



An
Bord
Pleanála

Inspector's Report ABP-301291-18

Development

Change of use of building from agriculture use to commercial use and construction of lean-to extension with mezzanine floor commercial storage yard with a weighbridge.

Location

Killelery, Geashill, Co Offaly

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

18/6

Applicant(s)

Quinn's of Baltinglass

Type of Application

Permission.

Planning Authority Decision

Grant with Conditions

Type of Appeal

First Party

Appellant(s)

Quinn's of Baltinglass

Observer(s)

None

Date of Site Inspection

Not Required

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1.0 Site Location and Description

1.1. The development is located in the townland of Killelery, Geashill, Co. Offlay. mlt has direct access onto local road L-5036-1.

2.0 Development

2.1. Retention Permission for:

- Charge of use of building granted under planning PL2/07/1694 from agricultural use to commercial use
- Construction of lean-to extension with mezzanine floor for commercial use to building granted under PL2/07/1674
- Commercial storage yard with weighbridge
- Widening of access point
- Signage

3.0 Planning Authority Decision

3.1. Decision

Offlay Co. Co. granted planning permission for the development subject to 10No. Conditions.

Condition 8

The developer shall pay to the Planning Authority a financial contribution as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000 as amended, towards the restoration and upkeep of 374metres of roadway on the L-5036-1, leading to the site. The amount of contribution shall be paid within 3months of the date of this permission or in such phased payments as the planning authority may facilitate.

Condition No. 12

Development contributions payable of €12852.00

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The reasoning behind the development contributions is outlined in the report. The special contribution is in line with the Area Engineers report.

Area Engineer, Edenderry

- The report recommended a special contribution payable of €2828 annually towards the restoration and upkeep of 374 metres of roadway on the L-5036-1, leading to the site. It was considered reasonable the applicant should contribute to the exceptional costs which are incurred by the planning authority and which are not covered by the development contribution scheme.

3.3. Prescribed Bodies

There were no submissions received.

3.4. Third Party Observations

There were none received.

4.0 Planning History

UD/17/009

Both Enforcement and a Warning Letter was issued in relation to unauthorised commercial use of an agricultural building, unauthorised extension to said building and unauthorised commercial storage yard.

5.0 Policy Context

5.1. Development Contribution Scheme 2014-2020

Included in the Appendix of this Report.

6.0 The Appeal

6.1. Grounds of Appeal

Quinns of Baltinglass have appealed one condition of the permission, i.e. Condition No. 8 which relates solely to a special contribution attached to the decision. The applicant is satisfied with the general contribution condition and condition 0 which requires the inclusion of a passing bay on the local road leading to the development.

The manner in which the amount calculated is outlined in the appeal. There is no other detail justifying the amount other than how it was calculated. There is no evidence to suggest the development has or will damage the road. There is effectively double charging in this instance. Under Condition 9 the applicant has to pay a general development contribution of €8555.76 and that includes a Roads levy.

The amount payable for the refurbishment (or restoration as stated by the planning authority) of the roads as well as upgrading, enlargement and replacement roads. In this regard the general contribution will be to include for roads.

The sum included in Condition 8 is excessive and was an error. The initial sum recommended in Ms McGraths Report of the 14/02/2018 was €2828 to be conditioned as a special contribution towards the restoration and upkeep of L-5036-1 leading to the site. The figure was calculated using an annual contribution levy formula employed by Offlay Co. Co. The contribution levy formulae is

$$((A/B - 1) \times C) / A$$

A is the expected road life in years

B is the reduced life of the road in years as a result of the proposed development

C is the total cost of the restoration

A is 12, B is 6, and the values are based on the Area Engineer's experience. C is the total cost of the restoration. When the formulae is applied the result is €2828.38, which corresponds to the figures in the memo dated 14/02/2018.

An error has occurred in the preparation of the Chief Executive's Order dated 26th of February 2018. The report calculated an annual contribution levy of €2828 but the Chief Executives order included a figure of C the total cost of the road restoration.

6.2. Planning Authority Response

The planning authority had no further comments and asked the Board to support to its decision.

7.0 Assessment

- 7.1. The appeal against Condition 8 is under Section 48(10)(b) of the Planning and Development Act 2000, as amended, 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. The Board should note this appeal relates to a special development contribution applied in Condition No. 8 whereby a special levy of €33,940 was imposed for the upkeep and restoration of 374metres of roadway on the L-5036-1. The Board should also note that Condition No. 9 imposes a development levy in accordance with the adopted Development Contribution Scheme (included in the Appendix of this report) which specifies €8555.76 of a total of €12,852.00 is payable towards Roads. The applicant, Quinn's of Baltinglass have no objection to the imposition and amount cited in Condition No. 9. However, it believes the imposition of Condition No. 8 in respect of Roads is effectively Double Charging.
- 7.3. The basis for the imposition of the special contribution is included in a report on file dated 14th of February 2018 within the Edenderry Area Office. The report stated an annual cost of €2,828 as a special contribution was payable towards the restoration and upkeep of 374metres of roadway on the L-5036-1. This cost is based on an annual levy formula, which included two variables determined by 'Area Engineer's Experience'.

$$((A/B) - 1 \times C) / A$$

A is the expected road life in years

B is the reduced life of the road in years as a result of the proposed development

C is the total cost of the restoration

The values applied were as follows:

A = 12 years based on area Engineers Experience

B = 6 Years based on Area Engineer's Experience

C = €33,940 (based on 375metres of road x 3.3metres (average road width) x €27.50 (cost of road restoration per sq.m. by Endenderry Area Office 2017).

This was considered to be a specific exceptional cost which is not covered by the Development Contribution Scheme. Having examined the wording of section 48(2)(c) of the Planning and Development Act 2000, I do not consider the restoration works and upkeep of the public road serving the development to be exceptional to the levies incurred for Roads under the adopted Development Contribution Scheme 2014-2020. I accept the Area Engineer's Office has given a detailed calculation basis for the charge of €33,940, which was recommended in the report to be imposed as an annual charge of €2828, instead a lump sum was applied to Condition No. 8. I consider the imposition of this condition to be unreasonable and effectively double charging for the upkeep of the road serving the development.

8.0 Recommendation

8.1. I recommend that Condition No. 8 be removed from the Schedule of Conditions.

Caryn Coogan
Planning Inspector

27th of June 2018