



An
Bord
Pleanála

Inspector's Report ABP-302064-18

Development	Retention & Permission for alterations to a development approved under planning reference 17/254
Location	Condon Engineering , Collon Business Park, Ballyboni , Collon, Co Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	18222
Applicant(s)	Tom Condon
Type of Application	Retention & Permission
Planning Authority Decision	Grant
Type of Appeal	First Party against Contributions
Appellant(s)	Tom Condon
Observer(s)	None
Date of Site Inspection	None
Inspector	Angela Brereton

1.0 Site Location and Description

1.1. The application site (area 2.77ha) is located on the south side of the R168 to the west of the village of Collon. Access is via the R168 and Condon Engineering forms part of Collon Business Park, Ballyboni, Collon, Co. Louth. The external storage area is located to the rear of Collon Vehicle Dismantlers and the existing manufacturing units on site. In view of the set back to the rear of these buildings there is limited view of this area from the public road. The River Mattock runs to the south of the site.

2.0 Proposed Development

2.1. Permission and Retention Permission has been sought for a development approved under planning reference 17/254. This includes Permission for the following:

- To extend the site area;
- For alteration to car parking and entrance arrangements, including set down area;
- To enclose an approved covered storage area, for use as part of the manufacturing unit (191sq.m);
- For an extension to the approved office area (171sq.m);
- For an additional (191sq.m) extension to manufacturing area;
- For external storage in existing service yard (1,562sq.m);
- For new external storage/hardstand area (7,830sq.m) and all associated site development works.

Retention Permission is sought for:

- The placement of granular filling (av. depth 400mm, area 3,715sqm) and:
- Of existing external storage area (709.5sq.m).

2.2. Brady Hughes Consulting have submitted details and drawings with the application. This includes the following:

- An Engineering Report

- A Natura Screening Assessment Report

3.0 Planning Authority Decision

3.1. Decision

On the 22nd of June 2018 Louth County Council granted Retention and Permission for the works subject to 7no conditions. Condition no.3 is relevant to Development Contributions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The *Planner's Report* had regard to the locational context of the site, to planning history and policy and to the documentation and inter departmental reports submitted. They recommended that Further Information be sought to include the following:

- Revised drawings to accurately reflect the situation on the ground.
- Infrastructural - including surface water drainage details regarding attenuation and discharge rates to the Mattock River. A Flood Risk Assessment taking into account that part of the site is subject to fluvial flooding and note of compensatory storage recommendations.
- Revisions and Updates to the Natura Impact Statement.

Brady Hughes Consulting submitted a *Further Information response* to include the following:

- A Flood Risk Assessment, Revised Drawings and a Revised Attenuation & Catchment C- Surface Water Drainage calculations have been submitted.
- Details regarding the External Storage Area to include that proposed and for retention.
- Details regarding Surface Water Drainage, flooding and compensatory storage area.

- They provide a rationale for the current application which includes that this will protect jobs and investment being made by Condon Engineering (and Enterprise Ireland), in line with CDP policies and objectives.
- They provide that no update to the AA Screening Report was necessary as the F.I did not result in any material change to the development proposed.

Planner's Response

The Planner's response to the F.I submitted and the Council's Infrastructural Section response recommending that permission be granted subject to conditions is noted.

Section 3 of the Planner's Report refers to compliance with the Council's Development Contributions Scheme 2016-2021 as adopted. This includes a detailed breakdown of contributions applied. It was recommended that permission be granted subject to conditions.

3.2.2. Other Technical Reports

The Council's *Infrastructure Section* recommended that further information be sought relative to surface water drainage issues including attenuation and discharge rates, Flood Risk Assessment and compensatory flood storage area. They also recommended that a revised sightline drawing be submitted for the proposed entrance. They had no objection to the F.I submitted and recommended a number of conditions.

The *Environmental Compliance Section* has no objections subject to recommended conditions.

The *Louth Heritage Officer* had regard to the Natura 2000 Screening Assessment submitted. They noted the proximity of the Mattock River to the southern boundary of the site and potential hydrological linkages to the River Boyne and River Blackwater SAC and SPA. They had concerns about infilling the flood plan and recommended that F.I about the potential for mitigating increased flood risk be submitted and also a hydrological report.

4.0 Planning History

Section 2 of the Planner's Report refers to the planning history of the application site. This includes the most recent, which is also referred to in the Public Notices:

- Reg.Ref.17/254 – Retention & Permission for development consisting of permission for an extension to an existing industrial premises comprising of 1,257sq.m industrial space and 158sq.m office space, covered store area and all associated site development works, together with retention permission for existing entrance gates. This was granted by the Council subject to 7no. conditions. Condition no.2 concerned Development Contributions.

5.0 Policy Context

5.1. Development Plan

The operative Development Plan is the Louth County Development Plan 2015-2021. Settlement Plans for smaller towns including Collon are now included within this County Plan. Collon is a level 3 settlement.

The Economic Strategy (Section 2.11.1) considers that level 3 settlements are suitable for small scale business and enterprise and lands have accordingly been identified and zoned for employment activities. Policy CS5 relates. Table 10.1 notes that there is a public wastewater scheme operational in Collon. And Table 10.3 a public water scheme. Section 6.3 sets out the Development Management Guidelines for Industrial and Commercial Developments. These include Landscaping and Amenity, Surface Water Drainage, Sustainable Design, Car Parking, Loading and Unloading Provision.

Map 3.1 Development Zones (LCDP) shows the site within Zone 2 adjacent to the Level 3 Settlement area zoning for Collon. The subject site is outside the town boundaries and is within Development Zone 2 and Section 3.10.2 of the LCDP sets out the strategic objective: *To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community.* Policies RD33 and RD34 relate.

Section 11.3.1 refers to Development Contributions Schemes and Section 11.3.2 to Section 48 Contributions Scheme.

5.2. **Natural Heritage Designations**

The nearest Natura 2000 sites are the River Boyne and River Blackwater SAC and SPA, located in excess of 6km to the south east of the site.

A Natura 2000 Screening Assessment by Hydrocare Environmental Ltd. has been submitted with this application. Their finding was that there are no likely significant impacts to any Natura 2000 site as a result of the development for which retention and permission is sought.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A First Party Appeal has been submitted by Brady Hughes Consulting Engineers on behalf of the applicant Tom Condon. This is solely against the contribution condition no. 3 (Reg.Ref.18222) applied under Section 48 of the Planning and Development Act 2000 (as amended) by Louth County Council. Their concerns include the following:

- They note the elements of how the fee was calculated for new development by the Council and have a number of concerns as to how the amounts specified in this condition were calculated and provide a summary of these.
- The quantum of levies attached to the area for which retention permission for open storage was sought has been applied using the gross rather than the nett storage area.
- They note their concerns about the wording of condition 3(b) as permission was not sought for 'retention of temporary' storage in this area. This area has been in use for open storage for a considerable time, and it is intended that this use remain.
- In their discussion section they note that their concerns largely relate to items 2 (area 7,249sq.m) and 4 (see attached drawing no. 341-03-003 Rev A).

- They note that this area may be considered in 2 sections – the area east of the waste water treatment system (WWTS) and percolation area, and the area to the west of the system including the link road.
- They refer to Drawing no. 341-03-100 attached which includes an area analysis showing the gross areas (to which levies were applied) and the nett areas to which they consider levies should be applied.
- They refer to Calculation Summary Sheets 1,2 and 3, the latter is a summary of the calculations that they believe are actually applicable in this case.
- They provide further comments relative to the rates applied in relation to the building extension and to the storage areas and note the need for reductions such as a discount of 75% to be applied.
- They have regard to and consider the reductions applicable in Section 6.2 of the Louth County Development Contributions Scheme relative to the subject development.
- They provide that the Council's scheme bases its calculations on residential floor space and does not include for 'other' developments as per the guidelines. Appendix III provides a schedule of non-residential development (as envisaged under Section 48(2)) of the Planning and Development Act 2000 (as amended).
- They provide an Extract from Chapter 2 of the Development Contributions Guidelines to Local Authorities 2013. They note that the purpose of reductions is to incentivise certain types of development as per these Guidelines.
- The interpretation of the County's Development Contribution Scheme should be to incentivise and in this case, it would undermine the IDA's marketing strategy to encourage and incentivise such approved industrial/manufacturing to invest and expand operations.
- They note that this project is E.I backed and this E.I grant is a considerable factor that makes the whole project viable.
- It would seem contradictory that one arm is helping to fund the operation when another is applying levies unnecessarily to a project which seeks to

support, future proof and grow in excess of 50 jobs provided for in this business.

- They ask the Board to amend Condition 3 to take account of 4no. issues relative to the Louth Development Contributions Scheme as specified.
- They have submitted plans relative to the Section 48 Appeal showing 'Gross and Nett Storage Areas'.

6.2. Planning Authority Response

Louth County Council have regard to their Development Contributions Scheme 2016-2021 and to the 'Guidelines for Planning Authorities on Development Contributions' 2013. They provide a detailed response to the issues raised relative to the break down and application of the development contributions. This includes:

- The calculation of €9 per sq.m for open storage areas/commercial hard surfaces/open port storage already has had a reduction factored in its rate of the commercial rate at 15% of the commercial rate for non residential developments. The Scheme did not consider it necessary to have a specific reduction included in Section 6.2 but would specify the rate in the non residential development schedule of contribution rates.
- The Planning Authority considers that they did not have the Nett storage area at their disposal at the time of calculation and consider it reasonable that the percentage of these areas should be levied at Nett rate.
- The PA did not apply the 75% reduction rate for external areas of open storage. They question whether a further reduction is appropriate given the parent history of the site and the fact that a condition has been inserted specifically restricting the use of open storage under Reg.Ref.07/369. The rate applied for open storage has already been reduced as per Appendix III of the Scheme.
- The 75% reduction was not applied used for open storage for retention or temporary storage until the works are completed. The PA did not consider it appropriate given the nature of such storage areas and how they relate to the overall industrial/manufacturing process.

- The contributions applied to the extensions to the industrial units all received a 75% reduction.
- They refer to Condition no.3(b) which relates to Drawing No. 341-03-002 which indicated existing hard stand/external storage area to be retained and note that temporary storage has not been indicated on this or the revised drawings and so consider that the contribution wording should remove the word temporary as this was made in error.
- They provide a Development Calculation Overview Analysis as per the First Party Appeal Statement.

7.0 Assessment

7.1. Legislative Context

- 7.1.1. Section 48 of the Planning and Development Act 2000, (as amended) details the methodology and guiding principles by which Development Contributions Schemes should be arrived at. The wording of s.48(10)(b) of the 2000 Act states that *‘an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the Planning authority’*. The wording of this section is restrictive in so far as it limits consideration of such appeals to the application of the terms of the adopted development contribution scheme and the powers of the Board to consider other matters. Therefore, the application is not considered ‘de novo’ and issue in question in this case is solely whether the Council’s Development Contribution Scheme has been properly applied.

Development Contributions – Guidelines for Planning Authorities issued by the DoECLG in January 2013 offers non-statutory guidance for Planning Authorities in preparing Schemes. This provides that a key aim for future development contribution schemes is to promote sustainable development patterns, secure investment in capital infrastructure and encourage economic activity. These Guidelines are referred to by the Appellant and they are issued under section 28 of the Planning and Development Act 2000(as amended). This includes regard to reduced rates in certain cases. Of note: *“However, no exemption or waiver should apply to any*

applications for retention of development. Planning authorities are encouraged to impose higher rates in respect of such applications.”

7.2. **Regard to Condition no.3**

7.2.1. This provides in summary that in accordance with the provisions of the Council's Development Contributions Scheme (Section 48 of the Planning and Development Act 2000 (as amended) for the following for the provision of public infrastructure and facilities:

(a) New Development - to be paid in full prior to commencement of development (i) Infrastructure - €67,783.20, Amenity - €16,945.80 with a sub total of €84,729;

(b) Retention of Temporary Open Storage – to be paid within 6 months of the Final Grant of Permission (i) infrastructure (including roads and surface water) – 709.5sqm x 7.20/sq.m = €5,108.40; (ii) Amenity (including parks, recreation, amenity & community facilities) – 709.5 x €1.80 = €1,277.10 with a sub total of €6,385.50.

Therefore, the total would be €91,114.50.

It is of note that the calculation/basis for this figure is provided in the Planner's Report in response to the Further Information submitted.

7.3. **Amendments sought**

7.3.1. Regard is had to the issues raised on behalf of the Appellant relative to Condition no.3 of the Council's permission. This First Party note that this condition applies a levy of over €91,000 where in their view only approx. €22,291.50 should apply. They provide spread sheets as follows:

Calculation Summary 1: This is a breakdown of the development levies that they expected to receive, and it was submitted as part of the application. At the time of preparation, they were not aware of the note at the end of Appendix III of the contribution scheme stating that levies for open storage only apply to the nett storage area. (€35,815.95)

Calculation Summary 2: This is a breakdown of the calculations as applied by the planning authority. (€91,114.50)

Calculation Summary 3: This is a breakdown of the calculations they believe are actually applicable in this case. (€22,291.50).

7.3.2. Regard is had to the variation relative to the calculation of these amounts. In summary they have asked the Board to amend this condition to take account of the following:

1. €9 per sq.m is the applicable rate for Open Storage as per Appendix III of the contributions scheme.
2. Open Storage is not one of the reductions listed in Section 6.2 of the contribution scheme.
3. The note at the end of Appendix III of the scheme states that levies shall only apply to the Nett Storage Area for Open Storage Areas.
4. Reduction 7 as per Section 6.2 relating to expansion of approved industrial areas should be applied to the Open Storage Areas and not just to the proposed building extensions.

7.4. **Regard to Council's response**

7.4.1. Their detailed response has been noted above. In summary their Development Calculation Overview Analysis as per the First Party Appeal Statement includes the following:

- Enclosing of approved storage area €2,862 – not indicated in contributions applied for -191sq.m. They agree that this amount be charged at €60 per sq.m.
- Agreement to levy €2,565 for 171 sq.m office extension with 75% reduction.
- They agree to 75% reduction for the Industrial Unit Extension €2,865 for 191sq.m.
- External Storage in existing Service yard 1562sq.m Nett – they do not agree to a 75% reduction.
- New External Storage 7830sq.m Gross figure should be Nett figure used. They agree with rationale but new information has not been submitted with the appeal verifying areas for circulation and racking.

- Retention of Existing External Storage 709.5sq.m Nett figure used. They agree in principle but question whether Nett can be applied for retention of Open Storage.

7.5. Condition in Context of Development Contributions Scheme

- 7.5.1. The Louth County Council Development Contribution Scheme 2016 - 2021 is the relevant contribution scheme for the area where the proposed development is located. Table 1 requires the payment of €48 per m² of non-residential development for Class 1 infrastructure (including roads and surface water) and €12 per m² of non-residential development for Class 2 Amenity (including parks, recreation, amenity & community facilities).
- 7.5.2. Note 4 (Article 5.0) provides: *The floor area of proposed development where buildings are involved shall be calculated as the gross floor area. This means the g.f.a determined from the internal dimensions of the proposed buildings, including the g.f.a of each floor including mezzanine floors.*
- 7.5.3. Article 6 provides for Exemptions and Reductions. Section 6.1 notes that: *Exemptions shall Not apply to permissions for retention* and Section 6.2 notes that *Reductions shall Not apply to permissions for retention.*
- 7.5.4. It is noted that the description of development in the current application does not include Temporary Permissions. Therefore, such reductions as noted in Appendix III of the Scheme would not apply.
- 7.5.5. Section 6.2(3) provides a Reduced rate of development contributions for *businesses grant aided or supported by IDA /Enterprise Ireland/LEO Louth*. It is noted that there is no documentation on file to support this. However, it is considered that the 75% reduction would fall under Section 6.2 (7) i.e: *Expansions to authorised industrial and manufacturing operations including expansion of port operations/facilities*. It is considered that this would apply to the proposed extensions to the existing authorised operations. However, it is noted that development proposed for retention is not currently authorised and therefore it is not considered that the 75% reduction would apply to this area.
- 7.5.6. Appendix III provides a Schedule of Contribution Rates relative to Non- Residential Developments. This includes the % of Commercial Rate Applicable. Relevant to

Section 6.2(7) this is €12 per s.q. for Class 1 Infrastructure (including roads and surface water) and €3 for Class 2 Amenity (including parks, recreation and community facilities) i.e €15 per s.qm. It is noted that these rates include the 75% reduction.

7.5.7. Separately, Open Storage Areas are not included specifically in Section 6.2(7) so that 75% reduction does not apply. Therefore, as per Appendix III the rate is (€7.20) and (€1.80) respectively i.e €9. Also of note is that at the end of Appendix III, there is a Note i.e: *Storage area is based on Nett Storage Area.*

7.5.8. Having regard to the issues raised and based on the Council's Development Contributions Scheme as adopted, I would recommend that the Calculation Summary that should be applied would be as follows:

Development Description	Area (Sq.m)	% of Commercial Rate Applicable	Rate (€)	Amount Due (€)	Reduction Applicable (%)	Total Due
Extending site area	N/A	N/A	N/A	N/A	N/A	N/A
Alterations to Carpark & Entrance arrangements	N/A	N/A	N/A	N/A	N/A	N/A
Enclosing of approved storage area	190.8	100	€60.00	€11,448	75	€2,862
Office Extension	171	100	€60.00	€10,260	75	€2,565
Industrial Unit Extension	191	100	€60.00	€11,460	75	€2,865
External storage in existing service yard NETT	1562	15	€9.00	€14,058	0	€14,058
New External Storage *NETT	2960	15	€9.00	€26,640	0	€26,640

Retention of Placement of Fill	3715	N/A	N/A	N/A	N/A	N/A
Retention of Existing Storage	709.5	15	€9.00	€6,385.50	0	€6,385.50
Total Due						€55,375.50

*Note as shown on drawing no. 341-03-100 (submitted with the appeal) the NETT Storage Area is 2960 sq.m.

7.5.9. The Council's comments in their response to the appeal regarding this issue are noted and while 'Nett Storage Area' is referred to at the end of Appendix III, it is noted that gross storage was originally referred to. Then this new external storage area was considered 'Gross' i.e based on 7249sq.m i.e. €65,241 (as per Calculation Sheet Summary 2). Therefore, the Nett storage would have to be retained within the areas as shown on this drawing. The Council's concerns are noted and if there are difficulties with this it would be within the remit of Planning Enforcement. Also of note is that based on Section 6.2 of the Scheme, reductions do not apply to permissions for retention. Therefore, the Nett figure would not be applicable to the 'Retention of Existing Storage Area'.

8.0 Recommendation

8.1. It is recommended that Condition no. 3 be amended as below.

9.0 Reasons and Considerations

9.1. The Board considered the Louth County Council Development Contributions Scheme 2016-2021 is the applicable contribution scheme in this case and that it had not been properly applied by the planning authority. The Board considered that the appropriate rate of payment to be applied in this case is that set out in Table 1 (non-residential development) of the scheme as amended by the rate reduction set out in Section 6.2(7) and Appendix III of the Schedule. Accordingly, it concluded that the

contribution applicable to the proposed development is as set out in the amended condition 3 set out below.

10.0 Conditions

1. The developer shall pay to the planning authority a financial contribution of €55,375 (fifty five thousand, three hundred and seventy five 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.

Angela Brereton
Planning Inspector

11th of October 2018