



An
Bord
Pleanála

Inspector's Report

ABP-305771-19

Development	Erection of a side extension to Potato Storage Shed.
Location	Rathmooney, Lusk, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F19A/0365
Applicant(s)	Country Crest Ltd.
Type of Application	First Party against S.48 Condition
Planning Authority Decision	Permission
Type of Appeal	First Party
Appellant(s)	Country Crest Ltd.
Observer(s)	None
Date of Site Inspection	Not visited
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The subject site has a stated area of c.0.55ha and is located at Rathmooney townland and is c. 1.5km northwest of Lusk Village and to the east of the M1 (Junction 5) and the R132. The site is accessed via the narrow local road network and a cul-de-sac road.
- 1.2. There are a number of buildings and agricultural stores within the wider Country Crest complex located within the site. As shown on the plans the location of the proposed extension is to the east side of an existing shed structure proximate to the southern boundary of the site. The lands to the south are in agricultural use.

2.0 Proposed Development

- 2.1. It is proposed to construct a 1,414 m² side extension to existing Potato Storage Shed including all associated site works. The proposed extension has as shown on the floor plans stated dimensions of c. 45.3m (i.e. east-west), c.32.2m (i.e.north-south) and a height of c.11m. Material finishes comprise 'insulated Kingspan cladding' (unspecified colour).
- 2.2. The applicant states in the particulars submitted with the planning application that the proposed extension will allow for required additional storage space in addition to better separation and segregation space for stored potatoes. The facility will ensure that produce can be adequately and efficiently stored, catalogued and dispatched. Two new refrigerated units are to be accommodated within the proposed extension to provide a more superior storage environment to control the quality of the produce.

3.0 Planning Authority Decision

3.1. Decision

On the 3rd of October, 2019 Fingal County Council granted permission subject to 12no. conditions. These include restriction of use to the storage of produce/vegetables in accordance with the plans and particulars submitted, surface water drainage, retention of hedgerow, construction management, submission of a Construction Environmental Management Plan and Development Contributions.

3.2. **Planning Authority Reports**

Planner's Report

This had regard to the locational context of the site, planning history and policy and to the interdepartmental reports. Their Assessment concludes that the proposed development by virtue of its scale and design does not unduly impact on the amenity of the surrounding area or neighbouring property and accords with the *Fingal Development Plan 2017-2023*. It is therefore considered that the development subject to conditions is consistent with the proper planning and sustainable development of the area.

3.3. **Other Technical Reports**

Water Services Department

They have no objections subject to recommended conditions.

Environmental Health Air & Noise Unit

They do not object subject to recommended conditions.

Transportation Planning Section

They have regard to the car parking standards and provide that it would appear that the existing parking available on site will be sufficient to accommodate the additional GFA. They also provide that the boundary treatment should be maintained to ensure adequate visibility from the site access and recommend that the inclusion of the relevant condition of Reg.Ref.18A/0210.

3.4. **Prescribed Bodies**

Inland Fisheries Ireland - Dublin

They recommend that all works should be in line with a Construction Environmental Management Plan. Precautions should be taken to ensure that is no entry of solids, during the connection of pipe work, or at any stage to the existing surface water system.

3.5. Third Party Observations

None on file

4.0 Planning History

The Planner's Report notes an extensive history of planning applications relative to the subject site: These include the following referred to on file:

- Reg.Ref.F06A/1167 – Permission granted subject to conditions by the Council for a new onion storage facility within a new 3,000sq.m single storey building with a 100sq.m adjoining plant room and all associated site works. There was an appeal against development contributions conditions and the Board's decision (PL06F.220291 refers) was as follows:

It is considered that the proposed use of the building in question solely as an onion storage facility, notwithstanding its location within a large agri-business, is essentially agricultural and that this building on a working farm qualifies for exemption from the payment of a contribution under the Development Contribution Scheme of the planning authority.

- Reg.Ref.F18A/0210 – Permission granted subject to conditions for an 386.4m² side extension to existing Dispatch Shed including all associated site works.

5.0 Policy Context

5.1. Fingal Development Plan 2017-2023

Land Use Zoning

As shown on Sheet No.2 the site is within the 'FP'- Food Park zoning where the Objective is to: *Provide for and facilitate the development of a Food Industry Park.*

Vision: Facilitate the development of a state of the art Food Park incorporating the growing, preparation, processing, ripening, packaging, storing, distribution and logistics relating to food, drink, flowers and related products on lands adjacent to major transport infrastructure, operating at a national and international scale and

optimising its strategic value to the regional economy. The Park will be primarily devoted to developing value added opportunities within the food sector.

Section 6.13 refers to *Land Use Zonings and Sectoral Building Requirements*. The Food Industry Park is included as a Type of Economic Development Zoning to facilitate different forms of enterprise generation and employment creation. Table 6.3 refers to these economic zonings.

Objective ED91 seeks to: *Consider the allocation of various sizes of land parcels for economic development land use zonings in order to cater for a wide range of employment and enterprise formats.*

Description of a Food Park FP

The purpose of the Food Park (FP) zoning is to facilitate enterprise opportunities associated with preparation, processing, packaging, storage and distribution of mainly horticultural products. Within the Development Plan, there are over 192 ha of lands zoned for FP purposes, primarily located to the north and northwest of Dublin Airport. Within the lifetime of the Development Plan, it is intended to prepare Masterplans for FP zoned lands at Coolatrath and Barberstown.

Objective ED104 refers to preparing Masterplans for the Food Park zoned lands at Coolatrath and Barberstown.

Contributions

Chapter 7 refers to Movement and Infrastructure. This includes regard to Section 48 and 49 Levies: *Financial contributions will be sought as part of the development management process for certain development under the provisions of Section 48 and Section 49 of the Planning and Development Act, 2000 (as amended). Section 48 (general) schemes relate to proposed provision of public infrastructure and facilities which benefit development within the area of the Planning Authority and are applied as a general levy on development. A 'special' contribution under Section 48(2)(c) may be required where specific exceptional costs not covered by the general scheme are incurred by a Local Authority due to a specific development.*

Objective MT44 seeks to: *Utilise, where appropriate, the provisions of Section 48 and 49 of the Planning and Development Act, 2000 (as amended) to generate financial contributions towards the capital costs of providing local and strategic transport*

infrastructure, services or projects in the County. This will be done in conjunction with adjoining Local Authorities where appropriate.

5.2. Fingal County Council Development Contributions Scheme 2016-2020

This is the pertinent scheme. Section 5(i) notes that Section 48 of the Planning and Development Act 2000, as amended gives meaning to “public infrastructure and facilities”- (a) – (h) and of is of note.

(ii) “scheme” means a development contribution scheme made under Section 48 of the Act.

Section 6 provides the Basis for Determination of Contribution.

Section 9 provides the Level of Contribution.

Section 10 provides for Exemptions and Reductions and Section 10(i) is relevant to agricultural.

Section 17 provides for Special Development Contributions, which may be imposed under Section 48 of the Act where exceptional costs not covered by the Fingal County Council Development Contributions Scheme 2013-2015 are incurred by the Council in the provision of a specific public infrastructure or facility.

5.3. Development Contributions - Guidelines for Planning Authorities 2013

The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in performance of their functions under the Planning Acts.

The primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, without which development could not proceed. Development contributions have enabled much essential public infrastructure to be funded since 2000 in combination with other sources of, mainly exchequer, funding. Discussion is had of the concept of the General Development Scheme, Special Contributions and Supplementary Contributions Schemes. This also provides that Planning authorities should ensure that the necessary monitoring and control procedures are in place to prevent double charging.

5.4. **Development Management Guidelines for Planning Authorities 2007**

Section 7.12 has regard to development contribution conditions (sections 48 and 49 of the Planning Act). This also provides details relative to appeal of the three categories of conditions for development contributions i.e General as covered by the Section 48 Development Contributions Scheme, Special Contribution as covered by Section 48(2)(c) and Supplementary as covered by Section 49.

5.5. **Natural Heritage Designations**

There are no Natura 2000 sites within proximity to the site. The Planner's Report notes that the closest Natura 2000 site (i.e. Rogerstown Estuary SAC and SPA) is located c.4.6km to the south of the south of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

Harmon McCarthy Projects Ltd has submitted a First Party Appeal against Condition no. 12 (Development Contributions) of the Council's permission Reg.Ref. F19A/0365. This includes an Executive Summary providing a rationale for the proposed development. Their grounds of appeal include the following:

Precedent of Previous ABP Decision

- They have regard to the Council's previous decision relative to Reg.Ref. F06A/1167 and to condition nos. 5 and 6 of that permission relative to the payment of development contributions.
- The applicant appealed this decision to the Board (Ref. PL06F.220291 refers), on the basis that there was an exemption within the Development Contributions Scheme for agricultural development.
- The Board removed these conditions on the basis that the building (used for the storage of onions) qualified for an agricultural exemption, and they have regard to the Board's decision in that case.

Development Subject to this appeal

- A description is given of the existing shed which is used solely for the storage of potatoes grown on the lands owned and farmed by Country Crest and the surrounding Crest facility where the shed is located.
- The shed is refrigerated, and the potatoes are chilled to maintain the temperature of the farmed potatoes.
- It must be noted that no processing, washing, packaging or any other type of production occurs within these units.
- The proposed extension will house two additional storage units as well as an internal corridor for access to same. Details are given of the potato storage methods.
- They provide that the existing practices within the unit and the proposed extension should be deemed to constitute agricultural usage only. The building is being used for storage purposes only.

Development Contribution – Grounds of Appeal

- The building in its current usage and with the proposed new extension is for the storage of agricultural prior to its use or transport off site for sale.
- The usage of the building and proposed extension is for agricultural purposes, whereas other buildings within the Country Crest agricultural facility undertake works and processes which would be deemed commercial.
- The same Board conclusion as was reached in the previous appeal – Ref.PL06F. 220291 – should apply to the current proposal, for the provision of a Potato Store extension.
- They request the Board to remove this development contributions condition from the Council's permission.

6.2. Planning Authority Response

Fingal County Council note that Condition no.12 required that the developer pay a sum of €50,862 in respect of public infrastructure and facilities as provided for the Development Contribution Scheme for the Council. They provide that the

Development Contribution was assessed in accordance with the current Scheme. They note that the Scheme makes provision for a 50% reduction in the commercial rate from €71.94 to €35.97 in respect of Section 10(i). They provide their calculations relative to €50,862. They note that there is no such provision in the Development Contributions Scheme 2003 under which F06/1167 (PL06F.220291) was assessed. They ask that in the event that the Planning Authority's decision is upheld, that Condition no.6 is included in the Board's determination.

6.3. Applicant's Response

The First Party have regard to the restriction on the use as provided by condition no. 2 of their permission. They note that the structure can only be used for the storage of produce/vegetables as per this planning condition, with the said produce/vegetables being potatoes grown by the applicants on their lands. They note that the cleaning, production, packaging and distribution of the potatoes take place in another of the buildings on-site, the existing Potato Pack House. Were an extension to be proposed to that building, the applicant understands that development contributions would be payable (at the reduced rate in accordance with Section 10(i) of the Development Contributions Scheme) and would have no objection to same.

They refer to the Council's decision relative to Ref. PL06F.220291 and provide that they are of the opinion that the structure constitutes agricultural usage only (storage of agricultural produce farmed by the applicants on their land), and therefore should be considered exempt from Development Contributions as per their full reasoning given in their initial Planning Appeal.

7.0 Assessment

7.1. Regard to Development Contributions

- 7.1.1. This First Party Appeal is solely against Condition no. 12 of the Council's permission relative to development contributions. 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.

7.2. Regard to Condition no.12

7.2.1. This appeal is made against Condition no. 12 of the decision of Fingal County Council to grant permission, under Reg.Ref.F19A/0365 for the above development:

Condition no.12 is as follows: *The developer shall pay the sum of €50,862 (updated at the date of commencement of development, in accordance with changes in the Tender Price index) to the Planning Authority as a contribution towards the expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefitting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.*

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefitting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.

7.2.2. The Council's response to the First Party Appeal provides their reasoning as to why this Development Contribution applies. Regard is had to the Fingal County Development Contribution Scheme 2016-2020. Section 9 provides the Level of Contribution. Section 10 provides for *Exemptions and Reductions*. Sub-Section 10(i) provides: *Agricultural Buildings, glasshouses and poly tunnels are exempt. Buildings associated with the processing, distribution, supply or sale of fruit, vegetables, food or any agri. or market gardening products are subject to a 50% reduction in the commercial rate.*

The Council provides the following calculation relative to the Development Contribution applied:

Proposed works area m² 1414

Area to be levied m².

Standard Levy

Agricultural Levy Due @ 50% of Commercial Rate

€35.97per m². €50,862

Total Levy Due €50,862

- 7.2.3. It is noted that the Council based their Levy (as per their response dated 12th of November 2019 on €71.94 being the commercial rate and 50% being €35.97). It is noted that as per the Council's Development Contributions website an increase has been effective for non-residential from 1st of January 2019 from €59.46 to €76.69 per sq.m relative to non-residential of Development. Therefore 50% of €76.69 would be €38.34 x 1414m² i.e.€54,212. However, as this is the Council's Development Contribution Scheme and they have advised that the relevant non-residential rate is 50% of €71.94, I would recommend that the level of contribution as recommended in Condition no. 12 be retained.

7.3. Regard to Background and First Party Case

- 7.3.1. Reference is made to a previous development by the applicant and a subsequent appeal to the Board (Appeal Ref. No. PL06F.220291 relates, as noted in the Planning History Section above) concerning development contributions which were removed as it was then determined by the Board that the building qualified for exemption from the payment. It is noted that this application was relevant to an onion storage facility in a separate building on the subject site. The First Party consider that condition no.12 of the subject application relating to development contributions raises similar issues and that the development subject to the current appeal should qualify for the same exemption and for the same reasons as the previous development.
- 7.3.2. They provide that the proposed development is considered to be agricultural in nature as the building is for the storage of farmed produce only. A description is

given of the scale and nature of the operations and note that the existing building and its proposed extension are not used for any process, distribution, supply or sale purposes. The building is used for temperature-controlled storage and segregation of potato stock farmed on the lands of the applicants. Storage is prior to the potatoes being moved elsewhere and transported for sale.

7.3.3. They are of the opinion that the structure constitutes agricultural usage only (storage of agricultural produce farmed by the applicants on their land), and therefore should be considered exempt from Development Contributions as per the reasoning given in their grounds of appeal. It is of note that many of the more recent Council decisions relative to the operations on this site included conditions relative to Development Contributions (these are included in the History Section of the Planner's Report).

7.3.4. The issue in this case is whether this proposal can be considered solely as an agricultural building which is exempt under Section 10(i) or as part of the food or any agri or market gardening process. I would consider that the building is not stand alone, rather it is seen as part of the Country Crest Agri-Food Business. Therefore, in accordance with Section 10(i) I would consider that the 50% reduction in the commercial rate rather than an exemption would apply.

7.4. **Conclusion**

7.4.1. It is noted that the Council provides that there is no such provision in the Development Contribution Scheme 2003 under which F06A/1167 (PL06F.220291) was assessed. As noted, the current Development Contributions Scheme 2016-2020 Section 10(i), refers and does not provide for such an exemption relative to the subject application. The issue in question in this case is solely whether the Council's Development Contribution Scheme has been properly applied. I would consider that the application of a Development Contribution as per Condition no.12 of the Council's permission Reg.Ref.F19A/0365 is in accordance with Fingal County Council's Development Contribution Scheme and has been properly applied. Accordingly, I would recommend that this condition be retained.

8.0 **Recommendation**

8.1. I recommend that Condition no.12 be retained.

9.0 Reasons and Considerations

The Board considers that the Fingal County Council Development Contributions Scheme 2016-2020 (as amended) is the applicable contribution scheme in this case. It is considered that the scheme has been properly applied and it is recommended that Condition no.12 of Register Reference F19A/0365 be retained.

Angela Brereton
Planning Inspector

17th of February 2020