



An  
Bord  
Pleanála

## Inspector's Report PL09.248352

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<b>Development</b>	Extension to side of agricultural building.
<b>Location</b>	Fleshtown, Sallins, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority Reg. Ref.</b>	17/84.
<b>Applicant(s)</b>	BCA Consultants.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	First Party v Development Contribution only
<b>Appellant(s)</b>	BCA Consultants.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	Not applicable.
<b>Inspector</b>	Susan McHugh.

## 1.0 Site Location and Description

1.1. The appeal site is located in a rural area in the townland of Fleshtown, approx. 3km south west of Clane and 3.5km north west of Sallins village centre. The Grand Canal is located approx. 1km directly south of the appeal site. There are 3no. existing agricultural sheds on site. The immediate area consists mainly of residential dwellings and agricultural land. The site itself is roughly rectangular in configuration and has a stated area of 0.75ha.

## 2.0 Proposed Development

2.1. The applicant is seeking to erect an extension to the side of an existing agricultural outbuilding with all associated ancillary site works. The development is to be located within an existing farm yard. The extension would have a floor area of 259.63sq.m.

## 3.0 Planning Authority Decision

### 3.1. Decision

The decision of the planning authority was to grant permission subject to 11 conditions.

Of relevance to this appeal is condition no. 11 as follows;

*The applicant/developer to pay Kildare County Council the sum of €2,600 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5<sup>th</sup> 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 5<sup>th</sup> November 2015.*

*Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water*

*Reason: It is considered reasonable that the developer 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**

### 3.2.1. Planning Report

The planning report is the basis for the Planning Authority decision. The planner notes the gross floor area for the calculation of development contributions as 260sq.m.

### 3.2.2. Development Contributions Calculations report dated 22/03/2017, recommends that a levy be applied. It notes;

- Agricultural development already exists on site,
- The exemption area of 600sq.m has been exceeded,
- A levy of €2,600.00 (260 sq.m x €10 per sq.m) is to be applied to the extension of the agricultural shed.

## 4.0 **Planning History**

**P.A. Ref. No. 16/726:** Permission granted (September 2016) to close an existing agricultural vehicular entrance, construct a new entrance with pull-in at an alternative position in lieu, and all ancillary site works.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

The operative plan is the Kildare County Development Plan 2017-2023.

Section 10.4.1 deals with agricultural development.

### 5.2. **Kildare County Council Development Contribution Scheme 2015-2022.**

I refer to the following provisions relevant to this appeal:

Section 8 refers to level of general contributions for Kildare County Council effective from adoption of this Scheme.

Section 12 refers to Exemptions and Reduced Contributions. Subsection (n) Agriculture indicates

*“The first 600 square metres 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).*

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The appeal relates to condition no. 11 of the Planning Authority’s decision to grant planning permission which includes the payment of a sum of €2,600 applied to the development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5<sup>th</sup> November 2015.

The grounds of appeal can be summarised as;

- The existing farmyard was constructed in the 1970’s as an exempt development, no planning permission was sought and no permission was granted. There were no levies applicable in that period.
- The application of the levies should have taken account of Part (n) of the Development Contribution Scheme 2015-2022, which exempts the first 600sq.m. The Council have included the floor area of the existing agriculture

buildings that were exempt from levies and planning permission at the time of construction.

- The Council are applying a retrospective tax/levy which is unfair, and considers that they are being penalised as if the application was for retention of a structure as outlined in Section 9(n) of the Development Contribution Scheme 2015-2022.

## 6.2. Planning Authority Response

The planning authority in a response dated the 24<sup>th</sup> April 2017 refers to;

- The contribution of €2,600.00 was applied correctly in accordance with the 2015-2022 Development Contribution Scheme.
- The rate applicable for Agricultural Development is set out under section 12(n) of the Scheme.
- Consideration was given to the previous history on site, notes permission granted under 16/726 and 15/599 do not relate to agricultural sheds on site.
- Notes that the applicant confirms the existing farm buildings were constructed without the benefit of planning permission in the 1970s.
- As the existing farm buildings exceed the 600sqm exemption, it is considered that the landholding has availed of the exemption which is cumulative and will only be granted once on any landholding.

## 6.3. Further Responses

The applicant in a response to the submission of the planning authority dated the 17<sup>th</sup> May 2017 indicates;

- All previous buildings on site were erected prior to the introduction of the current and previous development contribution schemes, so the floor areas of the existing buildings have no relevance to the exemption of 600sq.m. The applicant has not availed of any exemptions as referred to in the current

Development Contribution Scheme, and no new buildings were constructed since the introduction of the Scheme.

- The methodology applied by the planning authority relies on the existing floor areas of all buildings constructed prior to the introduction of the contribution scheme when calculating whether the development is exempt. Contend that this methodology is both incorrect and inconsistent with previous applications.
- The Board is asked to consider PA Ref. 16/386, ABP Ref. PL09.246874 where the Board in their decision decided not to accept the inspector's recommendation to attach a condition in relation to levies, and note that 'the applicant is entitled to avail of the exemption referred to in the Development Contribution Scheme in respect of the floor area of the proposal less that applied to development permitted previously under PA Ref. 07/77 (233.7sqm) in 2007'.
- Contend that they are entitled to a full 600sqm exemption on all buildings constructed after 2005.
- Reference is made to previous applications where exemptions were allowed File ref, No. PA 16/136, 16/98 and 16/51.
- 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 or previous applications and as if the application was made for the retention of a structure and not as outlined in Section 12(n).

## 7.0 **Assessment**

7.1. This is an appeal in relation to the application of a development contribution only. The Board will not determine the application as if it was made to it in the first instance and will only determine the matters under appeal.

7.2. An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of a Development Contribution Scheme has not been properly applied in respect of any condition laid down by the planning authority. In this appeal the issue to be considered is whether the terms of the Scheme have been properly applied.

- 7.3. The current proposal is for an extension to an existing agricultural outbuilding with a stated gross floor area of 259.63sq.m. The existing shed has a stated floor area of 405.30sq.m. There are two other existing farm buildings within the farmyard with floor areas of approx. 684sqm and 266sqm respectively.
- 7.4. The scheme in section 12 permits exemptions and reductions. The planning authority has indicated that the calculation of the contribution is based on the floor area of the proposed extension and was levied in accordance with section 12 (n) of the Scheme.
- 7.5. 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, there are further exemptions where the cumulative floor area (of other existing structures / development) would 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. Under PA Ref. 16/386, ABP Ref. PL09.246874 the Board considered that the applicant was entitled to avail of the exemption in respect of the proposed floor area less that applied to development permitted under PA. Ref 07/77 (277.3m2) and applied an amended reduced contribution.
- 7.6. The planning authority note that the existing farm buildings were constructed without the benefit of planning permission in the 1970's, while the applicant notes that the sheds were exempt. Notwithstanding this, I note that the application is not for retention of the existing shed, and the planning authority do not consider the existing sheds to be unauthorised, as they have granted permission for the extension.
- 7.7. I am satisfied that taking account of the existing sheds on site, which would appear to well predate the introduction of the Development Contribution Scheme in 2005, and as the applicant has not previously availed of an exemption under the current Development Contribution Scheme, that in the current case the applicant is entitled to avail of the exemption in respect of the proposed floor area.
- 7.8. The applicant is seeking to construct an extension to an existing agricultural outbuilding which is not considered a necessary development so as to comply with the environmental protection regulations of the National Action Programme implemented under the EU Nitrates Directive (91/976/EEC).

## 8.0 Recommendation

I recommend that Kildare County Council be directed to remove Condition No. 11 on the grounds that the terms of the Development Contribution Scheme 2015-2022 have not been properly applied.

## 9.0 Reasons and Considerations

Having regard to

- (a) the provisions of the Kildare County Development Contribution Scheme, 2015-2022 and which includes an exemption for the first 600sq.m of non-residential development on any agricultural landholding; and
- (b) the floor area of the development in question of 259.63 sq.m;
- (c) the fact that the existing agricultural developments on the landholding predate the introduction of development contribution schemes;

The Board considered that the terms of the Development Contribution Scheme have not been properly applied.

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Susan McHugh  
Planning Inspectorate

9<sup>th</sup> June 2017