



An
Bord
Pleanála

Inspector's Report

ABP-310460-21

Development	An agricultural grain shed and all associated site works
Location	Killelery, Geashill, Co. Offaly
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	21/70
Applicant(s)	Desmond Bagnall
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party v Development Contribution Only
Appellant(s)	Desmond Bagnall
Observer(s)	None
Date of Site Inspection	24.09.2021
Inspector	Anthony Kelly

1.0 Introduction

- 1.1. This report relates to a first-party appeal against Condition No. 9 of the planning authority decision to grant permission for the development. Condition No. 9 relates to the payment of a development contribution of €10,035 in accordance with the Offaly County Council Development Contribution Scheme. 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 off a local road approx. 2km west of Geashill village in east Co. Offaly.
- 2.2. The structure subject of the planning application was in situ at the time of my site inspection.
- 2.3. The structure/site subject of the application is immediately adjacent to, and accessed via, a commercial agricultural supplier. There is substantial concrete surfacing with several other large structures within the wider site. The subject building is located further to the rear/north east of the agricultural supply development and it has the same external finishes as the original structures i.e. blockwork to the lower area and green galvanise in the upper areas. There are fields adjacent to the north and east.
- 2.4. The site has an area of 0.35 hectares.

3.0 Proposed Development

- 3.1. Permission was sought for an agricultural grain shed and all associated site works.
- 3.2. The structure has a floor area of 669sqm and a height of 9.144 metres, according to the planning application. It has a concrete wall to the lower 3.658 metres and green metal cladding to the upper walls and roof. There are some translucent panels allowing light into the interior of the shed.

3.3. Further information was sought. The response stated that the proposed shed is for the applicant's own grain, and it is not a commercial shed. No HGVs will be used to transport the grain to the shed. This would be done by tractor and trailer. Detail of the site entrance was submitted, which 'is jointly used by Desmond Bagnall and the commercial enterprise', and section drawings through the proposed shed were also submitted.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to nine conditions. Condition 9 requires the payment of a development contribution as follows:

9. Prior to commencement of development, a contribution shall be payable to Offaly County Council, in accordance with the Council's Development Contribution Scheme, in respect of public infrastructure and facilities benefitting development in County Offaly, that is provided or that 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 interest for late payment, in accordance with the terms of the Council's Development Contribution Scheme:-

Category	Amount of Contribution
Industrial/Commercial development	€15.00 per m ²
Total	€15.00 X 669m ² = €10,035

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Offaly 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. Two Planning Reports form the basis of the planning authority's decision. The second report concludes that, having assessed the application in conjunction with the internal reports, and the policies and objectives in the Offaly County Development Plan 2014-2020, it is reasonable to permit the subject development.

4.2.2. Having regard to the content of the second Planning Report in relation to development contributions, the Planning Officer considered that, given the intersection/abutting of the site with the boundary of the commercial agricultural development previously permitted, and that the structure is accessed through the commercial developments' entrance, the subject development is an extension to that commercial agricultural development (P.A. Reg. Ref. PL2/18/6).

4.2.3. **Other Technical Reports**

Area Engineer – Following the further information response, conditions were recommended.

Environment & Water Services – No objection subject to conditions relating to, inter alia, surface water, waste management, and environmental nuisance.

Chief Fire Officer – No objection.

4.3. **Prescribed Bodies**

None.

4.4. **Third Party Observations**

None.

5.0 **Planning History**

There has been one previous relevant planning application on site. This is:

P.A. Reg. Ref. PL2/18/6 – In 2018, Quinns of Baltinglass Ltd. were granted (i) permission for retention of the change of use of a building from agricultural to

commercial use, construction of an extension to that commercial building, a commercial storage yard and weighbridge, widening of an access point, and signage, and (ii) permission to widen the entrance. A first party appeal was received by the Board against the inclusion of a special contribution condition (ABP Reg. Ref. ABP-301291-18). The Board directed the planning authority to remove the condition.

6.0 Policy Context

6.1. Offaly County Development Plan 2014-2020

- 6.1.1. The planning application was assessed by the planning authority under the 2014-2020 County Development Plan. The Offaly County Development Plan 2021-2027 subsequently came into effect on 20.10.2021.

6.2. Offaly County Council Development Contribution Scheme 2021-2025

- 6.2.1. The second planning authority Planning Report states the development contributions were levied as per Table 1a of the Scheme. Table 1a (Level of Contribution – Residential & Industrial/Commercial Development in all other areas) relates to development outside urban areas. It has a levy of €15 per square metre for industrial/commercial development.
- 6.2.2. Table 2 (Levels of Contributions – Other Categories of Development) (B) (Agricultural/Horticultural Development) states there is no contribution for the first 500sqm within a farm. A contribution of €3 per square metre applies over 500sqm.
- 6.2.3. Section 20 (Agricultural Development) of the Scheme states ‘A contribution shall be payable on all roofed structures, whether open or enclosed. Contributions shall be payable on the cumulative roofed area exceeding 500m².
- 6.2.4. Section 27 (Exemptions) (k) (Agriculture) states ‘The first 500m² of agricultural development granted permission **within a farm** – (100% exemption) Thereafter the rates as set out in Table 2(B) will apply ...’ (sic)

6.3. Natural Heritage Designations

- 6.3.1. The closest Natura 2000 site is River Barrow and River Nore SAC (Site Code 002162) approx. 7.7km to the south west. The closest heritage area is Raheen Lough pNHA (Site Code 000917) approx. 4.2km to the south east.

7.0 The Appeal

7.1. Grounds of Appeal

The main points made can be summarised as follows:

- The proposed development has been inaccurately classified as a commercial development for the purpose of calculating the appropriate level of contribution.
- The agricultural shed is to store harvested grain from the applicant's farm. The application fee paid was €80 (Class 3 – Provision of building for the purpose of agriculture). The description and fee were accepted by the Council.
- The planning authority's first question in the further information request was perfectly valid given a portion of the yard operates as a commercial agricultural enterprise. The response clarified that the shed was for the applicants' own grain. Notwithstanding, the planning authority considered the development as commercial, contrary to the information presented.
- The planning authority made a presumption, based on the location of the development in proximity to the commercial element of the applicant's farmyard, that the development must be commercial in nature. PL2/18/6 identified the commercial element as an extension to the agricultural farmyard associated with the applicant's house and farmholding. The majority of farmyard buildings are not commercial in nature, but relate to the agricultural holding. The external yard and entrance represent the primary access point to both the commercial and agricultural operations. It is not reasonable to reclassify the nature of the proposed development for the purpose of development contributions once the planning authority has been assured that

it is for a use directly associated with the applicant's farmholding and is not commercial in nature.

- Permission cannot be granted for a development for which no application has been made. It is clear the planning authority had no objection to the proposed development of a grain shed. Classification of same being for the commercial storage of grain from other farms, with no evidence, was misguided.
- Section 7.3.2 of the Development Management Guidelines states 'Unless the requirements of a condition are directly related to the development to be permitted, the condition may be ultra vires and unenforceable'. The development contributions imposed are not directly related to the development for which permission was applied or permission was granted. Permission was applied for an agricultural grain store, not for a commercial unit.
- A development contribution of €507 is applicable (nil cost for the initial 500sqm and €3 per square metre for the remaining 169sqm of the 669sqm structure).

7.2. Planning Authority Response

The main points made can be summarised as follows:

- On a site inspection on 21.07.2021 the subject shed was under construction even though a Final Grant had not been issued.
- The planning authority consider the subject development will be used for commercial use due to the following reasons:
 - The site is currently being used for commercial use as permitted under PL2/18/6.
 - The only way of accessing the shed is via the existing commercial storage yard as permitted under PL2/18/6.
 - The vehicular entrance to the site is currently being used as a commercial entrance to the commercial development granted under PL2/18/6.

7.3. Observations

None.

7.4. Further Responses

None.

8.0 Assessment

- 8.1. The primary issue with this appeal is whether the structure subject of the planning application, which has been constructed, should be considered as an agricultural structure or as a commercial structure, for the purpose of calculating development contributions.
- 8.2. There is an overlap between the site boundary for the current application and the site boundary for the most recent application on site, PL2/18/6, specifically the shared access/circulation area. A cover letter submitted with PL2/18/6 stated that Quinns of Baltinglass have depots of various sizes throughout the midlands and east of Ireland, and the Geashill depot is one of the smaller ones. The cover letter states 'the Geashill operation is staffed by the landowner and his family'. A letter of consent was provided by the landowner, Desmond Bagnall. The supplementary application form submitted with that application identifies the number of employees in the development as 'Four family members'.
- 8.3. The situation on this landholding is somewhat unusual in that it appears that the applicant/landowner, who is in control of 56.62 hectares of farmland in the immediate vicinity, including the farmyard immediately south west of the subject shed, is also an employee of Quinns of Baltinglass who operate a commercial agricultural enterprise out of a structure and yard area owned by the applicant. The access to the shed subject of the application and the commercial agricultural enterprise are shared by both operations. It appears that the connectivity between both enterprises is the reason the planning authority decided that the storage shed was for commercial purposes associated with the Quinns of Baltinglass commercial development, rather than the applicant's farming enterprise.

- 8.4. I note initially that it is Desmond Bagnall who has applied for planning permission for the grain store. There is no reference to Quinns of Baltinglass in the application, and I note it was that company which applied for permission under PL2/18/6. The development was described in the planning application and the public notices as an agricultural grain shed and a fee of €300 was paid i.e. an agricultural fee. (The grounds of appeal state a fee of €80 was paid but an additional €220 fee in accordance with Class 3 (i) of the Scale of Fees was submitted to the planning authority on 19.02.2021, two days after the application was received by the planning authority). By contrast, a commercial fee in accordance with Class 4 of the Scale of Fees was paid under PL2/18/6. Further to the further information request, the applicant stated that the proposed shed was for the applicant's own grain. On inspection, the subject shed was approximately a quarter filled with grain. There was also approx. 10 large Quinns of Baltinglass bags of grain within the shed. There appears to be a possible blurring of the lines to some degree between the commercial and agricultural enterprises on site.
- 8.5. Given the documentation submitted with the planning application I consider that the planning application was made for a structure for the storage of the applicant's grain, and not that associated with Quinns of Baltinglass. That is what was sought, and what was permitted by the grant of permission. Should the structure be found to be used for commercial purposes, contrary to the provisions of the planning permission, it would be open to the planning authority to pursue appropriate enforcement action. Therefore, I consider that the structure should be considered as an agricultural structure rather than a commercial structure, and development contributions calculated accordingly.
- 8.6. The applicant considers a contribution of €507 is the applicable contribution. The applicant has calculated this by omitting the first 500sqm of the 669sqm structure and applying a charge of €3 to the remaining 169sqm. I do not agree with the applicant in this regard. The structure, in my opinion, is part of a larger farmyard immediately adjacent to the south west. This farmyard is under the applicant's control. Q.9 of the 'Supplementary Application Form No. 3 – Agricultural Developments', states that the floor area of the existing farm buildings is approx. 3,504sqm. These buildings, and their floor areas, are shown on an aerial photograph submitted with the application. The relevant level of development contribution set out in the Development Contribution Scheme is somewhat ambiguous. Table 2 states there is no contribution for the first 500sqm of development within a farm. A contribution of €3 per square metre applies

over 500sqm. However, Section 27 refers to the first 500sqm 'of agricultural development *granted permission*'. Notwithstanding, in this case permission was granted for a 702sqm general purpose shed for agricultural use within the farmyard under P.A. Reg. Ref. PL2/07/1694 (which was the structure converted into the commercial agricultural development). Therefore, as an agricultural structure in excess of 500sqm was previously granted on site the ambiguity in the Development Contribution Scheme does not affect the development subject of the current application.

8.7. Having regard to the foregoing, I consider that the 669sqm agricultural grain structure should be levied at a rate of €3 per square metre i.e. €2,007 (669sqm x €3 per square metre).

9.0 Recommendation

I recommend that Offaly County Council be directed to amend Condition No. 9 on the grounds that the terms of the Development Contribution Scheme 2021-2025 have not been properly applied.

10.0 Reasons and Considerations

Having regard to:

- The provisions of the Offaly County Council Development Contribution Scheme 2021-2025; and
- The nature of the permitted and existing developments;

The Board considers that the terms of the Development Contribution Scheme have not been properly applied and Condition No. 9 shall be amended as follows;

The developer shall pay to the planning authority a financial contribution of €2,007 (two thousand and seven 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 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

08.11.2021