



An
Bord
Pleanála

Inspector's Report
PL29S.248530

Development	Construct a 2-storey 220kV Gas Insulated Switchgear building and 2 banded 220kV transformer bays and associated site works at the ESB Depot, Jamestown Road, Inchicore, Dublin 8.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2354/17
Applicant(s)	Eirgrid
Type of Application	Permission
Planning Authority Decision	Grant permission
Appellant(s)	Eirgrid v conditions
Observer(s)	None
Date of Site Inspection	None
Inspector	Karla Mc Bride

1.0 SITE LOCATION AND DESCRIPTION

1.1 The appeal site located within the existing ESB complex at Inchicore on the SW side of Dublin and the surrounding area is industrial in character. The extensive complex is bound to the N by Jamestown Road, to the W by Kylemore Way, to the E by industrial uses and to the S by the Grand Canal. The complex contains a wide variety of structures including the existing 38kV switchgear building, pylons, control building, substations and transformers in addition to the area depot and ancillary buildings. The appeal site is located in the central section of the ESB complex c.90m S of the boundary with Jamestown Road, it extends to the boundary with the Grand Canal and the site boundaries are defined by walls and palisade fences.

2.0 PROPOSED DEVELOPMENT

The development would comprise the removal of the existing boundary wall and palisade fence on the W and N boundaries of the existing substation compound and the construction of the following on the c.14,315sq.m. site:

- (a) A new 2 storey (c. 14.7m high) 220 kV Gas Insulated Switchgear (GIS) building (840 sq.m) to the N of the existing GIS building accommodating electrical plant at ground floor and a control room and ancillary storage areas at first floor level;
- (b) 2 banded 220 kV transformer bays on the E elevation of the new building;
- (c) All associated and ancillary works, ducts and cabling associated with the removal, relocation, replacement and installation of electrical plant and switchgear on the site, the provision of overhead connecting bus ducts running between the existing and proposed GIS buildings; and the relocation of underground cables across the site;
- (d) Modifications to openings on the N and S elevations of the existing GIS building;
- (e) The removal of an existing tower mast on the S side of the existing 220 kV substation proximate to the N bank of the Grand Canal;

- (f) The construction of a new boundary wall (c.4m high) and palisade fence (c.2.6m high) along the W and N boundaries of the site;
- (g) The erection of 11 lightning protection rods (c.3m high) on existing and proposed structures;

All ancillary works within the site including the provision of additional areas of hard-standing and internal access ways and associated site drainage works and other site works including the provision of oil storage.

3.0 PLANNING AUTHORITY DECISION

3.1 Decision

The PA decided to grant planning permission subject to 7 standard conditions.

Condition no. 2 required the developer shall pay the sum of €58,850.40 to the Planning Authority as a contribution towards expenditure that was and/ or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority as provided for in the approved Section 48 (Planning and Development Act 2000 as amended) Contribution scheme for Dublin City Council. The amount due is payable on commencement of development. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development. Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefitting development in the administrative area of the Local Authority.

3.2 Planning Authority Reports

Drainage Division: No objection subject to conditions.

The Planning Officer recommended that permission be granted subject to conditions including a financial condition. The levies set out in the Planners report are as follows:

Proposed floor space:	840 sq.m.
Commercial rate:	€70.06/sq.m
Other rates:	N/A
Total levy:	€58,850.40

3.3 The notification of decision to grant permission issued by Dublin City Council reflects this recommendation.

3.4 Prescribed Bodies

Transport Infrastructure Ireland had no observations to make.

3.5 Third Party Observations

None recorded on the file.

3.6 Planning History

There is an extensive planning history for the site relating to electricity.

4.0 POLICY CONTEXT

4.1 Dublin City Development Plan 2016- 2022

Zoning objective:

The proposed development would be located within an area covered by the Z6 zoning objective in the which seeks “To provide for the creation and protection of enterprise and facilitate opportunities for employment.”

Appendix 21: Land Use Definitions:

An industrial building is a structure (not being a shop or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process. Uses are ancillary to an industrial use, e.g. car parks and offices are included in the definition.

A Public Service Installation is a building, or part thereof, a roadway or land used for the provision of public services. Public services include all service installations necessary for electricity, gas, telephone, radio (and other similar uses) but does not include incinerators/waste to energy plants.

4.2 Development Contributions Scheme 2016 to 2020

The Dublin City Council Development Contributions Scheme was adopted on 7th December, 2015 in accordance with the provisions of Section 48 of the Planning & Development Act 2000 as amended. The levies are set out below.

Description of development	Amount of contribution
Industrial/commercial	€70.06 per square metre
Residential	€86.40 per square metre

Sections 1 to 8 set out the legislative framework for the Development Contributions Scheme. Sections 9 and 10 set out the contributions to be paid (except where an Exemption or Reduction applies) in respect of the different classes of public infrastructure and facilities; section 12 sets out the categories of development that are exempted from the requirement to pay development contributions; section 14 sets out the categories of development that are liable for a reduced rate under the Scheme; and sections 16 to 20 deal with payment of contributions. Appendix 1 sets out the costs included in the Scheme and Projected Development. Appendix 2 contains the projects.

The Section 10 **Contributions** to be paid in respect of the different classes of public infrastructure and facilities relate to:

- Class 1: Roads, infrastructure & facilities.
- Class 2: Drainage (surface water flooding) infrastructure & facilities.
- Class 3: Community facilities & amenities
- Class 4: Parks & open scape facilities
- Class 5: Urban regeneration facilities & amenities.

The Section 12 **Exemptions** are summarised below:

- Change of use from one commercial use to another.
- The first 40sq.m of extensions to a residential development.
- Development in receipt of a disabled persons' grant.
- Social housing units.
- Non-fee paying primary schools & secondary schools.
- Not-for-profit, community-run childcare facilities.
- Development to be used for social, recreational or religious purposes.
- Development to be used for persons with disabilities.
- The non-built elements of recreational facilities (pitches etc).
- Works to, and change of use of Protected Structures.
- Ancillary uncovered surface car parking & residential ancillary car parking.
- Apparatus/equipment that form part of the National Broadband Scheme.
- Renewable Energy development with a capacity up to 0.5MW.

The Section 14 **Reductions** are summarised below:

- Net additional floorspace created for demolition & replacement.
- Change of use from residential to commercial (vice versa).
- Minor extensions to Protected Structures.
- Open storage/hard surface commercial space development.
- Ancillary non-surface, non-residential car parking & undercroft car parking.
- Temporary permissions.

5.0 THE APPEAL

5.1 Grounds of First Party appeal against Condition No. 2

- Accept that the financial contribution is transparently calculated on the basis of the Contribution Scheme for Commercial developments.
- Permitted development is not Commercial or Industrial, it is a public utility development specifically comprising transmission infrastructure which is now subject to a development contribution usually applied to offices/retail.
- Section 10 of the Scheme is clear about the nature of public infrastructure development to be funded by the contribution.
- The permitted development is an extension to an existing public utility substation building and other associated transmission infrastructure.
- The Planning Officer's report refers to the proposal "as essential infrastructure for other employment centres as well as providing for domestic electrical usage" which occurs within an existing ESB Depot, and within a long established transmission substation within that Depot.
- The proposed public utility development will not be benefited by the nature of the aforementioned Section 10 public infrastructure developments.
- The PA has applied the scheme in error to the public utility development.
- In applying the Scheme in error, the PA had no option but to categorise the proposal as Commercial as the only other category is Residential.
- Request the Board to remove Condition no.2 in its entirety.

5.2 Planning authority response & other submissions

No responses received from the PA, Prescribed Bodies or Observers.

6.0 ASSESSMENT

6.1 This is a first party appeal against the financial contribution condition attached to the decision by Dublin City Council to grant permission for the proposed development. The first party appeal is confined to the development levy set out in Condition No. 2 (Section 48 Development Contribution), of the notification of decision of the planning authority to grant permission.

6.2 Section 48 (13) of the Planning and Development Act 2000, as amended, states that an appeal that relates solely to a condition dealing with a special contribution and no appeal is brought by any other person under Section 37 of the decision of the planning authority under that section, the Board shall not determine the relevant application as if it had been made to it in the first instance but shall determine only the matters under the appeal. I consider that it is therefore appropriate that this appeal should be confined to the consideration of whether or not the terms of the Council's Section 48 Development Contribution have been correctly applied.

6.3 Development contribution (Condition no. 2)

6.3.1 Condition No.2 requires the developer to pay the sum of €58,850.40 to the planning authority as a contribution towards the expenditure that was and / or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of the Authority. Section 10 of the Council's Development Contribution Scheme requires the payment of €70.06 per square metre for industrial or commercial development. Section 10 also sets out the contributions to be paid in respect of 5 different classes of public infrastructure and facilities related to roads, drainage, community facilities, parks and urban regeneration.

6.3.2 The applicant submits that the City Council applied the Contribution Scheme in error as the permitted development is not Commercial or Industrial. The applicant submits that it is a public utility development which is an extension to

an existing public utility substation building and other associated transmission infrastructure located within an existing ESB Depot. The applicant further submits that the public utility development would not benefit from the 5 classes of public infrastructure developments listed in Section 10 of the Scheme. The Board is requested to remove Condition no.2 in its entirety.

- 6.3.3 It is noted that Appendix 21 of the Development Plan defines an Industrial Building as a structure used for the carrying out of any industrial process, whilst a Public Service Installation is defined as a building or land used for the provision of public services which include all service installations necessary for electricity, gas, telephone etc. However, it is further noted that in Section 14 of the planning application form, the applicant listed the proposed 840sq.m. substation building as Class 4 (Other buildings (office, commercial etc.)) as specified in the Planning Application Fees section of the document entitled “Guide to Lodging Planning Applications, Applicant’s Checklist”, and not under Class 13 (Development not coming within any of the above classes).
- 6.3.4 The Dublin City Council’s Development Contribution Scheme 2016-2020 is subject to the provisions of Section 48 of the Planning and Development Act, 2000 as amended. It was adopted by the City Council on 7th December, 2015.
- 6.3.5 All planning permissions granted are subject to the conditions of the development contribution scheme in operation in the area of the planning authority. Furthermore, the Development Contributions Guidelines for Planning Authorities (2013) state that all planning authorities are required to include a number of exemptions, waivers and other provisions in their development contribution schemes.
- 6.3.6 Sections 12 the Scheme sets out the categories of development that are exempted from the requirement to pay development contributions. These categories are summarised in section 4.2 above. I have considered the Development Contribution Scheme 2016-2020 and note that it provides no categories of exemptions from the requirement to pay development

contributions that are applicable in this instance. Furthermore, Section 14 of the Scheme sets out the categories of development that are liable for a reduced rate under the Scheme which are also summarised in section 4.2 above, and I note that it provides no categories that are applicable in this instance.

6.3.7 Having regard to all of the foregoing it is recommended that Condition No. 2 be retained in its entirety.

7.0 CONCLUSION & RECOMMENDATION

7.1 Having regard to the nature of the condition the subject of the appeal and based on the reasons and considerations set out below, I am 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 recommend that the Board directs the Council under subsection (13) (a) of Section 48 of the Planning and Development Act, 2000 (as amended) to retain Condition No 2.

8.0 DEVELOPMENT CONTRIBUTION (CONDITION NO. 2)

8.1 Having regard to Section 48 of the Planning and Development Act, 2000 and, based on the reasons and considerations set out below, the Board directs the said Council to retain Condition No. 2 and the reason therefore.

8.2 Reasons and Considerations

Having regard to the provisions of the Dublin City Council Development Contribution Scheme 2016-2020 it is considered that the Section 48 Development Contribution Scheme would be applicable to the proposed development.

Karla Mc Bride (SPI)

17th August 2017