



An
Bord
Pleanála

Inspector's Report

ABP-305170-19

Development	Temporary retention for the change of use of the site to an administrative and logistics centre at the former "Galmoy Mines".
Location	Former Galmoy Mines, Galmoy, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	18531
Applicant(s)	AQS Composting Limited.
Type of Application	Temporary Retention Permission.
Planning Authority Decision	Grant with Conditions.
Type of Appeal	First Party V Development Contribution only.
Appellant(s)	AQS Composting Limited.
Observer(s)	None.
Date of Site Inspection	Not applicable.
Inspector	Susan McHugh

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1.0 Site Location and Description

- 1.1. The appeal site is located within the former Galmoy Mines plant site to the north-west of Co. Kilkenny. The site is approx. 6.5km to the north-west of Johnstown and adjacent to the Laois county boundary, and 2.5km to the north-west of Galmoy village.
- 1.2. Existing buildings on site comprise a single storey security hut and two storey office admin building. The also includes car parking areas and a truck hardstand area. The site comprises the southern part of a larger site and has a stated area of 2.589ha.

2.0 Proposed Development

- 2.1. The application is for Temporary Retention Permission for the continuation of use and change of use of the site, the security building and the ground floor of the administration building, from its previous mining use to an administrative and logistics centre, on the site of the former 'Galmoy Mines'. Temporary retention permission is also sought for the use of an external hardstand area for the storage of vehicles, all associated car parking and services of the former 'Galmoy Mines'.
- 2.2. The application was accompanied by the following;
 - A covering letter
 - A Traffic and Transport Impact Assessment and
 - An Appropriate Assessment Screening report
- 2.3. A request for further information was sought by the planning authority dated 27/09/2018.
- 2.4. The applicant sought an extension of time for an additional 3 months in a letter dated 21/03/2019. An Order dated 26/03/2019 was granted by the planning authority up to 05/07/2019.
- 2.5. A response to the request for further information was submitted 29/01/2019, and was accompanied by the following;
 - Services Drawings
 - Photos of Wastewater Holding Tank

- Wastewater Disposal Records 2018
- Galmoy Emergency Procedures: Accidents and Spillages

2.6. A request for clarification of further information was sought by the planning authority dated 22/02/2019.

2.7. A response to the to the request for clarification of further information was submitted 02/07/2019 and included;

- Site Suitability Test Report

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The decision of the planning authority was to **grant** planning permission subject to 7 conditions.

Of relevance to this appeal is Condition no. 2 as follows;

'The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the Local Authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Acts 2000-2018.

The amount of the financial contribution shall be paid upon grant of permission, with the amount of the contribution being the rate of contribution in existence on the date of such grant. In accordance with the current scheme the amount of the contribution is calculated at €33,675.00 (Thirty three thousand six hundred and seventy five Euro). Any applicable amount is subject to revision with reference to the Wholesale Price Index and to penalty interest in accordance with the terms of Kilkenny County Council's Development Contribution Scheme.

Reason: It is a requirement of the Planning and Development Acts 2000-2015 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.'

3.2. Planning Authority Reports

Planning Reports

3.2.1. The 1st planning report dated 26/09/2018 is the basis for the Planning Authority decision.

Includes:

- The site forms part of a larger landholding.
- There are five SAC's and one SPA located within 15km of the site.
- Retention permission is sought for the temporary change of use of 1,473 sqm.
- The hours of operation are 07.00-18.00, the number of employees is 18 and car parking is available for up to 36 spaces on site.
- Temporary permission is sought for a period of up to 5 years after which it is the applicants intention to relocate the business.
- Development Contributions class 4 applies to the development.
- Recommends further information in relation to site services items 1 to 5, and item 6 which requested clarity in terms of whether there 'will be two uses operating simultaneously on site, this is in the event of a grant of planning permission for mining on site as per P.18/229, if it is intended that the subject uses of this development will continue to operate on site for the temporary period proposed.'

3.2.2. The 2nd planning report dated 19/02/2019 includes;

- There is currently no permitted use on site, and this is an application for a new use on site and all current development plan standards apply.
- Recommends clarification of further information regarding the proposed foul drainage.

3.2.3. The 3rd planning report dated 25/07/2019 includes;

- Development Contributions class 4 applies to the development.
- Recommends a grant of permission

3.2.4. Other Technical Reports

- **Environment Section:** Verbal Report dated 24/07/2019 recommends no objections subject to conditions.
- **Roads Department:** Report dated 08/02/2019 recommends no objection.
- **Chief Fire Officer:** Report dated 03/09/2018 recommends that a Fire Safety Certificate is required.

4.0 Planning History

4.1. Parent Permission

P.A.Reg.Ref. P.92/884 ABP Ref. PL10.091530: Permission **granted** 29/04/1994 for a lead-zinc mine. (File attached) The following conditions required a financial contribution under section 26(2)(h) of the Local Government Planning and Development Act 1963 as follows;

Condition no. 9 : £689,590.00 in respect of road improvement works to facilitate the proposed development.

Condition no. 10: £117,000.00 in respect of road pavement strengthening works.

4.2. Amending Application

P.A.Reg.Ref. 10/719 ABP Ref. PL.10.240369: Permission **granted** by the P.A. for construction of a bio-energy facility and ancillary provisions together with retention and change of authorised use of site and infrastructural items at Galmoy Mines, Galmoy, Co. Kilkenny. Condition no. 2 required a section 48 financial contribution of €250,589.00.

Contribution appeal decided by the Board 15/01/2013 which determined that the terms of the Development Contribution Scheme for the area had not been properly applied in respect of condition number 2 and directed the Council under subsection (10) (b) of section 48 of the 2000 Act, to AMEND condition number 2 to include a financial contribution of €49,793.

The Board also determined that that the development contributions previously paid in the parent permission (appeal reference PL.10.091530) could be offset against any development charges payable on the revised use application. Furthermore, the proposed development benefits from the “Change of Use” and “Demolition and Rebuild/Extension of Use” provisions of the relevant Development Contribution Scheme. Therefore, the Board amended the contribution figure accordingly. (File attached).

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative plan is the Kilkenny County Development Plan 2014-2020.

5.2. Kilkenny County Council Development Contribution Scheme 2016-2017

5.2.1. The scheme refers to the basis for determination of contributions, categories of development and rates of charge, change of use applications, exemptions and reductions, and demolition and rebuild/extension of use.

5.2.2. The development contribution scheme outlines that the following contributions are payable with regard to non-residential development including open storage yards.

Section	Description of Development	Unit	Rate of Charge
4	Non Residential development including Open Storage Yards	m ²	€25.00

5.2.3. In relation to ‘*Change of Use for Non Residential Units*’, it states;

‘Where an applicant submits a planning application for a change of use, then any development charges paid in respect of the previous use will be available for offset against the development charges payable on the revised use application.’

- 5.2.4. The scheme also states, that *‘Exemptions/Reductions will NOT apply to Retention applications.’*
- 5.2.5. In relation to *‘Exemptions from the payment of Development Contributions’*, it refers to *‘categories of development which will be exempted from the requirements to pay development contributions under the scheme,’* and includes;
- *‘Where a planning permission is issued for a change of use, the Planning Authority may consider a waiver of the development charge or part thereof where the change of use does not lead to the need for new or upgraded infrastructure/ services.’*

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal relates to condition no. 2 of the Planning Authority’s decision to grant planning permission which includes the payment of a sum of €33,675.00 in accordance with the Development Contribution Scheme. The appeal was lodged by Fehily Timoney on behalf of the appellant and was accompanied by the following;
- Notification of Decision to Grant Permission P.884/92
 - Kilkenny County Council, Draft Development Scheme 2016-2017
- 6.1.2. The grounds of the appeal can be summarised as;
- The terms of the Kilkenny County Council Development Contribution Scheme have not been properly applied.
 - The application of the levies should have taken account of the change of use, and development charges paid in respect of the previous use which are available for offset against the development charges payable on the revised use application.
 - All of the buildings, external hardstanding, car parking and services to which this application applies were permitted under planning permission P.92884. Related development contributions have therefore been paid under condition no. 10 of the grant of that permission.

- Submits that the P.A. have not applied any level of offset against the development charges payable and has not had due regard to the offset provisions allowable under the '*change of use*' category.
- Contend that development contributions would be required for the proposed new wastewater treatment plant and associated percolation area. Consider that this falls within remit of Class 17 'Development not coming within any of the forgoing classes' of the 'Level of Development Contribution' and therefore a sum of €25.00 per m² should be applied which would be €4,612.50.
- Assert that this case is substantially similar to the appeal granted by ABP Ref. PL 10.240369.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority in a response dated 11/09/2019 indicated that they had no further comments.
- 6.2.2. The Board requested specific details of the basis on which the calculation was made, calculation involved, and the specific provisions in the scheme on which the calculation was based.
- 6.2.3. The Planning Authority in a response dated 01/10/2019 refers to;
- Development Contributions were calculated under Category 4 of the Kilkenny County Council Contribution Scheme 2016-2017.
 - Relevant section in the Scheme states: 'The Development Contribution Scheme shall commence on the date of adoption of the Scheme by Kilkenny County Council and will apply to the end of 2017 unless revised and will continue past the end of 2017 until such times as a new Scheme is adopted'.
 - The floor area of the security building and the ground floor of the administration building were used as the basis for calculating the floor area, as these two buildings were the subject of the planning application received and subsequently granted by the Council.

- Notes the allowances made for change of use applications and that exemptions/reductions will not apply to retention applications. The application is for retention and therefore no reductions or exemptions apply.
- Submit that the terms of the Kilkenny County Council Contribution Scheme have been applied correctly, when calculating the amount due under Condition No. 2 of P.18/531. A copy of the calculation sheet was attached.
- Note the appellants submission regarding charging for the septic tank, percolation area etc. and advises that the Council does not charge for these structures.

The planning authority submitted the Development Contribution Scheme calculation sheet which indicates;

- A levy of €33,675.00 (1,347sqm x €25 per sq.m) is to be applied to the development.
- This calculation is based on the temporary retention and change of use of the ground floor administration building 1,288sqm and security building 59sqm as indicated on Drawing No. B8, B18,. P1030-01100-0004 date stamped 07/08/2018.

Ground floor area of the admin building 1,288sqm x €25 per sq.m = €32,200.00

Floor area of the security building 59sqm x €25 per sq.m = €1,475.00

Total €33,675.00

- The calculation sheet notes that there is no exemption for retention.

6.3. Further Response

6.3.1. A further response was submitted by Fehily Timoney on behalf of the applicant dated 04/11/2019, indicates;

- Notes that page 5 of the scheme makes an unequivocal statement regarding the 'offsetting' of development contribution for change of use for non residential development. It does not state that this can be considered as an Exemption or Reduction from the calculated charges. No conditionality is made in the statement regarding whether the relevant change of use concerns applications for retention

permission. It is normal and common practice by Local Authorities to offset previous payment in order to avoid the assertion of double charging.

- The application of an offset for 'any development charges paid in respect of the previous use' arises in this case from the previous payments made in compliance with condition 10 of the grant of permission under P.A. Reg.Ref.884/92.
- Contend that as a development contribution had been paid under P.A. Reg.Ref.884/92, that they are entitled under the terms of the current scheme, to an offset of payment for the change of use regardless of whether the change of use concerned a retention application or not.
- Submit that to be in accordance with the terms of the Kilkenny County Contribution Scheme 2016-2017 that the initial calculation of the development charges should have offset the required amount against the previous payments, and only after calculating this amount would considerations of whether any Exemptions/Reductions be undertaken.
- Note the P.A.'s response that they do not charge for septic tank, percolation area etc., and request the Board have regard to this in its decision.

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 was made to it in the first instance and will in this instance only determine the matters under appeal.
- 7.2. An appeal may be brought to the Board where an applicant for permission 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 to be considered is whether the terms of the Scheme have been properly applied.
- 7.3. The current proposal is for temporary retention permission for the continuation of use and change of use of the site, the security building and the ground floor of the administration building, from its previous mining use to an administrative and logistics centre. It is also for temporary retention permission for the use of an

external hardstand area for the storage of vehicles, all associated car parking and services of the former 'Galmoy Mines'.

- 7.4. The stated floor area of the existing security building is 59sq.m, and the ground floor area of the administrative and logistics centre is 1,288sq.m. (total 1,347sq.m.).
- 7.5. The calculation sheet submitted by the planning authority indicates that the levy was calculated having regard to Class 4 of the Kilkenny County Council Contribution Scheme which refers to Non Residential Development including open storage yards, which applies a charge of €25.00 per sq.m.
- 7.6. The calculation of the levy of €33,675.00 was based on the floor area of the security building and the ground floor of the administration building which combined gives a total floor area of 1,347sq.m. ($1,347\text{sq.m.} \times €25.00 = €33,675.00$).
- 7.6.1. The Development Contribution Scheme permits exemptions, but the planning authority state that the exemptions/reductions do not apply as the application is for retention.
- 7.6.2. I would note however, that the structures i.e. the security hut and the administration building indicated as a 'gate house' and 'administration building' have the benefit of planning permission, under the parent permission PL.10.091530 and are indicated on Drawing no. Figure 7 of that permission. (see attached)
- 7.7. The applicant submits that in the case of a planning application for a change of use the scheme takes account of development charges paid in respect of the previous use, which will be available for offset against the development charges payable on the revised use application.
- 7.8. In support of the appeal the applicant has provided details to support its claim, namely that under a previous application P.A.Reg.Ref. 10/719 ABP Ref. PL.10.240369, the Board determined that that the development contributions previously paid in the parent permission (appeal reference PL.10.091530) could be offset against any development charges payable on the revised use application.
- 7.9. The Board also determined that the proposed development benefited from the "Change of Use" and "Demolition and Rebuild/Extension of Use" provisions of the relevant Development Contribution Scheme. Therefore, the Board amended the

contribution figure accordingly to account of the construction of the proposed bio-energy facility.

- 7.10. I note that under the amendment application P.A.Reg.Ref. 10/719 ABP Ref. PL.10.240369 the security hut and administration building subject of the current application and Development Contribution appeal, are located outside the red line boundary. See Drawing 1028-10 Rev 7 dated 21-12-10 attached.
- 7.11. The report of the Planning Inspector on PL.10.240369 also notes the argument submitted by the local authority which outlines ‘that the parent permission (appeal ref. PL10.091530) was not the subject of a development contribution scheme in accordance with the Planning and Development Act, 2000 (as amended). Nonetheless the parent permission was the subject of financial contributions, albeit prior to the Planning and Development Act, 2000-2010, and therefore prior to the adoption of any Development Contribution Scheme.’
- 7.12. In this regard I note that under the parent permission PL10.091530 a total financial contribution of £806,590.00 was conditioned under conditions no. 9 and 10.
- 7.13. I am satisfied, therefore, that the case put forward by the applicant is reasonable, in the context of the current application which relates to a change of use of existing permitted buildings, and continuation of use.
- 7.14. I would note that any development charges to be offset do not necessarily have to be Development Contributions in accordance with Section 48 of the Planning and Development Act, 2000 (as amended), as this is not specifically stated in the development contribution scheme. This would also include any development charges paid prior to the Planning and Development Act, 2000.
- 7.15. I am satisfied therefore, that the current proposal does benefit from the exemption, and that in the current case the applicant is entitled to avail of the exemption.
- 7.15.1. While I also note the applicants proposal to pay a development contribution in relation to the septic tank, percolation area etc. I concur with the planning authority that they do not charge for these structures. I am satisfied therefore that no levy is applicable in relation to those works.
- 7.16. I am satisfied that the Development Contribution Scheme has **not** been correctly applied.

8.0 Recommendation

- 8.1. I recommend that Kilkenny County Council be directed to **remove** Condition number 2 on the grounds that the terms of the Kilkenny County Development Contribution Scheme 2016-2017 have not been properly applied.

9.0 Reasons and Considerations

Having regard to:

- (a) The provisions of the Kilkenny County Development Contribution Scheme 2016-2017, which includes an exemption for non residential development, *'Where an applicant submits a planning application for a change of use, then any development charges paid in respect of the previous use will be available for offset against the development charges payable on the revised use application.'*
- (b) The fact that development contributions were paid on the parent application P.A.Reg.Ref. P.92/884 ABP Ref. PL10.091530, and
- (c) The submissions made in this appeal;

The Board considers that the terms of the Kilkenny County Development Contribution Scheme 2016-2017 have not been properly applied, and the removal of Condition number 2 is, therefore, appropriate.

Susan McHugh
Senior Planning Inspector

23rd January 2020