



An  
Bord  
Pleanála

## Inspector's Report ABP301376-18

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| <b>Development</b>                  | Permission to alter, demolish and extend existing commercial premises width and increase in gross floor area of 408.7 square metres. |
| <b>Location</b>                     | Mullins Cross, Dunleer, County Louth.  |
| <b>Planning Authority</b>           | Louth County Council.  |
| <b>Planning Authority Reg. Ref.</b> | 17/897.  |
| <b>Applicant</b>                    | Industrial and Farm Machinery Limited.   |
| <b>Type of Application</b>          | Permission.  |
| <b>Planning Authority Decision</b>  | Grant.   |
| <b>Type of Appeal</b>               | First Party -v- Condition.   |
| <b>Appellant</b>                    | Industrial and Farm Machinery Limited.   |
| <b>Observers</b>                    | None.  |
| <b>Date of Site Inspection</b>      | Not Inspected.   |
| <b>Inspector</b>                    | Paul Caprani.  |

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## 1.0 Introduction

ABP301376-18 relates to a first party appeal against a financial contribution condition. The grounds of appeal argue that in accordance with the financial contribution scheme, a 75% reduction applies for developments which are expansions through authorised industrial and manufacturing operations which would apply in this instance.

## 2.0 Site Location and Description

2.1. A site visit was not conducted in respect of the current application and appeal as it relates to a first party appeal against conditions only. Maps submitted with the planning application indicate that the subject site is located at Mullins Cross on the R132 (former N1 National Primary Route), between Dunleer and Castlebellingham in County Louth. The M1 motorway is located approximately two and half kilometres further west of the subject site. The area surrounding the site is rural in nature. There is sporadic ribbon development along the R132 in the vicinity of the site including a row of houses on the opposite side of the road to the immediate north-east of the entrance to the subject site. The subject site is roughly L-shaped and accommodates two existing industrial buildings one of which is located adjacent to the R132 to the east while the other larger building is located further to the rear. A large area of hardstanding is located between the buildings which is used for car parking.

## 3.0 Proposed Development

3.1. Under the current application, planning permission is sought for the demolition to the front part of the existing building to the rear of the site. The part of the building to be demolished currently accommodates a small retail unit which appears to be associated with the industrial premises together with storage, production/process workshop, office and meeting rooms. Part of the front part of the building also incorporates a first floor section accommodating additional office and storage space.

The proposal will result in the demolition of approximately 1,549 square metres of existing commercial space. It is proposed to replace the existing commercial area to the front of the rear building with a new two-storey structure more or less on the same footprint of the existing structure. The proposed new structure will accommodate a workshop/store, a new larger retail area and a ground floor extension to the warehouse area to the rear. At first floor level it is proposed to accommodate a new office accommodation on the western side of the building with a first-floor extension to the warehouse on the eastern side of the building. The total area of the reconstruction amounts to 1,958 square metres, an increase in floor area of 408.7 square metres. According to the documentation contained on file, the proposed development will result in an increase in office space of 116 square metres, an increase in the shop floor area of 192 square metres and an increase in storage area of 100 square metres.

#### **4.0 Planning Authority's Decision**

Louth County Council issued notification to grant planning permission subject to 10 conditions. Condition No. 10 required a total development contribution of €24,522.

##### **4.1. Documentation submitted with the Documentation**

- 4.1.1. The application submitted to Louth County Council was accompanied by an application form and site maps/plans together with application fee etc. Also submitted with the application form was a site characterisation report prepared by Hydrocare Environmental together with a copy of a letter of consent from owners of adjoining lands allowing permission for the application to be lodged.

##### **4.2. Assessment by Planning Authority**

- 4.2.1. The initial planner's report (dated 25<sup>th</sup> January, 2018) notes the following in relation to development contributions (see Section 9.10 of Planner's Report). *"Having regard to Articles 5.0 (Levels of Contribution) and 6.2 (Reduction), (11-Demolition etc.) and Appendix 3 (Non-Residential Developments) of the Development Contribution Scheme 2016 – 2021, it is considered prima fascia contributions are applicable on the additional 408.7 square metres GFA where no further reductions apply i.e. the*

*applicant has not provided information that the business is grant aided or supported by IDA/Enterprise Ireland/LEO Louth etc. The allocation of the contribution is as follows:*

- (a) Infrastructure (including roads and surface water) €48 x 408.7 = €19,617.6 for infrastructure and €12 x 408.7 = €4,904.4 for amenity.*
- (b) The applicant should be afforded the opportunity to respond to the anticipated development levy through further information”.*

#### **4.3. Further Information Request**

- 4.3.1. On the 26<sup>th</sup> January, 2018 Louth County Council requested further information from the applicant on a number of issues which included further information on development contributions as follows:

*As per Article 5 (level of contribution) and Article 6.2 (reduction) (11-Demolition etc.) and Appendix 3 (non-residential developments) of the Development Contribution Scheme 2016 – 2021, it is considered that contributions are applicable on the additional 408.7 square metres gross floor area which equates to €24,522.*

*If applicable the applicant shall submit information that the business is grant aided or supported by IDA/Enterprise Ireland/LEO Louth etc. in order to avail of the 75% reduction to the anticipated contribution.*

#### **4.4. Additional Information Submission**

- 4.4.1. Additional information was submitted to the Planning Authority on 15<sup>th</sup> February, 2018. In respect of development contributions, the following is stated:

*“Industrial and Farm Machinery Limited currently do not avail of grant aid and they are not currently supported by IDA/Enterprise Ireland/LEO Louth etc. IFM (the applicants) have not sought the support but they may well qualify given their export potential.*

*However, 75% reduction in the development levies also apply under Article 6.2 (reduction) Section 7 of the Development Contribution Scheme 2016 – 2021 for: Expansions to authorised industrial and manufacturing operations including expansion of port operations/facilities”. I would respectfully suggest that industrial*

*Farm Machinery Limited is an authorised industrial and manufacturing operation seeking permission for expansion. Supplying Original Equipment Manufacturers (OEM) with assembled hoses manufactured on site is a key component of the business and attached is a letter from IFM operations manager explaining this. (See letter attached dated 9<sup>th</sup> February, 2018).*

#### **4.5. Further Planning Report**

- 4.5.1. A further planning report was prepared on 7<sup>th</sup> March, 2018. Section 5.2.4 of the report specifically relates to development contributions. It states that *“the Planning Authority are not satisfied that the reduction under Article 6.2(7) applies in this instance as the primary purpose of IFM is a wholesale and retail distributor as per the website. In this regard the planning authority is satisfied that the development contribution as stated in paragraph 9.10 of the initial planner’s report are correct and should be applied by way condition i.e. €24,522”*.
- 4.5.2. In its decision dated 12<sup>th</sup> March, 2018 Louth County Council granted planning permission for the proposed development and included a condition (Condition No. 10 requiring the payment of €24,522).

### **5.0 Planning History**

- 5.1. Planning history associated with the subject site and its surroundings are indicated in Section 2 of the original planner’s report. It appears that there are a number of planning applications relating to alterations and extensions to the existing industrial buildings dating from 1986 to 2007. The details of which do not appear to be pertinent to the current application and appeal before the Board.

### **6.0 Grounds of Appeal**

- 6.1. The appeal specifically relates to the financial contribution levied by Louth County Council under Condition No. 10. The appeal was lodged by Brady Hughes Consulting on behalf of the applicants. The grounds of appeal state that the applicant operates an authorised industrial and manufacturing operation and that the development proposed should qualify for the 75% reduction rate as set out in the adopted financial contribution scheme.

- 6.2. Reference is made to the information contained in the planner's report and specifically the planners report in respect of the further information submission which states that *"I am not satisfied that the reduction under Articles 6.2(7) applies in this instance as the primary purpose of IFM is as a wholesale and retail distributor as per their website"*.
- 6.3. The appeal argues that the primary purpose of IFM website is to generate retail sales, ideally on line or at the retail store on site. The website is for many purposes and it is quite appropriate that the applicant should have an ecommerce focus in the website. There is also significant information on the website about the 6,000 square feet dedicated hydraulic hose assembly operation. Furthermore, it is respectfully suggested that the website page is a wholly irrelevant consideration in determining the application. The business is a combination of distribution sales and the manufacture of assembly hoses for the original equipment manufacturers. The business is directly involved in the manufacturing process resulting in bespoke products for sale. The grounds of appeal also make reference to the definition set out in the regulations for "industrial building", "industrial process" and the definition of "article". Reference is also made to the definitions of "industrial", "manufacturing" and "operation" set out in the Oxford English dictionary.
- 6.4. Based on these definitions it is argued that the company is in fact an industrial and manufacturing operation and therefore Condition No. 10 should be amended to include for a 75% reduction.

## 7.0 Appeal Responses

It appears that Louth County Council have not submitted a response to the grounds of appeal.

## 8.0 Development Contribution Scheme

- 8.1. The Louth Development Contribution Scheme 2016 – 2021 was adopted on 19<sup>th</sup> September, 2016.
- 8.2. Article 5.0 sets out the level of contribution in respect of different classes of public infrastructure to serve development. In relation to non-residential development a

development levy (Class 1) for infrastructure which includes roads and surface water will amount to €48 per square metre.

8.3. In respect of Class 2 (amenity) which includes parks, recreation, amenity and community facilities a cost per square metre will amount to €12.

8.4. Article 6 sets out details of exemptions and reductions. The relevant classes for the purposes of determining the current application and appeal are as follows:

*Section 6.2 – Reductions.*

Subsection 3 – A reduced rate of 75% of development contributions for businesses, grant aided or supported by IDA/Enterprise Ireland/LEO Louth.

Subsection 7 – Expansions to authorised industrial and manufacturing operations including the expansion of port operations/facilities. The latter developments will also attract a reduction of 75%.

## 9.0 **Planning Assessment**

9.1. I have read the entire contents of the file, have had particular regard to the financial contribution scheme adopted by Louth County Council and the grounds of appeal. The only question before the Board is whether or to the terms of the Development Contribution Scheme has been properly applied in this instance. The Planning Authority's rationale for applying the said financial contribution scheme was on the basis that the commercial enterprise operating on site was essentially a wholesale and retail distribution outlet and for this reason the financial contribution levy should be applied. The grounds of appeal however argue that the Planning Authority's view is entirely predicated on the commercial website and this should not be relied upon for the basis of such a determination in relation to financial contribution conditions. Furthermore, it is argued that the proposal constitutes an industrial building incorporating industrial processes.

9.2. It is clear and unambiguous in my view that expansions to authorised industrial and manufacturing operations incorporate 75% reduction in the Development Contribution Scheme. There is nothing to suggest on file that any aspect of the current operations on site is unauthorised under the Planning and Development



Acts. It is reasonable to assume therefore that the subject operations on site constitute authorised industrial and manufacturing operations. Therefore, the critical question before the Board is whether or not the subject site constitutes industrial and manufacturing operations or a wholesale/retail distribution outlet.

- 9.3. The Board will note that I have not visited the site in question and therefore have not observed the extent to which retail and/or industrial/manufacturing activity takes place on site. I would refer the Board however to the drawings submitted with the application. It is clear that the existing development on site incorporates a retail component in terms of the overall land use of the building, and it is equally clear that the proposed development also seeks to incorporate a new larger retail/new shop area under the proposal.
- 9.4. The remainder of the proposed building incorporates areas which are described as workshop/store, hose assembly area, ground floor extension to warehouse, first floor extension to warehouse and office development.
- 9.5. The Planning and Development Regulations refer to the “industrial process” as meaning “any process which is carried out in the course of trade or business other than agriculture for or incidental to the making of any article or part of any article and for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article”. It can be reasonably argued in my view that the workshop/store, hose assembly area and warehouse as well as the office use at first floor level can be considered uses which are incidental to the making of the article, which in this case appears to be hose assembly. For this reason, they could in my view be considered part of the industrial process and therefore can be deemed a class of use for which the reduction in the Development Contribution Scheme would apply.
- 9.6. It would be reasonable therefore in my opinion that the Board apply a reduction in relation to the financial contribution in respect of the gross floor area of the proposed development other than that associated with the new shop area.
- 9.7. Based on my calculation of the floor area therefore, the additional retail area associated with the proposal amounts to 152 square metres (proposed retail area less the existing retail area in that part of the building to be demolished and replaced). This amount in my view should attract the full financial contribution of €60

per square metre (€48 for Class 1 infrastructure and €12 for Class 2 amenity). As it cannot be reasonably argued in my opinion that the retail and sales element of the proposed development constitutes an industrial process or a use incidental to the industrial process.

9.8. The remaining additional 256 square metres, should in my view, attract the 75% reduction in the development contribution rate (i.e. €15 per square metre) on the basis that the proposed increase in floor area accommodates either an industrial use or a use which is incidental and ancillary to the industrial use (i.e. office, warehouse, storage etc.).

9.9. Therefore, the financial contribution should be reduced as follows:

152 square metres x €60 = €9,120

256 square metres x €15 (at 75% reduction rate as per section 6.2(7) of the Adopted Development Contribution Scheme) = €3,840.

I therefore recommend that the financial contribution be amended from €24,522 to €12,960.

## 10.0 Conclusion and Recommendation

Amend Condition No. 10 based on the reasons and considerations set out below.

## 11.0 Reasons and Considerations

The Board considered that the basis on which the financial contribution was calculated did not take into account article 6.2(7) of the Adopted Development Contribution Scheme 2016 – 2021 under the provisions of Section 48 of the Planning and Development Act 2000 (as amended) which allows for a 75% reduction on expansions to authorised industrial and manufacturing operations. The Board considered that 256 square metres of the proposed expansion of the existing building would attract the reduced financial contribution in accordance with the said Adopted Development Contribution Scheme. On this basis the Board calculated the revised financial contribute on to be €12,960.

## 12.0 Decision

The Board in accordance with Section 48 of the Planning and Development Act, as amended, considered based on the reasons and considerations set out below that the terms of the development contribution for the area has not been properly applied in respect of Condition No. 10 and directs the said Council to amend Condition No. 10 and the reason therefor.

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Paul Caprani,  
Senior Planning Inspector.

10th September, 2018.