



An  
Bord  
Pleanála

## Inspector's Report PL06S.248236

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<b>Development</b>	Extension to existing warehouse
<b>Location</b>	M50 Business Park, Ballymount Road, Dublin 12.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD16A/0456
<b>Applicant(s)</b>	HSIL Properties
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	HSIL Properties
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	Not inspected.
<b>Inspector</b>	Stephen Kay

## **1.0 Site Location and Description**

- 1.1. The appeal site is located in the M50 Business Park close to the Ballymount exit from the M50. Access to the business park is via Calmount Road and Ballymount Avenue. The Ballymount intersection on the M50 is located immediately to the south west of the appeal site.
- 1.2. The existing development on the site comprises a warehouse building. This warehouse building was granted on foot of Ref. SD15A/0254 and was under construction at the time that the application for the extension which is the subject of the current appeal was before the Planning Authority for consideration.
- 1.3. The stated area of the appeal site is 0.771 ha.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises an extension of the existing permitted warehouse building that is located on the site. The proposed extension is located at the eastern corner of the building and is proposed to comprise an additional 778 sq. metres of warehouse storage space. The proposed development incorporates a number of other elements including signage, additional staff parking, landscaping of the site. It is also proposed that an existing dock leveller would be removed from the north western elevation of the building and that the existing elevations would be altered by the changed colour scheme and revisions to existing door and window locations. The overall additional floor area over and above the development permitted under Ref. SD15/0254 is stated to be 865 sq. metres.
- 2.2. The extent of the additional lobby area is stated to be 38 sq. metres. The additional number of parking spaces proposed is stated to be 9 and these would be additional to the 60 no. spaces permitted under Ref. SD15A/0254.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 5 no. conditions, the most significant of which in the context of the current appeal are considered to be as follows:

Condition No.4 requires that the developer would pay a financial contribution of €61,875 euro in accordance with the provisions of the adopted s.48 development contribution scheme.

Condition No.5 requires that prior to the commencement of any development, the developer put arrangements in place for the payment of the financial contributions required in respect of Condition No. 16 attached to Register Ref. SD15/0254.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the Planning Officer notes the planning history and relevant development plan policy. The proposed development is considered to be consistent with the land use zoning and other plan policy and to be acceptable in visual and traffic terms. Considered that the water and drainage issues can be addressed by condition. A recommendation to grant permission consistent with the Notification of Decision which issued is recommended.

#### 3.2.2. Other Technical Reports

Water Services – recommends further information of surface water issues.

Irish Water – Recommends further information.

EHO – No objection.

Roads Section – No objection.

### 3.3. **Third Party Observations**

No third party submissions or observations were received.

## 4.0 **Planning History**

The following planning history is of relevance to this appeal:

Planning Authority Ref. SD15A/0254 – Permission granted by the Planning Authority for the development of a storage warehouse of 12,036 sq. metres on the appeal site. Access to the site proposed to be from the M50 Business Park and via Ballymount Road. The permitted development included office, reception area, car parking and associate site landscaping and drainage works. Development on foot of this permission was undertaken at the time of assessment by the Planning Authority.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

The site is located on lands that are zoned Objective EE under the provisions of the South Dublin County Development Plan 2016-2022. This objective is ‘to provide for enterprise and employment related uses’.

The development contribution scheme for the area is the South Dublin County Council Development Contribution Scheme 2016-2020. Under the provisions of this adopted scheme financial contributions requirements are split into residential and commercial / industrial development categories. The applicable rate per sq. metres for commercial / industrial development is 85.00 euro.

### 5.2. **Natural Heritage Designations**

The site is not located in or in close proximity to any designated site.

### 5.3. **Other Policy**

Reference is made in the submission of the first party to the ***Development Contributions, Guidelines for Planning Authorities (2013)***. The stated principal

aim of these guidelines is to provide non statutory guidance on the drawing up of development contribution schemes to reflect the economic changes since the previous guidance issued in 2007. It is also an aim that the guidance would provide a greater degree of consistency between adopted schemes across the country and the guidelines stress the importance of guidelines supporting economic development and set out a recommended methodology for the preparation of schemes. All planning authorities are required to revise their schemes to comply with the guidance. The guidance is issued under s.28 and all planning authorities and An Bord Pleanála are required to have regard to them in the performance of their functions.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The following is a summary of the main issues raised in the ground of appeal.

- That the conditions being appealed are Condition No. 4 attached to Ref. SD16A/0456 and Condition No.16 attached to Ref. SD15A/0254.
- That the lack of sub division of the commercial / industrial category in the adopted s.48 contribution scheme results in a situation whereby an office development that has a very high build cost and level of employment would have the same financial contribution requirement as a warehouse of the same floor area which would have a low build cost and low level of employment. The adopted scheme does not take account of the significantly reduced intensity of use of roads and drainage that arise in the case of the warehouse development relative to the office development of the same floor area.
- It is therefore submitted that the scheme as adopted is not justifiable, equitable or logical.
- That there are very significant differences in the development contributions applying in the four Dublin authorities and in Co. Meath. Noted that the development contribution required for the very large Facebook development

in Clonee on a new site was €989,008 which is only €40,000 more than that required of the first part for the development of an already serviced site of 0.77 ha. The development contribution in Meath is only €11 per square metre.

- That the adopted scheme is not consistent with the adopted Development Contribution Guidelines for Planning Authorities issued by the Department in 2003 and advisory document issued to Planning Authorities in July, 2012.
- That no account of the nature of the development has been taken in this case.
- That there is an issue of double charging where infrastructure is already in place on foot of previous planning permissions / permitted developments.
- That the terms of the adopted scheme have not been correctly applied.
- That under s.48(3)(c) there is provision for a reduced rate to be considered.

## 6.2. Planning Authority Response

The following is a summary of the main issues raised by the Planning Authority:

- That the calculation of €61,875 is based on the floor area of 865 sq. metres less the 40 sq. metre allowance and multiplied by €75 per sq metre for commercial / industrial development.
- State that the calculation of €946,922 for Condition No.16 of Ref. SD15A/0254 was calculated on the basis of the previous (2013-2015) development contribution scheme and used a higher rate per sq. metre of €78.68. The rate was however reduced as there was a valid commencement notice submitted and was set at €902,700. This equates to €75 per sq. metre in line with the 2016-2020 scheme.
- That it is not possible for the council to sub divide the €75 commercial / industrial category under the contribution scheme or to vary the amount other than where the development complies with the exemptions and reductions set out in section 10. The subject application does not fall within any of the exemptions set out at section 10.

### 6.3. **First Party Response to Observations of the Planning Authority**

The following is a summary of the main issues raised in the first party response to the observations of the Planning Authority:

- That the 2013 Departmental guidelines on development contribution schemes have been substantially ignored.
- That the Deloitte advisory document issued to local authorities has been misinterpreted. Specifically note that the Deloitte report states that contributions should be c. 3percent of development cost. In the appeal case the contribution sought is almost 20%.
- That councillors of South Dublin County Council that have been contacted by the applicant are surprised to learn that the adopted scheme does not differentiate between different types of commercial development. It is not clear how they were advised prior to voting to adopt the scheme.
- That rates of contribution in international cities are significantly lower than that in the South Dublin scheme. They also account for the intensity of use of the development in terms of infrastructure with development of the type proposed being at the lower end of the scale.
- That the appeal site was purchased as a fully serviced site, the infrastructure was constructed by the developer Park Developments.
- That the first party had a similar issue in Cork in 2005 (Ref. 05/3946) and in that case the manager met the first party and agreed to the omission of the condition.
- That the council are in a position to change their scheme to sub divide the office / industrial category but have decided not to do this.

## 7.0 **Assessment**

### 7.1. **Introduction**

- 7.1.1. This appeal has been made against financial contribution conditions attached to Ref. SD16A/0456. No other conditions are the subject of appeal and there are no other

parties to the appeal. As such therefore, the issue before the Board is restricted to consideration of the conditions raised by the first party and whether the Planning Authority has correctly applied the terms of the adopted s.48 development contribution scheme.

- 7.1.2. I note the fact that the Planning Authority at Condition No.5 have made reference to the previous grant of permission for the development of the site (Ref. SD15A/0254) and the fact that no contribution as required under Condition No.16 of that permission has been paid by the first party to date. Condition No.5 of the subject permission requires that the outstanding contributions would be paid prior to the commencement of development permitted. I note that Condition No.5 does not specify any exact amount. I would also note that the relevant amount relates to Permission Ref. SD15A/0254 and not to the application which is the subject of the current appeal. As such therefore I do not consider it appropriate that the financial contribution specified in Ref. SD15A/0254 in accordance with the s.48 development contribution scheme is open for consideration in this appeal. I further consider that the appropriate mechanism for the Planning Authority to enforce the collection of financial contribution in respect of the parent permission (Ref. SD15A/0254) is via condition No.16 attaching to that grant of permission.
- 7.1.3. In the event that the Board do not agree with the above interpretation I note that the case made by the first party are equally relevant to Condition No.16 of the original grant of permission (Ref. SD15A/0254) as they are to the current case. The merits of this case is discussed in the sections below.

## **7.2. S.48 Development Contribution Scheme**

- 7.2.1. The basic argument put forward by the first party is that the adopted scheme for South Dublin County Council does not adequately differentiate between development types. Specifically, it is contended that the commercial / industrial category is too broad in scope and results in developments that have very different capital costs, employment levels and infrastructural demands being charged the same financial contribution. It is also contended that the rates included in the Dublin local authority schemes are significantly out of line with those in the adopted Meath County Council scheme and in the contribution required in other countries for similar



storage developments (e.g. Croydon, London and German cities). It is contended that the terms of the adopted scheme have not been correctly applied and that under s.48(3)(c) there is provision for a reduced rate to be considered.

7.2.2. With regard to the rate applied, the adopted scheme clearly only distinguishes between residential development and what is effectively an 'other' category being commercial and industrial development. In my opinion the proposed warehouse extension clearly falls within the industrial / commercial class of development. It is further my opinion that the applicable rate of contribution for such a class of development is €75 per sq. metre and that the calculations submitted by the Planning Authority show that the contributions sought have been correctly calculated based on this rate per sq. metre. As noted by the Planning Authority, there is provision in the adopted scheme for exemptions in certain cases and these are set out at section 10 of the scheme. From a review of this section, I would agree with the Planning Authority that the applicant and the nature of the proposed development / land use in this case are such that none of the specific exemptions and reductions set out in section 10 of the scheme are applicable in this case. I note that sub section xxvi of section 10 provides for revisions / modifications to permitted developments to be treated as a separate application for permission and that the applicable rate per metre would be charged on the overall development. In this case the proposed development is advertised as an extension of a permitted development. In any event, the calculations set out by the Planning Authority in their submission indicate that what is sought in respect of the original permission and the proposed extension is all based on a contribution rate of €75 per sq. metre.

7.2.3. With regard to the contention of the first party that there should be further differentiation of uses based on the intensity and cost of development there is, in my opinion, merit in the case made. Similarly, the issue raised by the first party appellant regarding the discrepancies between the rate per sq. metre for commercial / industrial development in different counties and countries is noted and is clearly significant. The calculation of a rate is however a matter for the individual local authorities and the adoption of the scheme is a reserved function of the elected members. In the case of South Dublin County Council, the 2016-2020 contribution scheme has been through the appropriate procedures and adopted by the elected members. No issue has been raised by the first party regarding the process by

which the scheme was prepared, the basis for the calculation of the rate per sq. metre during the drafting of the scheme or the process by which it was adopted.

- 7.2.4. The first party contends that the Planning Authority have not taken due account of the provisions of the 2013 Development Contribution Guidance. As noted above, no specific sections of the Guidance are identified by the first party in this regard. The guidance does make reference to the importance of supporting economic development and it is assumed that the lack of sub division of the employment / office category in the adopted scheme is what is referred to in this regard. As stated above, I would acknowledge that this is the case however I would highlight to the Board that the overall level of contribution per sq. metre for office / commercial development has been reduced in the 2016-2020 scheme from the previous rate of €78.68 per sq. metre to the current €75 per sq. metre.
- 7.2.5. Section 48(10)(b) of the Planning and Development Act, 2000 (as amended) provides for an appeal to be brought to the Board where an applicant under s.34 considers that the terms of an adopted development contribution scheme have not been correctly applied. Section 48(10)(a) is clear no appeal shall lie to the Board relating to a financial contribution condition required in accordance with a s.48 contribution scheme other than in the circumstances set out at s.48(10)(b). The issue at hand in this appeal is therefore whether the terms of the adopted contribution scheme have been correctly applied. As set out above, it is my opinion that this has been the case in this development and it cannot be shown that the terms of the scheme have not been properly applied. I do not therefore consider that there is a basis under which the Board should require the omission or modification of Condition No.4 attached to the Notification of Decision issued by the Planning Authority.
- 7.2.6. The first party makes reference in their appeal to the provisions of s. 48(3)(c) of the Act and contend that this section provides for a reduction in contribution level to be applied. The wording of s.48(3)(c) is as follows; '*(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*'. This provision relates to the process of preparation of a development contribution scheme under s.48 of the Act and does not in my opinion mean that consideration can be given to a reduction in the rate of contribution on a case by case basis. The reductions and exemptions provided for in

the adopted South Dublin County Council scheme, and facilitated by s.48(3)(c) of the Act, are set out at section 10 of the adopted scheme. As set out at 7.2.2 of this report above, from a review of this section, I would agree with the Planning Authority that the applicant and the nature of the proposed development / land use in this case are such that none of the specific exemptions and reductions set out in section 10 of the scheme are applicable in this case.

## 8.0 Recommendation

8.1. In view of the above, I consider that the terms of the adopted South Dublin County Council Development Contribution Scheme 2016-2020 have been correctly applied in this case. I therefore recommend that the appeal be rejected and that the Planning Authority be directed as follows:

Condition No. 4 attaching to the Notification of Decision to Grant Permission issued by the Planning Authority on 23<sup>rd</sup> February, 2017 would remain in the final grant of permission, and

Condition No.5 requiring that outstanding contributions relating to a previous grant of permission (Ref. SD15A/0254) would be paid prior to the commencement of development should be omitted from the final grant of permission.

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Stephen Kay  
Planning Inspector

13th June, 2017