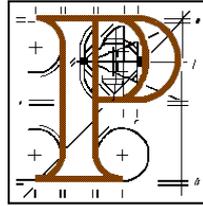


# An Bord Pleanála



## Inspector's Report Section 48 Appeal

**PL06S.244598**

**DEVELOPMENT:-**

Alterations/change of use of warehouse/repository building to a builder's merchants use, signage, car parking/loading areas and ancillary site works at Howard McGarvey Industrial Estate, Lower Ballymount Road, Walkinstown, Dublin 12.

**PLANNING APPLICATION**

**Planning Authority:** South Dublin County Council  
**Planning Authority Reg. No.** SD14A/0281  
**Applicant:** Murdock Distribution (Ireland) Limited  
**Application Type:** Permission  
**Planning Authority Decision:** Permission

**APPEAL**

**Appellants:** Murdock Distribution (Ireland) Limited  
**Type of Appeal:** 1<sup>st</sup> Party v. Contribution Condition  
**Observers:** None  
**Date of Site Inspection:** 26.5.2015

**INSPECTOR:** Robert Ryan

## **1.0 SITE LOCATION AND DESCRIPTION**

The appeal site is located to the north of Ballymount Road Lower c.0.45 kilometres to the west of the Walkinstown Roundabout in south-west Dublin. This is a long established industrial area with industrial buildings to the south and west. However, there is a park to the north and housing to the east (Walkinstown Crescent).

The appeal site is stated to be 0.73 hectares and this contains a disused warehouse stated to be 924 square metres which is set back over 130 metres from the main road. To the side and rear there are level concrete yards whilst site boundaries consists of palisade fencing and high walling.

The proposed development involves change of use to a builder's merchants (wholesale warehouse) with a new internal 1<sup>st</sup> floor storage area, meeting room and staff facilities (278 square metres). At ground floor level new partitions would be erected in order to provide a trade display area (278 square metres). Externally new windows, vehicular access points with roller shutters and escape doorways would be provided together with signage, parking, landscaping and a surface water drainage system. The revised building would have a floor area of 1,202 square metres.

## **2.0 PLANNING AUTHORITY'S DECISION**

The planning authority decided to grant permission subject to 7 relatively standard conditions.

Condition no. 2 required the totem sign to be reduced in scale so that it consists of a single non-illuminated sign not exceeding 3 metres in height and 2 metres in width.

## **3.0 DEVELOPMENT PLAN**

The appeal site is zoned EP1 – 'To facilitate opportunities for intensive employment uses complemented by mixed-use development based on a principle of street networks and in accordance with approved plans'.

#### **4.0 PLANNING AUTHORITY REPORTS**

The application was accompanied by a Planning Report prepared by Hughes (Planning and Development Consultants) which states that the proposed facility would form part of a chain of Builder's Merchants supplying both the public and trade users. It is a pre-1963 warehouse building. They outline their reasoning that no change of use would be involved and refer to parking/signage provision. In their view and having regard to the existing pattern of development the proposal is in accordance with the development plan zoning and objectives for the area. They enclose photographs.

The Environmental Health Department has no objection subject to conditions.

The Roads Department consider parking provision to be inadequate as they regard this as retail warehousing with a requirement of 34 car parking spaces instead of 12 proposed whilst a turning area for heavy goods vehicles should be clearly demonstrated. Provided this can be achieved they do not object to proposal.

The Water Service Section require further information regarding surface water proposals.

Irish Water also require more information regarding watermain layout.

The Planning Report states that there is no previous history. It continues that there is no definition for wholesale warehouse in the current development plan, but there is a definition in the Planning Regulations:-

'wholesale warehouse' means a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business.

Warehousing and Retail Warehousing are Open for Consideration in the development plan in an EP1 zone.

It notes that only a minor component (10-15% of sales) would involve sales to the public so that this would comply with definition of 'wholesale warehouse'.

The report concludes that the proposal would be in accordance with the proper planning and sustainable development of the area.

## 5.0 FIRST PARTY APPEAL

Hughes (Planning and Development Consultants) have specifically appealed against Condition No. 7 which reads as follows:

7. The developer shall pay to the planning authority a financial contribution of €94,604.83 (ninety four thousand six hundred and four euro and eighty three cent), in respect of public infrastructure and facilities benefiting development within the area of 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 2013-2015, made under section 48 of the Planning and Development Acts 2000-2011. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate. Contributions shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced as outlined in the South Dublin County Council Development Contribution Scheme 2013-2015.

**Reason:** The provision of such facilities will facilitate the proposed development. It is considered reasonable that the payment of a contribution be required, in respect of public infrastructure and facilities benefiting development in the area of the planning authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

They consider that the South Dublin Development Contribution Scheme 2013-2015 has not been properly applied in this instance, especially in the absence of a material change of use.

The local authority consultation was set out as follows viz.

Existing floor area 924.1 sqm x €78.68 sqm = €72,708.19

New first floor area 278.3 sqm x €78.68 sqm = €21,896.64  
€94,604.83

No credit or benefit was applied in respect of existing development.

They fully accept the proposed first floor levy, but existing floor area should be omitted as no additional infrastructural burden will occur.

Their SUDS proposal will in fact eliminate surface water from the mains sewage system.

The existing building is a warehouse whilst the proposed use is defined as a 'wholesale warehouse' under the planning regulations.

They refer to definitions of 'repository' – means a structure (excluding any land therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage.

'Wholesale warehouse' means a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business.

The main business involves goods being ordered by phone or fax and then delivered to the site with public sales comprising 10-15% of total. Therefore, in planning terms there is no change of use as both the above definitions are included in Part 4, Article 10 – Exempted Development – Classes of Use of the Planning Regulations.

Section 48(3)(b) of the Planning and Development Acts states that 'any benefit which accrues in respect of existing development may not be included in any such determination'.

In their view existing development should be offset from the contribution calculation.

They refer to the Development Management Guidelines of 2007 of which Section 7.12 requires contributions to be attached only if they accord with sections 48 and 49 of the Planning Act. They argue that condition no. 7 is not in accordance with Section 48(3) of the legislation.

They also quote from Development Contributions – Guidelines for Planning Authorities 2013 which refers to waivers in the case of change-of-use permissions, where change of use does not lead to the need for new or upgraded infrastructure/services.

They also refer to provision to charge only net additional development in cases of development projects.

The South Dublin Development Contribution Scheme 2013-2015 under (xxvi) requires contributions in respect of permission involving change of use where a contribution has not previously been paid or the original

development was pre-1963, but as there is no change of use here this statement does not apply in their opinion.

They conclude that the appropriate levy should be confined to new development and this amounts to €21,896.64.

## **6.0 RESPONSE OF PLANNING AUTHORITY**

In reply the planning authority outline their calculation was based on a total floor area of 1,204 square metres at €78.68 per square metre.

Where an application is made for change of use under the current contribution scheme if a contribution was not previously paid or involved pre-1963 development then it is treated in its entirety as new development and assessed accordingly. They enclose a copy of the scheme.

In their view the calculation is correct.

## **7.0 BOARD TO FIRST PARTY**

The Board wrote to Hughes Planning and Development enclosing the planning authority's submission, but received no response.

## **8.0 ASSESSMENT**

As this is an appeal specifically relating to a financial contribution the provisions of section 48 of the Planning and Development Act, 2000 (as amended) apply. Therefore the Board cannot consider the proposed development de novo and must confine itself to the matters under appeal.

The planning authority have enclosed a copy of 'South Dublin County Council Development Contribution Scheme 2013-2015', which in my view is the operative scheme.

The planning authority calculation is based on a proposed first floor of 278 square metres x €78.68 per square metre to give a total figure of €21,896.64. This figure is not in dispute.

The planning authority have also imposed a figure of €72,708.19 based on existing floor area of 924 square metres x €78.68 per square metre.

As stated above the appellants have argued that the existing building is pre-1963 (see Planning Report), that there is no change of use as such and also that there is no intensification requiring additional demand on services.

In reply the planning authority have argued that their calculation is in accordance with the relevant scheme.

Section 10 of the Scheme is entitled Exemptions and Reductions.

Part XXVI states changes of use: In respect of permission for change of use, where development contributions were paid in respect of the former use the contribution payable on the new proposal will be net of the quantum of development previously paid for.

Where a contribution was not previously paid or the original development was carried out before 1963 it shall be treated in its entirety as new development and assessed accordingly.

The Development Contribution Scheme does not provide for any rebate or refund in this regard. Agents/applicants should provide evidence of prior payment at application stage in order to expedite assessment and avail of this exemption.

The key question therefore is whether a material change of use is involved.

It is accepted that the previous use of the building was solely as a warehouse. The Planning Report quotes from the Planning and Development Regulations 2001 (as amended) that 'wholesale warehouse' means a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business. It concludes that change of use to wholesale warehouse development would be compatible with the zoning.

Part 4, Article 10 of the Planning and Development Regulations is entitled Exempted Development – Class of Use. Class 5 is 'Use as a wholesale warehouse or as a repository'.

The previous use would be defined as a repository and from the information submitted the new development could properly be described as a 'wholesale warehouse' – I would therefore be in agreement with the view taken by the planning officer.

However, the building will be open to the public and the ground floor area will be subdivided with a clearly defined 'Trade Display Area'. This would not be a retail warehouse as per 'Woodies' but it would be a builder's merchants, as set out in the public notice, on similar lines to say Heitons.

The Development Contributions Guidelines for Planning Authorities - DOECLG, January 2013 refers to waivers in the case of change-of-use permissions, where change of use does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.

In my view the proposal does involve a significant intensification and already this is reflected in the need to provide an additional 22 car parking spaces. This increase will inevitably mean more demand on public services. The creation of a Trade Display Area is clearly significantly different than a repository in terms of use.

## **9.0 CONCLUSION AND RECOMMENDATION**

It is my conclusion that the contribution as calculated by the planning authority is in accordance with their scheme. I would therefore recommend that condition should remain unaltered.

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**Robert Ryan,  
Senior Planning Inspector.**

**22<sup>nd</sup> June, 2015.**

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