



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313035-22

#### Development

Construction of a cold store building and associated high level conveyor link, a plant room with service gantry, extensions to production building, raising the roof levels of production building and new first floor factory accommodation and an intake building and associated high level conveyor link.

#### Location

Seafood Facility, Conlin Road, Killybegs, Co. Donegal.

#### Planning Authority

Donegal County Council

#### Planning Authority Reg. Ref.

2152571

#### Applicant(s)

John McGuinness.

#### Type of Application

Permission.

#### Planning Authority Decision

Grant permission

#### Type of Appeal

First Party against conditions

#### Observer(s)

None.

**Date of Site Inspection**

25<sup>th</sup> July 2022.

**Inspector**

Barry O'Donnell

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.96ha and is located on Conlin Road, Killybegs. It is a large and prominent site, to the north of Main Street and is an area of mixed uses, which includes commercial and retail uses to the south and residential and community uses to the west and north.
- 1.2. There is currently a pedestrian footpath on the west side of Conlin Road, routing northward from the junction of Main Street and terminating opposite the site, at Marine Drive. There is also a footpath on the east side of the road, to the north of the site, which routes southward from Emerald Drive/Close and which terminates approx. 110m north of the access to the subject site.

## 2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of a cold store building and associated high level conveyor link, construction of a plant room and service gantry, ground floor extensions to production building, raising the roof level of existing production building and construction of new first floor factory accommodation and construction of an intake building and associated high level conveyor link.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority granted permission on 17<sup>th</sup> February 2022, subject to 7 No. conditions. Of relevance to the appeal, condition states: -

7. The applicant (or person at the relevant time entitled to the benefit of the permission) shall pay the sum of €25,000 (twenty five thousand euro) to the Planning Authority as a special contribution under Section 48(2)(c) of the Planning and Development Act, 2000 in respect of (footpath development on Conlin Road) which will facilitate the development.

The contribution shall be paid prior to the commencement of the development or such phased payments as the Planning Authority may facilitate.

Where the works in question:-

- (i) are not commenced within five years from the date of payment to the Planning Authority of the contribution, or final instalment thereof; or
- (ii) have commenced, but have not been completed within 7 years of the date of payment to the Planning Authority of the contribution or final instalment thereof:  
or
- (iii) where the Planning Authority decides not to proceed with the proposed works or part thereof, the contribution shall be refunded to the applicant together with any interest that may have accrued over the period while held by the Planning Authority. Where a Planning Authority has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion of those works, which have been carried out.

### 3.2. Planning Authority Reports

3.2.1. A Planning Report dated 7<sup>th</sup> February 2022 has been provided, which reflects the Planning Authority's decision to grant permission. The reports states that the principle of commercial development is established on the site and that the proposal will improve efficiencies as part of the business. The existing factory building on the site is stated to be visible from much of the surrounding area, but that it forms part of the fish processing industry that now dictates the visual character of the town and that the proposals are minor in context. The report recommends that permission be granted, subject to 7 No. conditions, which are consistent with those attached to the Planning Authority's decision.

#### 3.2.2. Other Technical Reports

An emailed **Roads Department** report dated 8<sup>th</sup> February 2022 has been provided, which expresses no objection to the development but which requests that a specific development charge of €25,000 be applied for the provision of a new public footpath and public lighting along the road frontage linking the site to the existing footpath to the north.

The Planning Report indicates that the **Chief Fire Officer** was consulted but did not comment on the application.

A **Building Control** report dated 24<sup>th</sup> January 2022 has been provided, which recommends conditions as part of a grant of permission.

### 3.3. **Prescribed Bodies**

- 3.3.1. The Planning Report indicates that Irish Water was consulted but did not comment on the application.

### 3.4. **Third Party Observations**

- 3.4.1. None received.

## 4.0 **Planning History**

- 4.1.1. Recent planning records pertaining to the site include: -

1550523 - Permission granted on 13<sup>th</sup> July 2015 for construction of accommodation ancillary to approved cold store (Reg. Ref. 1450311 refers) and associated site works. Proposed accommodation consists of a pallet room, dispatch/delivery area, toilets, office and storage.

1451314 - Permission granted on 21<sup>st</sup> May 2015 for demolition of an existing fuel store and construction of accommodation ancillary to approved cold store (Reg. Ref. 1450311 refers) and associated site works. Proposed accommodation consists of a pallet room, dispatch/delivery area, toilets, office and storage.

1450311 - Permission granted on 3<sup>rd</sup> September 2014 for construction of a cold store warehouse and associated service gantry, together with associated site works including truck yard, boundary fence, retaining wall and petrol interceptor.

## 5.0 Policy Context

### 5.1. Seven Strategic Towns Local Area Plan 2018-2024

5.1.1. Map 7 of the local area plan is the land-use zoning map for Killybegs. It identifies that the site is subject to the 'Established Economic Development' zoning, with an objective '*To protect and enhance the capacity and operation of areas of Established Economic Development.*'

5.1.2. Relevant policies include: -

**Policy GEN-ED-2:** It is a policy of the Council to consider proposals for appropriate new commercial developments (or proposals for redevelopment of or extensions to existing commercial developments) on lands zoned 'Established Economic Development' in this LAP (Maps 1-7 refer), subject to compliance with all other relevant policies of this LAP, compliance with the Habitats Directive and subject to all other material planning considerations including environmental considerations.

**Policy GEN-ED-5:** It is a policy of the Council that any proposal for commercial or retail use, in addition to other policy provisions of this Local Area Plan, will be required to demonstrate compliance with all of the following criteria –

- (i) The proposed development is compatible with surrounding land uses existing or approved;
- (ii) The proposed development would not harm the amenities of nearby residents;
- (iii) There is existing or programmed capacity in the water and wastewater infrastructure or suitable developer-led improvements can be identified and delivered;
- (iv) The existing road network can safely handle any extra vehicular traffic generated by the proposed development or suitable developer-led improvements are identified and delivered to overcome any road problems;
- (v) Adequate access arrangements, parking, manoeuvring and servicing areas can be provided in line with the Development and Technical standards set out in the CDP or as otherwise agreed in writing with the Planning Authority;
- (vi) The proposed development would not create a noise nuisance;

- (vii) Any emissions from the proposed development can be dealt with in accordance with relevant standards;
- (viii) The proposed development would not adversely affect important features of the built heritage or natural heritage including Natura 2000 sites;
- (ix) The proposed development is not located in an area at flood risk and/or will not cause or exacerbate flooding;
- (x) The site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity;
- (xi) Appropriate boundary treatments and means of enclosure are provided and any proposed areas of outside storage are adequately screened from public view;
- (xii) The proposed development would not compromise water quality nor conflict with the programme of measures contained within the current North Western River Basin (NWIRBD) Management Plan.

## 5.2. Donegal County Council Development Contribution Scheme 2016-2021

5.2.1. Section 3.2 'Contribution Rates' identifies the following contribution rates, per square metre of development: -

- Commercial/Industrial – Industry - €7 per m<sup>2</sup> in Letterkenny/Tier 1 and €4.14 per m<sup>2</sup> in all other areas.

5.2.2. Appendix I contains a list schedule of potential capital projects and refers to countywide public footpaths and lighting projects.

## 5.3. Ministerial Guidelines

### *Development Contributions Guidelines for Planning Authorities (2013)*

5.3.1. The Guidelines provide guidance on the drawing up of development contributions. Under section 48 of the Act, planning authorities must draw up a development contribution scheme (a general development contribution scheme) in respect of certain public infrastructure and facilities provided by, or on behalf of, the local authority that generally benefit development in the area. All planning permissions granted are subject to the conditions of the development contribution scheme.

### *Development Management Guidelines (2007)*

- 5.3.2. Section 7.12 refers to conditions requiring development contributions (sections 48 and 49 of the Planning Act), advising that Development contribution conditions may only be attached if they accord with the provisions of either section 48 or section 49 of the Planning Act and these are based on the application of the terms of one or more development contribution schemes which have been formulated and adopted in accordance with those sections of the Act, or on the need for a special financial contribution.
- 5.3.3. Although there is no entitlement to appeal against the principle of attaching a condition formulated in accordance with a general or supplementary scheme, the contribution requirements of any such scheme may be the subject of a valid appeal where the applicant considers that the terms of the scheme in question were not properly applied. The planning decision should clearly set out how the relevant terms were interpreted and applied to the proposed development; as well as being best practice this will help to minimise unnecessary appeals.

#### **5.4. Natural Heritage Designations**

- 5.4.1. The site is not within or adjacent to any European site. St. John's Point SAC (Site Code 0001919) is the closest such site and it lies approx. 5km south-east.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The appeal concerns condition No. 7 of the Planning Authority's decision.
  - The amount seems arbitrary as no drawings/details of the proposal have been provided.
  - The proposed footpath will impact operations at the applicant's site and will require the transfer of land to the Count Council. This should be considered as part of the calculation of the financial contribution payable.
  - The footpath will be beneficial to the Killybegs community but will be of limited benefit to the applicant's business.



- The County Council constructed a social housing development at Emerald Drive, Upper Conlin Road. The main beneficiaries of the proposed footpath will be residents at this development and other residents in the area. In this context, the financial contribution required of the applicant is disproportionate.

## 6.2. Planning Authority Response

6.2.1. A submission was received on 13<sup>th</sup> May 2022, the contents of which can be summarised as follows: -

- The imposition of a special contribution requirements is reasonable and appropriate.
- The contribution request relates to Section 48(17)(d) of the Act, with reference to the provision of pedestrian facilities.
- The proposed footpath is 90m in length and is to the north-east of Conlin Road, where there is no footpath and where the alignment of the roadway is a hazard to pedestrians accessing the subject site and other sites.
- The cost is based on footpath developments elsewhere in the Municipal District, at current prices tendered to the Council
  - 90m of footpath at €120/sqm = €21,600
  - 3 No. lighting columns and ducting at €2,000 each = €6,000
  - Total cost €27,600
- A further length of over 120m in length is to be constructed along the frontage of the site and further to the south, but this may not be constructed immediately due to funding availability.
- No other issues are raised by the appeal and the Planning Authority relies on its report, in response to it.

## 6.3. Further Responses

6.3.1. A further submission was received from the applicant on 12<sup>th</sup> May 2022, the contents of which can be summarised as follows: -

- The Council's acceptance that the footpath is of limited benefit to the development raises the question as to whether it is appropriate to levy a special contribution, as a means of funding public infrastructure that should already be provided.
- The applicant will provide necessary lands and will facilitate and proposed footpath development and it is noted that a footpath will likely be required across the main factory entrance.
- The calculation of the amount levied has not been clarified and seems to be arbitrary.

## 7.0 **Assessment**

7.1. Section 48(10) (b) of the Planning and Development Act 2000, as amended, makes provision for an appeal to be brought to the Board where an applicant for permission under section 34 considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the planning authority.

7.2. As this is an appeal in relation to the application of a development contribution only, the Board will not determine the application as if it were made to it in the first instance and will only determine the matters under appeal. The condition the subject of this appeal is No. 7.

### 7.3. **Condition No. 7**

7.3.1. Condition No. 7 was applied by the Planning Authority as a special contribution towards footpath development on Conlin Road, Killybegs. The condition was applied in accordance with the provisions of Section 48(2)(c) of the Planning and Development Act 2000 and a contribution sum of €25,000 was specified.

7.3.2. Under Section 48 of the Act, planning authorities have 2 mechanisms by which to require the payment of a contribution in respect of existing and/or proposed public infrastructure and facilities benefiting development:

- (1) In accordance with a development contribution scheme made under Section 48,  
and/or,

(2) Where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

- 7.3.3. Regarding the facility to require payment under a development contribution scheme, the Donegal County Council Development Contribution Scheme 2016-2021 is the operative development contribution scheme for the Planning Authority, and it makes provision for the payment of a contribution at a set rate per square metre of development. I note that condition No. 6 of the Planning Authority's decision requires payment of a financial contribution in accordance with the development contribution scheme.
- 7.3.4. Regarding the facility to require a contribution towards specific exceptional costs, Section 48(2)(c) of the Act is clear that specific exceptional costs should arise in order to justify any request for a special contribution.
- 7.3.5. Section 48(12) of the Act states that a condition requiring payment of a special contribution under Section 48(2)(c) 'shall specify the particular works carried out, or proposed to be carried out, by any local authority to which the contribution relates'. Section 7.12 of the Development Management Guidelines also outlines that for such a condition to be attached by a planning authority, it is essential that the basis for the calculation of a contribution should be explained in the planning decision, including identifying the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development.
- 7.3.6. In my opinion the condition, as worded, does not meet the requirements of Section 48(12) or Section 7.12 of the Development Management Guidelines as it does not adequately specify the works to be carried out and does not provide any basis for the calculation of the contribution, including the nature/scope of works and the expenditure involved.
- 7.3.7. I am aware that in its response to the appeal, the Planning Authority has provided additional details regarding the specific works to which the special contribution would be allocated, identifying that the proposed footpath is 90m in length and is to the north-east of Conlin Road, where there is no footpath, and that the cost has been assessed based on footpath development elsewhere in the municipal district at current tender prices. Whilst I have given consideration to the submission, this

information should have been contained within the planning condition and within the planning authority's decision.

## 8.0 Recommendation

8.1. I recommend that condition No. 7 should be omitted, for the following reasons and considerations below.

## 9.0 Reasons and Considerations

9.1. Having regard to:

- a. Section 48(2)(c) of the Planning and Development Act, 2000 as amended;
- b. The Development Contributions Guidelines for Planning Authorities (2013);
- c. The Donegal County Council Development Contribution Scheme 2016-2021;
- d. The size and nature of the proposed development; and
- e. and the pattern of development in the area.

In respect of condition No. 7, the Board, in accordance with section 48 of the Planning and Development Act, 2000, as amended, considered that the condition failed to meet the requirements of Section 48(2)(c) of the Act and should thus be omitted.

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Barry O'Donnell  
Planning Inspector

6<sup>th</sup> September 2022.