



An
Bord
Pleanála

Inspector's Report PL.09.246874

Development

Erection of a dairy parlour with a roofed handling area, a meal bin and extension to an existing cubicle house with all associated facilities and site works at Portersize, Ballintore, Athy.

Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	16/386
Applicant(s)	Noel Lawlor
Type of Application	First Party v Condition 14
Planning Authority Decision	Grant permission
Appellant(s)	Noel Lawlor
Observer(s)	None
Date of Inspection	Not applicable
Inspector	Joanna Kelly

1.0 Site Location and Description

1.1 The appeal site is located in the townland of Portersize which is located approximately 2 kilometres east of Ballitore, in County Kildare.

2.0 Proposed Development

The applicant is seeking to erect a dairy parlour with a roofed handling area, a meal bin and an extension to an existing cubicle house with all associated facilities and site works. The development is to be located within an existing farm yard.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission subject to 14 conditions:

Of relevance to this appeal is condition 14 cited as follows:

The applicant/developer to pay to Kildare County Council the sum of €5,287.00 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.

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

3.2. **Planning Authority Report**

The planning report recommended a grant of permission. The planner noted that the new build proposed amounts to 528.7sq.m. contained within a single storey agricultural building.

4.0 **Planning History**

File Ref. No. 07/77 Permission granted for an over-ground slurry store with associated works.

Reference is made to unauthorised development. A warning letter was issued in 2013 regarding the removal of a hedgerow and building of a wall.

5.0 **Policy Context**

The Kildare County Development Plan 2011-2017 is the statutory development plan for the area. Chapter 10 deals with rural developments.

6.0 **The Appeal**

6.1 **Grounds of Appeal**

The grounds of appeal can be summarised as follows:

- It is submitted that there is a condition imposed for which the terms of the Kildare County Council's development contribution scheme were not properly applied.
- Reference is made to the wording regarding the application of development contributions for agricultural developments in section 12, part n.
- The application has a stated area of 527.7sq.m. The planner's report states that the 600sq.m. exemption could not be applied as the floor areas of

existing farm buildings on site were not given. Therefore, development contributions of €5,287 were applied at €10/m².

- All previous buildings on site were erected prior to the introduction of the current development contribution scheme. The most recent development on site was the building of an over-ground slurry store in 2007. Exemptions were applied to this planning application but were calculated under a previous scheme where 500sq.m. of agricultural development could be built without incurring development contributions. The exemption was not cumulative and therefore has no relevance to the current application. All other buildings on site were in place prior to the introduction of development contributions in 2004 so the floor areas have no relevance to this exemption.
- The first time a cumulative element was introduced to agricultural development was in the 2011 development contribution scheme. There has been no development on this landholding since September 2011 and therefore no exemption has been applied.
- The methodology applied by the planning authority in this case seems to use all the floor areas of all buildings within the farmyard when calculating whether or not the development is exempt.
- Reference is made to previous applications where exemptions were allowed File ref. No. 16/136, 16/98 and 15/527.
- In conclusion, it is set out that the condition regarding contributions should be removed as the application of the exemption is inconsistent with the methodology of previous applications.

5.1. Planning Authority Response

The response is summarised as follows:

- The calculation of the contribution was based on the floor area of the permitted development.

- The 600sq.m. exemption is cumulative and will only be granted once on any landholding. It is not restricted to the lifetime of a development contribution scheme.
- The planning authority confirms that in this instance contributions were correctly applied.

6.0 **Assessment**

6.1 Introduction - I consider the key issue for determination in this instance pertains to the development contribution. In accordance with Section 48 (13) (a) the Board will not determine the application as if it had been made to it in the first instance but will only determine the matters under appeal and will issue appropriate directions to the Planning Authority when it has determined the appeal. The reason for appeal pertains to the exemption provision within the scheme for agricultural developments, which the applicant contends is applicable in this case.

6.2 Provisions of the Contribution Scheme - The Kildare Development Contribution Scheme provides for “Exemptions and Reduced Contributions” in particular instances. The following is an extract as it applies to agricultural development:

“n) Agriculture

The first 600 square meters of non-residential development on any agricultural landholding will be exempt. Thereafter a rate of €10.00 per sqm shall apply. This exemption is cumulative and will only be granted once on any landholding. The exemption will only apply to buildings for the landowner’s own use in connection with the agricultural operation of his/her farm enterprise.

The following categories of agricultural development will be exempted from the requirement to pay development contributions under the Development Contribution

Scheme, subject to the submission of appropriate documentary evidence from the Department of Agriculture.

- All farm buildings and structures which are required to be constructed to comply with environmental protection regulations.*
- All farm buildings and structures which are required to be constructed to comply with National Action Programmes implemented under the EU Nitrates Directive (91/976/EEC).*

6.3 Proposal - The planning application sought permission to erect a parlour house which is to be constructed as an extension to existing facilities within the farm yard. The floor area of the proposed new area is 527sq.m. and is not disputed by the parties.

6.4 Assessment of condition 14 -The floor area of the existing sheds/buildings on the appeal site are in excess of 3,000sq.m. The development contribution scheme provides that the first 600sq.m. of non-residential development on any agricultural landholding will be exempt. The scheme provides that this floor area is cumulative and will only be granted once on any landholding. Having regard to the existing permitted scale of development on the landholding which greatly exceeds the 600sq.m. threshold, the applicant is not entitled to claim this exemption. The calculation by the planning authority is considered correct in that they applied the rate of €10 per sq/m.

6.5 I note the claim by the applicant that the scheme is not being applied consistently by the planning authority and makes reference to some recent applications. The Board should note that under section 12, paragraph n of the Scheme, that there are further exemptions where the cumulative floor area (of other existing structures/developments) would not appear to apply. The cases to which reference is made in the grounds of appeal would appear to be developments which would fall under these exemptions. The applicant is seeking to construct a milking parlour which is not considered a necessary development so as to comply with the environmental protection regulations or the National Action Programme implemented under the EU Nitrates Directive (91/976/EEC).

7.0 Recommendation

I recommend that the planning authority are informed that Condition 14 has been correctly applied.

8.0 REASONS AND CONSIDERATIONS

The Board considered that Condition 14 has been correctly determined in accordance with the current Kildare County Council development contribution scheme.

REASONS AND CONSIDERATIONS

Having regard to

- (a) the general arrangements regarding payment of development contributions and implementation of the scheme;
- (b) the extent of existing and permitted agricultural developments on the landholding;
- (c) the provisions of the Kildare County Development Contributions Scheme, in particular section 12, paragraph n

the Board considered that the terms of the Scheme has been properly applied in this instance.

Joanna Kelly

Planning Inspector

26 September 2016