



An
Bord
Pleanála

Inspector's Report 01.248496

Development	Extension to recycling facility, extension to composting facility, lean-to canopies to provide sheltered storage, vehicle parking areas and associated site works.
Location	Ballintrane, Fenagh, County Carlow.
Planning Authority	Carlow County Council
Planning Authority Reg. Ref.	16/292
Applicant(s)	O'Toole Composting Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	O'Toole Composting Limited
Date of Site Inspection	1 st August, 2017
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The site of the proposed development consists of an existing composting and recycling facility in the townland of Ballintrane approximately 13km south-east of Carlow Town. The site is approximately 5 hectares in area and is located in a rural location where the predominant land use is agriculture. The facility has direct frontage onto the N80 National Secondary Road.

2.0 Proposed Development

2.1. The proposed development comprises extensions to the existing facility to provide additional space to sort materials entering the site. It is also proposed to provide canopies to allow for storage of machinery and finished product associated with processes on the site. Overall, the development would provide:

- An extension to the east of the existing recycling facility (1179 sq m),
- An extension to the north-west to the existing composting facility (66 sq m),
- 'Lean-to' canopies either side of the recycling facility (each 549 sq m),
- A 'lean-to' canopy to the northern side of the composting facility (753 sq m), and
- An airlock to the northern side of the composting facility (281 sq m)

2.2. Details submitted with the application included a Planning Report, an Environmental Impact Assessment Screening, and an Appropriate Assessment Screening.

3.0 Planning Authority Decision

3.1. Decision

On 20th April 2017, Carlow County Council decided to grant permission for the proposed development subject to 20 no. conditions. Condition no. 3 comprised the development contribution totalling €50,655.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner recommended that further information be sought on traffic and drainage matters and requested amendments on the EIA and AA screening reports.

3.2.2. Other Technical Reports

The Fire Officer had no objections to the proposal subject to conditions.

The District Engineer requested further information on traffic-related matters.

The Roads Engineer had no objection to the proposal.

3.3 Prescribed Bodies

Inland Fisheries Ireland set out a range of concerns relating to the construction and operational phases.

Irish Water had no objection to the proposal.

The Environmental Protection Agency referred to the need for an EIA determination.

The Health Service Executive stated it had no comments on the proposal.

Transport Infrastructure Ireland considered the application was at variance with national roads policy.

A further information request was issued to the applicant on 23rd November 2016 in accordance with the Planner's recommendation and a response was received by the planning authority on 24th March 2017.

The submissions to the planning authority following receipt of the further information were as follows:

TII advised that its position remained the same as set out in its first submission.

The Planner was satisfied with the response to the further information request, considered all relevant environmental issues had been assessed in the EIS and AA Screening Reports, and recommended that permission be granted.

4.0 Planning History

There are seven previous planning permissions associated with the established facility – P.A. Refs. 15/81, 14/251, 08/321, 06/668, 05/575, 04/378, and ABP Ref. PL 01.204497 (P.A. Ref. 03/314).

5.0 Policy Context

5.1. Carlow County Development Plan 2015-2021

Waste Management

ENV – Policy 1 seeks to implement the Waste Management Hierarchy and the Regional Waste Management Plan and supports the development of recycling sites and associated developments in appropriate locations.

6.0 The Appeal

6.1. Grounds of Appeal

The appellant submits that Condition No. 3 of the planning authority's decision has been incorrectly applied and does not conform to the Carlow County Council Development Contribution Scheme 2017-2021. The specific grounds of appeal include:

- The proposed sheltered storage areas, which are covered by a lean-to canopy, do not comprise a building and/or gross floor area. Therefore, the proposed canopies are not subject to general development contributions as outlined in the Scheme.
- The correct development contribution should amount to €22,890 and are applicable to Buildings A, D and F proposed.
- The proposed canopies will be used to provide sheltered storage and vehicle parking areas and cannot be defined as "industrial buildings".

- It is not proposed to make anything in these areas or to carry out any 'processes' therein so defined under the term "industrial process" in the Planning and Development Regulations.
- The proposed canopies and associated sheltered areas are best defined as 'repositories', as so defined under the Regulations.
- Canopies do not comprise 'buildings' as they do not provide 'gross floor space' and, thus, the structures are not subject to the Development Contribution Scheme. Furthermore, the canopies are not enclosed and external walls are not proposed.
- Section 19 of the Council's Scheme outlines the contributions to be paid per m² of floor space for buildings. The canopies do not provide for gross floor space and could not be described as a 'building'. The Council's contribution rates directly relate to gross floor space of 'buildings'.
- Reference is made to Section 21 of the Scheme in relation to Agricultural Development and contributions for roofed structures, whether open or enclosed. It is submitted that it is clear the Scheme has made a distinction between rates applicable to gross floor space of buildings and agricultural development or sheds which could be described as 'open'. It is submitted that this distinction is not made for any other class of development and that it should be noted the proposed development relates to an industrial use. It is, thus, concluded that, where there are 'open' structures such as the proposed canopies, which are not in agricultural use, the Scheme does not allow for a rate to be applied.

6.2. Planning Authority Response

The planning authority is of the opinion that the roofed structures, with useable floor areas, come under the definition of industrial buildings. It is considered that the proposed structures are incidental and integral to the overall industrial process on the site. It is submitted that two of the sheltered storage areas are for skips and material being processed, and a further storage area would be used for finalised product and overnight parking of vehicles. It is noted that the structures are attached to existing buildings and are proposed to be used in conjunction with overall

processing of materials on site. It is further noted that the structures comprise part of the overall industrial use of the site and are indicated to improve efficiency and environmental performance of the facility. The planning authority is of the view the structures constitute industrial buildings as defined in the Planning and Development Regulations and have useable floor areas. In conclusion, it is submitted that the Scheme is applicable to “development” and attracts a development contribution of €15 per m², whether defined as an industrial building or whether in use for storage.

6.3. Further Responses

The applicant reaffirmed its position that the development contribution imposed by the planning authority is not applicable to the permitted canopies/lean-tos. It is submitted that the existing and proposed development should be considered a ‘waste activity’, that the canopies/lean-tos are not buildings, no waste activity or industrial processing takes place within their confines, they are not incidental to the overall process, and that the facility is subject to an Emissions Licence issued by the EPA (a copy of which is attached). It is stated that the proposed structures are expressly for the purposes of improving the environmental performance of the facility by providing for temporary storage of materials.

7.0 Assessment

7.1. The proposed developments the subject of the appeal comprise:

- A ‘lean-to’ canopy to the eastern side of the proposed extension to the recycling facility comprising an area of 549 sq m;
- A ‘lean-to’ canopy to the western side of the existing recycling facility comprising an area of 549 sq m; and
- A ‘lean-to’ canopy to the north of the existing composting unit comprising an area of 753 sq m.

7.2 In considering the appeal, I first make the following observations:

- In the Planning Report submitted with the application a ‘Summary of the Proposed Development’ is given in Section 1.1 and it is stated:

“... It is also proposed to provide for canopies to both facilities will allow (sic) for storage of machinery and finished product associated with processes on site.”

- With regard to the ‘lean-to’ to the north of the composting unit, the applicant states in its Planning Report (Section 4.2) that the application proposes to provide:

“A sheltered storage area (i.e. an area covered by a ‘lean-to’ canopy) for finalised product (output material) and overnight parking of vehicles (753 sq m approximately).”

- With regard to the ‘lean-tos’ either side of the recycling facility, the applicant states in its Planning Report (Section 4.2) that the application proposes to provide:

“Two sheltered storage areas (i.e. an area covered by a ‘lean-to’ canopy) for skips and material being processed such as timber, tyres, rubble and green waste, respectively. (549 sq m each approximately).”

- In the Planning Application Form, under Section 12 “Where the application relates to a building or buildings”, the ‘Gross floor space of proposed works in m²’ is given as 2,828 sq m. This appears to equate to the total area of all of the proposed development, less one of the ‘lean-to’ canopies with an area of 549 sq m.
- The planning authority maintains the structures constitute industrial buildings as defined in the Planning and Development Regulations and have useable floor areas. Whether defined as an industrial building or whether in use for storage, the planning authority contends these developments attract a development contribution.
- The applicant paid planning fees to the planning authority and they were calculated on the basis of Class 4 of Schedule 9 of the Planning and Development Regulations for the extension to the recycling facility and the extension to the composting facility, while they were calculated on the basis of Class 13 of Schedule 9 for the ‘lean-tos’ the subject of the appeal. Class 4 relates to the provision of buildings other than buildings coming within class 1,

2 or 3 (i.e. houses, extensions/domestic sheds, etc., and agricultural buildings). Class 13 relates to development not coming within any of the other classes set out in the Schedule. There is no record on the appeal file to indicate that the planning authority did not accept the fees calculation or that it sought to charge fees for the 'lean-tos' based upon a rate applicable to buildings as provided for in Class 4.

7.3 From the above, it can be seen that there is some confusion about the understanding of the nature and extent of the proposed development. It is seen that the applicant considers the canopied lean-tos as being 'sheltered storage areas' that are not part of the industrial process. However, the applicant was satisfied to submit in the application form that the lean-tos each have a gross floor space, contrary to its appeal submission that canopies do not comprise 'buildings' as they do not provide 'gross floor space'. The planning authority considers these areas to be industrial buildings with useable floor areas, in accordance with its response to the appeal, and yet it acquired planning fees for these structures apparently based upon a class of fees that are not of a class that refers to 'buildings' *per se*.

7.4 It is my submission that it is apparent that the canopied areas are to be used for storage and that the use of these areas as storage would form an integral part of the processes associated with the development on the site, namely the processes of composting and recycling. It appears there is no dispute amongst either of the parties to the appeal that the uses of composting and recycling constitute industrial processes. How one would separate the use of the structures the subject of the appeal (i.e. the canopied lean-tos) from the industrial processes being undertaken at the site cannot be truly understood or, indeed, accepted as they are proposed to facilitate enhancement of the operation of the existing facility. I note, thus, the applicant submits in its Planning Report to the planning authority:

"The purpose of the proposed development is to improve efficiency and the environmental performance of the recycling and the composting facilities only."

(Section 1.1)

7.5 It is my opinion that it is clear that the canopied lean-tos would form a functional component of the facility, would be wholly integrated with the processes as they would be developed for storage of materials, vehicles and/or output, and would be

integral to the achievement of improved efficiency and environmental performance of the facility. It is, furthermore, evident that it is accepted that the lean-tos comprise development in the form of structures and this is not in dispute.

7.6 From the above, it may reasonably be concluded that the canopied lean-tos constitute structures, thus, constituting development. This development would form an integral part of the industrial processes that would take place on the site. These structures would each provide a gross floor area and would be effectively roofed by the canopies. The Council's Development Contribution Scheme 2017-2021 makes provision for general development contributions for new developments. The Schedule of Contributions within the Scheme includes a contribution rate of €15 per m² for industrial development for all areas excluding Carlow Town and Environs and a contribution rate of €15 per m² for storage and warehousing (not for retailing). I note that this rate for storage makes no reference to wholly enclosed storage spaces, open structures or any other type of alternative storage space.

7.7 I acknowledge that the Scheme refers to contributions for agricultural development and alludes to fees payable under this class of development for open and enclosed structures. I do not consider that the provisions relating to the class of development in this instance apply, where the lean-tos are an integral part of an industrial process. I note that reductions provided for under the Scheme do not include development the nature of this appeal. I further note that the Scheme does not provide for any exemptions to which the applicant could request that the lean-tos would avail of. Worthy of note is Exemption r) in the Scheme which is as follows:

"r) Uncovered storage facility ancillary to a development."

Such an exemption may reasonably suggest that a covered storage facility would otherwise be subject to a development contribution.

7.8 Finally, having regard to the nature of the development as part of the industrial process on this site and to the content of the Carlow Development Contribution Scheme, I am satisfied to conclude that the planning authority's development contribution for the lean-tos, based upon a contribution rate of €15 per m², whether for storage or for industrial development, was correctly applied in accordance with its Development Contribution Scheme.

8.0 Recommendation

8.1 I recommend the attachment of Condition No. 3 of the planning authority's decision in accordance with the following:

9.0 Decision

The Board considered, based upon the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area had been properly applied in respect of condition number 3 and directs the said Council under subsection 10(b) of section 48 of the Planning and Development Act, 2000 to ATTACH the said condition and reason therefor.

10.0 Reasons and Considerations

Having regard to the nature of the development, which is a development subject to the provisions of Carlow County Council Development Contribution Scheme 2017-2021, it is considered that the terms of the development contribution scheme have been properly applied and a development contribution condition should be included in this instance.

Kevin Moore
Senior Planning Inspector

28th August 2017