



An
Bord
Pleanála

Inspector's Report

ABP-306444-20

Development

To construct (a) storage extension and alterations to processing mill building, (b) single skin metal clad portal framed storage unit, (c) proprietary free-standing canopy type structure over existing external retail display area, and (d) all associated site works. The site is the subject of an existing integrated pollution license from the EPA.

Location

Coolrain Sawmills, Coolrain, Portlaoise, Co. Laois.

Planning Authority

Laois County Council

Planning Authority Reg. Ref.

19/268

Applicant

Coolrain Sawmills Ltd.

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

First Party v Development Contribution Only

Appellant

Coolrain Sawmills Ltd.

Date of Site Inspection

20.03.2020

Inspector

Anthony Kelly

1.0 Introduction

- 1.1. This report relates to a first-party appeal against Condition No. 14 of the planning authority decision to grant permission for the development. Condition No. 14 relates to the payment of a development contribution of €41,276 in accordance with the Council's Development Contribution Scheme 2017-2023. Section 48(10)(b) of the Planning & Development Act, 2000 (as amended) states that an appeal may be brought to the Board where an applicant considers that the terms of the development contribution scheme have not been properly applied.

2.0 Site Location and Description

- 2.1. The site is located on a local road, in a rural area, approx. 1.2km north of Coolrain village and 6km west of Mountrath in western Co. Laois.
- 2.2. The sawmill development site is adjacent to the east side of the local road with a number of structures and outdoor storage. The River Delour runs along the northern and eastern boundaries of the site.
- 2.3. The site has an area of 0.121 hectares.

3.0 Development Description

- 3.1. The planning application was for permission for:
 - Construction of a storage extension and alterations to an existing processing mill building including reroofing in line with P.A. Reg. Ref. 16/448;
 - Construction of a single skin metal clad portal framed storage unit;
 - Construction of a proprietary free-standing canopy type structure over existing external retail display area; and
 - All associated site works.
- 3.2. In addition to standard planning application plans and particulars the application was accompanied by a 'Screening for Appropriate Assessment' document.

- 3.3. The floor space of the existing buildings is stated as 5,100sqm. The floor space of the proposed works is stated as 1,214sqm.
- 3.4. Further information was submitted including in relation to sightlines, car parking and a site-specific Flood Risk Analysis.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to 14 no. conditions. Condition No. 14 requires the payment of a development contribution as follows;

- 14. Prior to the commencement of development, a contribution shall be payable to Laois County Council, in accordance with the Council’s Development Contribution Scheme 2017-2023 in respect of public infrastructure and facilities benefitting development in the area of the planning authority, and that is provided or that it is intended will be provided by, or on behalf of, the Council.

The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and penalty interest for late payment, in accordance with the terms of the Council’s Development Contribution Scheme:-

This development is commercial;-

Commercial		Floor Area	Total per Contribution
Roads	€22.67	1214m ²	€27,521.38
Amenity	€11.33	1214m ²	€13,754.62
Total Development Contributions	€34	1214m ²	€41,276

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Laois County Council in

respect of the provision/improvement of public services/infrastructure benefitting development in the area of the planning authority.

4.2. **Planning Authority Reports**

4.2.1. The Planning Officer's reports of 04.07.2019 and 13.12.2019 are the basis for the decision. The Planning Report considers that, having regard to the provisions of the Laois County Development Plan 2017-2023, the proposed development would not seriously injure the amenities of the area, would not be prejudicial to public health, would be acceptable in terms of traffic safety and would be in accordance with the proper planning and sustainable development of the area.

4.2.2. **Other Technical Reports**

Western Area Roads Section – No objection but comments made in relation to car parking arrangements. (No report received based on the further information response).

Road Design – Satisfied with the further information response.

Fire Officer – Further information recommended but no objection in principle. (No report received based on the further information response).

4.3. **Prescribed Bodies**

None received.

4.4. **Third Party Observations**

None received.

5.0 **Planning History**

P.A. Reg. Ref. 16/448 – Permission granted in 2017 for permission to extend and renovate the existing sawmills.

6.0 Policy Context

6.1. Laois County Development Plan 2017-2023

- 6.1.1. Section 5.10 (Rural Economic Activities) is relevant to the application.
- 6.1.2. Commercial development is referenced in Section 8.5 (Development Management Standards). DM 25 relates specifically to commercial development in rural areas.

6.2. Laois County Council Development Contribution Scheme 2017-2023

- 6.2.1. Section 9.1 (General Provisions of the Scheme) (Area of Calculation) states that the floor area of proposed development where buildings are involved shall be calculated as the gross floor area and, where applicable, mezzanine floor areas will be included.
- 6.2.2. Section 9.8 (Infrastructure in lieu) states;

'In the case of a large scale residential, commercial or industrial development, the Council recognizes that a developer *may*, subject to the agreement of the Planning Authority, carry out some works as a result of or pursuant to a planning permission which may in some circumstances benefit others outside the development site (e.g. an increase in the diameter of surface water drainage pipes, increased road width or pavement depth). These works will be formally agreed in advance of development commencing and will be subject to the submission of certified invoices by the developer. Value Added Tax at the appropriate rate will be payable to the Revenue Commissioners. Any set-off against development contributions will be the cost of the works, excluding VAT'.
- 6.2.3. Section 16 (Development Contributions Scheme 2017-2023) gives a rate of charge of €34 per sqm for non-residential/commercial and industrial buildings.

6.3. Natural Heritage Designations

- 6.3.1. The closest Natura 2000 site is the River Barrow and River Nore SAC which is immediately adjacent to the northern and eastern boundaries of the site.

7.0 The Appeal

7.1. Grounds of Appeal

The main points raised in the grounds of appeal can be summarised as follows:

- Condition No. 14 of the decision to grant permission is being appealed.
- As part of the application and further information the applicant is required to conduct extensive infrastructure improvement works adjacent to the development. The scope of the infrastructure improvement works imposed is onerous to be borne by an individual entity.
- Works required to satisfy the requirements of the planning authority are that the median of the existing road is to be redressed to ensure 6 metres clear road width, provision of a 180 metres long concrete path and new kerbing defining junctions. These improvement works to the local infrastructure for the benefit of others outside the development should have been considered as a mitigating factor against the full application of development contributions. Section 9.8 (Infrastructure in lieu) of the Development Contribution Scheme has not been afforded to the applicant. Section 9.8 sets out that the VAT exclusive value of infrastructure improvement works may be offset against development contributions through agreement with the planning authority prior to commencement of development.
- Application of the full Roads and Amenity Contribution rate specifically to the area covered by the proposed open canopy is not appropriate and proportionate. The area of this structure is 210sqm. There is no distinction in the Scheme to separate this type of covering of open space from enclosed development. Other county schemes have such distinctions and mechanisms.
- In contrast to other counties the Development Contribution Scheme does not allow for a reduction in development contributions for businesses supported by Enterprise Ireland funding which applies to Coolrain Sawmills Ltd. This funding is required to ensure the continued employment and enterprise the business provides to this rural area of Laois.

7.2. Planning Authority Response

None received.

8.0 Assessment

- 8.1. The development is for the extension of the existing processing mill building, a storage unit and a canopy structure over an external retail display area. This is a first party appeal in relation to Condition No. 14 which requires payment of a development contribution of €41,276.
- 8.2. The grounds of appeal refer to infrastructure improvement works the applicant is required to carry out. These are redressing the median of the existing road to ensure a 6 metres road width, construction of a 180 metres long concrete path and new kerb defining junctions. The grounds of appeal submit that the scope of these are onerous to be borne by an individual entity. Extensive car parking associated with the sawmills is located along the local road to the front of the site. This results in a traffic and pedestrian hazard. On foot of the submission of the planning application both the Western Area Roads Section Engineer and the Road Design Office raised issues about car parking and sightlines and this formed part of a further information request. The further information response included revised drawings addressing the relevant issues; the sightline issue was agreed on site with the local authority. Therefore, these works were not unilaterally imposed by the planning authority by condition at decision stage, but they were included by the applicant to address issues raised in the further information request. In addition, the works benefit the subject development by way of traffic and pedestrian safety improvements such as sightlines, a footpath and defined kerbs and are not just works for the benefit of others outside the development as stated in the grounds of appeal.
- 8.3. The grounds of appeal consider that Section 9.8 (Infrastructure in lieu) of the Development Contribution Scheme 2017-2023 should have been afforded to the applicant. This section states that a developer may, subject to the agreement of the Planning Authority, carry out some works as a result of or pursuant to a planning permission which may benefit others in the case of a large scale residential,

commercial or industrial development. The works are to be formally agreed in advance of development commencing and any set-off against development contributions will be the cost of the works, excluding VAT. The wording of Section 9.8 implies that it is more relevant post-planning decision. For example, reference is made to both the submission of certified invoices, which would not occur prior to the grant of permission, and set-off against development contributions as opposed to being taken into consideration in the application of development contributions in the first instance. Therefore, Section 9.8 appears to be a matter for post-decision agreement between the developer and the Council, but the Council is under no obligation to enter into such an agreement. On this basis, I do not consider that the terms of the Development Contribution Scheme under Section 9.8 have been improperly applied by not being afforded to the applicant at planning application decision stage.

- 8.4. The grounds of appeal refer to the fact that the Development Contribution Scheme 2017-2023 does not make any distinction between an open canopy structure and enclosed developments, and it does not allow for a reduction in development contributions for businesses supported by Enterprise Ireland, unlike other planning authorities. Adoption of the Laois County Council Scheme is a reserved function and it was prepared in accordance with the advice and guidance of the 'Development Contributions Guidelines for Planning Authorities' (2013) document. Schemes adopted by other planning authorities are not relevant to development within Co. Laois.
- 8.5. The grounds of appeal state that the application of the full contribution rate to the area covered by the 210sqm open canopy structure is not appropriate and proportionate. Section 9.1 (General Provisions of the Scheme) (Area of Calculation) of the Scheme states that the floor area of proposed development where buildings are involved shall be calculated as the gross floor area. Section 12.11 (Exemptions) (Uncovered Storage) states that uncovered storage space within the overall site curtilage and deemed to be ancillary to the primary development on the site is exempt. There is no reference to covered storage. The rate of charge for a non-residential commercial or industrial building is €34 per sqm. The definition of a 'building' is a structure with walls and a roof (Collins and Cambridge dictionaries). As the canopy structure is open to all four sides, I do not consider that it comprises a building for the purpose of the Development Contribution Scheme and this 210sqm area should be omitted from the development contribution required.

8.6. The planning application form submitted with the application gave a proposed gross floor area of 1,214sqm and this was the figure used by the planning authority in their calculations. Having regard to Section 8.5, above, I consider the floor area for the 210sqm canopy area should be omitted. This results in an amended development contribution of €34,136 (1,004sqm x €34 per sqm).

9.0 Recommendation

I recommend that Laois County Council be directed to amend Condition No. 14 on the grounds that the terms of the Development Contribution Scheme 2017-2023 have not been properly applied.

10.0 Reasons and Considerations

Having regard to:

- The provisions of the Laois County Council Development Contribution Scheme 2017-2023; and
- The open nature of the free-standing canopy structure over the existing external retail display area;

The Board considers that the terms of the Development Contribution Scheme have not been properly applied and Condition No. 14 shall be amended as follows;

The developer shall pay to the planning authority a financial contribution of €34,136 (thirty four thousand one hundred and thirty six 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.

Anthony Kelly

Planning Inspector

24.04.2020