



An
Bord
Pleanála

Inspector's Report ABP 300132-17.

Development	House, seven glamping sites, toilet block, office portacabin and ancillary site services.
Location	Kilcoltrim, Borris, Co. Carlow.
Planning Authority	Carlow County Council.
Planning Authority Reg. Ref.	17/168.
Applicant	David Horan.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	First Party V. financial contribution condition.
Appellant	David Horan.
Observers	None.
Inspector	Dáire McDevitt

1.0 Site Location and Description

- 1.1 The appeal site is located in Kilcoltrim, a rural townland, c. 1km southwest of Borris in county Carlow. The area is characterised by sloping topography with the site located on a hill on the southern side of Kilcoltrim lane. It is located in a field to the rear of a single storey cottage and a two storey farmhouse with a farmyard complex to the east.
- 1.2 Access to the site is via a c. 130m unsurfaced track off Kilcoltrim Lane which is off the R702 south of the village of Borris. The access track is bounded by mature hedgerows with mature trees and hedgerows bounding the main body of the site. There is an existing portacabin and kayaks/canoes on site.

2.0 Proposed Development

- 2.1. Permission was sought for:
- A single storey dwelling with a timer clad finish erected on timber piles with a gfa of c.110.8sq.m and a height of c. 6.15m.
 - A toilet block (c. 70.25sq.m and height of 4.67m).
 - A Portocabin (26.6sq.m).
 - 7 no. glamping sites to accommodate bell tents.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 18 conditions.

Condition No. 18 refers to a financial contribution of **€19,419** in accordance with the Carlow's County Council's General Development Contribution Scheme and Section 48 (1) of the Planning and Development Act 2000 as amended towards the provision of public Infrastructure and facilities.

3.2. Planning Authority Reports

3.2.1 Planning Report

A grant of permission was recommended following further information that dealt with outstanding issues.

3.3. Other Technical Reports

Municipal Engineer. No objection subject to conditions.

Transportation Section. No objection subject to conditions.

Environment Section: No objection subject to conditions.

Water Services. No objection subject to conditions.

Chief Fire Officer. No objection subject to conditions.

3.4. Prescribed Bodies

None.

3.5. Third Party Observations

None.

4.0 Planning History

Planning Authority Reference 08/61 refers to a 2008 grant of permission for an outdoor activity and adventure centre, including a house (applicant) and 2 no. self-catering units, storage and ancillary services.

Planning Authority Reference No. 12/158 refers to an Extension of Duration of permission granted under 08/61 to **27th April 2018**.

4.1. The applicant has referred to Planning Applications for similar developments in other counties and the basis for calculating contributions in accordance with the relevant Development Contribution Schemes.

5.0 Policy Context

5.1. Carlow County Council General Development Contributions Scheme 2017-2021

- 5.1.1. Section 19 sets out the schedule of contributions. This includes Class 5, Commercial at a rate of €20 per square metre for all areas throughout the county, excluding Carlow Town & Environs.
- 5.1.2. Class 23 refers to ‘development not coming within any of the foregoing classes’ at a rate of €15 per square metres.
- 5.1.3. Glamping sites, camp sites or caravan parks are not defined as a specific class in the Development Contribution Scheme.

5.2. Carlow County Development Plan 2015-2021

The site is governed by the policies and provisions contained in the County Development Plan.

5.3 Definitions

There is no definition of ‘**commercial**’ provided in the Development Contribution Scheme.

In order to assess whether or not the glamping sites proposed constitute a ‘structure’, ‘works’ or ‘use’ regard should be had to the following items of legislation:

Planning and Development Act, 2000 as amended.

Section 2(1) defines among other things:

“**structure**” – means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situate, and

‘**use**’ in relation to land, does not include the use of land by the carrying out of any works thereon.

‘**works**’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

5.4 Natural Heritage Designations

The River Barrow and River Nore SAC (site code 002162) is c. 320m to the west of the site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is a first party appeal, seeking the amendment of Condition No. 18 of the Planning Authority’s decision which requires the payment of a development contribution and can be summarised as follows:

- The proposal relates to a tourist related recreational development and the Carlow County Council Development Contribution Scheme does not include a specific contribution for ‘recreational’ or ‘camping’ developments.
- A rate of €15 should have been applied to the service block and the portocabin as per class 13 in the Development Contribution Scheme (The applicant has referred in error to class 13, reference should be to class 23) with an amount due of €1452.75.
- No contributions should apply for the glamping tents as a floor area would not apply to a ‘tent’ pitch, which is ‘use of land’ and not the ‘works’ involved in the specific development of a structure with a specific floor area.

- There is no specific contribution for 'glamping' or 'camping' sites in the adopted Development Contribution Scheme.
- Total amount due €3114.75 for house (€1662) and portocabin/toilet block (€1452.75).

6.2. Planning Authority Response

6.2.1 The response is set out as follows:

- It is considered that those elements of the proposed development consisting of a toilet block and portacabin/site office are commercial development ancillary to the glamping site use. For this reason, it is considered that the commercial rate of €20.00 per square metres in Class 5 of the Council's current Development Contribution Scheme 2017-2021 was correctly applied to the toilet block and portocabin/site office.
- The appeal incorrectly refers to class 13 instead of class 23.
- In relation to the application of a contribution to the glamping sites. The appellant set out that any contribution based on floor area does not apply to a tent pitch which is 'use of land' and not the 'works' involved in the development of a structure.
- The appellant has not taken into sufficient account the definition of 'development' in Section 3 of the Planning and Development Act 2000 (as amended) which defines development as including (inter alia) works on or over land or the making of any material change of use of any land. Therefore it is considered that Class 5 for commercial development was correctly applied to the proposed glamping sites. The contribution for the glamping sites was based on a total floor area of 791sq.m as detailed in the planning application form.
- The development contributions have been correctly applied as per the current Development Contribution Scheme. The matter of previous

Development Contribution Schemes or those in place in other local authorities does not inform the Planning Authority's calculations.

6.3. Observations

None.

7.0 Assessment

7.1. Nature of Appeal

7.1.1. As this appeal is under Section 48(10)(b) of the Planning and Development Act 2000, as amended only, where the applicant considers that the terms of the relevant development contribution scheme have not been properly applied, 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. Application of Development Contribution Scheme

7.2.1 The issue in this appeal relates to whether the terms of the current Carlow County Development Contribution Scheme 2017-2021, adopted on the 13th February 2017, have been properly applied.

7.2.2 The proposed development relates to the construction of a house, 7 no. glamping sites, toilet block, office and ancillary site works. The Planning Authority attached condition No.18 which requires the developer to pay €19,419 to Carlow County Council in accordance with the General Development Contribution Scheme 2015. This includes the disputed €17,757 applied to the portacabin (office), toilet block and 7 no. glamping sites, The applicant is seeking the amended of this condition as the proposal relates to a tourism related development which they consider should be charged at a rate of €15 per sq.m (class 23) not €20 per spare metres (Class 5: commercial buildings) under the terms of the adopted Development Contribution Scheme. And that the 7 no. glamping sites to accommodate 7 no. bell tents do not constitute

structures for the purposes of applying the development contribution scheme as tents are temporary. Therefore the Planning Authority has not applied the adopted Development Contribution Scheme correctly in this instance by applying the amount of €15,820 to these sites.

7.2.3 The Planning Authority in their response to the appeal do not accept the applicant's assertion that the proposed development should not be considered as a commercial development. In addition, the Planning Authority note that the use of the land for 'glamping' constitutes development in accordance with the definition as set out in the Planning and Development Act 2000, as amended. Therefore, as the proposal is for a mixed use development consisting of a house and a commercial enterprise, a commercial rate of contribution applies to the glamping sites/pitches and ancillary toilet block and office.

7.2.4 The Planning Authority set out that the basis for the gross floor area (gfa) calculation for the glamping sites is the 791sq.m (7 x 113sq.m) referred to in the planning application form. I note that there are no plans and particulars for the glamping sites and associated bell tents on file. I further note that the site layout plan submitted does not indicate if permanent bases are proposed for the sites/pitches.

7.2.5 Having examined the Council's adopted Development Contribution Scheme I note that there is no definition for commercial development and I cannot find a reference to glamping sites/ camping sites/caravan parks within the scheme. I, therefore, refer to the definition of 'structure' as set out in the Planning and Development Act 2000 as referenced in section 5.3 of this report. Notwithstanding that the current application is for a commercial development which includes 7 no. glamping sites/pitches and an ancillary toilet block and portacabin (office). The 7 no. glamping sites/pitches to accommodate bell tents are not permanent structures and therefore the application of a contribution based on floor area does not apply to these sites/pitches. Given the commercial nature of the development I consider that the Planning Authority was correct in applying a financial contribution in accordance with the rate set

out in Section 19, class 5 for 'commercial' type of developments to the toilet block and portacabin/site office as they are ancillary to a commercial glamping business.

- 7.2.6 The applicant referred to Planning Authority Reference No. 10266 in the appeal. This relates to a 2010 grant of permission for a development that included camping at Hackettstown, Co. Carlow. A development contribution of €1,395 was applied for roads. I note that the development contribution was applied in accordance with the 2010 Development Contribution Scheme which was the scheme in force at the time.
- 7.2.7 The development is for a house and a commercial enterprise consisting of 7 no. glamping tents/sites and ancillary services block and office. I am satisfied that the Planning Authority is correct in seeking to apply a development contribution for the house (110.8sq.m at a rate of €15 per sq.m) and for the toilet block and the portacabin/office (total floor area of 96.85 sq.m at a rate of €20 per sq.m) in accordance with the terms of their Development Contribution Scheme.
- 7.2.8 In conclusion, I consider that the Board should direct the Planning Authority to amend the wording of Condition 18 to reduce the amount payable from €19,419.00 to €3,599.00 (€1,662 Class 1 and €1,937 Class 5) since the original sum charged by the Planning Authority included the 7 no. glamping sites/pitches.

8.0 Recommendation

- 8.1. I recommend that the Board directs the Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to amend Condition 18 so that the amount payable is reduced from €19,419.00 to €3,599.00. Amended condition should read as follows:

The developer shall pay to the planning authority a financial contribution of €3,599.00 (Three thousand, five hundred and ninety nine euro) in respect of public infrastructure and facilities benefiting development in the area of the

planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

9.0 REASONS AND CONSIDERATIONS

9.1. Having regard to:

- (a) The nature of the development which relates to a single house and a commercial development consisting of 7 no. glamping sites for bell tents and ancillary toilet block and office.
- (b) The provisions of the Carlow County Council General Development Contributions Scheme 2015.

the Board considers that the terms of the Development Contribution Scheme have not been properly applied by the Planning Authority. The Board considered that the proposed glamping sites/pitches do not fall within the remit of Class 5 (commercial) of the Development Contributions Scheme and that the ancillary toilet block and portacabin (office) fall within the remit of Class 5 as they ancillary to the commercial business. A contribution under class 1 for the

house applies and therefore would be subject to a development contribution in accordance with the terms of the Development Contribution Scheme.

Dáire McDevitt
Planning Inspector

16th February 2018