



An
Bord
Pleanála

Inspector's Report

ABP-313722-22

Development	Retention of pig house and ancillary structures.
Location	Corravilla, Bailieborough, Co. Cavan
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	21733
Applicant(s)	Shane O'Reilly.
Type of Application	Permission.
Planning Authority Decision	
Type of Appeal	First party against conditions
Observer(s)	None.
Date of Site Inspection	2 nd May 2023.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.77ha and is located in the townland of Corravilla, approx. 8km north of Bailieborough, Co. Cavan. It consists of an agricultural yard that is set back in excess of 200m from the L7533 and which contains a pig house with a stated gross floor area of 1,000m².
- 1.2. The site is accessed from the L7533 via a stone track that leads to a stone surfaced circulation area to the front of the pig house.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises retention of a pig house, ancillary structures and associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 13th May 2022, subject to 22 No. conditions.
 - Condition No. 2 required payment of a financial contribution of €6,750 under the S48 development contribution scheme.
 - Condition No. 3 required payment of a financial contribution of €20,000 under S48(2)(c) of the Act, in respect of public infrastructure and facilities

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 28th January 2022 and 13th May 2022 have been provided. The first report requests Additional Information regarding noise and odour, disease transmission prevention measures, waste disposal, feed activities, leak detection measures and the site access.
- 3.2.2. The second report followed receipt of the AI response. It summarises and responds to the individual AI response submissions and recommends that permission be

granted, subject to 22 No. conditions which are consistent with those attached to the Planning Authority's decision.

3.2.3. Other Technical Reports

Municipal District Engineer reports dated 16th December 2021 and 11th May 2022 have been provided. The first report requests AI regarding the site access and site layout. The second report followed receipt of the AI response and recommends that a condition be attached requiring a financial contribution of €20,000 related to road refurbishment works in the vicinity of the site.

Environment Reports dated 11th January 2022 and 25th April 2022 have been provided. The first report requests additional information regarding leak detection, disease transmission prevention measures, feed activities and noise/odour. The second report followed receipt of the AI response and recommends conditions as part of a grant of permission.

3.3. Prescribed Bodies

- 3.3.1. The Planning Authority report indicates no prescribed bodies were consulted on the application.

3.4. Third Party Observations

- 3.4.1. The Planning Authority report indicates there were no third-party submissions on the application.

4.0 Planning History

- 4.1. I did not encounter any recent planning records pertaining to the site.

5.0 Policy Context

5.1. Cavan County Development Plan 2022 - 2028

- 5.1.1. Section 12.5 of the development plan relates to Agriculture and it acknowledges the importance of farming to the County. Section 12.8 contains policies related to agricultural buildings and structures and the following are relevant to the proposal: -

ABS 01: Facilitate the development of environmentally sustainable agricultural activities, whereby watercourses, habitats, areas of ecological importance and environmental assets are protected and development does not impinge on the visual amenity of the countryside.

ABS 02: Ensure developments do not impact on archaeological or heritage features of importance.

ABS 03: Require buildings to be of a design, appearance and material specification that is compatible with the protection of rural amenities.

ABS 04: Require an effective means of farm waste management.

5.2. Cavan County Council Development Contribution Scheme 2017 – 2020

5.2.1. The 2017-2020 scheme remains the operative development contribution scheme for the Planning Authority. It provides a scheme for the levying of financial contributions as part of grants of planning permission, under the terms of Section 48 of the Planning and Development Act, 2000, as amended.

5.2.2. Section 3.0 sets out the level of contribution based on class of development and, of relevance, it states that agricultural structures shall contribute at a rate of €5 per square metre, with an exemption available for 0-300m² of such structures. Note 2 of the section states as follows: -

‘Retention permissions shall be charged at 1.5 times the applicable rate of the development contribution. No exemptions or reductions are applicable for retention permissions, other than developments considered to be exempt development as per the Planning and Development Regulations 2001-2015. For example, a retention application for a 60m² single storey domestic extension to the rear of a residential property, the applicant may avail of the 40 m² exemption listed under Section 4(1)(b) below.’

5.2.3. Section 4 contains a list of exemptions and reductions, which are deemed to be exempted from the requirement to make a financial contribution. Subsection 4(1)(k) provides an exemption for agricultural developments that result in no increase in overall production and are made in order to comply with National or EU Directive. A

further note at the end of Section 4.2 reiterates that exemptions and reductions do not apply to permissions for retention.

5.3. Telecommunications Antennae and Support Structures – Guidelines for Planning Authorities (1996)

- 5.3.1. The Guidelines provide guidance in relation to telecommunications installations which form part of the requirements for licensed, public mobile telephony and which are deemed to be development in accordance with the Planning and Development Act.

5.4. Natural Heritage Designations

- 5.4.1. The site is not located within or adjacent to a designated European site and there are no such sites within a 15km search zone of the site.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows: -
- The appeal relates to conditions 2 and 3 of the Planning Authority's decision.
 - Condition No. 2
 - The contribution calculation fails to take account of exemptions contained within the S48 development contribution scheme, which provides for a deduction for the floor area of development that would be allowed as exempted development.
 - The relevant exempted development classes are Classes 7 and 9 and, applying the exempted development allowance, the net area for the financial contribution is 778m². Using this area, the contribution payable is €5,834.06.
 - Condition No. 3
 - The operation of the farm involves 1 lorry movement per week.

- The S48 development contribution scheme payment required by condition No. 2 has considered the traffic implications of this development and there are no circumstances that warrant a special development contribution.
- The works identified in condition No. 3 are not exceptional and are not specific, required to facilitate this development.
- Application of special contribution conditions as has been done in this instance would have implications for agricultural activity elsewhere in the County, which involves utilising the public roads.

6.2. Planning Authority Response

6.2.1. The Planning Authority made a submission on the 4th July 2022, the contents of which can be summarised as follows: -

- Condition No. 2
 - The applicant has misinterpreted Note 2 of the S48 development contribution scheme.
 - It is incorrect to describe the internal office/storeroom within the structure as a Class 9 structure.
 - The calculation used as part of condition No. 2 is correct and the Board is requested to retain it.
- Condition No. 3
 - The road network in the vicinity of the site is in poor condition and was not designed for HGV traffic. The development will further deteriorate the road network in the area.
 - Pig farming involves HGV traffic for delivery of livestock and feedstuffs, which contributes disproportionately to deterioration of road conditions and incurs additional expenditure over and above standard refurbishment works.
 - Funds secured under the S48 development contribution scheme cannot reasonably be relied upon as the costs are exceptional.
- Road improvement works

- An estimated 550m² pavement strengthening in the area of the entrance to the site is proposed. Detailed costings are itemised in Appendix 1 of the submission.
- The Board is requested to uphold the condition.

6.3. Observations

6.3.1. None.

6.4. Further Responses

6.4.1. The applicant made a further submission, following receipt of the Planning Authority's submission. Its content can be summarised as follows: -

- Condition No. 2
 - The store area to which Class 9 applies is adjacent to the pig house rather than within it. It is also separate and distinct from it. There is no justification for not treating this structure as a Class 9 structure.
 - The Planning Authority's position regarding the applicability of exemptions at Note 2 of the S48 development contribution scheme are confusing and conflicting. It is unreasonable that the Planning Authority can arbitrarily decide whether to apply reliefs afforded by the scheme.
- Condition No. 3
 - The Planning Authority's submission states that no significant road improvement costs have been incurred at this location, which suggests that upgrades are overdue.
 - The proposal is an agricultural development, not industrial.
 - The appeal submission indicates that exceptional costs arise, but the condition states that the contribution is to fund standard refurbishment works. No specific exceptional costs have been demonstrated.
 - Vehicular traffic associated with pig farms is well known and would have been considered by the Planning Authority when it prepared the S48 development contribution scheme.

- The pig farm operation is smallscale and nothing about the development, location or works proposed is exceptional.

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 conditions the subject of this appeal are Nos. 2 and 3.

Condition No. 2

- 7.3. The condition was applied by the Planning Authority under the Cavan County Council Development Contribution Scheme 2017 - 2020 (DCS) and required payment of a financial contribution of €6,750. The condition states that the contribution should be paid within 3 months of the final grant and shall be subject to any indexation provisions of the Scheme at the time of payment.
- 7.4. In appealing the condition, the applicant argues that the contribution calculation is incorrect as it fails to take account of exemptions contained within the DCS, which provides for a deduction for the floor area of development that would be allowed as exempted development. In essence, the applicant's case is that the parts of the pig building that would ordinarily constitute exempted development (stated to fall within Classes 7 and 9 of Part 3 of Schedule 2 of the Regulations) can be deducted from the contribution calculation and that, in doing so, the net area for the financial contribution is 778m² and the contribution payable is €5,834.06.
- 7.5. The applicant's interpretation of the DCS is disputed by the Planning Authority, whose submission on the appeal argues that an exemption can only be claimed if it is a listed category in Section 4.0 of the DCS.

- 7.6. Note 2 of Section 3.0 of the DCS is central to the appeal. It states that no exemption or reduction is applicable for retention permissions, other than developments considered to be exempt development as per the Planning Regulations 2001-2015, and an example of a 60m² domestic extension proposed for retention is provided, whereby a 40m² exemption listed under Section 4(1)(a) may be claimed (the DCS incorrectly identifies Section 4(1)(b) in the example).
- 7.7. In my view the note is unclear, as it appears to indicate that exempted development under the Regulations is subject to exemptions and reductions. But this is contradicted by the example case, where the 'exemption' cited is that provided for in Section 4.0 of the DCS, not the exempted development right provided for in the Regulations.
- 7.8. Section 4 of the DCS contains the prescribed list of exemptions and reductions from the requirement to pay development contributions and, regardless of the aforementioned uncertainty in Note 2, it clearly states that exemptions and reductions shall not apply to permissions for retention of development.
- 7.9. I am satisfied that in view of this provision, which I consider to be clear and unambiguous, the subject development is not liable for an exemption or reduction and the terms of the DCS have been correctly applied.

Condition No. 3

- 7.10. The condition was applied by the Planning Authority under Section 48(2)(c) of the Act and required payment of a financial contribution of €20,000 within 3 months of the final grant or in phased payments as agreed with the Planning Authority.
- 7.11. Section 48(2)(c) of the Act states that a planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by the DCS are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.
- 7.12. 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.

- 7.13. Condition No. 3 does not specify the works that the required contribution would fund and in appealing the decision, the appellant argues that specific exceptional costs have not been identified.
- 7.14. In its submission on the appeal, the Planning Authority states that an estimated 550m² pavement strengthening is proposed in the area of the entrance to the site and detailed costings are also itemised at Appendix 1 of the submission.
- 7.15. The appellant made a further submission, following receipt of the Planning Authority's submission, arguing that the works identified are of a standard nature and should be accounted for by the contribution required under Condition No. 2.
- 7.15.1. 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.
- 7.15.2. Notwithstanding the above, I have given consideration to the contents of the Planning Authority's submission and note that the funds would be used to upgrade the junction of the L7533/L3516/L3517 and the L7533 at the site entrance. I noted on my site visit that the junction appears to have been recently upgraded and surface dressed. I consider further upgrades to the junction are unlikely to be required, however; the Board may wish to clarify this with the Planning Authority.
- 7.15.3. The site access has an unbound stone surface and at the time of my visit the presence of stone was evident on the L7533. I note in this respect that condition No. 4 of the Planning Authority's decision required specified works to the site access and public road fronting the access, which includes provision of a structural overlay that is tied into the existing road level. This revised layout will improve the condition of the public road at the point of the site access.
- 7.15.4. Regarding the likely impact of the development on the road network, I note from the application documents that traffic movements will be of a low order, associated with a weekly feed delivery, and the appeal submission states that the operation will

involve c.1 lorry movement per week. Given the nature of the development, there is likely to be very limited HGV traffic associated with live deliveries to and from the site and presumably routine movements associated with daily operations. I am satisfied that the development will result in a low level of traffic and I do not consider the development would have a detrimental effect on the road, such that the required financial contribution is warranted.

7.15.5. The DCS includes an 87% proportion of all contributions to be allocated to 'roads, infrastructure and facilities' projects. I am satisfied that the DCS contribution required under condition No. 2 is adequate to account for the impact of the development on the local road network.

7.15.6. In view of the foregoing, I conclude that condition No. 3 should be omitted from the Planning Authority's decision.

8.0 Recommendation

8.1. I recommend that condition No. 2 of the Planning Authority's decision should be retained and condition No. 3 should be omitted.

9.0 Reasons and Considerations

Condition No. 2:

The Board considered the Cavan County Council Development Contribution Scheme 2017 - 2020 is the applicable development contribution scheme in this case and that it had been properly applied by the planning authority.

Condition No. 3:

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 Cavan County Council Development Contribution Scheme 2017 - 2020;
- d. The size and nature of the proposed development; and
- e. and the pattern of development in the area.

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.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Barry O'Donnell
Planning Inspector

12th May 2023.