



Planning and Development Acts 2000 to 2018

Planning Authority: Fingal County Council

Planning Register Reference Number: FW17A/0119

Appeal by O'Toole Transport Limited care of Downey Planning of 1 Westland Square, Pearse Street, Dublin against the decision made on the 1st day of May, 2018 by Fingal County Council to grant subject to conditions a permission in accordance with plans and particulars lodged with the said Council.

Proposed Development: A logistics (warehouse and distribution) complex building comprising a double height area consisting of a cold store, cross dock storage area and ground and first floor ancillary office and staff accommodation area, and single height mechanics workshop; a single storey truck wash; security kiosk; external truck fuelling area with associated pumps and storage tanks; surface car and truck parking area; bicycle parking; signage; provision of new cycle path and footpath to Bay Lane; new vehicular entrance/exit at Bay Lane; one number ESB substation; and all associated landscaping, boundary treatment and ancillary engineering works necessary to facilitate the proposed development, all at Bay Lane, The Ward, Mulhuddart, Dublin.

Decision

Having regard to the nature of the condition(s) the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to AMEND conditions numbers 15(ii) and (iii) and condition number 18 so that they shall be as follows for the reasons set out.

15(ii). Details of all necessary works for the upgrade of the northern side of Bay Lane between the eastern boundary of the site and the roundabout to the west, including road widening, drainage, footpath and cycle path, public lighting, and road marking and signage shall be agreed with the planning authority and those works located within the site boundary shall be carried out at the expense of the developer. The developer shall also pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the said upgrade works relating to the extent of Bay Lane between the western boundary of the appeal site and the roundabout to the west. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

15(iii). The proposed development shall not commence operation until such time as the works required for the upgrade of the northern side of Bay Lane (the public road) between the eastern boundary of the site and the roundabout to the west are substantially completed to the satisfaction of the planning authority.

Reason: In the interest of the proper planning and sustainable development of the area.

18. The developer shall pay to the planning authority a financial contribution of €283,808 (two hundred and eighty-three thousand eight hundred and eight euro) 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

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.

Reasons and Considerations

Having regard to:

- (a) the provisions of the Fingal Development Plan 2017-2023,
- (b) the provisions of the current Cherryhound Local Area Plan,
- (c) the provisions of the Fingal County Council Development Contribution Scheme 2016-2020, and
- (d) the submissions made in this appeal,

it is considered appropriate that the applicant make a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended, towards the costs of upgrading the length of public road between the appeal site and the roundabout to the west which will benefit the proposed development and that condition number 15(ii) should be amended accordingly. The Board also considered that requiring said upgrade works to be completed prior to the commencement of development on the site was unreasonable, and that condition number 15(iii) should be amended to instead relate to commencement of operation of the proposed logistics complex. In relation to condition number 18, it is considered that the terms of the Development Contribution Scheme had not been properly applied by the planning authority, and considered that the condition should be amended to reflect the correct contribution rate for non-residential development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Paul Hyde

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2018.