



An  
Bord  
Pleanála

## Inspector's Report PL09.248650.

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<b>Development</b>	Erection of an agricultural store with all associated facilities.
<b>Location</b>	The Maws, Maynooth, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority Reg. Ref.</b>	17/312.
<b>Applicants</b>	Wilhelm and Annetrud Franke.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Permission with conditions.
<b>Type of Appeal</b>	First Party
<b>Appellants</b>	Wilhelm and Annetrud Franke. .
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- 1.1. The proposed development is located in the townland of Maws in a rural area between Maynooth and Kilcock. The site and lands front onto the R148 which was formerly the old N4 National Primary Route.
- 1.2. On the site is a dwelling and agricultural buildings to the rear (south) of the dwelling. The lands have to access points one for the dwelling and an agricultural laneway located to the west of the site.

## 2.0 Proposed Development

- 2.1. The development as submitted to the planning authority on the 30<sup>th</sup> of June 2017 as stated in the public notices was for an agricultural store and all associated facilities with a stated floor area of 664.22m<sup>2</sup>. The proposed building is located to the north east of existing agricultural buildings and is a framed structure open plan building of design and construction associated with modern agricultural buildings.

## 3.0 Planning Authority Decision

### 3.1. Decision

The decision of the planning authority was to grant permission subject to 10 conditions.

Of relevance to this appeal is condition no. 10 as follows;

*The applicant/developer to pay Kildare County Council the sum of €6,642 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 Reports**

### **3.2.1. Planning Reports**

The planning report dated the 15<sup>th</sup> of May 2017 recommended permission. Condition no. 10 calculates the contribution based on a rate applicable at €10 per m<sup>2</sup>, refers to exemption/reductions 664.22m<sup>2</sup> calculations of 664.22m<sup>2</sup> by €10 and the levy applied €6,642.20.

## **4.0 Planning History**

No relevant site history but I would refer to ABP ref. no. PL.09.246874 and ABP ref. no. PL.09.248352 where the matter of development contributions similar to the matters raised in this appeal have arisen.

## **5.0 Policy Context**

### **5.1. Development Plan**

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

Section 10.4.1 deals with agricultural development.

### **5.2. Kildare Contribution Scheme 2015.**

5.2.1. The Kildare Contribution Scheme 2015 was adopted on the 5<sup>th</sup> of November 2015.

5.2.2. Section 7 of the scheme relates to Apportionment of Contributions and indicates *“the development contribution allocated to each class of public infrastructure was determined having regard to the contribution requirement set out in the Capital Programme”*.

5.2.3. Section 8. Refers to the level of general contributions for Kildare County Council.

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**

6.1.1. The appellant c/o Austin Morrin in a submission dated the 6<sup>th</sup> of June 2017 refer to;

- The appeal refers to the Development Contribution Scheme adopted by Kildare County Council and in particular section 12, part n, which relates to agricultural developments.
- The planning report indicates that the existing floor area of farm buildings were not given and therefore the 600m<sup>2</sup> exemption could not be applied.
- The landholding has never availed of any previous exemption and therefore the calculation should be based on the area over 600m<sup>2</sup> and the levy applied to 64.22m<sup>2</sup> and the contribution should be €642.20.
- Reference is made to previous decisions of the Board ABP ref. no PL.09. 246874 where the Board ruled that levies would be applied on the floor areas of applications which were had been granted since the introduction of development contributions.

- Reference is also made to other decisions of the planning authority.
- The appeal considers that the levy was incorrectly applied.

## 6.2. Planning Authority Response

The planning authority in a response dated the 7<sup>th</sup> of July 2017 refers to;

- There was no measurement or scaled drawings of existing agricultural buildings submitted and it is practice to remove/reduce the contributions once the confirmed measurements of existing agri-buildings are made available are less than the 600m<sup>2</sup> available.
- The planning authority set out the basis of the levy.

The existing agricultural buildings on the site are measures as 374.75m<sup>2</sup> and a building to be demolished 217.3m<sup>2</sup>.

The remaining exemption available is calculated as 245.25m<sup>2</sup> based on 600m<sup>2</sup> minus the existing agri building 374.7m<sup>2</sup> retained.

As the area of proposed buildings is 664.22m<sup>2</sup> the area applicable for levy is 418.97m<sup>2</sup> based on extant remaining exemption available calculated as 245.25m<sup>2</sup>.

The contribution required is therefore €4,189.70 based on the floor area multiplied by 10 per m<sup>2</sup>.

## 6.3. Appellant Response

The appellant in a response to the planning authority response refers to;

- The response ignores that all agricultural buildings predate the introduction of development contributions in 2005.
- Reference is made to a recent almost identical case with the Board recently determined ABP ref. No. PL.09.248352.
- The applicant not having availed of any previous exemption is entitled to avail of the exemption.

## 7.0 Assessment

- 7.1. The development as submitted to the planning authority was for an agricultural store and all associated facilities with a stated floor area of 664.22m<sup>2</sup>.
- 7.2. This appeal is a first part appeal in relation to condition no 10 requiring the payment of a financial contribution of €6,642.
- 7.3. The grounds of appeal refer to an application as made for the works outlined and the appeal refers to the Development Contribution Scheme adopted by Kildare County Council and in particular section 12, part n, which relates to agricultural developments. There is reference to the 600m<sup>2</sup> exemption could has not been applied and as the landholding has never availed of any previous exemption, the calculation, therefore, should be based on the area over 600m<sup>2</sup> and the levy applied to 64.22m<sup>2</sup> and the contribution should be €642.20.
- 7.4. The planning authority in response considers that the calculation of the contribution was applied on the development in accordance with the Kildare Contribution Scheme. There was no measurement or scaled drawings of existing agricultural buildings submitted and it is practice to remove/reduce the contributions once the confirmed measurements of existing agri-buildings are made available are less than the 600m<sup>2</sup> available. A revised contribution was submitted in the response based on;
- The existing agricultural buildings on the site are measures as 374.75m<sup>2</sup> and a building to be demolished 217.3m<sup>2</sup>.
  - The remaining exemption available is calculated as 245.25m<sup>2</sup> based on 600m<sup>2</sup> minus the existing agri building 374.7m<sup>2</sup> retained.
  - As the area of proposed buildings is 664.22m<sup>2</sup> the area applicable for levy is 418.97m<sup>2</sup> based on extant remaining exemption available calculated as 245.25m<sup>2</sup>.
  - The contribution required is therefore €4,189.70 based on the floor area multiplied by 10 per m<sup>2</sup>.
- 7.5. 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.

- 7.6. The principle of applying development contributions where planning permission is granted for development is acceptable and provided for in statutory provisions.
- 7.7. Section 12 of the Kildare DCS refers to Exemptions and Reduced Contributions. And 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”. It is also indicated that the “exemption will only apply to buildings for the landowner’s own use in connection with the agricultural operation of his/her farm enterprise”
- 7.8. The subsection refers to cumulative and will only be granted once on any landholding. There appears to be no dispute that an exemption was not availed of previously and no dispute that existing buildings predate development contributions.
- 7.9. 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) but they would not appear to apply and are not referred to in correspondence relating to this appeal.
- 7.10. The provisions of Section 12, subsection (n) although it refers to the first 600 square metres of non residential development on any agricultural landholding will be exempt in referring to cumulative and granted once on any landholding and I would interpret this to enable consideration of a view that the applicant is entitled to avail of the exemption as referred to in the Development Contribution Scheme in respect of the floor area of this proposal which is 600 square metres and levied on any floor area in excess of 600 square metres.
- 7.11. On this basis I do not consider that the DCS has been correctly applied and the floor area the levy should be applied is in relation to 64.22m<sup>2</sup> the floor area in excess of the 600 m<sup>2</sup> exemption and the contribution should be applied as €642.20.

## 8.0 Recommendation

- 8.1. Having considered the submissions received in relation to this appeal and the documentation submitted I consider that the appeal can be addressed under section 139 of the Planning and Development Act 2000 as amended. I recommend that condition no. 10 be amended.

## 9.0 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,

Amend condition 10 as follows;

The applicant/developer to pay to Kildare County Council the sum of ~~€~~**€42.20** 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.

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Derek Daly  
Planning Inspector

22<sup>nd</sup> August 2017