



An
Bord
Pleanála

Inspector's Report

ABP-319226-24

Development	Construction of new ancillary structures for the operation of an existing biogas facility and all associated site works.
Location	Gorteen Lower, Nurney, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	23894
Applicant(s)	Green Generation Ireland Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party (against S. 48 Condition)
Appellant(s)	Green Generation Ireland Limited
Observer(s)	None
Inspector	Ian Boyle

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Appendix 1 – Form 1: EIA Pre-Screening

1.0 Site Location and Description

- 1.1. The appeal site is in a rural location to the south of Nurney Village. It lies on the southern side of the R415 (Regional Route). It accommodates an existing piggery and biogas facility.
- 1.2. A shared vehicular entrance off the R415 at the northern boundary provides access to the site. This common entrance leads to two separate entrances, one for the piggery and one for the biogas plant. There is a traffic barrier at the site entrance near the main office for the facility. The office requires visitors to register the purpose of their visit upon arrival.
- 1.3. The biogas plant processes food and food-processing waste and is a regulated facility under the Department of Agriculture, Food and Marine (DAFM). The applicable regulations require annual reporting and regular inspections of the facility, which operates as a standalone entity. The plant is EPA-licensed and therefore must also submit an Annual Environmental Report (AER/EPR) for environmental performance and compliance purposes.
- 1.4. The appeal site has a stated area of 0.275ha.

2.0 Proposed Development

- 2.1. The proposed development is for the construction of new ancillary structures for the operation of an existing biogas facility and all associated site works.
- 2.2. The Planning Authority requested further information on 3rd November 2023.
- 2.3. The Applicant responded on 23rd January 2024.

[Note: The appeal is in relation to a financial contribution applied by the Planning Authority only.]

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority issued a Notification of Decision (NoD) to grant permission on 15th February 2024, subject to 9 no. conditions.

3.1.2. **Condition 9** is in relation to the payment of a financial contribution (€239,285.90). it is applied under Section 48 of the Planning and Development Act 2000, as amended. The reason stated is that 'it is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority'.

3.1.3. The Applicant is appealing this condition.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Having regard to the existing use of the site, as well the scale and design of the proposed development, the Planning Authority does not consider that there would be any negative impacts on the residential amenity of the surrounding area.
- The site is located roughly 300m from the Finney River which is part of the River Barrow and River Nore SAC. An AA Screening Report has been prepared which identifies there are no Appropriate Assessment issues arising.
- Screening for Environmental Impact Assessment has also been undertaken.
- The Planning Authority is satisfied that the Applicant has adequately addressed the further information request.
- The proposed development is of an appropriate scale and design. Therefore, it is considered to comply with the provisions of the Kildare County Development Plan 2023-2029.
- Recommends permission be granted.

3.2.2. **Other Technical Reports**

Environment Department: Further information requested.

Athy MD Office: Further information requested.

Roads Department: Further information requested.

Water Section: No objection, subject to conditions.

Chief Fire Officer: No objection, subject to conditions.

3.3. **Prescribed Bodies**

Health and Safety Authority (HSA): No objection.

4.0 **Planning History**

The subject lands have been subject to several applications over the past several years for various types of development relating to the existing onsite use (i.e., biogas facility and piggery). The biogas facility was initially granted permission in 2004 under Reg. Ref. 03/734.

4.1. **Kildare County Council Development Contribution Scheme 2023-2029**

The Kildare County Council Development Contribution Scheme 2023-2029 ('the Scheme') was adopted on 19th December 2022 and came into effect on 1st January 2023. It replaces the previous Contributions Scheme, which was for the period 2015 to 2022.

The following sections of the Scheme (2023-2029) are considered relevant:

Section 8.2: Non-residential Development (e.g. Commercial / Retail Development / Warehousing)

The development contribution rate shall be €62 per sqm.

Section 8.5 Miscellaneous

All other development, not covered elsewhere in the Scheme, shall be charged at the following rates:

- Built: €30 per sqm
- Open: €15,000 per ha

Built development refers to development not covered elsewhere in the Scheme; for example, covered areas.

Open development includes development not included elsewhere in the Scheme which involves the carrying out of works on, in, over or under any land or the making of any material changes in the use of land for example, hard standing, carparking, surface storage, motor/garage forecourts.

4.2. Kildare County Development Plan 2017-2023

The Kildare County Development Plan 2023-2029 ('Kildare Development Plan' / 'CDP') was adopted on 9th December 2022. It came into effect on 28th January 2023. The more relevant sections of the CDP for the development proposed include:

- Chapter 4 – Resilient Economy and Job Creation
- Chapter 6 – Infrastructure and Environmental Services
- Chapter 7 – Energy and Communications
- Chapter 12 – Biodiversity and Green Infrastructure
- Chapter 17 – Development Management Standards.

4.3. Natural Heritage Designations

No natural designations apply to the subject site.

The nearest European Site is the River Barrow and River Nore SAC (Site Code: 0021620, which is roughly 300m south.

5.0 The Appeal

5.1. Grounds of Appeal

The following is a summary of the main issues raised in the grounds of appeal (received 7th March 2024):

- The Planning Authority (PA) applied a development contribution under Condition 9 for €239,285.90.
- The amount was not calculated correctly or in accordance with the Kildare Development Contribution Scheme 2023-2029.
- It appears that the PA has based the development contribution on 'buildings' (€62/sqm) rather than 'structures' (€30/sqm).
- The Board is referred to a recent KCC Decision (Reg. Ref. 23/60324) where the PA agreed that a sprinkler tank and pumphouse were not 'buildings' and should have been levied as 'structures' instead. The final grant was altered to reflect this, before the appeal date elapsed. [See enclosed details.]
- The current proposed development is for structures only, including tanks, boilers, sumps, filters, plant, scrubbers, equipment etc. There are no buildings.
- The retention element of the application is not relevant to this appeal as Section 8 of the Scheme does not relate to any exemption or waiver.
- The Board is requested to review the calculation of levies by KCC.

5.2. Planning Authority Response

The Planning Authority's response to the grounds of appeal (received 3rd April 2024) can be summarised as follows:

- The application is for the construction of new ancillary structures required for the operation of an existing biogas facility.
- The development contribution required by Condition 9 is €239,285.90. This is based on a rate of €62 per ha against an area of 3,859.46sqm.

- The calculation refers to Commercial and Retention Commercial (Section 8.2 of the Scheme applies).
- The development contributions have been calculated correctly and in accordance with the Kildare Development Contribution Scheme 2023-2029.
- The Board is requested to confirm €239,285.90 as the correct development contribution amount.

5.3. Applicant Response

The Applicant's response to the Planning Authority's submission (received 12th April 2024) can be summarised as follows:

- The PA's submission refers to Section 8.2 of the Scheme. It states that the rate for non-residential development was applied.
- The submission does not provide any response to the grounds of appeal in respect of the fact that only structures are proposed, and that no buildings form part of the application which would create additional floorspace.
- The type of structures proposed would not generate a demand for public services.
- The PA does not address the precedent example referred to in the appeal (Reg. Ref. 23/60324).
- The lower rate of €30/sqm should be applied.
- If the Board does not accept this position, it is noted that the Board previously applied a 50/50 approach in respect of fees as they considered the biogas facility to be part-agriculture and part-commercial (ABP Ref. PL09.242536 refers).

6.0 Assessment

- 6.1. The sole planning consideration in assessing this appeal case is whether the development contribution amount specified under Condition 9 has been applied correctly, or whether it should be amended, having regard to the provisions of the Kildare County Council Development Contribution Scheme 2023-2029 ('the Scheme').
- 6.2. The Planning Authority considers the proposed development to be in accordance with Development Plan policy and is deemed acceptable. The appeal, therefore, is confined to the matters concerning the specific condition referenced, which the Applicant has appealed, and which, in this case, can be treated under Section 48(10)(b) of the Planning and Development Act, 2000 (as amended).
- 6.3. Condition 9 requires the Applicant to pay a development contribution in the order of €239,285.90. The condition has been applied by Kildare County Council under the provisions of Section 48 of the Planning and Development Act 2000 (as amended). The stated reason for the condition is that it is considered reasonable the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority.
- 6.4. The Applicant argues that the Planning Authority has wrong based their levy calculation on the rate of €62/sqm. They state that levy rate of €30/sqm should have been used in the workings instead as this relates to 'structures' as opposed to 'buildings'. These structures comprise tanks, boilers, sumps, filters, plant, scrubbers, and other related equipment necessary for the operation of the existing facility. To support their argument, the Applicant asserts that none of the proposed works or 'structures' would result in the creation of any additional floorspace, nor would they lead to an increased demand for public services. I note that the area considered for the contribution (sqm) is not contested.
- 6.5. The Applicant references a recent planning decision made by the Planning Authority, where it was subsequently determined that a sprinkler tank and pumphouse were initially classified (wrongly) as structures, rather than buildings, for the purposes of development contributions. The Planning Authority modified the final grant of permission to amend this error and the rate of €30/sqm was applied, retrospectively.

- 6.6. In my assessment, I have referred to the provisions of the Kildare County Council Development Contribution Scheme 2023-2029. The proposed development is for a series of ancillary type works, which are intended to improve and enhance the existing biogas facility. They are comparatively small in scale and technical in nature. The works include filters, air scrubbers, fuel storage tanks, an enclosed flare, storage digesters, gas domes, a biogas upgrader, compressor, a CHP enclosure, boilers, carbon filters, abstraction tank, switch room, vertical biofilters, CO2 liquefaction plant, bund walls, attenuation tanks, etc. The Planner's Report (dated 1st November 2023) provides a good summary of these structures (Pages 7 to 16 refer). I consider that the application does not include any new commercial, warehouse or industrial process type buildings which would attract the levy rate of €62/sqm.
- 6.7. Therefore, I am satisfied that in having regard to the type of works proposed that they qualify for the type of development described under Section 8.5 of the Scheme. I note also the reference provided by the Applicant whereby works part of another application – i.e., a new sprinkler system and pumphouse – and consider these works comparable to the proposed development. In this case, the Planning Authority accepted the sprinkler and pumphouse were structures and that they should be subjected to the €30/sqm levy rate (as opposed to €62/sqm). I highlight for the Board's attention an internal memo completed by the Planning Department (dated 9th January 2024). The memo instructed that a change in the development contribution amount applied under condition (No. 3) for Reg. Ref. 23/60324 should be made and reflected in the final grant of permission.
- 6.8. In summary, I do not consider that the provisions of the Kildare County Council Development Contribution Scheme 2023-2029 have been properly applied in this instance. I consider that the correct rate per sqm is €30/sqm. This would result in a total development contribution amount of €115,783.80 (derived from €30 * 3,859.46sqm).
- 6.9. I consider that Condition No. 9 of the Planning Authority's Decision should be amended accordingly.

7.0 Recommendation

7.1. It is recommended that the Planning Authority be directed to amend the wording of Condition No. 9 as follows:

9. The developer shall pay to the planning authority a financial contribution of €115,783.80 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 prior to commencement of development or 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.

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.

8.0 Reasons and Considerations

8.1. Having regard to the provisions of the Kildare County Council Development Contribution Scheme 2023-2029, the Guidelines for Planning Authorities on Development Contributions (2013), Section 48(10)(b) of the Planning and Development Act, 2000 (as amended), and the content of the documentation submitted with the application and appeal, it is considered that the terms of the Council's Development Contribution Scheme for the area have not been properly applied by the Planning Authority. Condition 9 should accordingly be amended to reflect the terms of the Council's Development Contribution Scheme.

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.

Ian Boyle
Senior Planning Inspector

30th October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	319226		
Proposed Development Summary	The appeal case relates to a development contribution, which is 'not a project' for the purposes of EIA and can therefore be excluded at pre-screening stage.		
Development Address	Gorteen Lower, Nurney, Co. Kildare		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	Yes		
	No X (see note above)		No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No			Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
		N/A	
No			No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: Ian Boyle

Date: 30th October 2024