Inspector's Report

PL-501283-KE-26

Development	Installation of a trade effluent waste water treatment system with all associated site works.
Location	American Fruits and Flavors Ireland DAC, Townparks Industrial Estate, Athy, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2561064
Applicant(s)	TSL Projects Limited
Type of Application	Retention
Planning Authority Decision	Grant Retention with Conditions
Type of Appeal	First Party Normal Planning Appeal
Appellant(s)	TSL Projects Limited
Observer(s)	None
Date of Site Inspection	22nd June 2026
Inspector	Terence McLellan

1.0 Site Location and Description

1.1. The subject site measures approximately 3.3 hectares and comprises an existing industrial premises operated by American Fruits and Flavours DAC. The site is located on the outskirts of Athy, to the north-west of the town centre and to the north/east of the junction of the R428 regional road and the L8068 local road. The site is generally bound by the L8068 local road and the Grand Canal to the south-west, and Woodstock Street to the south. The immediate area to the north is characterised by existing industrial/warehousing development. To the east/south is St Vincent's Hospital Nursing Home and other established residential development.

2.0 Proposed Development

2.1. Planning permission is sought for the installation of a trade effluent wastewater treatment system and ancillary components including an underground, surface water attenuation tank to replace the previously approved attenuation pond (Ref: 22/1443) and an enlarged attenuation/infiltration tank.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Kildare County Council granted retention permission by order dated 9th April 2026 subject to 18 conditions. Condition 2 is of specific relevance to the current appeal and reads as follows:

2. The Applicant/Developer to pay to Kildare County Council the sum of €20,466.20 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022 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 the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022. Development Contributions are due for payment once a commencement notice

is lodged. In the case of retention permission, development contributions are due on the issuing of a Final Grant of planning permission.

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

Reason: 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.

3.2. **Planning Authority Reports**

3.2.1. The first Planner's Report concluded in a Further Information request seeking a justification for the installation of an underground attenuation tank and to consider appropriate retrospective measures to address the Planning Authority's concern including proposals to retrofit SuDS where possible. These matters were resolved to the satisfaction of the Planning Authority, as detailed in the second Planner's Report.

3.2.2. The Planning Authority's assessment considered that the development was in accordance with the zoning objectives of the site and recommended a grant of permission including a condition regarding the payment of development contributions, as set out in the Chief Executive's Order. The planning report does not provide a rationale in relation to the inclusion of Condition no. 2 relating to development contributions.

3.3. **Other Technical Reports**

3.3.1. **Area Engineer (07.10.2025**): No objection, subject to conditions.

3.3.2. **Chief Fire Officer (30.10.2025):** No objection, subject to conditions.

3.3.3. **Environment (05.11.2025):** No objection, subject to conditions.

3.3.4. **Environmental Health Officer (23.10.2025):** No objection, subject to conditions.

3.3.5. **Water Services (01.04.2026):** No objection, subject to conditions.

3.4. **Prescribed Bodies**

3.4.1. I note that the planning application was referred to Inland Fisheries Ireland and Uisce Éireann. No response on file or recorded in the Planner's Reports.

3.5. **Third Party Observations**

3.5.1. No observations received.

4.0 Planning History

4.1. **Planning Authority Reference 22/1443**: Permission was granted by Kildare County Council in July 2023 for the construction of a new production building, construction of a new treatment plant compound, new gated exit onto the L8068, and all other ancillary development.

5.0 Legislative Context

5.1. Planning and Development Act 2000, as amended

Section 48 Development Contributions

5.1.1. (1) A Planning Authority may, when granting a permission under Section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

5.1.2. (2)(a) Subject to paragraph (c), the basis for the determination of a contribution under subsection (1) shall be set out in a development contribution scheme made under this section, and a planning authority may make one or more schemes in respect of different parts of its functional area.

5.1.3. (2)(b) A scheme may make provision for payment of different contributions in respect of different classes or descriptions of development.

5.1.4. (2)(c) 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 a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

5.1.5. (3)(a) A scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme.

5.1.6. (3)(b) In stating the basis for determining the contributions in accordance with paragraph (a), the scheme shall indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination.

5.1.7. (3)(c) A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme.

5.1.8. (10)(a) Subject to paragraph (b), no appeal shall lie to the Board (Commission) in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

5.1.9. (10)(b) An appeal may be brought to the Board (Commission) where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

5.1.10. (10)(c) Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of a planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the expiration of the period for the taking of an appeal. provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment of the full amount of the contribution as specified in the condition.

6.0 Policy Context

6.1. Kildare County Development Plan

Chapter 15: Development Management Standards

6.1.1. Section 15.1.4 Development Contributions: The Council, taking into consideration the capital expenditure necessary for the provision of public infrastructure and facilities, will require the payment of financial contributions in accordance with the Development Contributions Scheme. Developers may also be required to carry out works at their own expense to facilitate their development and these will be specified as a condition of their planning permission.

6.2. Athy Local Area Plan 2021-2027

6.2.1. The site is zoned H: Industry and Warehousing, the stated objective of which is 'To provide for industry, manufacturing, distribution and warehousing.'.

6.3. Kildare County Council Development Contribution Scheme 2023-2029

6.3.1. The Kildare County Council Development Contribution Scheme 2023-2029 adopted 19th December 2022 (hereafter referred to as 'the Scheme') is the operative scheme applied by the Planning Authority at the time of decision. The Scheme sets out the basis for the determination of the relevant development contributions, including circumstances where a reduction / exemption in the contribution rate may apply.

6.3.2. Section 8: Level of Contribution – Provides the level of contribution in respect of the various classes of infrastructure for specified categorises of development, being either residential development or non-residential development. In this regard, the following is relevant:

- 8.2: Non-residential Development (Commercial/Retail/Warehousing) – The development contribution rate shall be €62 per square metre.

6.3.3. Section 9: Retention Permission – No exemptions or waivers shall apply to any development subject to retention permission.

6.3.4. Section 10: Exemptions and Reduced Contributions – Details exemptions and reduced contributions available to categories of development from the requirement to pay development contributions under the Scheme.

6.4. Relevant Guidelines

6.4.1. The following key national planning policy documents and Section 28 Ministerial planning guidelines are of relevance:

- Development Contributions Guidelines for Planning Authorities, January 2013
- Development Management Guidelines for Planning Authorities, June 2007
    - Section 7.12 Conditions requiring development contributions (Sections 48 and 49 of the Planning Act) - provides guidance on planning conditions relating to development contributions. Any scheme may be the subject of an appeal where the applicant considers that the terms of the scheme were not properly applied. To help minimise unnecessary appeals, the planning decision should clearly set out how the relevant terms were interpreted and applied to the proposed development.
    - Section 8.12 Contribution Conditions - refers specifically to appeals in respect of development contribution conditions and reiterates that an appeal against a contribution condition can only be made where the applicant contends that the terms of the contribution scheme have not been properly applied.

6.5. Natural Heritage Designations

6.5.1. Under the provisions of section 48(13)(a) the Commission shall determine only the matters relating solely to the contribution condition. Appropriate Assessment is therefore not required.

7.0 EIA Screening

7.1.1. Under the provisions of section 48(13)(a) the Commission shall determine only the matters relating solely to the contribution condition. Appropriate Assessment is therefore not required.

8.0 **The Appeal**

8.1. **Grounds of Appeal**

8.1.1. Appeal by TBP Planning and Development Consultants, for and on behalf of the Applicant, TSL Projects Limited.

- The Kildare County Council Development Contribution Scheme has not been correctly applied.
- The Planning Authority calculated the figures based on the floor areas of the ancillary structures associated with the operation of the waste treatment plant.
- The structures are ancillary and functionally integral to the operation of the wastewater treatment system, comprising plant rooms, process enclosures, and control infrastructure. They are not standalone development and do not provide usable floorspace.
- The structures are not development which of themselves generate demand for public services, they do not give rise to additional or separate infrastructure demand beyond that associated with the primary use.
- The purpose of development contributions is to recover costs associated with the provision of public infrastructure necessitated by the development.
- Demand on public foul drainage infrastructure comes from the discharge of treated effluent from the manufacturing process as opposed to being from the ancillary structures themselves.
- Although the system discharges to the public network, the private treatment system processes and regulates that discharge.
- The structures do not increase the volume, intensity, or impact of the discharge beyond the primary manufacturing development, the system manages and mitigates that impact prior to connection.
- Applying a contribution based on the gross floor area of the ancillary structures results in double charging as the primary development was already subject to development contributions (PA Ref: 22/1443).
- Gross floor area is not an appropriate metric in the case of plant and infrastructure whose floor area bears no relationship to the generation of wastewater, traffic, or demand on public services.

- The floor area in question does not equate to additional occupancy or usage and does not correlate with additional demand on public infrastructure.
- Floor areas are provided for administrative and informational purposes. The inclusion of gross floor area in the planning application documentation does not provide a valid or lawful basis or justification for applying development contributions and does not determine if such floor area is chargeable.
- The application of development contributions must be justified by reference to the terms, intent and proper application of the Development Contributions Scheme, and the extent to which the development generates demand for public infrastructure.
- Proper application of the Development Contributions Scheme requires that the method of calculation reflects the actual drivers of infrastructure demand.
- Inclusion of treatment plant structures without regard to their function, is an overly rigid application of the scheme resulting in a contribution disproportionate to the impact of the development.

8.2. **Planning Authority Response**

8.2.1. A response was received from the Planning Authority on 2nd June 2026. The main points can be summarised as follows:

- Section 48 of The Planning and Development Act 2000 (as amended) gives a definition of public infrastructure and facilities which includes the provision of …. surface water sewers and flood relief work and ancillary infrastructure and the refurbishment, upgrading, enlargement or replacement of …. surface water sewers, flood relief work and ancillary infrastructure.

- This definition is also included in Section 6 of The Kildare County Council Development Contribution Scheme 2023 – 2029.

- The buildings permitted by Pl. Ref. 25/61064 are connected to the onsite surface water system which in turn discharges to the public Surface Water Sewerage System.

- While the buildings permitted are infrastructural, it is incorrect to state that they do not generate any demand for public services as they are connected to the public Surface Water System.
- The Development Contributions required are calculated based on Section 7.2 of The Kildare County Council Development Contribution Scheme 2023 – 2029 which states that the area of calculation in respect of buildings for the purposes of this scheme shall be the gross floor area.
- The main grounds stated for the appeal in this case is that the structures involved are infrastructural and do not generate any demand for public services.
- The permitted structures are connected to the public Surface Water Sewerage System which generates a demand for public services.
- The Development Contributions required by condition 2 are calculated based on the gross floor area of the buildings permitted in accordance with Section 7.2 of the Kildare County Council Development Contribution Scheme 2023 – 2029 which has been adopted in accordance with Section 48 of The Planning and Development Act 2000 (as amended).

8.3. Observations

8.3.1. None.

8.4. Further Responses

8.4.1. A further response was received from the Applicant on foot of a Section 131 Notice, responding to the Planning Authority's submission. This can be summarised as follows:

- Only one of the three structures in question is connected indirectly to the public surface water network, the DAF building. The other buildings are connected to an infiltration pond.
- Applying the Planning Authority's methodology, charges should only apply to the DAF Building and would amount to €5815.60.

- If the Commission do not agree with the originally stated position, then the approach of Kildare County Council is acceptable and the contribution should be reset to €5815.60.

9.0 Assessment

9.1. This is a first party appeal against a financial contribution condition (Condition No. 2) that was included as part of the decision of the Planning Authority to grant retention permission for the subject development. As this is an appeal in respect of conditions requiring a financial contribution, the provisions of Section 48 of the Planning and Development Act, 2000 (as amended), apply and the Commission is restricted to considering this matter alone and cannot consider the matter de novo. My assessment is therefore confined to the condition in question.

9.2. Section 48 of the Planning and Development Act, 2000 (as amended), provides for the attachment of financial contributions conditions, the basis for which must be set out within a Development Contribution Scheme. The Kildare County Council Development Contribution Scheme 2023-2029 is the applicable contribution scheme in this instance, with the level of contribution, retention permissions, and exemptions/reductions applicable outlined in sections 8, 9 and 10 respectively, of same. For clarity, the scheme states that no exemption or waivers shall apply to any developments subject to retention permission.

9.3. The Development Contribution Sheet submitted by the Local Authority shows that the contribution was calculated as follows:

Rate Bands	Description	Rate Per Sqm	Floor Area sqm	*Exemption Reduction	Area Considered for Contribution Sqm	Contribution
8.2	Sludge Building	€62.00	124.3	0	124.3	€7,706.60
8.2	Control Building	€62.00	112	0	112	€6,944.00
8.2	Dissolved Air Flotation (DAF) Building	€62.00	93.8	0	93.8	€5,815.60
					Development Contributions Applicable	**€20,466.20**

9.4. Rate Band 8.2 relates to non-residential development (e.g. commercial, retail development, warehousing) and is charged at €62 per sqm. I note that part of the Local Authority's rationale for applying a charge rests on the fact that the buildings are connected to the on-site surface water system which in turn discharges to the public surface water sewage system and on that basis the development generates a demand for public services.

9.5. The Applicant considers that the Development Contribution Scheme has not been applied properly, that the structures are not development that generate a demand for public services, and notes that only one building is connected to the public system. The Applicant submits that the buildings are ancillary and integral to the wastewater system, comprising plant rooms etc. and are not standalone development that provides useable floorspace. It is stated in the grounds of appeal that gross floor area is not an appropriate metric and that the development was already subject to contributions on the parent permission, resulting in double charging. The Applicant further submits that floor areas are provided for administrative purposes only and that this does not provide a valid or lawful basis or justification for applying development contributions, nor does it determine if such floor area is chargeable.

9.6. The main issue in the appeal is not whether the buildings are plant or ancillary development, but whether or not the Kildare County Council Development Contributions Scheme 2023-2029 (DCS) provides a basis for excluding them. The permission seeks the retention of the trade effluent wastewater treatment system. In addition to the various tanks and mechanical plant, this includes three permanent buildings, specifically, the sludge removal building, DAF building, and the control building. These are, in my opinion, buildings in the ordinary and accepted planning sense. The fact that they are related to the wastewater treatment system rather than constituting office/commercial floorspace does not change my view that they are buildings that form part of the permitted development and consequently form a part of the industrial process permitted on site.

9.7. The DCS at Section 8.2 provides for charging of non-residential development (e.g. commercial/retail/warehousing) on a €62 per sqm basis, with the DCS confirming at Section 7.2 that the calculation in respect of buildings shall be based on gross floor area. The examples of non-residential floorspace given in the DCS is not exhaustive. In my opinion the development is commercial/industrial and clearly non-residential. The DSC does not distinguish between occupied/useable floorspace and plant rooms, nor does it exclude ancillary buildings or engineering plant.

9.8. Where the DCS intends to provide exemptions, these are stated in Section 10, with examples of exemptions/reduced contributions including temporary permissions, protected structures, telecommunications, change of use etc. None of the exemptions or reduced contributions would apply to the buildings in question and the direct inclusion of specific exemptions suggests that no further implied exemptions exist. Furthermore, the DCS clearly states that no exemption or waivers shall apply to any developments subject to retention permission.

9.9. I am satisfied that the development has been charged under the appropriate class in the DCS. In the absence of a clear exemption or alternative charging methodology within the DCS, I am of the view that there is no clear basis to exclude/exempt the subject buildings from the development contributions charge.

9.10. In terms of the Applicant's view that the application of charges results in double charging, I would note that the contributions on the parent scheme were charged based on 7,931sqm of floorspace. Having reviewed the documentation for that application on the planning register, I do not consider that this floorspace figure includes any of the buildings within the previously approved treatment area. For clarity, the chargeable floorspace appears to have been based solely on the information provided in the application form regarding the calculation of the planning application fee and does not appear to have included any of the buildings in the effluent treatment area. On that basis I am satisfied that no double charging has occurred.

10.0 Recommendation

10.1. I am satisfied that the Local Authority have correctly applied the Kildare County Council Development Contributions Scheme 2023-2029, and I recommend that Condition 2 be attached as set out hereunder.

11.0 Reasons and Considerations

Having regard to:

(a) the Kildare County Council Development Contributions Scheme 2023-2029;

(b) Section 34(5) of the Planning and Development Act 2000, as amended;

(c) Section 48 of the Planning and Development Act 2000, as amended; and

(d) the planning application, and the documentation submitted as part of the appeal.

The Commission consider that the terms of the Development Contribution Scheme were correctly applied in respect of Condition No. 2 of Reg. Ref. 25/61064 and that the Planning Authority is directed to attach Condition No. 2 as set out below:

2. The Applicant/Developer to pay to Kildare County Council the sum of €20,466.20 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022 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 the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022. Development Contributions are due for payment once a commencement notice is lodged. In the case of retention permission, development contributions are due on the issuing of a Final Grant of planning permission.

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

   Reason: 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.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Terence McLellan
Senior Planning Inspector

6th August 2026