



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315151-22

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<b>Development</b>	Retention and completion of entrance; barn containing 7 no. stables and machinery/hay store; access roadway. Permission for new horse walker unit and switch room.
<b>Location</b>	Sycamore Stables, Greatconnell, Newbridge, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	22/660
<b>Applicant(s)</b>	Natalia and Alan Nolan
<b>Type of Application</b>	Permission (s. 34)
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Financial Contribution (s. 48)
<b>Appellant(s)</b>	Natalia and Alan Nolan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	14 <sup>th</sup> April 2023
<b>Inspector</b>	Philip Maguire

## 1.0 Site Location and Description

- 1.1. The appeal site comprises of a large agricultural field within the townland of Greatconnell, c. 2.5km southeast of Newbridge, Co Kildare. The site is located along and accessed via a local road (L2028), south of the M7 and due west of the M9 motorways. The surrounding area is characterised by undulating farmland with a distinctive pattern of ribbon development along the adjoining local road.
- 1.2. The appeal site is irregular shaped and predominantly under grass save for some access tracks and a partially constructed barn. It has a stated area of 4.1ha and road frontage of some 53m. Site topography is initially consistent with road level before falling sharply towards the River Liffey which adjoins the southwestern boundary. The roadside boundary is defined by pillars, wing walls and a recessed gate opening which was blocked by temporary fencing during the site inspection. The remainder of the roadside boundary is defined by a timber post and rail fence and newly planted laurel hedgerow to the rear of a section of temporary fencing. The remaining boundaries are defined by mature treelined hedgerow save for a section of wall flanking the access road and adjacent to the partially constructed barn. Detached houses adjoin the site.

## 2.0 Proposed Development

- 2.1. The barn-type structure to be retained and completed is sited roughly 250m southwest of the site entrance on a northeast-southwest alignment. This reflects the orientation of an adjacent agricultural building beyond the site to the northeast. The barn has an asymmetrical pitched roof, finished floor level of 116.50mAOD and a stated floor area of 346sq.m. The ridge height is illustrated as 5.917m and spans 22.046m. All structural steelwork appeared to be *in situ* during the site inspection. The proposed external finishes include fare faced blockwork and agri-cladding, green in colour.
- 2.2. The horse walker unit would be sited to the northwest of the barn. It has a stated floor area of 132sq.m and maximum height of 4.471m. The finished floor level is illustrated as 116.25mAOD. A dungstead would be sited to the rear (southwest) of the barn. It has a finished floor level of 103.15mAOD. An ESB switch room would be sited to the northeast of the barn along the site boundary. It has a finished floor level of 116.50mAOD and stated floor area of 14sq.m. Surface water from the site entrance will discharge to an adjacent soakaway. Additional landscaping is also proposed.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The Planning Authority decided to grant permission for the proposed development on 27<sup>th</sup> October 2022, subject to conditions.

3.1.2. Condition 12 is directly relevant to this appeal. It states:

*The Applicant/Developer to pay to Kildare County Council the sum of **€11,223.60** being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5<sup>th</sup> November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted Kildare County Council on 5<sup>th</sup> November 2015.*

**Note:** *Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water.*

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

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- Planning Report (25/10/22): Basis for the Planning Authority decision. The proposal, as amended, was deemed to be consistent with the policies and objectives of the Kildare County Development Plan 2017-2023. Having regard to its nature and design, and the character of the adjoining development, it was considered that the proposed development would not seriously injure the amenities of the area or of property in the vicinity.

#### 3.2.2. Other Technical Reports

- Enforcement (16/06/22): Application addresses unauthorised development.
- Building Control (27/06/22): No observations.

- MD Office (30/06/22): No objection subject to conditions.
- Environment (06/07/22): No objection subject to conditions.
- Fire (12/07/22): No objection.
- Roads (19/07/22): Further Information required.
- Water (20/07/22): No objection.

### 3.3. Prescribed Bodies

- TII (20/06/22): No observations.
- Irish Water (20/07/22): No objection.

### 3.4. Third Party Observations

3.4.1. 4 no. third party submissions were received. The issues raised can be summarised as follows:

- Inaccuracies and omissions in the application
- All hedgerows have been removed
- No provision for stock-proof fencing or mature hedging
- Works to date include drinking throughs and hardstanding against hedge line
- No surface water management proposals
- New block wall along south-eastern boundary has been omitted from drawings
- New drainage pipe along the south-eastern boundary is not included
- New access is not addressed/removed
- Shed 5m closer to south-eastern boundary than permitted under PA ref. 18/655
- Biosecurity of livestock at risk due to works along perimeter hedge line
- Works not in compliance with PA ref. 18/655 and should be remediated

## 4.0 Planning History

4.1. Appeal site:

**PA ref. 18/655:** Permission **granted** in October 2018 for a detached agricultural shed, recessed entrance, and associated site works.

**PA ref. UD/8031:** Unauthorised development consisting of a new entrance to public road; widening of existing entrance and erection of wing walls, piers and gate not in compliance with PA ref. 18/655; c. 150m long block wall along the south-eastern boundary; internal access tracks exceeding 500m; creation of 1m high, 2m wide earth berm along the southwestern boundary; and placement of 2 no. 20ft metal containers on the site. Warning Letter dated 20<sup>th</sup> April 2022 issued. Enforcement Notice dated 27<sup>th</sup> June 2022 served requiring certain remedial measures to be carried out.

#### 4.2. Other relevant site history:

**PA ref. 18/1236:** Permission **refused on appeal** (ABP-303311-18) in May 2019 for single-storey house, with attached domestic garage for 3 no. reasons relating to lack of economic or social need to live in this rural area and non-compliance with the rural housing policy set out in the County Development Plan; excessive density of suburban-type development which would militate against the preservation of the rural environment; and endangerment of public safety by reason of a traffic hazard.

**PA ref. 17/1393:** Permission **refused** in February 2018 for a single-storey house and separate agricultural shed for 3 no. reasons relating non-compliance with the rural housing policy set out in the County Development Plan; lack of screening and inappropriate siting of the shed which would impact on the adjacent Liffey Valley; and the absence of adequate information relating to sightlines at the entrance.

## 5.0 Policy Context

### 5.1. National Guidance

- 5.1.1. Under Section 2 of the Development Contributions Guidelines (DECLG, January 2013), as amended, planning authorities are required to include specific exemptions and waivers in their Development Contribution Schemes, however it states that no exemptions or waivers should apply to any applications for retention of development.

## 5.2. Development Contribution Scheme 2015-2022

5.2.1. The Planning Authority decision of 27<sup>th</sup> October 2022 was made under the Kildare County Council Development Contribution Scheme (DCS) 2015-2022 which was adopted on 5<sup>th</sup> November 2015. Section 2 states that this Scheme will remain in force until a new scheme is adopted or upon its expiration in 2022. It also notes that revised contributions will be applied to all decisions issued after the date of adoption.

5.2.2. Section 8(xiv) of the DCS relates to ‘miscellaneous developments’ and indicates that a rate of €27.51/sq.m will be applied to “built” (as opposed to “open”) developments.

5.2.3. Section 9(b) of the DCS relates specifically to ‘retention’ and states that:

- (i) *Development Contributions will not be applied where a valid application is received for retention of minor alterations (as determined by the Planning Authority) and where there is no increase in floor area.*
- (ii) *Development contributions in respect of retention applications will be applied at the rate of “standard” applications for planning permission.*
- (iii) *Where development contributions have not previously been paid, applications for retention of development will have contributions applied, based on the proposed floor area of the permitted development. For development constructed pre 1963, contributions will be applied in full. The rate of contributions applicable will be based on the current contributions scheme in place at time permission is granted.*
- (iv) *An application to retain an extended area to that previously granted, where contributions have been previously paid in full will have contributions applied to the extended floor area only. No exemptions will apply and charges will be based on the total extended floor area granted. The rate of contributions applicable will be based on the current contributions scheme in place at time permission is granted.*

5.2.4. Section 12(o) of the DCS relates specifically to ‘equine’ and states that:

*The first 600 square meters of non-residential development on any equine landholding will be exempt and the contribution thereafter will be at a rate of €10.00 per sqm. This exemption is cumulative and will only be granted once on any landholding.*

5.2.5. Section 12(q) of the DCS states:

*No exemptions or waivers shall apply to any developments subject to retention permission save where it applies to a previously permitted development (e.g. temporary permission).*

5.2.6. Section 13(b) of the DCS states:

*Contributions due with regard to Planning Permission for retention are payable immediately on issue of the final grant of permission.*

### 5.3. **Development Contribution Scheme 2023-2029**

5.3.1. The current Development Contribution Scheme for the period 2023-2029 was adopted on 19<sup>th</sup> December 2022 and came into effect on 1<sup>st</sup> January 2023. Section 2 states that the Scheme is effective for 7 years or until such time as it is reviewed, or a subsequent scheme is adopted. Section 8.3 of the Scheme provides that 'agriculture or equine' development shall be charged at €5/sq.m but the first 600sq.m of such development shall be exempt. Section 8.5 provides that 'built miscellaneous' development shall be charged at €30/sq.m. Section 9 of the Scheme states that no exemptions shall apply to any development subject to retention permission.

## 6.0 **The Appeal**

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

6.1.1. A 1<sup>st</sup> Party appeal has been lodged by DH Architectural on behalf of the applicants, Natalia and Alan Nolan. The applicants contend that the imposition of the condition is unreasonable and should be reduced on the following grounds:

- It is claimed that the works were carried pursuant to the permission granted under PA ref. 18/655 for a 229sq.m barn and the 117sq.m lean-to structure was added after the barn was erected.
- It is stated that no levies applied under PA ref. 18/655 as the area was less than 600sq.m as per the Development Contribution Scheme and as the total area is still less than 600sq.m no levies should be applied in this instance.

- As the horse walker and switch room are not subject of retention, it is stated that no levies apply and it is also noted that the cumulative area of the barn with lean-to, horse walker and switch room less than 600sq.m.
- Alternatively, it is stated that levies should only be applied to the 117sq.m lean-to structure, if they are to be applied at all.
- A reduction in levies is requested on this basis.

## 6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Calculation rate applied is incorrect
- Rate should have been €10/sq.m – Sec. 12(n) of DCS “2017-2022”
- Sec. 9(b)(ii) applies in respect of retention applications
- Agricultural shed – 346sq.m x €10/sq.m = €3,460.00
- Switch room – 14sq.m x €27.51/sq.m = €385.14
- Horse walker – exempt in accordance with Sec. 12(o) of the “DCS 2017-2022”
- Condition no. 12 of PA ref. 22/660 should be reduced to €3,845.14

## 6.3. Further Responses

6.3.1. A further response was received from DH Architectural on behalf of the applicants, Natalia and Alan Nolan. It can be summarised as follows:

- Request the Board to determine whether the Planning Authority also incorrectly removed the already approved exemption under PA ref. 18/655
- Satisfied at the 117sq.m lean-to structure being charged at €10/sq.m
- Satisfied horse walker is exempt from development contributions
- Satisfied switch room is calculated at €27.51/sq.m
- Not satisfied at €10/sq.m for the original 229sq.m building
- Planning Authority incorrectly removed this already approved exemption



## 7.0 **Assessment**

### 7.1. **Preliminary Points**

7.2. The appeal relates to Condition 12 only, which imposes a development contribution in accordance with the provisions of s. 48 of the Planning and Development Act 2000 (as amended) and as per the terms of the Kildare County Council DCS 2015-2022.

7.3. Section 48(10)(b) of the Planning Act makes provision for an appeal to be brought to the Board where an applicant considers that the terms of the relevant DCS have not been properly applied in respect of any condition laid down by the planning authority. In that context, the Board is required to apply the scheme as adopted by the Planning Authority and not to evaluate the merits or otherwise of the Scheme itself. Furthermore, as this appeal relates to a development contribution only, the Board cannot determine the application as if it was made to it in the first instance and is confined to considering whether the terms of the Scheme have been properly applied.

7.4. This poses two separate issues for the Board to consider. Firstly, it must determine which DCS applies to the subject appeal; the former DCS under which the Planning Authority decision was made or the current DCS for 2023-2029. Secondly, and once satisfied of the applicable scheme, it must ensure that the Scheme is properly applied.

### 7.5. **Applicable Contribution Scheme**

7.5.1. The Kildare County Council DCS for the period 2015-2022 was adopted on 5<sup>th</sup> November 2015. The Planning Authority decision of 27<sup>th</sup> October 2022 was made under this Scheme as noted in Condition 12. The DCS for the period 2023-2029 came into effect on 1<sup>st</sup> January 2023. Having regard to section 48(10)(b) of the Planning and Development Act 2000 (as amended), I am fully satisfied that the applicable Scheme is the one that was in effect on the date of the Planning Authority decision.

### 7.6. **Application of the Scheme**

7.6.1. Condition 12 of PA ref. 22/660 requires the payment of the sum of €11,223.60 to Kildare County Council in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority. The Planning Report of 25<sup>th</sup> October 2022, the basis for the decision, sets out a Schedule of recommended conditions including Condition 12. It relates to the elements considered applicable for development contributions as opposed to the actual wording of the condition or rates

to be applied i.e. stables 346sq.m, horse walker 132sq.m and switch room 14sq.m. The Planning Authority have submitted that an incorrect rate was applied in respect of the agricultural shed and horse walker and their amended position is set out in para. 6.2.1 above i.e. 346sq.m agricultural shed based on a rate of €10/sq.m and exemption for the horse walker. The rate for the 14sq.m switch room was unchanged and it is stated that Condition no. 12 of PA ref. 22/660 should be reduced to €3,845.14.

7.6.2. The applicants offer three appeal grounds. Firstly, the total area of 346sq.m remains less than 600sq.m and no contributions should be applied. Secondly, the total area of 346sq.m in addition to horse walker and switch room remains less than 600sq.m and no contributions should be applied. Finally, if contributions do apply, then they should be applied to the 117sq.m lean-to element only. The applicants position alters somewhat following the Planning Authority appeal submission as outlined in para. 6.3.1 above i.e. they accept rates of €10/sq.m for the lean-to and €27.51 for the switch room. They are also satisfied that the horse walker is exempt but remain of the view that the “original 229sq.m building” benefits from an “already approved exemption”.

7.6.3. I have reviewed the development authorised on foot of PA ref. 18/655. I note that it is a symmetrical pitched roof structure and sited in a broadly similar position, orientation and level (116.70mAOD) to the appeal development, albeit with an increased separation from the south-eastern boundary (8.80m). The ridge height is illustrated as 5.605m and spans 22.290m which is somewhat of departure when compared to the appeal development ridge height of 5.917m. Having regard to my site inspection and placing significant weight on the documentation on file, including close range photographs of the groundworks and steelwork *in situ* I do not agree with the applicant that development authorised on foot of PA ref. 18/655 materially commenced and the lean-to structure was simply a later addition. I am satisfied that the barn for which permission for retention and completion was sought was unauthorised in its entirety.

7.6.4. I am therefore satisfied that the Planning Authority correctly concluded that the barn structure to be retained did not benefit from any exemptions under the DCS in force at the time of their decision. This position is reinforced by the description of the proposed development as detailed in Section 9 of the Planning Application Form received by the Planning Authority on 31<sup>st</sup> May 2022. It clearly states that the proposal relates to the ‘retention and completion of barn structure’ as opposed to retention and completion of extension to previously permitted barn structure or words to similar effect. There is a

clear distinction to be made in that regard and the wording of the proposal supports what was evidenced on the ground. The applicable floor area is therefore 346sq.m.

7.6.5. Section 12(o) of the DCS 2015-2022 sets out a charge of €10/sq.m for equine related development after the first 600sq.m exemption. Section 12(q) provides that such exemptions do not apply in the case of retention permission. The applicable development contribution for the barn to be retained and completed is therefore €3,460. This exemption does however apply to the unbuilt horse walker and I agree with the Planning Authority and applicants submissions in this regard. I also agree with their submissions with regard to the switch room i.e. built miscellaneous development. The applicable development contribution for the 14sq.m switch room is therefore €385.14 based on a charge of €27.51/sq.m as per section 8(xiv) of the DCS.

## 8.0 Recommendation

8.1. I recommend that the Planning Authority be directed to **AMEND** Condition 12 of PA ref. 22/660 for the reasons and considerations set out hereunder.

## 9.0 Reasons and Considerations

9.1.1. Having regard to the provisions of the Kildare County Council Development Contribution Scheme 2015-2022, section 48(10) of the Planning and Development Act 2000 (as amended) and relevant Guidelines, I considered that the terms of the Scheme were not properly applied in respect of Condition 12 for the following reasons:

- The Planning Authority incorrectly applied a development contribution rate of €27.51/sq.m for the barn to be retained and completed. The applicable rate is €10/sq.m for equine related development.
- The Planning Authority incorrectly applied a development contribution rate of €10/sq.m for the proposed horse walker which falls within a specified exemption.

9.1.2. As per the terms of the DCS, the applicable development contributions are:

- |  |               |                  |
|--|---------------|------------------|
| • 346sq.m barn (to be retained and completed): | 346 x 10 =    | €3,460           |
| • 14sq.m switch room (proposed):               | 14 x 27.51 =  | <u>€385.14</u>   |
|  | <b>Total:</b> | <b>€3,845.14</b> |

9.1.3. I consider that Condition 12 should be amended to reflect the terms of the Development Contribution Scheme (2015-2022) that was in effect when the appealed condition was laid down, as follows:

## 10.0 Conditions

12.	<p>The developer shall pay to the planning authority the sum of <b>€3,845.14</b> as a contribution towards expenditure that was and/or is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the planning authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.</p> <p><b>Reason:</b> It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilitates benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by or on behalf of the Local Authority.</p>
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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.

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Philip Maguire  
Planning Inspector  
26<sup>th</sup> April 2023