



An
Bord
Pleanála

Inspector's Report ABP306530-20

Development	Point of detail in relation to a financial contribution.
Location	Bayland, Kilbora, County Wexford.
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20171422
Applicant(s)	O'Sullivan Agricultural Services
Type of Application	Point of detail application.
Planning Authority Decision	To apply commercial rates
Type of Appeal	Applicant in relation to Contribution
Appellant(s)	O'Sullivan Agricultural Services
Observer(s)	None
Date of Site Inspection	None
Inspector	Hugh Mannion

1.0 Introduction

- 1.1. The Board granted planning permission for the retention of an existing shed, construction of a new shed and provision of a wastewater treatment system serving a farm supplies business at Bayland, Kilbora, County Wexford under ABP 300848-18 on 18th October 2018. The Board imposed a development contribution condition in accordance with the Wexford County Council Development Contribution Scheme.

2.0 Proposed Development

- 2.1. The proposed development comprises
- 1) the retention of an existing lean-to shed 784m² on the north-western boundary used as a loading area,
 - 2) erect a new shed 2,713m² for use as a grain, fertilizer and general store,
 - 3) relocation and upgrading of the WWTP.
- At Bayland, Kilbora, County Wexford.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. The planning authority decided that the proposed development comprised commercial development which should be liable to a contribution based on the commercial rate provided for in the Development Contribution Scheme.

3.3. Planning Authority Reports

- 3.4. The exchange of emails submitted to the Board by Wexford County Council demonstrates that the Planning Authority considered that a commercial rate contribution is appropriate in this case, that the applicant and the planning authority did not agree on the amount payable under condition number 8 attached by the Board to the grant of permission. The planning authority advised the applicant to appeal the matter to the Board.

4.0 Planning History

Permission was granted for retention of a shed and erection a new shed and construction of a wastewater treatment system under appeal reference ABP300848-18 and condition 8 of that permission was as follows;

The developer shall pay to the planning authority a financial contribution 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.

4.1. Policy and Context

The Wexford County Council Development Contribution was adopted on the 9th April 2018 and is the applicable contribution scheme for the area.

5.0 The Appeal

5.1. Grounds of Appeal

- This building functions as a grain store and therefore should be classed as an agricultural development for the purposes of the Wexford County Council Development Contribution Scheme.

- The applicant has identified three cases where grain stores were classed as agricultural development for the purposes of development contributions and the applicant's property should be also be classed as an agricultural development.
- The planning authority has discriminated against the applicant and put him at a competitive disadvantage.

5.2. Planning Authority Response

- No response

5.3. Observations

- None

6.0 Assessment

- 6.1. The Board granted planning permission for the retention of an existing lean-to shed of 784m² on the north-western boundary used as a loading area, erect a new shed 2,713m² for use as a grain, fertilizer and general store and relocation and upgrading of the WWTP at Bayland, Kilbora, County Wexford under ABP300848-18. Condition 8 of that grant of permission required the payment of a financial contribution 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. That permission was granted on the 18th October 2018. The applicable development contribution scheme was adopted on the 9th April 2018.
- 6.2. Under the terms of the Board's order where the applicant and planning authority did not agree to the amount of the contribution the matter could be referred to the Board for determination. The applicant for permission has referred the matter to the Board and I am satisfied having regard to the material submitted to the Board by the planning authority that agreement between the parties has not been reached.

- 6.3. The development contribution scheme provides that an agricultural development be subject to a contribution charged at €2 per m² with the first 500m² being exempt of any contribution. Commercial developments are charged at a rate of €10 per m² with no areas exempted from the reckonable area. The correspondence copied to the Board indicates that the applicant referenced three instances where the planning authority applied an agricultural contribution to permitted developments. The planning authority distinguishes (see especially internal email dated 29th November 2019) between commercial businesses supplying products in the agricultural market and sheds owned by individual farmers for the use of farm livestock and produce.
- 6.4. The permitted development has a floor area of 3,497m². Applying the commercial contribution this would give a total of €34,970.90.
- 6.5. Taking the planning application reference numbers quoted by the applicant and relying on the Wexford County Council's planning search facility in its website it appears that reference number 20160265 refers to a development referred to by the planning authority as an 'existing grain store business.' The planning authority applied an agricultural levy provided for under the earlier development contribution scheme (adopted in 2013) which was €1 each for roads and €1 for recreational and community facilities after an initial exemption for the first 500m². Under reference number 20170115 the planning authority referred to a steel framed building for the processing of grain and considered Development Plan section 18.15.1 "Proposals for Industrial and Enterprise Developments and 18.15.2 "Criteria for Assessment of Industrial and Enterprise Developments". In that case the 2013 development contribution scheme was applied at agricultural rates of €1 for roads and €1 for recreational and community after the initial exemption for the first 500m² development. Under planning reference 20170708 permission was granted for an agricultural building described by the planning authority as being associated with an on-going agricultural use. A contribution condition was calculated at agricultural rates under the 2013 development contribution scheme. I conclude therefore that there are inconsistencies in how the planning authority applies the development contribution scheme.
- 6.6. Nonetheless the net point in this case must be the proper application of the adopted development contribution scheme applicable at the time of the Board's decision and still current. That scheme distinguishes between "commercial" development

described in the scheme as warehousing/manufacturing/office and commercial uses and “agriculture” which is taken as self-explanatory. Wexford County Development Plan 2013-2019 (lifetime extended to at least end 2020) does not provide a glossary of terms. The Planning and Development Act 2000, as amended states that “agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly. The Act does not define “commercial” but the Planning and Development Regulations 2001, as amended, states “business premises” means (a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons, (b) a hotel, hostel (other than a hostel where care is provided) or public house, or any structure or other land used for the purposes of, or in connection with, the functions of a State authority”.

- 6.7. The concise Oxford English Dictionary defines ‘commerce’ as buying and selling, especially on a large scale and ‘commercial’ as concerned with or engaged in commerce and the making or intention to make a profit. The applicant’s covering letter addressed to the planning authority with the original application (determined on appeal by the Board under reference ABP300848-18) refers to the activity on site as “grain merchants”, describes the business in part as handling fertilizers on pallets and having stocked fertilizer in bulk for customers. I conclude therefore that the application facilitated a commercial development undertaken for profit.
- 6.8. Planning guidance and documents should be interpreted for their ordinary meaning when considering their implications for applicants for permission and the public who may be impacted by them. I am satisfied that in this case the permitted development is a commercial development. The financial contribution condition imposed by the Board in accordance with the applicable development contribution scheme was for a commercial development and that this could have been understood upon reading the scheme for its ordinary meaning.

- 6.9. The planning authority applied that contribution in its original decision under reference 20171472 (appeal reference ABP300848-18) requiring €20,982 for roads in condition 2 and €13,988 for community facilities in condition 3 for a total of €34,970. The applicant did not appeal those conditions. Subsequently the applicant appears to have calculated his liability under the development contribution scheme relying on the 'agricultural' development type and submitted €5,994.18 to the planning authority (see letter from applicant to the planning authority dated 26th November 2019 copied to the Board with the request for determination to the Board). The planning authority's internal emails confirm that in November 2019 the planning authority calculated that €28,975.82 remained outstanding ($€20,982 + €13,988 = €34,970$ and $€34,970$ less $€5,994.18 = €28,975.82$).
- 6.10. Having regard to the forgoing I conclude that the proposed development is a commercial development for the purposes of the Wexford County Council Development Contribution Scheme 20018 which is the applicable scheme in this case. Additionally, the adopted scheme makes provision that the rate "may be adjusted annually from the 1st January using the Wholesale Price Index..." but the planning authority appears not to have done so and I conclude, having particular regard to the wording of the scheme, that this is a matter within the competence of the planning authority and that the Board need not consider this aspect of the case further. I conclude therefore that the outstanding amount payable by the applicant to the planning authority is €28,975.82

7.0 Reasons and Considerations

The Board granted planning permission under appeal reference number ABP 300848-18 for the development the subject of this request for a determination on a point of detail and imposed condition number 8 requiring the payment of a contribution under the provisions of the Wexford County Council Development Contribution Scheme adopted on the 9th April 2018. The Development Contribution Scheme distinguishes between commercial development and agricultural development for the purposes of determining the amount of the contribution payable. The Board has had regard to the submissions made in relation to the application under planning register reference number 20171472/appeal reference number ABP300848-18, the material submitted by the applicant (O'Sullivan Agricultural Services Limited) in this request for a determination on a point of detail and the copy of the planning authority's file submitted to the Board. The Board is satisfied that the development the subject of the application under planning register reference number 20171472/appeal reference number ABP300848-18 was a commercial development for the purposes of the Wexford County Council Development Contribution Scheme 2018, that the amount payable at the time of the grant of permission was €34,970, that the applicant (O'Sullivan Agricultural Services Limited) has made a payment of €5,994.18 to the planning authority and that the outstanding amount payable to Wexford County Council is now €28,975.82.

Hugh Mannion
Senior Planning Inspector

11th March 2020