



An
Bord
Pleanála

Inspector's Report 09.246660

Development	Change of use of agricultural yard to a commercial yard and single storey log cabin office, new recessed entrance and relocation of existing north Kildare tourist route sign.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	16/082
Applicant(s)	Richard Milligan
Type of Application	Permission
Planning Authority Decision	Grant permission
Appellant(s)	1. Richard Milligan
Observer(s)	1. None on file
Date of Site Inspection	Not inspected
Inspector	Sarah Moran

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1.0 Site Location and Description

1.1 The subject site is located within the grounds of an existing agricultural complex at Robertstown House, Robertstown, Co. Kildare. Robertstown House and its associated gate lodge are listed as protected structures nos. B13-20 and B13-31 in the Kildare County Council record of protected structures. They are also listed in the National Inventory of Architectural Heritage (NIAH), ref. 11806010 and 11806011 (see enclosed copies of same), where they are both rated as being of regional importance. The site, stated area 0.049 ha, is part of an existing agricultural complex located to the north of the gate lodge and north east of Robertstown House. The local road serving the house and grounds is to the immediate east of the site. It is described in the Architectural Heritage Impact Assessment on file as the 'Bull Yard', an enclosed yard surrounded by agricultural buildings and walls on two sides with an adjoining coach house on the south west perimeter. The yard was used as a cattle pen and handling facility until 2012.

2.0 Proposed Development

2.1. The main elements of the proposed development are as follows:

- Change of use of an agricultural yard to a commercial yard (stated area 409 sq.m.) for the storage and sale of vans which have been converted into horse boxes;
- Construction of single storey timber office (floor area 17.49 sq.m.);
- New recessed site entrance from the public road and 1.8m high boundary wall;
- Relocation of an existing North Kildare Tourist Route road sign on the public road frontage.

2.2 The applicant submitted further information to the PA on 28th April 2016 comprising further details of the proposed rural enterprise and compliance with County Development Plan rural development criteria and an Architectural Impact Assessment report.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 The PA requested further information on 29th March 2016 in relation to compliance with County Development Plan policy on location of one-off rural enterprises, clarification of the nature and extent of the development and architectural heritage issues.

3.1.2 The PA granted permission on 25th May 2016, subject to 16 no. conditions. Condition no. 3 restricts the use of the site to the display and sale of horseboxes, with works to convert vans to horse boxes (i.e. industrial / manufacturing activity) not to be carried out on site. Condition no. 4 restricted opening hours. Condition no. 16 required a section 48 development contribution of €15,760.00 in accordance with section 13 of the Kildare County Council Development Contribution Scheme 2015-2022. The remaining conditions imposed are considered to be standard for this type of development.

3.2. Planning Authority Reports

3.2.1 Area planner report 24th March 2016 recommends a further information request for details of compliance with the rural enterprise criteria of the County Development Plan; clarification of the nature and extent of the development; consultation with County Architectural Conservation Office. Attached Appropriate Assessment (AA) screening report concludes that there would be no potential for significant effects from the development on the Natura 2000 network.

3.2.2 The second Area Planner report, dated 25th May 2016, concludes that the applicant's response to the further information request is satisfactory; demonstrates compliance with the criteria for rural enterprise location set out in Table 10.2 of the County Development Plan; also satisfactorily clarifies the nature and extent of the development; also the development would not have any adverse or tangible impact on the character of the adjacent protected structures. Recommends permission subject to conditions.

3.3. Other Technical Reports

3.3.1 Kildare County Council Area Engineer Western Area 19th February 2016; Kildare County Council Transportation Department 14th March 2016; Kildare County Council Environment Section 16th March 2016; Kildare County Council Water Services 22nd March 2016; Irish Water 24th March 2016. All no objection subject to conditions.

3.3.2 Kildare County Council Conservation Officer comment on the F.I. submission 14th May 2016. No objection.

3.4. Third Party Observations

3.4.1 None on file.

4.0 Planning History

4.1. Reg. ref. 10/975. Permission granted to Henry Milligan for extension and alterations to existing gate lodge to Robertstown House, protected structure No. B13-20 and the demolition of an adjoining outbuilding and the erection of a similar structure and single storey kitchen and link.

5.0 Kildare County Development Plan 2011-2017

5.1 Chapter 10 Rural Development. Policies RRD7 and RRD11, criteria for location of one-off rural enterprises. Rural development objectives RDO3, RDO4. Chapter 12

6.0 Natural Heritage Designations

6.1 The Grand Canal, a proposed Natural Heritage Area (pNHA), is located c. 0.25 km north east of the site. The following designated sites are located within 15 km of the subject site:

Name of Site	Site Code	Distance from development site
Ballynafagh Bog SAC	000391	c. 1.6 km northeast
Ballynafagh Lake SAC	001387	c. 1.5 km northeast
Pollardstown Fen SAC	000396	c. 5 km south
Mouds Bog SAC	002331	c. 5 km south

7.0 The Appeal

7.1 The first party appeal relates to financial contribution condition no. 16 only. The grounds of appeal may be summarised as follows:

- Section 12(g) of the Kildare County Council Development Contribution Scheme 2015-2022 provides a 100% reduction in charges where permission is sought for a change of use that does not lead to new or upgraded infrastructure or significant intensification of demand on existing infrastructure.
- The proposed development does not require connection to surface or waste water facilities. The Area Engineer and the Transportation Department have raised no concerns regarding the capacity of the existing road network to serve the development.

- Section 8(xiv) of the Scheme states that open development is charged at a rate of €15,000 per ha. It does not state this rate as a minimum or a 'part thereof' rate. Therefore, if development contribution is considered to be applicable, then the rate payable should be as follows:

$$490 \text{ sq.m. (0.049 ha) @ €15,000 per ha} = \text{€735}$$

Therefore, if a charge is applicable, the final development contribution charge would be €1,495.

- The applicant does not believe that any charge is applicable with regard to section 12(g) of the Development Contribution Scheme. However, he is willing to pay a sum of €1,495 as a goodwill gesture.

7.1. Planning Authority Response

7.1.1 The main points made may be summarised as follows:

- The PA considers that the nature and extent of the development is such that commercial activities would lead to an intensification of demand on the local road network.
- Therefore, the PA considers that levies have been applied correctly in this instance.

8.0 Assessment

8.1. The sole issue under review in this appeal is that of financial contributions under section 48 of the Planning and Development Act 2000 (as amended). Section 48(10) of the Act provides that an applicant can only appeal a condition requiring a development contribution in accordance with a Development Contribution Scheme where the applicant considers that the Scheme has not been properly applied. Therefore, the Board's sole remit is not to adjudicate on the merits of the Scheme but to consider whether it has been properly applied. Section 48(10)(c) provides:

Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal, provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

In addition, section 48(13)(a) provides:

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.

8.2. I therefore intend to assess the relevant issues as follows:

- PA calculation of development contributions under the Kildare County Council Development Contribution Scheme 2015-2022;
- Assessment of applicant's case;
- Conclusion

8.3 Planning Authority Calculation of Development Contributions

8.3.1 Condition no. 16 states:

The applicant/developer to pay to Kildare County Council the sum of €15,760.00 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 2000 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.

8.3.2 Section 8(iii) of the Development Contribution Scheme states the following charges for ‘commercial development (including warehousing / industrial and commercial extensions)’:

Gross Floor Area	0 – 250 sq.m.	251 – 3,000 sq.m.	➤ 3,000 sq.m.
Rate per sq.m. (€)	43.46	54.31	61.55

The floor area of the proposed cabin office (17.49 sq.m.) has been charged at the above rate, resulting in a charge of €760.11. The yard area has been charged as ‘open development’, as provided for under section 8(xiv) of the development contribution scheme, which describes such developments as follows:

Miscellaneous developments, not listed individually above, will have the following development contribution rates applied-

	<u>Built</u> Per sq.m.	<u>Open</u> Per hectare
Rate (€)	27.51	15,000.00

* "Built" applies to all developments involving development not specifically defined in the categories of development set out above e.g. smoking areas, etc.

***"Open" development is defined as development not included in the categories set out above which involves the carrying out of any works on, in, or under any land or the making of any material change in the use of any land. Examples of "open"

development include but is not limited to golf courses, temporary car parking, surface storage, motor trade forecourts, etc.

The PA has applied the “open” charge of €15,000 for the change of use of the yard area. This results in a total charge as follows:

$$€760.11 + €15,000 = €15760.11$$

8.4 Assessment of Applicant’s Case

8.4.1 The applicant submits that section 12(g) of the Development Contribution Scheme applies. Section 12 provides for exemptions and reduced contributions of up to 100%. Section 12(g) relates to change of use developments and states:

This scheme provides for waivers in the case of Change of Use planning permissions. Kildare County Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure.

The applicant notes in this regard that the development does not require connection to surface or waste water facilities and that the Area Engineer and Transportation Department have no objection to the proposal.

8.4.2 I note the following information provided in the documentation on file in relation to the proposed change of use and commercial activity:

- The existing use is an agricultural yard. According to the site and newspaper notices, the proposed use involves “the storage and sale of vans that have been converted into purpose built horse boxes”. The conversion works would not take place at the subject site, i.e. no manufacturing. The activity would employ existing family labour already located at the farm. Condition no. 3 of the permission specifically restricts the use of the site to the sale and display of horseboxes, with works to convert vans to horse boxes not to be carried out on site.

- There is an existing connection to the public water supply and sewer. The staff of the development would use sanitary facilities at the adjacent house.
- The applicant submits that the activity would not require HGV deliveries or generate high volumes of traffic.
- The business would operate under normal business opening hours of 9am-6pm.

8.4.3 With regard to section 12(g) of the Development Contribution Scheme, the PA response to the appeal considers that the proposed commercial activity would result in an intensification of demand on the local road network. The Scheme provides information on the public infrastructure projects funded by section 48 development contributions, including roads. Having regard to the available information, it would appear that the proposed activity would not employ any more staff than the exiting family operation, i.e. no additional vehicular movements associated with staff. The only other vehicular activity associated with the premises would be potential customers visiting the site. While I accept that agricultural activity could involve a substantial number of vehicular movements, particularly at certain times of the day / year, they generally would be less than those associated with a sales activity at a commercial motor premises. I also note that the description of ‘open development’ in development contribution scheme section 8(xiv), which deals with ‘miscellaneous developments’, includes “motor trade forecourts”. I therefore am satisfied that section 12(g) does not apply in this case and I agree with the PA statement that the development would result in an intensification of demand on the local road network.

8.4.4 Section 8(xiv) of the Development Contribution Scheme states a charge of €15,000 ‘per hectare’ for ‘open’ development as defined above. Although the proposed development has a total stated area of 490 sq.m., the PA has applied a rate of €15,000, i.e. the charge for 1 ha. The applicant submits that the charge of ‘open’ development should be applied proportionally, i.e.:

$$490 \text{ sq.m. (0.049 ha) @ €15,000 per ha} = \text{€735.}$$

When added to the €760.11 charge for the commercial element of the development, this would result in a total charge of €1,495.11. I note that section 8(xiv) of the Scheme clearly states that the charge for 'open' development is €15,000 *per hectare*, with no specific provision for developments with an area <1 ha. I therefore agree that the PA has not applied the Scheme correctly in this instance and that the charge should be applied proportionally as set out above, resulting in a total charge of €1,495.11.

9.0 Recommendation

- 9.1. To conclude, it is considered that Kildare County Council has incorrectly applied the terms of the Kildare County Council Development Contribution Scheme 2015-2022. I therefore recommend that the Board should direct the Council to AMEND condition no. 16 of the relevant permission, such that it states the following, for the reasons and considerations set out below:

The developer shall pay to the planning authority a financial contribution of €1,495.00 (one thousand four hundred and ninety-five euro) 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

10.0 Reasons and Considerations

Section 12(g) of the Kildare County Council Development Contribution Scheme 2015-2022 provides for a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure. The Board considers that the proposed development involves a commercial activity, which would result in an intensification of demand on the local road network. It therefore considers that the exemption provided in section 12(g) of the Scheme does not apply in this instance. The cabin office is to be charged at the commercial rate set out in section 8(iii) of the Scheme, resulting in a charge of €760 for that aspect of the development. However, the Board decided that the terms of the Scheme had not been properly applied in respect of Section 8(xiv), relating to “open” development, including motor trade forecourts, which states a charge of €15,000 per hectare. Under section 48(10)(b) of the Planning and Development Act 2000, the statutory function of the Board is limited to consideration of whether the terms of the development contribution scheme have or have not been properly applied in respect of any condition laid down by the planning authority. In this case, the Scheme does not make any specific provision for developments with an area of less than one hectare. The rate provided in section 8(iii) can therefore be applied proportionally, resulting in a charge of €735 for that aspect of the development. The total development contribution charge is therefore €1,495.00.

Sarah Moran

Senior Planning Inspector

19th September 2016