



An
Bord
Pleanála

Inspector's Report ABP-301748-18

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 mechanic 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; 1 no. ESB substation; and all associated landscaping, boundary treatment and ancillary engineering works necessary to facilitate the proposed development.

Location

Bay Lane, The Ward, Mulhuddart,
Dublin 15

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.	FW17A/0119
Applicant(s)	O'Toole Transport Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party against Conditions
Appellant(s)	O'Toole Transport Ltd.
Observer(s)	None
Date of Site Inspection	7 th September 2018
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of c. 3.3 ha, is located to the west of Dublin Airport, on the northern side of Bay Lane in The Ward, Mulhuddart, Dublin 15.
- 1.2. The appeal site is irregular in shape and is currently undeveloped. It is bounded to the north by a strip of land adjoining a new approach arm of a roundabout, to the east by a quarry that appears to be disused, to the south by Bay Lane and to the west by lands that adjoin the N2-N3 Link Road.
- 1.3. The appeal site is accessed from Bay Lane to the south, while Bay Lane connects to a roundabout on the N2-N3 Link Road c. 100m east of the appeal site. A concrete batching plant type operation is located on the southern side of Bay Lane, close to the roundabout.
- 1.4. The surrounding area generally comprises a mix of agricultural lands and large industrial/warehousing/logistics type development, with little residential development in the immediate vicinity.

2.0 Proposed Development

- 2.1. The proposed development is described in the statutory notices as follows:
 - 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 mechanic 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;
 - 1 no. ESB substation;

- and all associated landscaping, boundary treatment and ancillary engineering works necessary to facilitate the proposed development.

2.2. The application, as supplemented by the further information submitted, included a Planning Report, Urban Design Statement, Appropriate Assessment Screening Report, Infiltration Testing Report, Tree Survey and Tree Protection Strategy, Arboricultural Impact Report, Landscaping Report, Drainage Report and Floor Risk Assessment, Archaeological Test Excavation Report, and Acoustic Report,

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Fingal County Council decided to grant permission. Conditions 15 and 18, which form the basis of the appeal, are as follows:

- **C15:**
 - (i) Prior to the commencement of development the applicants shall submit for the written agreement of the Planning Authority:
 - (a) The design and construction details of the works required to widen and upgrade Bay Lane (public road) which shall include a minimum of a 6.5m carriageway.
 - (b) The details of the crossover of the proposed entrance.
 - (ii) All necessary works required for the upgrade of Bay Lane (the public road) to serve the proposed development including road widening, drainage, footpath and cyclepath connectivity, public lighting and road marking and signage shall be agreed with the Planning Authority and shall be carried out at the expense of the developer.
 - (iii) The works required for the upgrade of Bay Lane (the public road) to serve the proposed development shall be substantially complete to the satisfaction of the Planning Authority prior to the commencement of development within the application site.

Reason: In the interests of the proper planning and development of the area.

- **C18:** The developer shall pay the sum of €363,440.00 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's final report can be summarised as follows:

- Principle of proposed development is considered to be acceptable.
- Provision of colour panel banding is considered appropriate.
- A piece of public art is required in accordance with Objective DMS05.
- AA Screening Report is noted and considered to be acceptable.
- Revised site layout is acceptable.
- Proposed boundary treatments are unclear. Existing trees to be retained.
- Appropriate planting of the swale will be required to ensure no open areas of water to attract birds.
- Construction requirements set out in acoustic report to manage interior sound levels should be conditioned.
- Transportation Planning Dept. note that the submitted autotrack layout would indicate that the proposed 6.0m wide carriageway would need to be increased to a minimum of 6.5m in order to accommodate HGVs and maintain a low to moderate speed. They also note that specific engineering details would need to be agreed. Appropriate conditions will be attached.

- The development is considered to be acceptable under the GE zoning objective.

3.3. **Other Technical Reports**

- 3.3.1. Water Services: No objection, subject to conditions.
- 3.3.2. Environmental Health Officer: No objection, subject to conditions.
- 3.3.3. Environment Department: No objection, subject to conditions.
- 3.4. Transportation Planning: No objection, subject to conditions.
- 3.5. Parks Department: No objection, subject to conditions.

3.6. **Prescribed Bodies**

- 3.6.1. Irish Water: No objection.
- 3.6.2. TII: No observation to make.
- 3.6.3. Daa: Surface water swale comprises an open body of water and is opposed by daa. A noise condition should be included.
- 3.6.4. Department of Culture, Heritage and the Gaeltacht: No objection.

3.7. **Third Party Observations**

- 3.7.1. None.

4.0 **Planning History**

4.1. **Appeal Site**

- 4.1.1. **Reg. Ref. F98A/0701:** Permission refused in 1998 for a single dwelling and biocycle unit.
- 4.1.2. **Reg. Ref. 92A/1956:** Permission refused in 1993 for a bungalow, garage and septic tank.

4.2. Surrounding Area

4.2.1. I am not aware of any recent relevant planning history in the surrounding area.

5.0 Policy Context

5.1. Fingal Development Plan 2017-2023

5.1.1. The appeal site is located on lands zoned GE, 'General Employment', under the current Fingal Development Plan 2017-2023. The objective of this zoning is to provide opportunities for general enterprise and employment. The appeal site is also within the Outer Public Safety Zone and the Inner Airport Noise Zone associated with Dublin Airport.

5.2. Cherryhound Local Area Plan 2012-2018

5.2.1. The appeal site is also subject to the provisions of the Cherryhound Local Area Plan 2012-2018, which has been extended until 2022.

5.2.2. The appeal site is zoned 'GE' under the LAP, while the south western part of the site is located within a 'node'. An indicative pedestrian/cycle link is shown along Bay Lane.

5.2.3. The following Movement Objectives are noted:

- MO 1: Seek the creation of an efficient, functional and safe system for all vehicles, cyclists and pedestrians.
- MO 2: Require development of the area to be consistent with the mobility/transport policies/objectives of the current Fingal Development Plan.
- MO 3: Encourage an incremental modal split in favour of public transport, cycling and walking as opposed to use of private motorcars.
- MO 6: Provide for a linked cycle network.
- MO 8: Require, where necessary, all roads to be of a design and standard to accommodate HGV's.

5.2.4. Section 6.2 states that "no Special Contribution Scheme is currently anticipated for the development of the subject lands. Contributions in accordance with the Planning

Authority's Section 48 Development Contribution Scheme will be required. Applicants for development will provide the local infrastructure servicing their individual lands (roads, water supply, drainage, ducting for utility services etc.). Developers will co-operate with each other in the provision of services and 'ransom stripping' will not be permitted. The Planning Authority will adopt a co-ordination and facilitation role to ensure privately provided services are properly designed in an integrated and economic manner to best service the LAP lands".

5.3. Natural Heritage Designations

5.3.1. The appeal site is not located in or within 10km of any Natura 2000 sites.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A first party appeal against conditions was lodged on behalf of the applicant by Downey Planning. The issues raised in the appeal can be summarised as follows:

- Appeal relates to conditions 15(ii), 15(iii) and 18.
- **Condition 15(ii):**
 - This condition represents a double financial contribution. Condition 18 also requires the developer to pay a contribution in relation to public infrastructure, including roads and footpaths/cycle paths in the area.
 - The widening of the road is an objective of the Cherryhound LAP, and is not a specific requirement of the applicant's proposed development. The applicant has sought to facilitate the future upgrade of Bay Lane by setting back the development.
 - It was the intention of the applicant that only the addition of a new footpath and cyclepath within their landholding would be required in order to upgrade Bay Lane. However, it is unclear from Condition 15(ii) the extent of works that the Planning Authority require to be carried out to Bay Lane.
 - The lack of clarity is not in keeping with Section 7.3.4 of the Development Management Guidelines and makes it difficult for the applicant to proceed

with design and tender. Uncertainty has a negative impact on obtaining finance to complete the development.

- It is not just the applicant that will benefit from any upgrade of Bay Lane. Adjoining lands to east, west and south will also benefit greatly. It is unreasonable that the applicant should cover the full cost.
- Condition 15(ii) would appear to be attached in accordance with section 34(m) of the Planning and Development Act 2000, as amended. Section 7.3.5 of the Development Management Guidelines states that where such conditions are attached, the Planning Authority will be liable for the costs of the services over and above the requirements of the development.
- The Board is asked to remove the requirement within Condition 15(ii) that would necessitate the applicant covering the full extent of an upgrade.
- **Condition 15(iii):**
 - This condition could have the effect of unnecessarily delaying the development. It is unreasonable to require any upgrade to be 'substantially complete' prior to commencement of development within the site.
 - The issue of HGVs would only arise at the operational stage of the development. It would be safe and reasonable to permit the ongoing construction of the proposed development concurrently with any upgrade of Bay Lane.
 - Applicant has an urgent need to commence construction and operation, and condition 15(iii) would unreasonably militate against this.
 - The Board is asked to amend Condition 15(iii) such that the proposed development cannot become operational until the works to upgrade Bay Lane are substantially complete.
- **Condition 18:**
 - The rate of contribution has been calculated incorrectly. The Planning Authority used the 'residential' rate under their Section 48 Scheme, instead of the 'non-residential' rate.

- The Board is asked to amend Condition 18 so that it accurately reflects the correct financial contribution of €283,808.19.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response to the appeal can be summarised as follows:

- **Condition 15(ii):**

- Given the nature of the proposed development, a road haulage logistics operation involving HGV movements, an appropriately designed road network is required.
- The necessary improvements to Bay Lane to directly facilitate the business is entirely appropriate.
- The condition does not require the appellant to cover the full extent of an upgrade to Bay Lane, rather improvements to the northern side of the Lane from the entrance to the site to the roundabout to the west. These improvements are required specifically to facilitate the development and operation of the site.
- Further contributions for improvements to Bay Lane will be sought as and when other lands come forward for development.

- **Condition 15(iii):**

- The concerns of the appellant are acknowledged.
- Provided that appropriate measures are taken in order to secure safe access and egress during the construction phase, the Planning Authority would have no objection to condition 15(iii) being amended as follows:
"The proposed development shall not operate until such time that the works required for the upgrade of Bay Lane (the public road) to serve the proposed development are substantially complete to the satisfaction of the Planning Authority."

- **Condition 18:**

- Following examination of the file, the levy was based on a floor area of 4,229 sq m, but inadvertently applied at the residential rate of €85.94 per sq m, instead of €67.11.
- The correct development contribution to be applied is €283,808. This error was corrected by Chief Executive Order.
- The Board is asked to include Condition 18 with the correct amount applied.

6.3. Observations

6.3.1. None.

6.4. Appellant's Response to Planning Authority Response

6.4.1. A response to the Planning Authority's response was submitted on behalf of the appellant by Downey Planning. It can be summarised as follows:

- Planning Authority's submission that only the northern half of Bay Lane is required to be upgraded is acknowledged, however appellant should only be financially liable for works in front of the application site.
- Any works on third party lands between the application site and the roundabout should either be funded by the Planning Authority or off-set against the appellant's section 48 development contributions if necessary.
- It is anticipated that the third party lands between the application site and the roundabout will be brought forward for development in the near future. Proposed development has been designed to facilitate such a development.
- Making the appellant fund the upgrade of the public road that will only benefit third party landowners represents a double financial contribution, noting that condition 18 requires a financial contribution in relation to public infrastructure, including roads and footpaths/cyclepaths in the area.
- The Board is asked to remove the requirement in Condition 15(ii) for the appellant to cover the full extent of the Bay Lane upgrade, including to lands owned by third parties.

- Appellant welcomes the Planning Authority's proposed amendment to Condition 15(iii).
- Appellant welcomes the Planning Authority's proposed correction of the development contribution amount.

7.0 Assessment

7.1. Nature of Appeal

7.1.1. Having regard to the nature of the conditions under appeal, which relate to localised road upgrade works and the development contribution payable, and noting the lack of third party observations or appeals, I am satisfied that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted. I consider, therefore, that the appeal should be dealt with in accordance with Section 139 of the Planning and Development Act 2000, as amended.

7.2. Condition 15(ii): Works to Bay Lane

- 7.2.1. Condition 15(ii) requires all necessary works required for the upgrade of Bay Lane to serve the proposed development including road widening, drainage, footpath and cyclepath connectivity, public lighting and road marking and signage to be agreed with the Planning Authority and carried out at the expense of the developer. I note that Condition 15(i), which has not been appealed, overlaps somewhat with Condition 15(ii), and requires the applicant to submit details of the works required to widen and upgrade Bay Lane which shall include a minimum of a 6.5m carriageway and the details of the crossover of the proposed entrance for the written agreement of the Planning Authority.
- 7.2.2. The Planning Authority has clarified in their response to the appeal that Condition 15(ii) is intended to relate to the northern side of Bay Lane, between the entrance to the appeal site and the roundabout to the west.
- 7.2.3. The proposed Site Layout Plan (drawing No. AI_002), submitted in response to the request for further information, shows Bay Lane having a 6m width in front of the appeal site with a 5m wide 'proposed new cycle track/pedestrian path' on the northern side of the road, inside the 'red line' planning application boundary. The

proposed cycle track/footpath is shown to extend to the west, towards the roundabout, outside of the planning application boundary. A drawing entitled 'Proposed Road Widening to Bay Lane' (drawing No. C.055) contains annotation indicating the extent of road to be upgraded and widened, and the extent of road to be upgraded but not widened. The proposed new footpath and cycle lane is shown extending as far as the end of the existing footpath/cycle lane at the roundabout. The proposed widening works would result in a consistent 6m road width between the roundabout and the eastern boundary of the appeal site.

7.2.4. A drawing entitled 'Proposed New Entrance Autotruck Layouts' (Drawing No. C.050), also submitted in response to the request for further information, indicates that HGVs turning to enter the site would cross the road centre-line. As noted above, Condition 15(i), which has not been appealed, requires Bay Lane to be widened to provide a 6.5m road width, in accordance with the report from the Transportation Planning Section. Given the results of the Autotruck analysis and having regard to the likely relatively intensive nature of such HGV turning movements when the facility is operational, I consider the Planning Authority's requirement for an increased road width to be reasonable. I also note Objectives MO1 and MO8 of the Cherryhound Local Area Plan 2012-2018:

- MO 1: Seek the creation of an efficient, functional and safe system for all vehicles, cyclists and pedestrians.
- MO 8: Require, where necessary, all roads to be of a design and standard to accommodate HGV's.

7.2.5. On my site inspection I noted that the existing road width at the eastern site boundary was c. 5.8m, and roughly halfway along the southern boundary measured c. 5.6m. Therefore, the provision of a 6.5m road width as required by Condition 15(i) will require the cyclepath and footpath to be repositioned slightly northwards. While there would be sufficient space within the appeal site for the footpath/cyclepath to be repositioned to the north, it is not clear to me that continuing this repositioned footpath/cyclepath to the west to connect with the end of the existing footpath/cyclepath at the roundabout would be achievable without potentially requiring works on third party lands. Given that the applicant may not have the necessary consents to construct the relatively short (c. 60m) section of

cyclepath/footpath between the western boundary of the appeal site and the roundabout, I consider that Condition 15(ii), as formulated, is unreasonable.

7.2.6. Notwithstanding this, and contrary to what is contended by the appellant, I consider that the road upgrade and the continuation of the footpath/cyclepath between the roundabout and the appeal site will facilitate and benefit the proposed development, and will not just facilitate third parties. I therefore consider it reasonable that the provision of these road improvements should be linked to the proposed development. This would be consistent with Objectives MO3 and MO6 of the Cherryhound LAP:

- MO 3: Encourage an incremental modal split in favour of public transport, cycling and walking as opposed to use of private motorcars.
- MO 6: Provide for a linked cycle network.

7.2.7. The appellant contends that the works to Bay Lane could be off-set against the development contribution payable under Condition 18. However, there is no provision within the terms of the adopted Fingal County Council Development Contribution Scheme 2016-2020 for such off-setting. The appellant also contends that requiring them to fund the upgrade of the road would amount to double charging, as they will be paying a development contribution towards public infrastructure under Condition 18. I note in this regard that neither the upgrading of Bay Lane nor the provision of pedestrian/cycle infrastructure in the area appear to be included in the list of transportation projects listed in Appendix II of the Scheme, and I do not consider that requiring the applicant to either provide, or make a contribution towards the provision of such infrastructure where it benefits the proposed development, would amount to double-charging.

7.2.8. While I consider the Planning Authority's linking of the proposed development to local road and connectivity improvements to be reasonable and appropriate and in accordance with the provisions of the LAP, I consider that a more appropriate means of ensuring its delivery would be by requiring the developer to undertake the upgrade works within the site boundary, and to require the payment of a special contribution under section 48(2)(c) towards the provision of the road upgrade and footpath/cyclepath works on the extent of Bay Lane between the western boundary of the appeal site and the roundabout. I consider that this amendment to the

Condition would address the potential issue with regard to lands outside the applicant's control.

- 7.2.9. I therefore recommend that the Board direct the Planning Authority to amend the Condition accordingly, with the amount of the section 48(2)(c) contribution to be agreed between the applicant and the Planning Authority or, in default of such agreement, to be referred to An Bord Pleanála for determination.

7.3. **Condition 15(iii): Timing of Upgrade Works**

- 7.3.1. Condition 15(iii) requires the upgrade works to Bay Lane to be substantially complete prior to the commencement of development within the application site. The appellant contends that this condition is unreasonable and that it could delay the development. They contend that the Condition should be related to the commencement of operations, rather than commencement of construction. In responding to the appeal, the Planning Authority has stated that they would have no objection to condition 15(iii) being amended as follows:

“The proposed development shall not operate until such time that the works required for the upgrade of Bay Lane (the public road) to serve the proposed development are substantially complete to the satisfaction of the Planning Authority.”

- 7.3.2. Having regard to the limited and controlled nature of construction-related traffic, compared to the volume of HGV traffic that will arise during operation of the proposed logistics complex, I consider the appellant's position to be reasonable, and further consider that tying the road upgrade works to commencement of operation of the proposed development, rather than commencement of construction would allow for the more efficient and timely delivery of the proposed development which the Planning Authority has determined to be a suitable use of the appeal site.
- 7.3.3. I consider the Planning Authority's proposed amended Condition to be generally reasonable, although I recommend that the Condition should be clarified with regard to the extent of road upgrade works to be completed, and I recommend that the Board direct the Planning Authority to amend Condition 15(iii) accordingly.

7.4. Condition 18: Development Contribution

7.4.1. Condition 18 requires the payment of a development contribution of €363,440. The Planning Authority has accepted that this amount is incorrect, as they utilised the 'residential' rate, rather than the 'non-residential' rate in calculating the contribution payable.

7.4.2. The floor area of the proposed development, as amended, extends to 4,229 sq m. The current development contribution rate for 'non-residential' development under the Fingal County Council Development Contribution Scheme 2016-2020 is €67.11 per square metre, which would equate to a development contribution of €283,808. The Planning Authority has accepted that this is the correct contribution, and I recommend that the Board direct the Planning Authority to amend Condition 18 accordingly.

7.5. Appropriate Assessment

7.5.1. Having regard to the nature and scale of the proposed development and the separation distances from the nearest Natura 2000 sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. Having regard to the nature of the conditions 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 Planning Authority under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended, to AMEND Conditions 15(ii), 15(iii) and 18 as follows:

15(ii). 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 cyclepath, 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, towards 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 subject to any applicable indexation provisions of the Scheme at the time of payment.

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 complete to the satisfaction of the Planning Authority.

Reason: In the interests 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.

9.0 Reasons and Considerations

9.1. Having regard to:

- the provisions of the Fingal Development Plan 2017-2023;
- the provisions of the Cherryhound Local Area Plan 2012-2018;
- the provisions of the Fingal County Council Development Contribution Scheme 2016-2020; and
- the submissions made in this appeal;

the Board considered it 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 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 15(iii) should be amended to instead relate to commencement of operation of the proposed logistics complex. With regard to Condition 18, the Board 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.

Niall Haverty
Planning Inspector

11th September 2018