



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306213-19

#### Development

Change of use of part of the ground floor of existing Light Industrial Building from existing office & associated use to new commercial use for the storage, sorting, preparation/assembly, and distribution of flowers & flower arrangements (both for off site distribution and on line sales), for new retail sales area.

#### Location

Rye River Brewing Co.,  
Donaghcumper, Dublin Road,  
Celbridge, Co. Kildare

#### Planning Authority

Kildare County Council

#### Planning Authority Reg. Ref.

191068

#### Applicant(s)

Lorcan Burke.

#### Type of Application

Permission

#### Planning Authority Decision

Grant permission

#### Type of Appeal

First Party

#### Appellant(s)

Lorcan Burke.

**Observer(s)**

none

**Date of Site Inspection**

Not inspected

**Inspector**

Stephen Kay

## **1.0 Site Location and Description**

- 1.1. The appeal site is located c.1km to the east of Celbridge town on the Dublin Road. The site is currently occupied by the Rye River Brewing Company and there is an existing large warehouse / office building on the site.
- 1.2. The site is bounded to the east and south east by residential development and to the west by an industrial premises (Retronix Semi Conductors). To the south, the site is bounded by a stream that is a tributary of the River Liffey and beyond that by undeveloped agricultural lands.
- 1.3. The stated area of the site is 1.98 ha. and the floor area of the building for which the change of use relates is 197 sq. metres.

## **2.0 Proposed Development**

- 2.1. The development comprises the change of use of part of the ground floor of an existing light industrial building from office use to a new commercial use for the storage, sorting and distribution of flowers and flower arrangements. These flowers are stated to be for distribution to retailers off site and for on line sales. A new retail sales area is proposed, as are alterations to the front façade of the building with new entrance doors, new canopy / awning, new high level façade signage and minor internal alterations. Minor alterations to the car parking layout are also proposed.
- 2.2. The covering letter submitted with the application indicates that the owner of the site currently has a flower business which operates from a premises in Celbridge town. Access to this premises for the purposes of deliveries is stated to be problematic and it is therefore proposed that the operation would be relocated to the appeal site.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 7 no. conditions. The relevant condition for the purposes of this appeal is Condition No. 7 which requires the payment of a development contribution of €8,561.62 in accordance with the adopted development contribution scheme.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the planning officer notes the planning history and zoning of the site. Refusal of permission is recommended by the Planning Officer however this recommendation was overturned by the Director of Services and conditions are recommended.

#### 3.2.2. Other Technical Reports

Transportation Department – Further information required.

Environment – No objection.

### 3.3. Third Party Observations

None on file.

## 4.0 Planning History

The following planning history is referenced in the report of the Planning Officer.

Kildare County Council Ref. 19/702 – Permission refused by the Planning Authority for the change of use of part of the existing Rye River Brewing Company Premises from existing offices to use for the storage, sorting and preparation / distribution of flowers and ancillary amendments to the existing signage, internal layout and parking. This proposal was for a development essentially the same as that the subject of the current appeal. Permission refused for reason relating to the nature of

the proposed new use being entirely unrelated to the established use of the site and of a nature that is contrary to the zoning objective of the site.

Kildare County Council Ref. 15/942 – Permission granted for the extension and alterations to the existing industrial building.

Kildare County Council Ref. 97/1778 – Permission granted for the erection of a factory and ancillary office on the site.

## 5.0 Policy Context

### 5.1. Kildare County Council

#### ***Development Plan***

The appeal site is located on lands that are zoned ‘commercial and tourism’ under the provisions of the *Celbridge Local Area Plan, 2017-2023*. The objective of this zoning is ‘*to support established commercial uses and tourism / leisure related uses*’.

#### ***Kildare County Council Development Contribution Scheme, 2015-2022***

Section 8 of the Scheme sets out the applicable rates of contributions for various types of development.

#### **Non Residential**

##### **(iii) Commercial Development (including Warehousing/Industrial and Commercial extensions)**

Calculated based on the gross floor area of the development.

<b>Gross Floor Area</b>	<b>0-250 sqm</b>	<b>251 - 3,000sqm</b>	<b>&gt;3,000sqm</b>
<b>Rate per sqm (€)</b>	43.46	54.31	61.55

**(iv) Retail Development (including Retail Warehousing) –**

Calculated based on the gross floor area of the development.

<b>Gross Floor Area</b>	<b>0 - 100sqm</b>	<b>101 – 1,500sqm</b>	<b>&gt; 1,500sqm</b>
<b>Rate per sqm (€)</b>	<b>39.82</b>	<b>54.31</b>	<b>65.16</b>

Section 12 of the adopted 2015-2022 Scheme relates to exemptions and wavers and Section 12(g) relates specifically to changes of use. This section states as follows:

*12(g) Change of Use*

*This scheme provides for waivers in the case of Change of Use planning permissions. Kildare County Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.*

**5.2. Natural Heritage Designations**

The appeal site is not located in or in close proximity to any European sites.

**5.3. EIA Screening**

Having regard to the scale and nature of the proposed change of use there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal relates to the application of the development contribution condition regarding the application of the adopted development contribution scheme. Therefore, in accordance with s.48(10) of the Act, the appeal is restricted to the application of the terms of the adopted scheme.

The following is a summary of the main issues raised in the first party grounds of appeal:

- That the relevant development contribution scheme is the *Kildare County Council Development Contribution Scheme 2015-2022*.
- Submitted that the error has occurred on foot of the direction by the Director Services that permission should be granted. The suggested conditions attached by the Planning Officer makes reference only to ‘*Development Contributions – Change of Use – 197 sq. metres*’.
- That the nature of the change of use is such that the relevant floor area that should be the subject of the levy is 61 sq. metres net rather than the 197 sq. metres on which the contribution was calculated.
- That the provisions of section 12(g) of the adopted scheme provide for a waiver from the application of a development contribution in circumstances where there is a change of use. S.12(g) states that:

*This scheme provides for waivers in the case of Change of Use planning permissions. Kildare County Council **will** grant a 100 percent reduction in contribution charges where the development **does not lead to the need for new or upgraded infrastructure / services or **significant** intensification of demand placed on existing infrastructure.*** (emphasis added).

- Noted that development contributions were applied in the case of the original grant of permission for the development of the site for industrial use (Ref. 97/1778).

- Contended that the nature and scale of the proposed new use is such that there would not be significant new demands on infrastructure, particularly with reference to staff movements, customer trips and deliveries. In particular noted that the new retail area will replace a high intensity office area.
- Submitted therefore that the correct approach is for there to be an exemption on development contributions but that if the Board does not agree contended that the applicable rate would be the net floor area of 61 sq. metres at a rate of €39.82 as per section 8(iv) of the 2015 Scheme giving a total contribution amount of €2,444.95.

## 6.2. **Planning Authority Response**

The response received from the Planning Authority sets out the basis for the calculation of the development contribution sought as per Condition No.7 attached to the Notification of Decision which issued. This identifies that the basis of the calculation is a floor area of 197 sq. metres and a charge of €43.46 per sq. metre. This sheet was previously attached with the first party appeal. The correspondence received also indicates that there are outstanding development contributions under Ref. 15/942 of €17,623.00. This permission relates to extension and alterations to the existing industrial building.

## 6.3. **Further Responses**

The response of the Planning Authority was circulated to the first party for their observations. The response received from the first party notes that the Planning Authority have not addressed the basis for the appeal and that the information submitted was already available and was submitted with the first party appeal.

## 7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of the subject appeal:

- Introduction
- Exemption under s.12(g) of the adopted development contribution scheme
- Relevant Floor Area and Rate Applicable
- Other Issues

### 7.2. Introduction

7.2.1. This appeal relates to a first party appeal against a condition attached under s.48 of the Planning and development Act, 2000 as amended and there are no other parties to the appeal. In accordance with section 48(10) of the Act, consideration of the appeal is restricted to the financial contribution condition.

### 7.3. Exemption under s.12(g) of the Adopted Development Contribution Scheme

7.3.1. That the provisions of section 12(g) of the adopted scheme provide for a waiver from the application of a development contribution in circumstances where there is a change of use. S.12(g) states that:

*(g) ‘ This scheme provides for waivers in the case of Change of Use planning permissions. Kildare County Council will grant a 100 percent reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure / services or significant intensification of demand placed on existing infrastructure.’*

7.3.2. The first part of the exemption makes reference to circumstances where the development ‘does not lead to the need for new or upgraded infrastructure / services’. From the information submitted with the application there is no indication that any new infrastructure would be required to serve the permitted new use.

- 7.3.3. The second part of the exemption makes reference to whether there would be a '*significant intensification of demand on existing infrastructure*'. The first party appeal provides a breakdown of the impact of the new floor areas and concludes that there would not be any significant change in terms of additional personnel on site or traffic / customer visits to the site. The submission makes reference to the fact that the proposed flower sorting area and the retail area are both replacing what are stated to be existing high intensity open plan office areas. No clarification is provided with regard to previous or revised staff numbers on the site or whether the previous office use in these areas has been relocated on the site, however it is apparent that the number of additional staff involved in the permitted change of use is not likely to be significant. Therefore, while the permitted new use would likely lead to some additional customers and visitors to the site it is not considered likely that these would be such as to result in a significant intensification of demand placed on existing infrastructure in terms of traffic. Similarly, while there is the potential for some additional staff to be employed on site, the extent of these increased staff numbers is not likely to be such as to result in a significant intensification of demands on existing infrastructure.
- 7.3.4. For these reasons, it is my opinion that the permitted change of use should be exempt from the requirement to make a development contribution by virtue of the provisions of paragraph 12(g) of the development contribution scheme. I do however acknowledge that the level of information provided by the first party with regard to overall employee numbers on site pre and post change of use is limited as is the level of information supplied with regard to deliveries to the site and the anticipated number of customers to the new use.
- 7.3.5. In the event that the Board do not agree with this interpretation, the following is my assessment of the relevant floor area and rate per square metre which should form the basis of the calculation of the required contribution.

#### **7.4. Relevant Floor Area and Rate Applicable**

- 7.4.1. The calculation of the Planning Authority is on the basis of a floor area of 197 sq. metres and a charge of €43.46 per sq. metre. The case made by the first party is that the planning authority has mis applied both the rate of contribution and applied it

to an incorrect area. Firstly with regard to the floor area, I note that both section 8(iii) relating to commercial development and 8(iv) relating to retail development made clear reference to the fact that the floor area for the purposes of the calculation is gross floor area rather than net. References in the appeal to the net figure of 61.4 sq. metres being the appropriate floor area for the calculation of the development contribution is not therefore in my opinion correct. I therefore consider that the Planning Authority was correct in the use of the gross floor area figure of 197 sq. metres as the basis for calculation of the required contribution amount.

- 7.4.2. The issue then arises as to whether the nature of the new floor space is retail or commercial in nature and therefore whether the rates set out in Table 8(iii) commercial or Table 8(iv) retail apply. It is clear that the retail shop area indicated on the plan would come under the heading of retail (Table 8(iv)) and that a rate of €39.82 is applicable to the 61.4 sq. metres of development which is stated to be retail. This gives a total contribution of €2,444.95 for this area.
- 7.4.3. The balance of the floor space comprising 135.6 sq. metres (197-61.4 sq. metres) to which this application relates comprises flower storage area, flower storage and assembly and distribution area and tea station / staff work area. The question arises as to whether these areas relate to 'retail' development / floor space or 'commercial' development / floor space. No definition of these terms is provided in the adopted 2015-2022 Development Contribution Scheme.
- 7.4.4. Given the nature of these additional areas comprising storage associated with retail activity and the preparation of flowers for online retail sales, it is my opinion that the nature of the use of the additional floor area is retail rather than commercial. The relevant rate per square metre is therefore €39.82 per square metre and the calculation for the additional area is 135.6 sq. metres at a rate of €39.82 per sq. metre giving a total of €5,399.59. Combined with the €2,444.95 for the retail shop area, this gives a total contribution of €7,844.54. Therefore, in the event that the Board do not consider that the change of use permitted is exempt from the payment of a development contribution under paragraph 12(g) of the contribution Scheme, then it is recommended that the wording of Condition No. 7 would be revised to specify a figure of €7,844.54.

## **7.5. Other Issues**

- 7.5.1. I note the fact that the first party contends that all financial contributions in respect of the initial development of the industrial / commercial building at the site were paid. The original permission for the development of the site is Planning Ref. 97/1778. I also however note that the breakdown of contribution calculation submitted by the Planning Authority indicates that there are outstanding development contributions of €17,623 relating to Planning Ref. 15/942 which relates to an extension of the Rye River Brewing Company facility on the appeal site.
- 7.5.2. A review of the wording of the adopted development contribution scheme does not provide any basis on which development contributions would be assessed having regard to any outstanding contributions relating to the site, and it is considered that the collection of outstanding contributions is an issue for the Planning Authority.

## **8.0 Recommendation**

- 8.1. Having regard to the above, it is recommended that the Planning Authority, Kildare County Council be directed that Condition No. 7 attached to Planning Ref. 191068 would be omitted in its entirety.

## 9.0 Reasons and Considerations

Having regard to the nature of the proposed and previously permitted uses of the floor area the subject of the permitted change of use, to the lack of any material intensification of demand on existing infrastructure or requirement for new or upgraded infrastructure arising from the permitted change of use, and to the provisions of s.12(g) of the adopted *Kildare County Council Development Contribution Scheme, 2015-2022* which provides for a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure, it is considered that the provisions of the adopted contribution scheme have not been properly applied such that Condition No. 7 attached to Planning Ref. 191068 should be omitted in its entirety.

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Stephen Kay  
Planning Inspector

14th May, 2020