



An
Bord
Pleanála

Inspector's Report ABP-301175-18

Development	Construct 2 industrial units, together with connection to existing public services and ancillary site works.
Location	Abbeyhalfquarter, Ardnaree, Ballina, Co. Mayo.
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	P17/762
Applicant(s)	Holmes Insulation Ltd
Type of Application	Permission
Planning Authority Decision	GRANT with conditions
Type of Appeal	First Party against contribution condition
Appellant(s)	Holmes Insulation Ltd
Observer(s)	None
Date of Site Inspection	21/06/18
Inspector	John Desmond

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1.0 Site Location and Description

- 1.1. The application site is location within a small industrial estate within the east side of Ballina town, accessed off Abbey Street. The site is the last remaining section of the estate remaining to be completed. The foundations of the proposed structures were already in place on the date of site inspection. The existing units were in a range of uses from light industrial (glaziers) to leisure (gym).

2.0 Proposed Development

- 2.1. Construct 2no. industrial units of 725.8-sq.m stated gross floor area.

3.0 Planning Authority Decision

3.1. Decision

GRANT subject to 14no. conditions.

Condition no.14 required the payment of **€11,860.80** for the reason '*to comply with Mayo County Council Development Contribution Scheme 2004 and Supplementary Development Contribution Scheme 2009.*'

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first report of the Planning Officer (14/11/17) did not include an assessment but rather comprised a request for further information concerning design issues, landscaping, signage, undersized surface water drainage, onsite storage, parking and renewable energy, consistent with the request that issued from the Planning Authority.

The second report (23/02/18) is consistent with the decision of the Planning Authority to grant permission and the conditions attaching thereto. It includes a breakdown of the development contribution calculations.

3.2.2. Other Technical Reports

Area Engineer (10/11/17) requested further information on compliance with parking standards.

Area Office (16/10/17) issued a detailed report concerning further information required, including the type of retail proposed, and standards to be complied. €5000 deposit required to cover cost of any pavement damage.

Architect's report (12/10/17) raised concern about proximity to western boundary, screening belt of planting and signage.

RDO (29/09/17) – no observations.

Ballina Municipal District (27/09/17) requested further information on surface water drainage network capacity issues and on size of unit adjacent boundary wall.

3.3. Prescribed Bodies

TII (02/10/17) – no observations.

4.0 Planning History

Reg.Ref.99/701977 (P99/1977) – Permission **GRANTED** by the Planning Authority (final grant date 15/07/99) to Joe and Des Horan to construct 7 no. commercial / light industrial units and also to convert existing walled area to be roofed storage area/building, connect to all public utilities together with all associated site works, subject to conditions.

No copy of history documents attaching to file.

5.0 Policy Context

5.1. Development Plan

Mayo County Development Plan 2014-2020.

Development Contribution Scheme 2004, as revised 05/02/07

5.2. **Natural Heritage Designations**

River Moy SAC Site no.002298 (c.225m to northwest)

6.0 **The Appeal**

6.1. **Grounds of Appeal**

This First Party appeal is against the attachment of contribution condition no.14 only.

- Application should not be considered 'de novo' having regard to the provisions of s.48(13)(a) of the Act.
- The permission pertains to 2no. industrial units granted permission under P99/1977 but not constructed.
- The development contributions required under condition no.4 of permission P99/1977 (£17,000, equivalent to €21,585.54) was paid in full by the previous applicant and all service connections have been made. Payment receipts (2no. dated 28/02/05) and confirmation attached (01/03/05).
- Condition no.14 should be removed or significantly reduced to reflect the payments already made and infrastructure completed.

6.2. **Planning Authority Response**

The Planning Authority has submitted no response to support the attachment of the condition.

7.0 **Assessment**

7.1. This is an appeal solely against attachment of Development Contribution Condition under section 48(10) of the Act. The applicant's reference to section 48(13), which relates to appeals against the attachment of a special contribution condition, is erroneous as the subject condition is not a special contribution condition and no such condition was attached.

7.2. The Planning Authority granted permission for 2no. industrial units of 725.8-sq.m stated GFA in total. Condition no.14 attaching to the decision requires the payment

of €11,860.80 for reason 'to comply with Mayo County Council's Development Contribution Scheme 2004 and Supplementary Development Contribution Scheme 2009'. It is apparent from the Council's calculations that the contribution only related to the Section 48 Development Contribution Scheme 2004. No contribution was applied under the Section 49 Supplementary Contribution Scheme 2009, which falls outside the scope of the Board's consideration in this case.

- 7.3. Having regard to the limitations imposed on the Board under section 48(10), the Board should limit its considerations to the condition concerned and I will limit my assessment accordingly.
- 7.4. S.48(10)(b) provides that an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority. The applicant does not specifically claim that the terms of the scheme have not been properly applied, rather it is submitted that an allowance should have been made for the previous payment of contributions (€21,585.54) for the original development (P99/1977, final grant date 15/07/99) which included 2no. industrial units which were not constructed.
- 7.5. The determination of the contribution applicable for industrial development, as provided for under schedule 1 of the Section 48 Development Contribution Scheme 2004, revised 05/02/07, is on the basis of several categories of contribution applied to such development at the rate of dwelling house equivalent:

Category of contribution	Amount of contribution € per dwellinghouse equivalent	Contribution figure applied	Dwellinghouse equivalent	subtotals
Surface water services	596	0	Not applied	0
Amenities	357	357	4.8	1713.60
Roads	Varies	1519	4.8	7291.2
Footpaths & Public	238	238	4.8	1142.4

Lighting				
Community, Open Space & Recreational Facilities	357	357	4.8	1713.6
Car parking	2382	0	Not applied	0
Total				€11,860.80

- 7.6. The Scheme provides no indication as to how dwelling house equivalent is to be calculated per use type, which makes the application of the scheme less than transparent and open to risk of inconsistent application. The Planner's Report calculated the contributions based on the development being equivalent to 4.8 dwelling house equivalent, which was determined from estimated water usage of 600/l/d per dwelling (3-person occupancy at 200/l/d per person). The rate applied would appear reasonable and has not been disputed by the applicant.
- 7.7. Section 10 of the Scheme provides that the various categories of contribution are applied to a particular application **only** where they are relevant. The Planning Authority only consider 4no. (of 6no.) categories of contribution to be relevant – amenities, roads, footpath and related, and community and related. It is not obvious why the Council deemed certain categories, including surface water services in particular, not to be relevant to the application. A connection to the storm water system is proposed that will put extra pressure on an already undersized surface water drainage pipe, as noted in the Area Engineer's report (notwithstanding attenuation and hydrobrake proposals at further information stage). A standard surface water contribution, if not a special contribution condition, would seem warranted in this case, however it would be unreasonable for the Board to amend the categories of contribution where the Council has not deemed them relevant to the application and decided to forgo contributions.
- 7.8. Section 4 of the Scheme allows that the Planning Authority, '*at its own and absolute discretion, **may** allow the payment of a reduced contribution where the payment of the contribution would not be just and reasonable having regard to any of the following –*

- (a) *The limited extent of the development,*
- (b) *The limited cost of the development,*
- (c) *Other exceptional costs.*

...A decision to allow a reduced contribution under this section ... shall contain a statement specifying the reasons for the decision.' The decision of the Planning Authority not to apply a reduced contribution is consistent with the terms of the Scheme. There is no provision for reduced contribution where contributions have been paid in respect of development previously permitted and subsequently not completed on site. It is possible, but not certain, that the applicant is entitled to the return of monies paid in respect of contributions paid under the terms of P99/1977 for development that was not carried out. However, this is a matter for the Planning Authority and is not relevant to consideration of the case at hand. No reduction in the contribution is therefore warranted.

7.9. Section 5 of the Scheme allows that the Planning Authority, '*at its own and absolute discretion may waive any contribution payable*' where carried out by or on behalf of a voluntary organisation within specified categories (a)-(e). There is no indication that the applicant would fall within the scope of section 5 and no waiver of contribution is applicable.

8.0 Recommendation

- 8.1. I recommend that Condition no.14 be attached without amendment of the contribution figure.

9.0 Reasons and Considerations

The Board, in accordance with section 48 of the Planning and Development Act, 2000, (as amended) considered that the terms of the Mayo County Council Development Contribution Scheme 2004, as revised 2007, for the area had been properly applied in respect of Condition 14 and directs the said Council to **ATTACH** the said condition.

John Desmond
Senior Planning Inspector

25th June 2018