



An
Bord
Pleanála

Inspector's Report PL 25M 248466.

Development	Retention of existing six bay slatted shed, free standing meal bin and ancillary site development works.
Location	Kilpatrick, Collinstown, Co. Westmeath.
Planning Authority	Westmeath County Council
P. A. Reg. Ref.	17/6046
Applicant	Chris and Colin Kennedy.
Type of Application	Permission for Retention
Decision	Grant Permission.
Type of Appeal	Section 48 Appeal against Condition No 4.
Appellant	Chris and Colin Kennedy.
Date of Site Inspection	6 th July, 2017.
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The site is that of a farmyard located at the end of and with access onto a cul de sac lane (L 56271) which in turn is linked to a Class C minor road a short distance to the south of the R 395 and Collinstown and south west of Drumcree. There are existing farm buildings, a farmhouse and the slatted shed and meal bin which are subject of the application for permission for retention within the farmyard at the site location.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for permission for retention of a large metal clad six bay dry bedded slatted shed along with a free standing meal bin to the side and ancillary works that have been constructed behind the existing buildings towards the rear of the farmyard. The details in the application indicate capacity to accommodate fifty suckler cows and sixty weanling cattle involving an annual eighteen week storage period. Storage tank capacity is proposed at 440 cubic metres inclusive of 0.2 metres Freeboard and exceeds the estimated 423 cubic metres storage required by the proposed development according to the calculations provided with the application.
- 2.2. A flooding report, based on visual inspection and desk study is include with the application in which it is concluded that the site is suitable for the proposed development. Rainfall collected on the roof is to be discharged to soakaways.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 15th April, 2017, the planning authority decided to grant permission for retention subject to conditions which include a Section 48 development contribution condition (No 3) and the appealed condition with the requirement for payment of a special development contribution in accordance with the provisions of section 48 (2) (c) of the Planning and Development Acts, 2000 as amended.

3.2. Planning Authority Reports

- 3.2.1. The planning officer and district engineer for services and roads indicate no objection. The roads engineer indicates concern about the post construction condition of the road surface along the lane serving the development.

4.0 Planning History

- 4.1. P. A. Reg. Ref. 16 6165. Permission was granted, on 27th April, 2017 for removal of a four bay, hay shed and construction of a five bay dry bedded shed, underground soiled water storage tank, a silage slab, a dungstead and site development work. Condition No 4 contains a requirement for payment of a development contribution in accordance with the terms of the development contribution scheme adopted 2004 in the amount of €890.75 (subject to annual updates) towards the cost of public infrastructure and facilities benefiting development in the area of the planning authority.

5.0 The Appeal

- 5.1. The appeal received from BGM Consulting on behalf of the applicant is solely against the attachment of condition No 4 attached to the grant of permission.
- 5.2. The appeal contains the following statement:

“The small section of road in question is located at a neighbouring dwelling house. The movement of cars into the parking areas to the front of the house has resulted in the damage as noted by Westmeath County Council. The damage has not been caused by the onward passage of traffic movements to the applicant’s farmyard.”

- 5.3. Included with the appeal are photographs of the road surface at the frontage of the neighbouring property referred to in the appeal.

6.0 Planning Authority Response

- 6.1.1. There is no submission available on file from the planning authority.

7.0 Assessment

- 7.1. The appealed condition No 4 included with the order is reproduced exactly as it is worded in the local authority's Order below:

“The planning authority is of the view that the construction of this development has lead to localised damage to the road serving the development see attached pictures. The applicant is required to contribute to the cost of repairing this damage and a Special Contribution in accordance with section 48 of the Planning and Development 2000, of €4,536.00 subject to the agreement of the Planning Authority, shall be payable within two months of the date of grant of permission.

Reason: It is considered reasonable that the developer should contribute to the repair of public infrastructure as a result of the proposed development.”

- 7.1.1. Photographs and a sheet with calculations for repair of the surface of the entire length of the lane between the junction with the main road and the neighbouring property was made available by the planning authority prior to the determination of the decision of the application. Two farmyard properties only have direct access and a frontage onto the lane. They are:

(a) The neighbouring property comprising an occupied dwelling and operational farmyard, located to the north east of the junction of the cul de sac lane with the main road. Photographs of this property are included with the appeal and with the planning authority's documentation showing with the calculation of the amount payable under the appealed condition.

(b) An operational farmyard and unoccupied dwelling which is located at the end of the lane and to the north west of the junction of the lane with the main road.

(There some other agricultural entrances and tracks off the lane.)

7.1.2. On review of the application documentation it is clearly apparent that the site of the proposed development is Property 'B', the property located at the end of the lane which is that of a nineteenth century farmhouse and farmyard in which the slatted shed and meal bin have been constructed at the rear of existing structures. At the time of inspection, it was observed that the road surface of the section of the lane between the end of the lane and a sharp bend to the south side of the neighbouring property is in extremely poor condition. It is not apparent as to how the condition of the road surface deteriorated and for how long it has been in the condition observed during the visual inspection. The condition of the surface along the remainder of the lane was found to be in considerably better at the time of the visual inspection. There is no evidence available on the pre-development and post-development condition of the road surface along the lane.

7.1.3. According to section 48 (2) (c) of the Planning and Development Act, 2000 as amended which is reproduced below there is provision, subject to specific criteria whereby a local authority can seek payment of an additional contribution to cover the specific exceptional cost of public infrastructure and facilities that are not covered by the adopted development contributions scheme but which are essential to facilitate a particular development.

“A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by a local authority in respect of public infrastructure and facilities which benefit the proposed development.”

Section 48 2 (c), Planning and Development Act, 2000 as amended.

7.1.4. Therefore, in order to attach the condition with the requirement for payment of the special development contribution subject of the appeal, it must be demonstrated that the cost of the works is not covered by the development contributions scheme

adopted by the council and the costs of the works are additional specific exceptional costs for public infrastructure and facilities essential to enable a particular development to be implemented and made operational. The lane is part of the existing the local road network serving the proposed development and other development in the area.

- 7.1.5. It is noted that the planning authority calculated the cost of the repair works to the full length of the lane. However, the planning authority has not demonstrated that the specific costs of maintenance and repairs to the lane to which it refers are not covered in the costs for works to the local roads network provided for within development contribution scheme adopted by the County Council. No additional infrastructure and facilities, involving specific additional costs which not covered by the adopted development contributions scheme to facilitate the development subject of the application are required or are to be provided by the local authority to facilitate the development subject of the application. Nevertheless, it is appreciated that the lane primarily serves the two farm properties which have the benefit of direct access onto it and surrounding agricultural lands.

7.2. **Appropriate Assessment.**

- 7.2.1. Having regard to the location of the site, to the limited nature and scale of the proposed development, to the calculations on capacity and requirements which include a freeboard allowance, the proposed means disposal of in accordance with good practice having regard to the Nitrates Directive, and to the proposed arrangements for collection and disposal of storm water to soak pits it is considered that. no appropriate assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

- 8.1. In view of the foregoing, it can be concluded and that attachment of Condition No 4 is *ultra vires* the powers of the planning authority and it is recommended that the appeal be upheld and that the planning authority be directed to remove the Condition. Draft Reasons are set out below.

9.0 Reasons and Considerations

- 9.1. According to the provisions of section 48 (2) (c) of the Planning and Development Act, 2000 as amended, subject to specific criteria a local authority can attach a condition with a requirement for payment of an additional contribution to cover the specific exceptional costs of public infrastructure and facilities not covered by the adopted development contributions scheme but which are essential to facilitate a particular development. The Board concluded that the cost of the roads maintenance and repair in respect of which the additional special contribution would not constitute additional specific exceptional costs of public infrastructure and facilities which are essential to facilitate the proposed development and are not covered by the adopted development contributions scheme.

**Jane Dennehy,
Senior Planning Inspector.
12th July, 2017.**