a small single-storey detached cottage which is located on the northern side of the laneway and is listed on the Record of Protected Structures. Adjacent the protected structure a gateway provides access to a number of sheds which are located within the subject site and are set around a concrete yard. The largest of these sheds is located to the rear and forms the subject of the current application for retention. It occupies an area of 666 square metres and comprises of a kingspan metal shed with two pitched roofs and two large roller shutter entrances on the front (northern elevation). The shed is currently used for the packing of vegetables. The wider area surrounding the site accommodates intensive market gardening agriculture and the subject shed is used for the preparation and packing of these vegetables. The shed rises to a maximum ridge height of just under 7 metres. It is the largest building on the subject site.
- 2.3. Note this description is taken from the Inspector's Report for the parent permission Ref. ABP-301557-18.

3.0 Background

- 3.1. Retention Permission was granted by the Council (Reg.Ref.F18/0069) and subsequently by the Board (Ref. ABP-301557-18 refers) for Retention of a 666sq.m agricultural pack house, packing shed and fridge unit for which planning permission has been granted for a 502sq.m pack house and machinery store granted under planning Reg.Ref.no. F13A/0015 within the curtilage of a protected cottage, all at Drishoge, Oldtown, County Dublin.
- 3.2. Condition no.4 of the Board's permission provides for a development contribution (unspecified amount) in accordance with the Council's Development Contributions Scheme made under Section 48 of the Planning and Development Act 2000 (as amended).
- 3.3. Condition no.4 of the Council's permission (Reg.Ref. F18/0069) is of note relevant to the current Point of Detail Referral and is as follows:

The developer shall pay the sum of €44,695 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards the expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefitting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County Council made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefitting development in the area of the Planning Authority and which is provided, or which is intended to be provided on or on behalf of the Local Authority.

- 3.4. Also, of note is Reg.Ref. F13A/0015 where permission was granted by the Council for the demolition of existing timber agricultural shed within the curtilage of a protected structure to be replaced with extended – steel packing shed and machinery store with all associated infrastructural works.

4.0 Referral

4.1. Referrers Case

4.2. This has been submitted by Eddie Gribbin Architecture and Production Design on behalf of Millview Farm and can be summarised as follows:

- They have included a letter of dispute as evidence from the Bonds and Contributions section of the Planning and Strategic Infrastructure Department, which outlines the date of various correspondence and reminder notices from the Council and under Section 34 of the Planning and Development Act, as amended and are now referring this matter to the Board for determination.
- They consider that the development contribution of €44,695 as per Condition no.4 of Reg.Ref.18A/0069, is excessive considering that the existing grant of permission (Reg.Ref. F13A/0015) of the steel packing shed and machinery store had no financial contributions to the council.
- The present contribution seems to be based on the overall size of 666sq.m of the development, but fails to take into account the existing granted permission of 502sq.m or the timber shed of 208sq.m which it has replaced.
- Furthermore, adjacent to this timber shed was another type 4 shed of 76sq.m which had been demolished prior to the applicants purchasing the farm. This building is clearly identifiable on the orthographic maps c. 2000 as shown on the OS website.
- These factors have not been considered by the Council and the applicants are at a loss as to why they have been penalised so heavily.
- Had it not been for the protected cottage this development would with a minor modification have been exempted development and they ask the Board to review this contribution.
- The applicant contacted the Council in an attempt to find out how such a decision to penalise Millview Farm in such a manner was reached and it appears that these contributions are decided upon at prescribed meetings by Local Councillors. They queried what criteria they use to establish these

contribution levels and provide that the Council was unable to assist in this matter.

- They query why the Local Councillors chose not to set contributions for the original planning permission of 502sq.m yet demand €44,695 for the retention of an excess of 164sq.m.
- Millview Farm is a small family owned farm which processes and packages produce for local supermarkets and is simply not in any position to incur the cost of these contributions.
- To put it in perspective they are the equivalent to the cost of the construction of the packing shed itself.
- They are concerned the cost of these contributions are excessive. They also note that the adjoining farm has a similarly sized shed erected without permission and wonder why they have been unfairly subjected to the most punitive treatment.
- They enclose a letter dated 15th of January 2020 from the Planning and Strategic Infrastructure Department of the Council relative to the dispute concerning condition no. 4 of planning permission ABP-301557-18/ F18A/0069.

5.0 Planning Authority Response

5.1. The Planning Authority Response can be summarised as follows:

- All planning applications are assessed in accordance with the terms of the Fingal County Council Development Contributions Scheme 2016-2020 (as amended).
- Condition no.4 of ABP-301557-18 requires the payment of a financial contribution in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended.
- They note that Development Contributions were calculated at the commercial rate i.e.

- Area Proposed for Retention 666sq.m
- Area to be levied 666sq.m
- 666sq.m x €67.11 = €7,563
- They note that under sub-section 10(ii) of the Council's Development Contributions Scheme does not allow for Exemptions for retention of development.
- The Planning Authority requests that Condition no.4 as included in the Board's determination be upheld.

5.2. Referrer's Response

5.3. Eddie Gribbin, Architecture and Production Design's response on behalf of Millview Farm includes the following:

- Their client does not object to paying a contribution, but the method of calculation as set out in Condition no. 4 of ABP-301557-18 fails to take into consideration the existing planning permission for 502sq.m or the fact that this structure replaces existing structures as outlined in the referral dated 28th of February 2020.
- They would agree to the contribution of €7,563 as set out by the Council in their correspondence dated 23rd of March, 2020 and await the Board's determination on this matter.

6.0 Policy Context

6.1. Fingal County Development Plan 2017-2023

Chapter 7 refers to Movement and Infrastructure. Section 7.1 includes reference to Section 48 and 49 Levies and notes: *Financial contributions will be sought as part of the development management process for certain development under the provisions of Section 48 and Section 49 of the Planning and Development Act, 2000 (as amended)*. Section 48 (general) schemes relate to proposed provision of public infrastructure and facilities which benefit development within the area of the Planning Authority and are applied as a general levy on development.

Objective MT44 seeks to: *Utilise, where appropriate, the provisions of Section 48 and 49 of the Planning and Development Act, 2000 (as amended) to generate financial contributions towards the capital costs of providing local and strategic transport infrastructure, services or projects in the County. This will be done in conjunction with adjoining Local Authorities where appropriate.*

6.2. Fingal County Council Development Contributions Scheme 2016-2020

Regard is had to the Section 48 General Contributions Scheme and to the public infrastructure and facilities included and basis for determination of contribution. Section 9 provides the Levels of Contributions for Residential and Non-residential. It is noted that this has been increased by 7.2% in accordance with the Tender Price Index from the 1st of January 2019 to Residential €92.13 per sq.m and Non-residential €71.94.

Section 10 provides the Exemptions and Reductions. Regard is had Further to these in the Assessment below.

The following Sections are also of note:

Payment of Contribution

11. *Conditions requiring payment of the contributions provided for in the Scheme will be imposed in all decisions to grant planning permissions made following the making of the Scheme by the Council. The operative date of the scheme is from 1st January 2016.*

12. *The contributions under the Scheme shall be payable prior to commencement of development or as otherwise agreed by the Council. Contributions shall be payable at the index adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Note 1 to the table at Article 9 above.*

15. *An appeal may be brought to the Board where the applicant for planning permission under Section 34 of the Act considers that the terms of the Scheme have not been properly applied in respect of any conditions laid down by the Council.*

Review of the Scheme

16. *The Scheme may be reviewed from time to time by the Council having regard to circumstances prevailing at the time. After a review of the Scheme, a new Scheme may be made. The Scheme is effective from 1 January 2016 until 31 December 2020, unless a New Scheme is made in the interim. The duration of the Scheme may be extended beyond 2020 if considered appropriate subject to the approval of the elected members.*

Effective Date

18. *This Scheme is effective in respect of permissions granted from 1st of January 2016.*

6.3. **Development Contributions - Guidelines for Planning Authorities 2013**

The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in performance of their functions under the Planning Acts.

The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed. Development contributions have enabled much essential public infrastructure to be funded since 2000 in combination with other sources of, mainly exchequer, funding. Discussion is had of the concept of the General Development Scheme, Special Contributions and Supplementary Contributions Schemes.

Chapter 2 provides Key Messages for Supporting Economic Development. This includes: *However, no exemption or waiver should apply to any applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications.*

The practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Section 34(5) provides: *The conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and F262 [the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination].*

Section 48 of the Planning and Development Act 2000, (as amended) details the methodology and guiding principles by which Development Contributions Schemes should be arrived at. This includes:

Section 48(1) - *A planning authority may, when granting a permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).*

Section 48(2)(a) - *Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.*

(b) *A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.*

(c) *A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.*

Section 48(3)(a) - *A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.*

(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

8.0 Assessment

8.1. Regard to Point of Detail Referral

- 8.1.1. Prior to addressing the issues arising, I note that this case is a point of detail referral under section 34(5) of the Planning and Development Act 2000, as amended, and not an appeal under section 48(10). The wording of S.48(10)(b) of the 2000 Act states that *'an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the Planning authority'*. The wording of this section is restrictive in so far as it limits consideration of such appeals to the application of the terms of the adopted development contribution scheme and the powers of the Board to consider other matters.
- 8.1.2. The point of detail arising from condition no. 4 of permission Reg.Ref. F18A/0069 and relative to condition no. 4 of Ref. ABP-301557-18. This relates to the application of the terms of the development contribution scheme, upon which the referrer and the planning authority did not reach agreement. In default of such agreement, the matter of the proper application of the terms of the scheme has therefore been referred to the Board for determination. Accordingly, the Board, in this case, is limited solely to determining the issues arising in the of the point of detail and relative to the payment of financial contribution condition no.4.

8.2. Background issues

- 8.2.1. Regard has been had to the Background and previous planning history of the site. The Planner's Report relative to ABP-301557-18 noted that a number of sheds are located within the subject site. The largest of these sheds (666sq.m) was then the subject of the retention application. It was noted that this shed was used for the packing of vegetables. The wider area surrounding the site accommodates intensive market gardening agriculture and the subject site is used for the preparation and packing of these vegetables.
- 8.2.2. The Referrer considers that condition no. 4 fails to take into account the existing permitted of 502sq.m or the timber shed of 208sq.m it replaced. Furthermore, the adjacent timber shed of 76sq.m which was demolished prior to the Referrer taking over the farm. Regard is had to the plans submitted relative to Reg.Ref. F13A/0015 which show the location of these sheds. This application referred to the demolition of the existing agricultural shed (to be replaced and extended) and the construction of a 502sq.m, steel packing shed and machinery store. As noted in the Planner's Report it was proposed to replace the existing timber shed of 208sq.m with the 502sq.m shed. It is noted that the Council's permission in that case did not include for a development contribution. No discussion was then had of this issue.
- 8.2.3. The Planner's Report relative to the retention application Reg.Ref. F18A/0069 notes that permission had been granted in Reg.Ref. F13A/0015 for a 502sqm pack house and machinery store. The structure as constructed has a floor area 164sq.m in excess of what was previously permitted. Details are given of the breakdown of uses within the 666sq.m unit which was constructed in a broadly similar location as the 502sq.m shed previously permitted. Therefore, the structure as constructed has a floor area of 164sq.m in excess of that which was permitted under Reg.Ref. F13A/0015. The Planning and Strategic Infrastructure's Response to the Third Party Grounds of Appeal relative to Reg.Ref.F18A/0069/ABP-301557-18 provided that in the event of the P.A's decision is upheld, that Condition no.4 (development contribution) be included in the Board's determination.
- 8.2.4. The Third Party appeal then had regard to the locational context within the curtilage of a Protected Structure and concerns included relative to the scale, nature and use and access to the shed, rather than specifically referring to the development

contribution condition. Section 7.2 of the Inspector's Report noted that the Applicant's response argued that the financial contribution levied by Fingal County Council in this instance (€44,695) was excessive and is based on the overall size of the development failing to take into account the existing structure on site.

- 8.2.5. Section 9.5.3 of the Inspector's Report did not consider it appropriate that the Board deal with this issue by way of a first party's response to the grounds of appeal i.e. *If the First Party had concerns in respect of the financial contribution condition applied, it should have raised this issue by way of a valid first party appeal against the condition in question.* Condition no.4 of the Inspector's Report for ABP-301557-18 included the €44,695 Development Contribution levy as per the Council's condition no.4. However it is noted that the Board's decision provided for an unspecified development contribution to be levied under the terms of the Council's Development Contributions Scheme, made in accordance with Section 48 of the Planning and Development Act 2000 (as amended).

8.3. Application of the Fingal County Development Contributions Scheme

- 8.3.1. As noted above the 2016-2020 Scheme is the applicable Scheme relative to the subject application. Regard is also had to the Report of the Council's Planning and Strategic Infrastructure Department dated 19th of October 2019, which provides a breakdown relevant to the calculation of condition no. 4 of the Council's permission relevant to Fingal Council's Development Contributions Scheme 2016-2020 (as amended).

i.e: 666sq.m x €67.11 = €44,695

This also notes that a lenient phasing arrangement can be agreed in accordance with their Phasing Policy i.e Lump Sum of 25% - €11,173.75, 12 monthly payments of €2,793.44.

- 8.3.2. Section 10 of the Scheme provides the Exemptions and Reductions 10(i) provides a number of categories of development (a) – (r) will be exempted from the requirement to pay development contributions under the scheme or subject to reductions. This includes category (i) i.e: *Agricultural Buildings, glasshouses and poly tunnels are exempt. Buildings associated with the processing, distribution, supply or sale of fruit, vegetables, food or any agri or market gardening products are subject to a 50% reduction in the commercial rate.*

Section 10(ii) provides that for clarification purposes:

(a) *Exemptions and reductions shall not apply to permissions for retention of development.*

8.3.3. Section 9 of the Scheme provides the Level of Calculation and per sq.m of Industrial/Commercial class of Development this is given (2016 rates) as €59.46 (x 666sq.m = €36,603).

It is provided that as from the 1st of January 2020 the Development Contribution Rates will increase by 6.6% in accordance with the Tender Price Index. The rates effective from this date are: €76.69per sq.m. (non-residential development).

Therefore, it is noted that there is a variation in the amount levied depending on the Tender Price Index. As noted, relative to the Council's condition no.4 of Reg.Ref. F18A/0069 the amount levied for the contribution was €44,695.

8.3.4. It is of note then that the Council's response to the current Point of Detail Referral provides that they noted that Development Contributions were calculated at the commercial rate i.e.

- Area Proposed for Retention 666sq.m
- Area to be levied 666sq.m
- 666sq.m x €67.11 = €7,563

8.3.5. The Referrer notes concerns about the method of calculation as set out in condition no.4 of ABP-301557/Reg.Ref.F18A/0069 and that it doesn't take into consideration the existing planning permission for 502sq.m or the fact that this structure replaces existing structures as outlined in their Referral. They however would agree to the above reduced amount.

8.4. **Consideration of Level of Contribution**

8.4.1. I am concerned that the amount referred to in the Council's response appears to be in error and has not been justified as being in accordance with the Fingal County Council Development Contributions Scheme 2016-2020 (as amended). It is clear that 666sq.m x €67.11 = €44,695 rather than €7,563.

- 8.4.2. I would consider that having regard to the Scheme that the inclusion of a development contribution is justified particularly taking into account that Reg.Ref.13A/0015 did not provide for a contribution. If it had that could be taken into account and the additional 164sq.m levied in this case to avoid double charging. Therefore, it does fall that the contribution is relative to 666sq.m. As noted above as it is a retention application the Exemptions and Reductions referred to in Section 10 of the Council's Scheme do not apply. Therefore, it would appear that the levy of €44,695 as justified by the Council would apply.
- 8.4.3. However the Board may take the view that had a development contribution been levied in this case that took account of the 502sq.m previously permitted that as per Section 10(i) (i) *Buildings associated with the processing, distribution, supply or sale of fruit, vegetables, food or any agri or market gardening products are subject to a 50% reduction in the commercial rate*, would apply. Therefore, then only the additional 164sq.m would be levied at the full rate. This would allow for a reduction in the full amount of development contribution i.e. 502sq.m x €67.11 = €33,689 (50% = €16,845) and then levy the additional 164sq.m at the full rate i.e. 164sq.m x €67.11 = €11,006. This would result in a total contribution of €27,851.
- 8.4.4. I would recommend that in view of the planning history of the site as outlined relative to the previously permitted development in Reg.Ref. F13A/0015 that the levy as per condition no.4 be reduced to this amount.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS by order dated 23rd of October 2018, retention permission, subject to conditions was granted by An Bord Pleánala, reference ABP - 301557-18. This upheld the decision of Fingal County Council permission register reference F18A/0069 for retention of a 666 square metres agricultural pack house, packing shed and fridge unit for which planning permission has been granted for a 502square metres pack house and machinery store granted under planning register reference number

F13A/00015 within the curtilage of a protected cottage, all at Drishoge, Oldtown, County Dublin.

AND WHEREAS Condition no.4 of the said permission required the applicant to pay a development contribution and as required by Fingal County Council of €44,695 being the appropriate contribution to be applied to this development in accordance with the Fingal County Council Development Contributions Scheme of 2016 – 2020 (as amended) as adopted by Fingal County Council from the 1st of January 2016.

AND WHEREAS the developer and the planning authority failed to agree on the amount of the contribution to be paid pursuant to condition 4, and on application of the terms of the relevant Development Contributions Scheme in compliance with the terms of this condition and the matter was referred by Eddie Gribbin, Architecture and Production Design on behalf of Millview Farm on the 28th day of February 2020.

NOW THEREFORE An Bord Pleánála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and for the Reasons and Considerations set out below, hereby determines that the amount payable under condition no.4 of Register Reference F18A/0069 (ABP-301557-18) is reduced to €27,851 in respect of public infrastructure benefitting the development 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, as amended.

Reasons and Considerations

Having regard to:

(a) Sections 34(5) and 48 of the Planning and Development Act 2000, as amended,

(b) The Fingal County Council Development Contributions Scheme 2016-2020,

(c) The submissions on file, and the planning history of the site,

The Board considered it appropriate that the Development Contribution be amended so that it be reduced to take into account that area previously granted permission in register reference F13A/0015 in their response to this point of detail referral.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations and observations received by it in accordance with statutory provisions.

Angela Brereton
Planning Inspector

8th of July 2020