



An
Bord
Pleanála

Inspector's Report ABP-301479-18

Development	Retention permission for a cattle shed with slatted tank and all associated site works.
Location	Kellsgrange, Kells, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	18/103
Applicant(s)	Larry Mahony
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Larry Mahony
Date of Site Inspection	No site inspection
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.0674 hectares, is located 1.5km north east of Kells village in Co. Kilkenny. The site is accessed off a local secondary road, the L5043 and is within an existing farmyard complex that is approximately 430m west of the M9.

2.0 Proposed Development

2.1. Permission is sought for retention of a cattle shed with slatted tank and associated site works. The shed has a floor area of 674sqm and a ridge height of 7.41m, is attached to an existing shed and is part of an existing farmyard complex. There is underground storage tank with a cubic capacity of 355.2m³.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 6 conditions. Of note is the following condition.

Condition no. 2: A development contribution of €4,044.00 charged under the Kilkenny County Council Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Reports

Environment Section (16/03/18) No objection subject to conditions.

Planning report (06/04/18): Proposal considered to be acceptable in the context of proper planning and sustainable development. A grant of permission was recommended subject to the conditions outline above.

3.3. Third Party Observations

None

4.0 Planning History

12/277: Permission granted for cubicle shed with underground storage tank.

06/1744: Permission granted for roof extension on slatted shed and cow cubicle house.

04/1215: Permission granted for extension to milking parlour.

02/1345: Permission granted to convert roofed silage pit to cubicle house and erect roofed slatted feeding area for cows.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Kilkenny County Development Plan 2014-2020.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged by Peter Thomson Planning Solutions on behalf of Larry Mahony, Kellsgrange, Kells, County Kilkenny.

- The appeal concerns the application of condition no. 2 and a Section 48 Development Contribution of €4,044. It is noted that the incorrect amount has been applied and that the correct contribution is €1,044.

- It is noted that category no. 6 on page 3 relates to agricultural development with a rate of €6 per sqm for agricultural developments over 500sqm. It is noted that this section does not distinguish between proposed development and development to be retained.
- It is noted on page 5 that exemptions/reductions will not apply to retention applications and that none of the exemptions and reductions listed on page 5 and 6 are relevant or applicable to agricultural developments.
- The appellant notes that the first 500sqm of the development subject to the application should not be charged and is not a reduction as defined under the development contribution scheme.
- The appellants refers to a number of cases including PL10.239060 and PL10.239962 where development contributions for agricultural developments being retained do not apply to the first 500sqm.

6.2. Planning Authority Response

Response by Kilkenny County Council

- No further comments to make.

7.0 Assessment

- 7.1. This is an appeal in relation to the application of a development contribution only. 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. An appeal may be brought to the Board under section 34 considers the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the planning authority. In this appeal, the issue is considered whether the terms of Scheme have been properly applied.
- 7.3. The proposal is retention of an agricultural shed with a floor area of 674sqm. Under condition no. 2 a Development Contribution of €4,044 was applied based on a rate of €6 per sqm. The appellant notes that category 6 of the Development Contribution scheme provides for a rate of €6 per sqm for agricultural development greater than

500sqm and that the a contribution of €1,044 or €6 per sqm based on 174sqm is applicable under the Development Contribution Scheme.

- 7.4. Having examined the scheme the provision for such developments under category 6 is €6 per sqm greater than 500sqm meaning that a contribution would only apply to the floor area above 500sqm, in this case 174sqm giving a total of €1,044. The Planning Authority have charged €4,044 using the whole floor area. The reasoning behind such is not clear in the Planning Report and the Planning Authority have decided to make no further comment on the case in their response. The appellant has highlighted that on page 5 it is noted the 'Exemptions/Reductions will NOT apply to Retention applications'. The appellants also points out that exemptions and reductions are clearly listed on pages 5 and 6 of the scheme and none are relevant or applicable to the category of development the proposal falls under (no. 6) meaning they do not apply and that the Council have incorrectly applied the terms of the condition. I would concur with the appellants view and note that the exemptions and reductions are clearly listed and defined on pages 5 and 6 and none apply to agricultural development. If the intention of the scheme is to apply a higher contribution to agricultural developments subject to retention, then it is not clear enough in its wording. I would consider that the correct contribution is €1,044 based on the floor area of the structure or greater beyond 500sqm, which in the case is 174sm ($174 \times 6 = 1,044$).

8.0 Recommendation

- 8.1. I recommend that Kilkenny County Council be directed to AMEND condition no. 2 as follows...

2. The developer shall pay to the planning authority a financial contribution of €1,044 (one thousand and forty four 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. The contribution shall be paid prior to the 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 the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 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 the provisions of the Kilkenny County Council Development Contribution Scheme 2016-2017 which includes a provision for no contributions for the first 500sqm of an agricultural building under section 6 page 4 of the scheme, the Board considers that the terms of the Development Contribution scheme have not been properly applied.

Colin McBride
Planning Inspector

27th June 2018