



An
Bord
Pleanála

Inspector's Report PL09.R248746

Development	Retention of single storey shed for agricultural purposes and a storey and a half shed for commercial purposes.
Location	Broadleas Commons, Ballymore Eustace, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	16/1075.
Applicant	Robbie Winders.
Type of Application	Permission.
Planning Authority Decision	Permission with conditions.
Type of Appeal	First Party
Appellant	Robbie Winders
Observer(s)	None.
Date of Site Inspection	None.
Inspector	Philip Davis.

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1.0 Introduction

This is an appeal under S.48(10)(b) of the 2000 Act, as amended, arguing that the Development Contribution Scheme has been improperly applied. It is one of three concurrent schemes on the same landholding – the others being **PL09.248741** and **PL09.248743**.

2.0 Site Location and Description

The appeal site is located in Broadleas Commons, a townland characterised by extensive rural sprawl extending south from the village of Ballymore Eustace. The appeal site is a 0.15 hectare site some 2-km south of Ballymore Eustace with a pair of sheds used for agriculture and commercial use, part of a larger landholding including two dwellings and stables.

3.0 Proposed Development

- 3.1. Retention permission for a single storey agricultural shed of c. 149.4 square metres and a storey and a half c.250 square metre shed for commercial purposes.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to 11 no. conditions. Condition no. 11 set a S.48 Development contribution of €12,355.00.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The original planning permission for the site (07/2417) is noted, as are 16/1074 and 16/1076.

4.2.2. Other Technical Reports

The Development Contribution Calculations sheet on file indicates that the required contribution is €10 per sqm agricultural shed and €43.46 per sqm for commercial

use. As it is an application for retention it was considered that no exemption is applicable.

4.3. **Prescribed Bodies**

None relevant

4.4. **Third Party Observations**

None relevant

5.0 **Planning History**

The planning report states that in 2007 permission was granted (for the overall landholding) for the partial demolition of existing dwelling house and to convert the remainder to stable block and tack room, and to construct a new dormer style dwelling house with barn and all associated site works (**07/2417**).

6.0 **Policy Context**

6.1. **Development Plan**

The site is in open countryside without a specific zoning designation. There is a recorded monument close to the site (KLD029-014001), a standing stone.

6.2. **Natural Heritage Designations**

The closest Natura 2000 site is the Poulaphouca Reservoir SPA, site code 004063, some 3-km to the east. A screening was carried out by the planning authority which concluded that no AA was required.

7.0 The Appeal

7.1. Grounds of Appeal

- It is argued that the planning authority did not take due consideration of the previous permission for a barn at the location.
- It is noted that Section 12(n) of the Scheme states that the first 600 square metres of non-residential development on any agricultural landholding shall be exempt.
- It is noted that 12(f) sets a reduced development contribution for temporary permissions, there should be a reduction of 50% as Condition 3 of the permission sets a 5 year life for the permission.

7.2. Planning Authority Response

- It is noted that paragraph 12(q) states that 'no exemptions or waivers shall apply to any developments subject to retention permission saves where it applies to a previously permitted development (e.g. temporary permission).'
- It is stated that the 'permitted barn' referred to by the applicant was never built.
- It is confirmed that the levy should have been reduced in line with condition 3 which limited the use for 5 years – the revised levy is €6,922.50.

7.3. Applicants Response

- It is restated that the agricultural shed should be exempted under 12(n). With reference to the reduction, it is argued that there should be a further reduction, which would come to a contribution of €5,530.50.

8.0 Assessment

8.1. Overview

In assessing this appeal, I consider it important to establish an overview of the planning history of the overall landholding, not just this site, as all three concurrent appeals are interrelated.

There is no record on file of permissions on this landholding prior to 2007. A single dwelling was located on the south-western corner of the site. This dwelling appears to have been a long established cottage, built at a right angle to the road. The dwelling appears on older OS plans from the early 20th Century. Aerial photographs from 2005 show the site undeveloped, apart from the cottage and another structure at a right angle to this cottage.

In 2007 the planning authority granted permission (**07/2417**) for a new dwelling on the landholding. This permission was for a new dwelling and to turn the existing house on the south-western corner to stables and tack room use in addition to other storage structures. Condition 33 of this permission set a development contribution for the new dwelling.

Subsequent to this, it appears that a series of unauthorised developments took place on the landholding. These included:

- The construction of the permitted dwelling on a significantly larger scale, and on a different design/alignment on the site.
- The existing dwelling stayed (or was reinstated) to residential use, contrary to the permission.
- Two sheds were constructed on the northern corner of the landholding, used partially for agricultural use, and partly for a business operated by the owners of the main house.

The applicants have sought, in three separate permissions, the retention of the permitted dwelling on its existing larger scale and new design/alignment (**16/1074/PL09.248741**), the retention of the use of the original dwelling as a residential unit (**16/1076/PL09.248743**) and the retention of the two sheds (this appeal).

While other arguments have been raised by the appellants, the core of the appeal against the development contribution is that it is submitted that as these applications are for the 'retention' of previously permitted developments, they are exempt under section 12 of the Scheme.

With regard to the two sheds, the applicant has argued that the exemption under 12(f) of the Scheme should apply as the permission is limited to five years only:

12(f) Temporary Permissions

The Scheme includes reduced rates for temporary permissions. The rates for such permissions will be calculated and applied as follows:

- 33% of normal rate for planning permission granted of up to 3 years
- 50% of normal rate for planning permission granted of up to 5 years.
- 66% of normal rate for planning permission granted of up to 10 years.

The applicant will not be exempt from further charges where a 2nd or subsequent application is granted.

In addition, it is submitted that it should be exempt as it is for retention (12(q)):

12(q) Retention Permission

No exemptions or waivers shall apply to any developments subject to retention permission save where it applies to a previously permitted development (e.g. temporary permission).

To support the argument that it is a retention application, it is noted that the storage sheds were included in the original planning permission for the overall site.

However, I note that the sheds bear little resemblance in location and design to those originally permitted, and in any event, no development contribution was paid. In the context of the Scheme it is quite clear that 12(q) is only intended to apply to certain restricted situations, such as when an existing permitted development requires retention permission to extend its life. I therefore do not consider that there is any basis to consider that the sheds can be exempt by way of 12(q). I further note that the wording of 12(q) is such that any application for retention cannot have relief from other exemptions, and this includes 12(n), which exempts the first 600 square metres of agricultural sheds.

The planning authority has acknowledged that as condition 3 of **16/10754** limited the use to five years, then 12(f) applies, and there should have been a 50% reduction in the contribution. The planning authority calculate this as coming to €6,922.50. I concur with the conclusion and the calculation and conclude that the levy should be altered to this sum.

9.0 Recommendation

I recommend that the Board directs the planning authority to alter the contribution to €6,922.50 for the reasons and considerations set out below.

10.0 Reasons and Considerations

The Board considers that the requirement to pay the development contribution is in accordance with the requirements of Section 48 of the Planning and Development Act, 2000, as amended, and the Kildare Development Contribution Scheme 2015-2022. It is considered that the proposed development does not represent the retention of an existing temporarily permitted development as defined under 12(q) of the Scheme. As such, it is not exempt under subsection 12(q) of the Development Contribution Scheme 2015-2022 or any other exemption set out in the Scheme. It is, however, considered that Condition 3 of permission 16/1075, which sets a five-year limit for the permission, limits, under subsection 12(f) of the Scheme, reduces the contribution by 50%. Accordingly, the Board directs that condition 11 be amended such that the total contribution due is €6.922.50.

Philip Davis

Planning Inspector

26th October 2017