



An
Bord
Pleanála

Inspector's Report ABP-307362-20

Development	Permission for the erection of a hay/straw store, associated facilities and site works.
Location	Turnings, Straffan, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	20/42
Applicant(s)	Maurice Hanifin.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party -v-Condition
Appellant(s)	Maurice Hanifin
Observer(s)	None
Date of Site Inspection	12th February 2021
Inspector	Fergal Ó Bric.

1.0 Site Location and Description

1.1 The appeal site is located approximately 2.5 kilometres south of Straffan Village, within the townland of Turnings. This area is rural in that it is located outside of a settlement boundary as defined within the Development Plan. The site is accessed off a local county road, the L-2007. The site comprises a number of agricultural structures including farm machinery stores, farm workshop, cattle shed and a straw store adjacent to a single storey dwelling (outside of the appeal site boundary).

2.0 Proposed Development.

2.1 Permission is sought for the construction of a hay/straw store within the existing farmyard enclosure with a floor area of 609.33 square metres (sq., m.) and a maximum ridge height of 9.2 metres. External finishes would comprise of a concrete rising wall to a height of 1.8 metres, with corrugated cladding on the upper rising walls and roof. The proposals would also involve the demolition of an existing agricultural shed with a floor area of 165.79 sq. m.

2.2 Further information was submitted in relation to: Sightlines, volume and type of traffic that the hay/straw store would generate.

3.0 Planning Authority Decision

3.1 A grant of planning permission was issued subject to seven conditions. The following conditions are of relevance:

Condition number 1: Development shall be carried out in accordance with the documentation and particulars lodged with the application on the 22nd day of January 2020, as amended by further information received by the Planning Authority on the 5th day of May 2020.

Condition number 7: Development contribution of €4,435.40.

3.2 Planning Authority Reports

Planning Reports

Transportation Department: No objections following the submission of the further information response as referred to in Section 2.3 above.

Environment Department: No objections, subject to conditions.

Planning report: The proposed agricultural development was considered acceptable in the context of the established and permitted farmyard enclosure and the proper planning and sustainable development of the area. An Appropriate Assessment (AA) screening report was prepared by the Planning Authority and concluded that there would be no potential significant effects on any Natura 2000 sites and that an AA is not required. A grant of permission was recommended subject to conditions, a number of which are set out in Section 3.1 above.

3.3 Prescribed Bodies

Not referred to prescribed bodies.

4.0 Planning History

Planning Authority reference number, 05/1512, In 2005, planning permission was granted for the demolition of an existing house and to replace same with a bungalow and secondary effluent treatment system, all associated site works and services, from that previously permitted under planning authority reference number 04/1512.

I would refer to An Bord Pleanála reference numbers PL,09,248650, PL.09.246874 and PL.09.248352 where the matter of development contributions for agricultural developments, similar to the matters raised in this appeal have arisen.

5.0 Policy Context

5.1 Development Plan

The relevant Development Plan is the Kildare County Development Plan 2017-2023.
Section 10.4.2 Agriculture-Policies:

AG1: Support agricultural development and encourage the continuation of agriculture as a contributory means of maintaining population in the rural area.

5.2 Kildare County Council Development Contributions Scheme 2015-2022

5.2.1 Section 12 refers to Exemptions and Reduced Contributions.

Subsection (n) Agriculture states.

“The first 600 square metres of non-residential development on any agricultural landholding will be exempt. Thereafter a rate of €10.00 per sqm shall apply. This exemption is cumulative and will only be granted once on any landholding.

The exemption will only apply to buildings for the landowner’s own use in connection with the agricultural operation of his/her farm enterprise.

The following categories of agricultural development will be exempted from the requirement to pay development contributions under the Development Contribution Scheme, subject to the submission of appropriate documentary evidence from the Department of Agriculture.

- All farm buildings and structures which are required to be constructed to comply with environmental protection regulations.
- All farm buildings and structures which are required to be constructed to comply with National Action Programmes implemented under the EU Nitrates Directive (91/976/EEC).

5.3 Natural Heritage Designations

None relevant.

6.0 The Appeal

6.1 Grounds of Appeal

6.1.1 The appeal is made by Mr. Austin Morrin on behalf of the applicant Mr. Maurice Hanifin, and was received by the Board on the 18th of June 2020. The grounds of appeal are as follows:

- The appeal refers to the Development Contribution Scheme adopted by Kildare County Council and in particular Section 12, part n, which relates to agricultural development exemptions.
- In respect of the Kildare County Council Development Contributions Scheme (DCS) 2015-2022, Section 12(n) pertains to agricultural developments and sets out the following: The first 600 square metres of non-residential development on any agricultural land holding will be exempt. Thereafter a rate of €10.00 per square metre shall apply. This exemption is cumulative and will only be granted once on any landholding. The exemption will only apply to buildings for the landowner's own use in connection with the agricultural operations of his/her farm enterprise.
- The Planning Report states that the 600 sq. m, exemption could not be applied as the floor area of the existing farm buildings within the existing farmyard enclosure exceeds 600 sq. m.
- The landholding has never availed of any previous exemption and therefore, the calculation should be based on the floor area in excess of 600m² and the levy applied to 9.33m², the area in excess of 600 sq. m., and the contribution should be €93.30.
- Reference is made to previous decisions of the Board, namely reference numbers PL.09 248650, PL.09 248352 and PL.09.246874 where the Board ruled that levies would be applied on the floor areas of applications which had been granted since the introduction of development contributions.
- Reference is also made to other decisions of the Planning Authority.

- The appeal considers that the levy was incorrectly applied.

6.2 Planning Authority Response

6.2.1 The Planning Authority responded to the Board on the 20th of July 2020 as follows:

- The Planning Authority set out the basis of the levy.

The existing agricultural buildings on the site measure in excess of 600 sq. m., and this is accepted by the applicant.

Without proof of construction dates of the existing agricultural structures on site, the Planning Authority cannot definitively determine if the existing structures were constructed prior to, or subsequent to, the adoption of the Development Contributions Scheme.

As the area of proposed building is 609.33 sq. m. the area applicable for levies is 443.54 sq. m. as an existing farm structure measuring 165.79 sq. m. would be demolished, and this has been provided for within the calculations.

The contribution required is therefore €4,435.40 based on the differential floor area, multiplied by €10 per m².

7.0 Assessment

7.1 Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development Contribution Scheme have not been properly applied. Therefore, the Board, is restricted to considering the merits of condition number seven only.

7.2 The current proposal pertains to the erection of a hay/straw storage shed with a stated gross floor area of 609.33 sq. m. which would replace an existing hay/straw storage structure with a stated gross floor area of 165.79 sq. m. There are a number of other existing farm buildings within the farmyard enclosure which cumulatively would exceed the 600 sq. m. exemption set out with Section 12 (n) of the DCS.

- 7.3 Section 12 of the DCS permits certain exemptions and reductions. The Planning Authority has stated that the calculation of the contribution is based on the floor area of the proposed structure, minus the floor area of the existing structure to be demolished and was levied in accordance with Section 12 (n) of the scheme.
- 7.4 I note the claim by the applicant that the DCS is not being applied consistently by the Planning Authority and makes reference to some recent decisions by the Planning Authority. The Board should note that under Section 12, paragraph (n) of the scheme, there are further exemptions where the cumulative floor area (of other existing structures/development) would appear to apply. Under the Board cases referred to by the applicant within his grounds of appeal, the Board considered that the applicant was entitled to avail of the exemption in respect of the proposed floor area, and less any demolition of development (as applicable) and applied amended contributions or no contributions.
- 7.5 The Planning Authority state that they are unaware whether the existing agricultural structures on site pre-date the Development Contributions Schemes, or not. Notwithstanding this, I note that the current application is not seeking retention planning permission, and the Planning Authority have not stated that the existing sheds are unauthorised, and they have permitted the current proposal.
- 7.6 Therefore, I am satisfied that taking account of the existing sheds on site, which would appear to predate the introduction of the DCS in 2005, and as the applicant has not previously availed of an exemption under the current DCS, that in this instance, the applicant is entitled to avail of the 600 sq. m exemption, as provided for under Section 12 (n), in respect of the proposed floor area.
- 7.7 I would accept the point made by the applicants, that they are entitled to seek the 600 sq. m. exemption, as provided for within the scheme, and should only be levied on the differential. Therefore, the differential of 9.33 sq. m. is the extent of floor area which is liable to contributions as per the provisions of the Kildare County Council DCS 2015-22, and not the 443.54 sq. m as referenced by the Planning Authority within their planning report and appeal submission. I consider that the levy as proposed, is not warranted or justified and should be amended.

8.0 Recommendation

Having considered the submissions received in relation to this appeal and the documentation submitted and based on the reasons and considerations set out below, I recommend that condition number 7 be amended.

9.0 Reasons and Considerations

Having regard to

(a) the general arrangements regarding payment of development contributions and implementation of the scheme.

(b) the extent of existing and permitted agricultural developments on the landholding.

(c) the provisions of the Kildare County Development Contributions Scheme, specifically Section 12 (n),

Amend condition 7 as follows.

Having regard to the nature of the proposed agricultural use of the development, the provisions of Section 12 (n) of the adopted Kildare County Council Development Contribution Scheme, 2015-2022, which provides for an exemption for the development of agricultural structures up to 600 square metres, where no exemption has previously been applied, it is considered that the provisions of the adopted contribution scheme have not been properly applied such that Condition Number 7, attached to Planning Authority reference number 20/42 should be amended, and limited to the floor area in excess of the 600 square metre exemption, which amounts to 9.33 sq. m. in floor area, which would amount to a revised Development Contribution of €93.30.

Reason: It is considered reasonable that the development should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

Fergal O'Bric
Planning Inspectorate

22nd February 2021