



An
Bord
Pleanála

Inspector's Report PL25M.247256 (Section 48 Appeal)

Development	Change of use of an existing building from light industrial use to recycling of metal, waste electrical and electronic equipment and permission for retention of building.
Location	Moate Road, Kilbeggan, Co. Westmeath.
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	16/6002
Applicant(s)	KMK Metals Recycling Limited.
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party v Condition No.7 (Financial Contribution)
Appellant(s)	KMK Metals Recycling Limited.
Observer(s)	N/A
Date of Site Inspection	N/A
Inspector	Patricia Calleary

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1.0 Site Location and Description

- 1.1. The site with a stated area of 1.48 ha comprises one of two existing industrial type units located along the R446 (Moate Road) to the west of Kilbeggan town in Co. Westmeath.

2.0 Proposed Development

- 2.1. Permission was sought for proposed development comprising of the **change of use** of an existing building from light industrial use to the recycling of metal and waste electrical and electronic equipment (WEEE). It also includes ancillary structures (2 no. weighbridges and 2 no. storage bays), parking and mechanical plant. In addition, **retention permission** was sought for an existing plant room and a boundary fence erected along the eastern site boundary. Based on the information provided on the application form, the Gross Floor Areas (GFAs) include: 3803 sq.m for the building which is subject to the change of use and 136 sq.m for the retention of the plant room.

3.0 Planning Authority Decision

- 3.1. The Planning authority issued a **decision to grant permission** subject to 12 conditions. **Condition No.7** imposed a development contribution of €28,236 which is the sole matter of this appeal.

3.2. Planning Authority Reports

3.2.1. Planning Reports

P.14 of the Planning officers report provides the methodology used for calculating the development contributions. It sets out the following:

- Change of use refers to an area of 3,803 sq.m. No contributions were applied on the existing structure with the exception of permission for an extension under file ref: 06/4319 where a development contribution of €72,100 was applied and subsequently paid in December 2013;

- Development contributions now applied on the balance (3,803 sq.m less 2,060 sq.m = 1,743 sq.m);
- No record of contributions having been paid to date on the site, therefore full development contributions are applicable.

4.0 Planning History

The following planning history was referenced in the planners report and first party's submission.

- PL Ref. No. 73/776

On 1st February 1974 **permission was granted** by Westmeath County Council to **erect a factory**.

- PL Ref. No. 90/480 – Appeal Ref: PL25/5/84206

On 30th April 1991, **permission was granted** by An Bord Pleanála on appeal to Powerscreen Limited for an **extension to workshop and offices**.

- PL Ref. No. 95/329 – Appeal Ref: PL25.096734

On 21st December 1995, **permission was granted** by An Bord Pleanála on appeal to Powerscreen Limited for an **extension to workshop**.

- PL Ref. No. 03/4039

On 12th May 2003, **permission was granted** to Powerscreen Limited for construction of a **new entrance lobby** to front of existing industrial unit.

- PL Ref. No. 06/4319

On 20th February 2007, **permission was granted** to Coen Holdings for a **single storey extension** (2060 sq.m GFA) to an existing light industrial building for the storage, cutting and manufacture of timber based products, together with parking, connection to services and site development works.

- Section 5 Declaration Ref S5-06/05

Westmeath County Council determined that the **change of use** of the subject building for use by Coen Timber for the cutting, moulding, storage and distribution of timber is **exempted development**.

- Section 5 Declaration Ref S5-04-15

Westmeath County Council determined that a proposed **change of use** of a tyre recycling and tyre shredding would constitute **development**.

5.0 Policy Context

5.1. Local Planning Policy

- 5.1.1. The provisions of the Westmeath County Development Plan 2014-2020 and Kilbeggan Service Town Plan 2014-2020 are noted.

5.2. Westmeath Development Contribution Scheme 2013-2020

- 5.2.1. Table 1 of the Westmeath Development Contribution Scheme 2013-2020 scheme provides **€16.20** per sq.m of floor area is applicable for classes of development which include industrial/commercial and other types of development.
- 5.2.2. **Section 7** deals with **Exemptions and Reductions**, including the following of note:
- *(xviii) Revisions/Modification to a permitted development: An application for permission for modification/revision to a permitted development, including a change of house type or amendment to a site layout will, where material, be treated as an independent/separate permission for development, and will be assessed on the full proposal for the floor area permitted in such a permission, at the rate of development contributions in operation on the date of issue of the decision to grant permission. The contribution payable at commencement will be based on the permission implemented i.e. the original permission or the revised proposal (updated in accordance with the relevant index).*
 - *(xix) Change of use: In respect of permission for change of use, where development contributions were paid in respect of the former use, the contribution payable on the new proposal will be net of the quantum of development previously paid for. Where the former use is fully authorised and any levies that might have applied to that use have been paid, credit will be given for the previous use.*

5.3. Development Contributions – Guidelines for Planning Authorities 2013

- 5.3.1. These guidelines were issued under section 28 of the PDA 2000 (as amended) with a stated aim to provide guidance on the drawing up of development contributions to reflect radical economic changes.

6.0 The Appeal

6.1. Grounds of Appeal (First party)

This is a first party appeal which relates to a financial contribution condition only, wherein it is submitted that the application of the Development Contribution scheme has been incorrectly applied to the proposed development in this instance. The following points are put forward by the first party/appellant.

- Having regard to the terms of the Westmeath Development Contribution scheme, the monetary amount of €28,236 is incorrectly calculated;
- The Council has not correctly acknowledged the development contributions already paid to date and based on what is already paid, no development contributions are applicable;
- The subject proposal has a gross floor space of 3803 sq.m. The applicable rate for this type of development is €16.20 per sq.m (based on Table 1 of Westmeath Council Development Contribution scheme) which would normally equate to a sum of €61,608.60. However, the PA are obliged to credit development contributions already paid in accordance with Section 7 of the development contribution scheme which deals with change of use.
- An amount of €76,417.11 has already been paid consisting of €72,1000 on foot of Planning Ref: 06/4319 and £4000 (€4317) on foot of previous planning permissions (776/73, 90/480, 95/329).
- Following payment of £4000 (€4317), Westmeath County Council issued a letter dated 6th February confirming that no financial contributions were outstanding. (A copy of the letter is attached with the appeal).

- The PA, through Condition No. 7 is seeking €28,236.60 which would result in a total contribution, including what is already paid, of €104,653.71. This would equate to a €27.52/sq.m figure instead of the applicable €16.20 which would be incorrect in the context of the development which seeks permission for change of use.
- The Planning Authority is obliged to apply the reduced development contribution rate, as per the provisions of amendment F190 / recent changes to the Planning and Development Act, 2000 (copy of extract included as an appendix to the first party's submission). Notwithstanding this, Condition 7 should be omitted from the grant of permission;
- Requests the Board to consider the building is for light industrial use which would be consistent with the established permissions on the site and within the building.

6.2. Planning Authority Response

- No response received.

7.0 Assessment

- 7.1. This is an appeal made under the provisions of Section 48 of the Planning and Development Act 2000, as amended and therefore the Board is restricted to considering Condition No. 51 alone and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the condition that has been appealed and the consideration of whether or not the terms of the current Westmeath Development Contribution scheme was properly applied in this instance.
- 7.2. The appeal centres on the first party's contention that the Planning Authority has not correctly considered previous contributions applied (and paid) and the nature of the development for a 'change of use'. They consider that no development contribution should be applied in this instance.
- 7.3. The planning history is detailed in Section 4 above. A summary is provided under with details of contribution conditions attached by the Planning Authority (Column 4) and comments of the applicant (Column 5).

7.4. In addition to the planning permissions, the applicant refers to a declaration **Ref S5-06/05** made to Westmeath County Council in which it was determined that the change of use of the subject building for use by Coen Timber for the cutting, moulding, storage and distribution of timber was considered to be exempted development.

Table 1 – Planning History and Financial Contributions

Planning Ref	Date of grant	Nature of Development	Contribution Condition Attached	Comment provided by applicant/ appellant
PL Ref. No. 73/776	1 st February 1974	Erect a factory	No financial contribution condition attached.	----
PL Ref. No. 90/480 – Appeal Ref: PL25/5/84206	30 th April 1991	Extension to workshop and offices	No financial contribution condition attached.	----
PL Ref. No. 95/329 – Appeal Ref: PL25.096734	21 st December 1995	Extension to workshop	A financial contribution condition which was unspecified attached.	£4000 (€4317) agreed and paid to Planning Authority. Letter received from the PA in 2002 confirms that no financial contributions are outstanding on planning permissions PL776/73, PL90/480 and PL95/329 (Appeal Ref: PL25.096734)
PL Ref. No. 03/4039	12 th May 2003	Construction of new entrance lobby	No financial contribution condition attached.	----
PL Ref. No. 06/4319	21 st February 2007	single storey extension (2060 sq.m GFA) to an existing light industrial building	Condition No.5 included a development contribution of €72,100.	€72,100 paid
16/6002	19 th August	Change of use	Condition No.7	Comments detailed

PL25M.247256	2016 – A decision to grant permission issued by Meath County Council (Subject matter of this Section 48 appeal).	of an existing building from light industrial use to recycling of metal, waste electrical and electronic equipment and permission for retention of building as constructed (including external plant room and fencing).	attached to the planning decision required a development contribution of €28,236.	in Section 6.1 of appeal.
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- 7.5. Having reviewed the Westmeath Development Contribution Scheme 2013-2020 and the information on file, I consider there are 2 aspects which need to be considered in my assessment of this appeal, i.e. the **change of use** for the main building and **retention** for the plant room, each which I have detailed below.
- 7.6. **Change of use:** The main building comprising a GFA of 3803 sq.m is the subject of a change of use. Section 7 (xix) of the applicable contribution scheme provides that in respect of permission for change of use, where development contributions were paid in respect of the former use, the contributions payable for the new proposal will be net of the quantum of development previously paid for. I am satisfied based on the information on file, including reference in the appeal documentation to the Section 5 Declaration (Ref S5-06/05), that the former use was authorised and that any levies that applied to that use have been paid. Therefore, **credit** should now be given for the **quantum of development previously** paid for.
- 7.7. The contributions which would apply for the use of the existing building for recycling of metal, waste electrical and electronic equipment would be based on a GFA of 3808 sq.m for the new proposal less the quantum of development, i.e. a GFA also of 3808 sq.m previously paid. This equates to zero. I have taken into account that the original factory permitted under PL Ref. No. 73/776 and an extension under PL Ref

No.90/480 (Appeal Ref: PL25/5/84206) where no financial contributions were required to be paid.

- 7.8. The calculation methodology applied by the Planning Authority in this case was based on an application of the current scheme collectively to the floor area of the original factory building, an earlier extension to workshop and an entrance lobby. This in my view is at variance with the intention of Section 7 (xix) especially as no contributions were applied to the original factory or the later extension to workshop and offices and all contributions required to date on the building were paid. Evidence has been submitted by the first party/appellant that in 2002, Westmeath County Council confirmed that there were no contributions outstanding at that time. The first party has also submitted a record of contributions applied prior to and since 2002 as well as evidence of payments made to the Planning Authority.
- 7.9. Based on the rationale outline above, I recommend that **no development contribution** is required for the **change of use** element of the main building.
- 7.10. **Retention:** The application and public notices refer to retention of an external plant room with a stated GFA of 136 sq.m. As outlined above, Section 7 (xviii) of the contribution scheme deals with **revisions/modifications** to a **permitted development**. It provides that where material revisions /modifications occur (or by way of extension have occurred in the context of retention), these will be treated as independent / separate permissions and will be assessed on the floor area permitted in a permission at the rate of development contributions in operation on the date of issue of the decision to grant permission. In that context, it is clear that the contribution which would apply for this aspect of the development comprising retention of works, would be based on the GFA (136 sq.m) multiplied by €16.20 which equates to €2203 when rounded.
- 7.11. In summary, I consider the contributions should be based on 3803 sq.m **change of use** [proposed works] and 136 sq.m **retention**. The calculation is set out below:
- **Change of use:** €16.20 x (3803 sq.m of current floor area less 3803 sq.m of previous quantum of development) = zero, i.e. no contribution should be applied for this element.

- **Retention** 136 sq.m (Plant room) x €16.20 = €2203. No credit would be afforded to this floor area having regard to Section 7 (xviii) of the scheme.
- **Total Contribution Applicable** for retention and change of use = €2203

8.0 Recommendation

- 8.1. Having regard to the nature of the condition which is the subject of the appeal and based on the by reasons and considerations set out below, I am satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted. I recommend that the Board directs the Council under subsection (13) (a) of Section 48 of the Planning and Development Act, 2000 (as amended) to **AMEND Condition No. 7**.

9.0 Reasons and Considerations

Having regard to the planning history and the previous financial contributions paid in respect of the building, to the nature of the development now proposed, which constitutes the change of use of an existing building and the retention for an external plant room, to the Westmeath County Council Development Contribution scheme 2013-2020, particularly Section 7 (xix) and Section 7 (xviii), it is considered that the appropriate contribution applicable in this case is €2203 based on €2203 for the retention element of the existing development and zero for the proposed change of use element.

Patricia Calleary
Senior Planning Inspector

21 November 2016