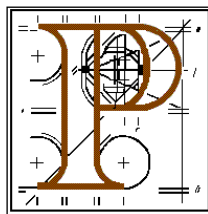


An Bord Pleanála



Inspector's Report

Development: Permission to construct 3 no. poultry houses and 2 no. egg/general purpose stores together with all ancillary structures and all associated site works at Glebe, Ardee, County Louth..

Planning Application

Planning Authority: Louth County Council
Planning Authority Reg. Ref.: 15/233
Applicant: Gerry McGuinness
Type of Application: Permission
Planning Authority Decision: Grant

Planning Appeal

Appellant(s): Gerry McGuinness
Type of Appeal: 1st Party
Observers: None
Date of Site Inspection: N/A
Inspector: Fiona Fair
Appendices: Louth County Council, updated Jan 2014, Development Contribution Scheme 2010 - 2014

1.0 SITE DESCRIPTION

The rectangular shaped appeal site (stated 1.4 ha) is located at the northern edge of the town of Ardee in County Louth. The N2 bounds the site to the west and the site is accessed off the R171 regional route (Ardee to Talanstown) from the east. A large commercial animal feed supply business with existing large silos and buildings is located to the north of the appeal site. The lands to the south are in agricultural use and the applicant's family domestic dwelling is located to the southeast. Located further to the south is a Toyota car showroom business.

The appeal site is set back from the (R171) public road and is accessed by way of an existing agricultural entrance and agricultural track. The land which is relatively flat is currently in agricultural use as grazing and is bounded by mature hedgerows.

2.0 PROPOSAL:

Planning Permission sought for:

- 3 no poultry houses
- 2 no egg/ general purpose stores
- All ancillary structures (to include meal storage bin(s) & soiled water tanks)
- All associated site works

The planning application form indicates: The gross floor area of the proposed works is 4,296 sq. m

3.0 PLANNING AUTHORITY'S DECISION

Subsequent to further information being requested Louth County Council granted full planning permission subject to 10 no. conditions.

Given the nature of the subject appeal Condition 6 is of specific relevance, it states: *'In accordance with the Council's Development Contribution Scheme 2010 - 2014 made under the provisions of section 48 of the Planning and Development Act 2000, the developer shall pay a contribution to the Planning Authority in the amount specified below (or such increased amount in accordance with the changes on an annual basis to the Wholesale Price Index for building and construction published by the Central Statistics Office) towards the costs already incurred or to be incurred by the Planning Authority on the provision of the public infrastructure and facilities listed below that will benefit development in the area of the Planning Authority. Unless otherwise agreed in writing with the Planning Authority before development is commenced, the said contribution shall be paid in full before such commencement-*

- a. Road Improvement - 4,296 sq. m x 10.62 = €45,623.52
b. Community, recreational and amenity - 4,296 sq. m x 0.94 = €4,038.24
Total = €49,661.76

(Forty nine thousand, six hundred and sixty one euro and seventy six cent)

Reason: *The provision of such public infrastructure and facilities in the area of the Planning Authority has benefited or will benefit the proposed development and it is considered reasonable that the developer should contribute towards the cost of their provision'.*

4.0 TECHNICAL REPORTS

4.1 Planners report:

The report indicates that the planning authority is satisfied that the proposal is in compliance with the County Development Plan policies.

4.2 Infrastructure Planning Report:

No objection subject to condition

4.3 Environment Department:

No objection to the proposal subject to conditions.

5.0 APPEAL GROUNDS

5.1 A first party appeal has been lodged by CLW Environmental Planners Ltd. on behalf of Mr. Gerry McGuinness. This is a first party appeal against financial contribution Condition No. 6, only, attached to the decision to grant permission (Reg. Ref.15/233), under section 48 (10) (b) of the Planning and Development Act 2000. The grounds of appeal are summarised as follows:

- The Louth County Council Development Contribution Scheme (LCCDCS) has not been properly applied in this instance.
- Under condition 6 as applied the proposed poultry house and store has had the rates shown for 'piggery, Cattle shed' at €10.62 for Roads contribution and €0.94 per sq. m for recreational, community facilities & amenities applied.
- The development is a 'poultry shed and associated store' and not either a 'Piggery, Cattle shed'
- The only category listed in the DCS which poultry house can be considered under is a '*farm building, hay shed*'. thus the lower rate of contribution for a '*farm building*' should apply in this case.
- The correct calculation should be as follows:
 - a. Road Improvement:
 $4,296 \text{ sq. m} \times 3.19 = \text{€}13,704.24$
 - b. Community, recreational and amenity:
 $4,296 \text{ sq. m} \times 0.28 = \text{€}1,202.88$

Total €14,907.12
- Regard should be had to precedent set by Reg. Ref. 10/166 under which planning permission was granted for a poultry house and associated facilities and the development contribution rate applied was that for 'farm building, hayshed'.

- It is acknowledged that a development contribution is applicable however the applicant request that the Board amend the contribution applied in this instance.
- The proposed development of a poultry house and ancillary store does not fall under the levy titled 'piggery, cattle shed'. Rather it can only fall under the levy class titled 'Farm Building, Hayshed' and it is this development contribution amount which should be applied.
- Appeal accompanied with a copy of the notification of decision to grant permission Reg. Ref. 15/233
- Copy of Louth County Council DCS 2010 - 2014

6.0 RESPONSES

6.1 Planning Authority response summarised as follows:

- The sheds the subject of the proposed development are clearly to house live stock i.e. chickens / poultry which is comparable to sheds to house pigs or cattle which are also livestock.
- The levy for a farm building - the lesser levy is applied to general 'farm buildings, hay shed' which are to provide ancillary storage facilities on farms for such items as animal feed, bedding, machinery etc.
- It is considered that the traffic generated in relation to livestock which includes transport to and from the site, feeding supplies, husbandry etc is greater than for that of farm storage.
- The p.a. is conscious that the lesser levy was applied in the case of Reg. Ref. 10/66 for not a dissimilar proposal. However it is submitted that in hindsight this was incorrectly applied.
- The p.a. reassessed the development contribution (€49,661.76) applied by way of condition 6 attached to Reg. Ref. 15/233 and a lesser contribution as follows is deemed applicable taking into account storage elements of the proposal. It is submitted that the correct calculation should be as follows:
 - 3 no. poultry houses floor area 1,398 sq. m Total 4,194 sq. m @ piggery / cattle shed rate

a. Road Improvement:

$$4,194 \text{ sq. m} \times 10.62 = \text{€}44,540.28$$

b. Community, recreational and amenity:

$$4,194 \text{ sq. m} \times 0.94 = \text{€}3,942.36$$

$$\text{Total } \text{€}48,482.64$$

- 2 no. egg / general purpose stores - floor area 90 sq. m; plus 3 no. meal bins 4.71 sq. m each (total 14.13 sq. m) and waste shavings 12 sq. m - accumulated total of storage facilities 116.13 sq. m @ farm building rate:

a. Road Improvement:

$$116.13 \text{ sq. m} \times 3.19 = \text{€}370.45$$

b. Community, recreational and amenity:

$$116.13 \text{ sq. m} \times 0.28 = \text{€}32.52$$

$$\text{Total } \text{€}402.97$$

Total ~~€~~48.885.61

6.2 A response to the planning authority response has been lodged by CLW Environmental Planners Ltd. on behalf of Mr. Gerry McGuinness. It is summarised as follows:

- The applicant agrees that the houses are to house livestock (poultry) this has never been in contention.
- In line with the Louth DCS as adopted by Louth County Council the proposed development is categorically not a pig house and / or a cattle house. These are the only two types of livestock house specifically provided for in the DCS.
- It is up to Louth County Council to put any changes proposed to the DCS before the elected members of the Council for approval if they deem this appropriate.
- If part of the DCS was intended to read livestock house, it would have been detailed as such
- If Louth County Council contend that farm buildings are for storage purposes only there is then no category / class within the development contribution scheme for poultry houses and thus It follows that there

should be zero development charge in relation to this portion of the development.

- Based upon Reg. Ref. 10/66 the applicant had felt that the appropriate Development Contribution had been levied.

7.0 PLANNING HISTORY

7.1 Reg. Ref. 81/57 Permission sought on the subject lands for a grain fertiliser and spray store. While the planners report indicates that this was refused from an online web search it appears to have been granted permission as a '*decision grant date*' is given.

Lands a short distance to the south of the appeal site.

7.2 Reg. Ref. 15/5 / PL 15.245128 Permission Refused on appeal for alterations to car showroom and offices, incorporation of a gymnasium, modification of vehicle test centre, revisions to approved petrol station, change of use of existing building to shop, café/restaurant, offices/meeting rooms, and the development of the forecourt area at lands at the junction of the N2 and the R171 Tallanstown Road, The Glebe, Ardee, Co. Louth

8.0 NATIONAL POLICY:

PLANNING AND DEVELOPMENT ACT 2000, Section 48 Development Contributions.

Section 48 (13) (a) of the Planning and Development Act 2000, as amended, states:

Notwithstanding sections 37 and 139, where an appeal received by the Board after the commencement of this section relates solely to a condition dealing with a special contribution, and no appeal is brought by any other person under [section 37](#) of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance, but shall determine only the matters under appeal.

9.0 LOCAL POLICY

9.1 Louth County Development Plan 2015 – 2021

9.2 The Louth County Council Updated Development Contribution Scheme (LCCDCS) 2010 - 2014, updated in January 2014, attached as appendix to this report.

10.0 ASSESSMENT

I highlight that the Planning and Development Act 2000, as amended, stipulates that no appeal shall lie to An Bord Pleanála in relation to a condition requiring a Development Contribution to be paid in accordance with a Development Contribution Scheme. However, an appeal may be brought to the Board where the applicant for planning permission considers that the terms of the Scheme have not been properly applied in respect of any condition laid down by the Planning Authority.

The current appeal is made under Section 48(10)(b) of the Planning and Development Act, 2000 – 2012. Consequently, the only question to be addressed is whether the terms of the DCS have been properly applied by the planning authority in its imposition of condition 6, on the draft permission granted to the current application (Reg. Ref. 15/233). Details of Condition 6 are set out above in section 3 'Planning Authority's Decision' of this report. This condition requires that the applicant pay a development contribution of €49,661.76, a sum which reflects the 'Piggery, Cattle Shed' category of development set out in Appendix B (as amended) of the LCCDCS 2010 - 2014 which sets out a charge of €10.62 per sq. m gross area for Roads Contribution and €0.94 per sq. m gross area for recreational and amenities contribution.

It is noted that the subject development will not be connected to the public water supply or waste water collection system these elements of the contribution scheme have therefore not been applied.

It is the opinion of the planning authority that the sheds the subject of the proposed development are clearly to house live stock i.e. chickens / poultry which is comparable to sheds to house pigs or cattle which are also livestock. It is submitted that the levy for a farm building - the lesser levy is applied to general 'farm buildings, hay shed' which are to provide ancillary storage facilities on farms for such items as animal feed, bedding, machinery etc.

I note correspondence on file between the applicant and the planning authority querying the category of development contribution applied and the planning authority's subsequent reassessment. Upon reassessment the development contribution (€49,661.76) applied by way of condition 6 attached to Reg. Ref. 15/233 was amended downwards. It was deemed applicable to take into account storage elements of the proposal. The planning authority now submit that the correct calculation should be as follows:

- 3 no. poultry houses floor area 1,398 sq. m Total 4,194 sq. m @ piggery / cattle shed rate

a. Road Improvement:

4,194 sq. m x 10.62 = €44,540.28

b. Community, recreational and amenity:

4,194 sq. m x 0.94 = €3,942.36

Total €48,482.64

- 2 no. egg / general purpose stores - floor area 90 sq. m; plus 3 no. meal bins 4.71 sq. m each (total 14.13 sq. m) and waste shavings 12 sq. m - accumulated total of storage facilities 116.13 sq. m @ farm building rate:

a. Road Improvement:

116.13 sq. m x 3.19 = €370.45

b. Community, recreational and amenity:

116.13 sq. m x 0.28 = €32.52

Total €402.97

Total €48,885.61

The first party appeal submits that the terms of the development contribution scheme have been incorrectly applied as the development is a 'poultry shed and associated store' and not a 'Piggery, Cattle shed'. The only category

listed in the LCCDCS which poultry house can be considered under is a *'farm building, Hay shed'*, thus the lower rate of contribution for a **'farm building'** should apply in this case. Being a charge of €3.19 per sq. m gross area for Roads Contribution and €0.28 per sq. m gross area for recreational and amenities contribution. It is submitted that the correct development contribution calculation should be as follows:

a. Road Improvement:

$$4,296 \text{ sq. m} \times 3.19 = \text{€}13,704.24$$

b. Community, recreational and amenity:

$$4,296 \text{ sq. m} \times 0.28 = \text{€}1,202.88$$

Total €14,907.12

I tend to agree with the first party in this matter. The proposed development is categorically not a pig house and / or a cattle house. These are the only two types of livestock houses specifically provided for in the, 2010 - 2014, updated, LCCDCS. I agree that it is up to Louth County Council to put any changes proposed to the DCS before the elected members of the Council for approval if they deem this appropriate. It is ambiguous to say that part of the DCS was intended to read livestock house. Poultry House should be specifically listed within the category 'piggery, cattle shed' if it is intended that it should fall within this category. I am of similar understanding as the applicant that 'Farm Building, Hay Shed' has the meaning farm building and hay sheds with the assumption that any other type of farm building not specifically provided for elsewhere falls within this category.

Regard is had to Reg. Ref. 10/66, under which planning permission was granted (also to the applicant) for a poultry house and associated facilities and the development contribution rate applied was that for 'farm building, hayshed'. I note that the current LCCDCS 2010 - 2014 was also in place at the time of decision on this application. Based upon the foregoing I am of the opinion that there was a presumption on behalf of the applicant on applying for planning permission that the development contribution rate applicable was that for 'farm building, hayshed'. I note the planning authority's response that

in hindsight that the planning authority would consider that the development contribution was incorrectly applied, in the case of Reg. ref. 10/66, however they have not indicated any instances in which the higher levy has been applied for similar developments i.e. poultry houses under the current LCDCS.

It is not disputed that a development contribution is applicable. The gross floor area of 4,296 sq. m is also not disputed.

I recommend that the Board amend the contribution applied in this instance.

Having regard to Reg. Ref. 10/66 and to the terms of the LCCDCS specifically Appendix B (as amended) which lists 'Type of development' 'Proposed Use Classification'. It is clear that the proposed development of a poultry house and ancillary store is not specifically provided for. In my opinion it does not fall under the levy titled 'piggery, cattle shed' as argued by the planning authority. But can only therefore fall under the levy class titled 'Farm Building, Hayshed' and it is this development contribution amount which should be applied. I would recommend that the Board directs the planning authority under subsection (10) (b) of section 48 of the Planning and Development Act, 2000 to amend the wording of condition number 6 as the charge included should reflect the Roads Contribution and Recreation & Amenity contribution as per 'Farm Building, Hay Shed'. I consider that the sum charged by the planning authority €49,661.76 be amended to €14,907.12 and that the Board amend Condition No. 6 to reflect this.

11.0 RECOMMENDATION

Having read the submissions on file, had due regard to the provisions of the Development Plan, updated Development Contribution Scheme and all other matters arising. I recommend that the planning authority be directed under subsection (10) (b) of section 48 of the Planning and Development Act, 2000 to amend the said condition number 6 so that it shall be as follows for the reason stated.

12.0 REASONS AND CONSIDERATIONS

Having regard to-

(a) The Louth County Council, updated, Development Contribution Scheme 2010 - 2014 made under Section 48 of the Planning & Development Act, 2000, adopted on the 17th January 2014.

(b) Reg. Ref. 10/66, under which planning permission was granted for a poultry house and associated facilities and the development contribution rate applied was that for 'farm building, hayshed'.

(c) The fact that the terms of the Louth County Council Development Contribution Scheme specifically Appendix B (as amended) which lists 'Type of development' 'Proposed Use Classification' does not specifically provided for poultry house and therefore it can only fall under the levy class titled 'Farm Building, Hayshed'.

the Board considered that the terms of the Development Contribution Scheme with respect to a contribution in respect of 'poultry houses' was not correctly interpreted and applied by the planning authority in respect of a contribution towards public infrastructure and facilities benefiting development in the area of the planning authority.

The Board concluded that the application of a financial contribution is applicable in this instance, however, over charging occurred by reason of class of contribution sought. This application is for 3 no. poultry houses and 2 no. egg/general purpose stores together with all ancillary structures and all associated site works. A 'poultry house and associated stores' is not a piggery and not a cattle shed. The only category listed in the Louth County Council Development Contribution Scheme which a poultry house can be considered under is a 'Farm Building, Hay Shed'. Therefore amendments were required to the contribution in order to render it consistent with the corresponding provisions of the Louth County Council, updated, Development Contribution Scheme and Section 48 of the Planning and Development Act, 2000 – 2010.

Condition:

1. The developer shall pay to the planning authority a financial contribution of €14,907.12 (fourteen thousand, nine hundred and seven euro and twelve cents) 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.

Fiona Fair

Planning Inspector

8th December 2015