



An
Bord
Pleanála

Inspector's Report ABP-302389-18

Development	Minor layout & elevational modifications to previous permission 3358/15. (i) Two new 6.4m high silos. (ii) Ground floor visitor event space. (iii) First floor visitor bar and walkway (193sq.m).
Location	Units 3 and 4, Stag Industrial Estate, Ballyboggan Road, Dublin 11
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	4416/17
Applicant(s)	Napella Ltd
Type of Application	Permission
Planning Authority Decision	GRANT with conditions
Type of Appeal	First Party against conditions
Appellant(s)	Napella Ltd
Observer(s)	None
Date of Site Inspection	18/11/18
Inspector	John Desmond

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	6
3.3. Prescribed Bodies	7
3.4. Third Party Observations	7
4.0 Planning History.....	7
5.0 Policy Context.....	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Planning Authority Response	13
6.3. Observations	14
7.0 Assessment	14
7.1. Introduction	15
7.2. Principle / policy	15
7.3. Impact on amenities	16
7.4. Traffic and transport issues	18
7.5. Contributions	19
7.6. EIA Screening	20
7.7. Appropriate Assessment	20

8.0 Recommendation..... 21

9.0 Reasons and Considerations..... 21

10.0 Conditions 22

1.0 Site Location and Description

- 1.1. The application site is located within the Stag Industrial Estate, between the Grand Canal adjacent the south and the River Tolka Valley adjacent the north, within the Broombridge area, to the northwest of Dublin City. The form and layout of the industrial estate, with clusters of low density warehouse units, would suggest it dates from the 1960's and '70's. The Stag Industrial Estate is located at the western end of this industrial area, comprising a cluster of units serviced by a cul-de-sac road with access onto Ballyboggan Road to the north. The estate is in quite rundown condition, with vacant plots and units, poor road and parking surfaces, and a shift in focus from traditional industrial warehouse units to other, service focussed uses evident, with a gym and an evangelical Christian church.
- 1.2. The application site has a stated area of 6,317-sq.m. The site accommodates existing buildings of c.3200-sq.m floorplate. This includes the main industrial warehouse structure, a small 2-storey attached office building, and a separate industrial unit forming part of a large terrace of back-to-back units to the south. A number of units within that terrace are indicated as under the applicant's control (Site Layout Plant dwg.no.H16.a3.PR/01). There are ancillary industrial-type structures, including silos at the north and northwest end of the site. There are extensive, private, hard-surface areas at the west and east sides of the site, for loading and parking, with a separate shared-parking area off-site to the southwest. The applicant also has control over the surface parking and yard area to the south of the aforementioned terrace.

2.0 Proposed Development

- 2.1. Summary description:

Modifications to layout and elevations to previous permission reg.ref.3358/15 including:

- Omission of originally proposed façade cladding;
- 2no. new 6.4m high silos to north side of building;
- New ground floor visitor event space (409-sq.m stated GFA);

- New first floor visitor bar and walkway (193-sq.m stated GFA).

2.2. Further information

- Response report by O'Dea and Moore Architects, providing information on opening hours, visitor area operation details, staff numbers, signage, car parking, existing and proposed traffic movements, rear loading area, proposed visitor traffic, and adjacent overflow parking area.

3.0 Planning Authority Decision

3.1. Decision

GRANT subject to 14no. conditions. The following conditions are pertinent to the Board's considerations of this appeal:

No.2 – S.48 DCS to sum of €42,176.12

No.3 – S.49 Supplementary DCS to sum of €22,876.00 in respect of Luas Cross City.

No.4 – Omits use of the site for private functions/corporate/group/ticketed events.

No.5 – Limits site being open to the public between 12.00-19.00 hours Monday-Sunday, unless otherwise agreed with the planning authority.

No.6 – Limits consumption of alcohol by visitors to within the identified bar/visitor area (drawing ref.H161.PR/AI/03 of 29/06/18).

No.7 – Requires parking to be provided as per drawing no.H161.PR/AI/01 prior to commencement of tours.

No.8 – Limits height of individually mounted and painted letter to 500mm in height.

No.10 – Cycle parking to be provided to Development Plan standards.

3.1.1. The planning authority sought **FURTHER INFORMATION** (02/02/18) on the following points:

- Visitor event area opening hours;
- Existing / proposed staff numbers;
- Details of additional signage;

- Details of use of existing car parking;
- Details of traffic movements associated with existing building and traffic levels associated with proposed use;
- Details of use of existing shared and overflow car parking and consent to use same.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **final report (15/07/18)** is consistent with the decision of the planning authority to grant permission and with the conditions attaching thereto.

The **initial report (02/02/18)** is consistent with the decision of the planning authority to seek further information on 7no. points; all, bar one point addressing details of additional signage, were points of request from the Roads Department and related to visitor facility's opening hours, the organisation of and details of visitor numbers, existing / proposed staff numbers, car parking, traffic movements and details of shared / overflow parking.

3.2.2. Other Technical Reports

The **final Roads Department report (18/07/18)** had no objection subject to 4no. conditions, including a non-standard condition requiring the omission of the proposed use for private functions / corporate / ticketed events and that the use of the development for large scale events (400 persons) should be subject of a separate planning application. Cycle parking to comply with CDP standards.

The initial **Road Planning Division report (24/01/18)** recommended that further information be sought on 6no. points which were included in the FI request issued by the planning authority.

The **Engineering Department Drainage Division report (08/01/18)** had no objection subject to compliance with conditions attaching to previous permission reg.ref.3358/15.

3.3. Prescribed Bodies

TII (19/12/18) – S.49 Luas Cross City Contribution Scheme Levy applies.

3.4. Third Party Observations

None.

4.0 Planning History

Reg.Ref.3358/15 – Permission **GRANTED** (final grant 05/11/15) for remodelling of existing facade (7.08m) to create partially higher facade (9.18m high), including new signage to front elevation, and upgrade of existing roof covering, 4no. free-standing steel grain storage silos to front (3no. of 9.5m and 1no. at 10.77m), at existing facility subject to 5no. conditions, all being standard conditions bar condition no.2.

Condition no.2 required the following amendments - a) The central coated copper panel on the west façade shall not project in excess of 1m above the existing roof eaves level; and b) The proposed individually mounted letters shall not exceed 500mm for the height of each letter.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016-2022

Land use zoning objective '*to provide for the creation and protection of enterprise and facilitate opportunities for employment creation*'.

S.16.22 Industry, Warehousing and Business Park Development

Proposals for the development or extension of industrial, warehousing and business park developments should have regard to the following criteria: [inter alia]

- *Where proposals for these type of developments would generate a large volume of HGV traffic, they shall not be located where they would encourage movement of such traffic through residential areas (see also Appendix 4).*

- *In the case of proposed developments, which are of a nature and extent that they would impact on the environment and attract significant volumes of vehicular traffic to the development site, Dublin City Council will require the application to be accompanied by a Transport Assessment (TA); Appendix 4 gives further guidance on the need for and content of a TA and applicants are advised to undertake pre-planning consultations with Dublin City Council regarding the requirement for a TA.*
- *In the case of proposed developments (or groups of developments located in close proximity to one another) which would attract significant volumes of traffic, the preparation and submission of a Travel Plan (TP) may be required as part of the application; Appendix 5 gives guidance on the type and scale of developments that will require the submission of a TP and the required form and content of these documents.*

5.2. Natural Heritage Designations

South Dublin Bay and River Tolka Estuary side code 004024 c.5.3km east-southeast.

6.0 The Appeal

6.1. Grounds of Appeal

This is a first party appeal, c/o DK Planning and Architecture, against the attachment of conditions nos.2, 3, 4, 5 and 6 of the decision.

The main grounds of appeal may be summarised as follow:

- It is proposed to develop a generally similar undertaking at the Ballyboggan Road brewery as the current visitor centre operated at the Dingle Whiskey Distillery, which is also owned by the Porterhouse.
- The visitor centre would be a showcase for the company's products where guests come to sample new and unusual beers, with guided tours during the day.

- Occasionally, more structured events during the evening, including corporate events as a particular feature, limited to a maximum of 200 guests would held between about 7pm-11.30pm at latest.
- The new visitor centre in Broombridge would make it a more popular destination, bringing new activity to the area and increasing use of Luas Cross City, similar to the impact of the Brooklyn Brewery on a rundown area of New York.
- The majority of visitors attending structured evening event would arrive by public transport, particularly by Luas or special buses, with the ticketed events ending in sufficient time for guests to catch the late-night Luas (last tram M-S at 00.16hrs) from Broombridge Station a few minutes on foot via Ballyboggan and Broombridge Roads, or via the pedestrian gateway to the canal towpath (5 mins).
- The site is well placed in relation to walking and cycling via the Tolka Valley and Royal Canal town path identified in the Dublin CDP as a greenway which is well advanced, with the Broombridge section to commence early 2019.
- The applicant intends maximising use of public transport to serve the centre, proposing to compile and implement a Final Travel Plan in co-operation with the planning authority as outlined in the Preliminary Travel Plan by NRB Engineers, including appointment of Travel Plan Coordinator and provision of cycle parking facilities agreed with the planning authority.
- Conditions nos.4 and 6 would compromise the visitor facilities (events space of 406-sq.m and visitor bar and walkway of 193-sq.m).
- Condition no.5 is an unnecessary constraint on the operation of the proposed guided tours of the brewery.
- Conditions nos.4, 5 and 6 negated most of the benefit of the grant of permission and therefore, accordingly, the financial contribution conditions nos.2 and 3 are not an appropriate application of the respective contribution schemes.
- The Development Management Guidelines (2007) state that conditions should be necessary, relevant to the development permitted and reasonable.

- Conditions nos.4, 5 and 6 are not necessary. They are relevant only to the extent that they render the development unviable. They are not reasonable in terms of the proper planning and sustainable development of the area. The Board is requested to remove these conditions under s.139 of the Act, 2000, as amended.
- In the context of conditions nos.4, 5 and 6, the sum of contributions levied under conditions nos.2 and 3 do not represent a proper application of the relevant contribution scheme.

Condition no.4 – omits use of the site for private functions / corporate / group / ticketed events.

- The condition omits the primary purpose of the proposed visitor centre, thereby undermining the entire basis on which the proposed visitor centre is grounded.
- Only a generic reason, '*in the interests of the proper planning and development of the area*', is given for the attaching of condition no.4, which raises the question of its validity under the DMG.
- Condition no.4 it appears to arise from the report of the Roads Planning Division relating to car parking provision, but which takes little account of the location of the site immediately adjacent the Luas terminus. This is at odds with the Council's emphasis on encouraging public transport use, for example in its granting permission for a craft distillery in the Liberties (reg.ref.3309/13), with a larger visitor facility than proposed under this current application, with no on-site visitor parking.
- It is Council policy to discourage car use, with S.2.3.6 of the CDP emphasising the need for modal shift from motorised private modes to public transport, cycling and walking.
- The Planner's Report does not interrogate the view of the Roads Planning Division, expressing concern for significant change in intensity of use, with no recognition that it might have positive impacts on the area, or that use of private cars to attend an organised beer tasting evening would be unnecessary, especially given the proximity to good public transport.

- An inspection of the environs shows that intensification of use of these lands might be something to aspire to rather than fear.
- The NTA's Transport Strategy for the GDA 2016-2035 supports development at locations and densities which enable the efficient provision of public transport services, including a policy to manage transport demand through setting maximum parking standards for all new development, with standards based on transport accessibility (S.5.9).
- The site is within parking zone 2 where standards for maximum provision of parking apply for various development types where public transport would be accommodated – public house 1 space per 300-sq.m net floor space; cultural / recreational 1 space per 250-sq.m GFA; restaurants / café 1 space per 150-sq.m seating area; nightclub etc., 1 per 10-sq.m; other cultural / recreational / leisure uses, spaces dependent on nature and location of use.
- Use is 'other cultural / recreational / leisure uses for which no maximum parking provision is given, but from the comparative use types, for a maximum GFA (406+193-sq.m) the following would apply - for a public house 2no. spaces; for a nightclub 60no. spaces.
- 24no. can be provided on site, which is reasonable in view of stated policies, proposed Final Transport Plan implementation, proximity to the rail station and proposals to otherwise use buses to serve the organised events.
- There is plenty of spare parking available on lands within control of applicant and its associated company, *Noyfield*, which is addressed in detail in letter of Roundtree Tarpey Solicitors attached to the appeal, covering units 1, 4, 6, 7 and 8 in addition to unit 9. Unit 8 includes lands between the building and the canal side boundary with pedestrian access gate. Lands between units 1, 4 and 6 Tolka Valley Industrial Estate, encompassing a large expanse used for parking, was conveyed to Noyfield in 2016, which the applicant has sufficient legal interest to use.
- The applicant can establish an easement over the 'common' areas of land for parking purposes, which is shared by the other units, including a gym and a church.

- The attached drawing of the site and environs, by O’Dea and Moore Architects, shows the position in respect of accommodating significant numbers of parked cars on existing large areas of parking to front and rear of adjoining Tolka Valley Industrial Estate, if this is required.
- The organised events will take place in the evening when other traffic in the industrial estate is at a minimum.

Condition no.5 – limits public opening hours to between 12.00-19.00 Mon-Sunday unless otherwise agreed.

- Proposed opening hours from midday to 19.00 hrs, 7-days per week, and provision for corporate events units 23.30 hrs.
- Omits key component of proposed enterprise rendering the development unviable.
- An evening activity is to be entirely welcomed in the prevailing environment of the site, enlivening the area.
- Only a generic reason, *‘in the interests of the proper planning and development of the area’*, is given for the attaching of condition no.5, which raises the question of its validity under the DMG.

Condition no.6 – limits consumption of alcohol by visitors to within the identified bar / visitor area.

- The basis for the condition is unclear and unnecessary.
- Renders the proposed visitor centre at ground floor level of little use as tours of breweries entail sampling of beer, which otherwise comprise only the study of the detail of the brewing process.

Conditions nos.2 and 3 – required financial contributions under the S.48 DCS and the S.49 Supplementary CS for Luas Cross City.

- Sum based on proposed development including entire visitor centre facilities, but the conditions attached (nos.4 and 6) effectively limit the visitor centre to the small first floor bar.
- The sums should be based on the development as permitted.

Supporting documents (main points of which are summarised within grounds of appeal) -

- *Porterhouse Brewing Company Visitor Centre and Events Space.*
- *Letter regarding land under applicant's control prepared by Roundtree Tarpey Solicitors.*
- *Preliminary Travel Plan prepared by NRB Consulting Engineers.*

6.2. **Planning Authority Response**

The main points of the planning authority's response may be summarised as follow:

Re condition no.4

- In the appeal the applicant has provided the additional information in respect of public transport and parking options available, which the PA considers justify the proposal.
- The applicant has clarified that the maximum number of guests at private functions would be 200.
- The PA remains of the view that the appellants do not reflect or address the scale of the private function element of the proposal at this location and that a use of this magnitude should be accommodated by a detailed mobility strategy and rationale in terms of the suitability of the location in accessibility terms, and that condition no.4 should therefore be retained as part of any order to grant permission for the development proposed.
- The PA does not consider the application site to be comparable to the Teeling site, referred to by the applicant, which is located in the city centre such as would provide justification and precedent for the proposed development.

Condition no.5

- The restricted hours of opening reflect those proposed by the applicant in the further information response.
- The condition provides scope to agree extended opening hours in writing with the PA.

- In the context where the PA is omitting the private function element of the proposed development in the absence of a detailed mobility strategy and rational in terms of the suitability of the location in accessibility terms, condition no.5 is necessary to clarify the public opening hours.
- Condition no.5 should therefore be retained as part of any order to grant permission for the development proposed.

Condition no.6

- The overarching intention of the condition is to ensure clarity over the substantive use of the building as a brewery,
- It is not intended to restrict the tasting of products brewed on the premises as part of a guided tour, but the condition accepts that the condition could be interpreted in this manner.
- The following rewording of the condition is suggested:

The consumption of alcohol by visitors shall only take place within the identified Bar / Visitor Area identified on plan Ref.H161.PR/AI/03 dated 29th June 2018, except where forming part of a guided tasting tour of the brewery. Reason: In the interest of the proper planning and development of the area.

6.3. Observations

TII (31/08/18) notes that the site is located with the area set out for the S.49 Luas Cross City (St Stephen's Green to Broombridge Line) Contribution Scheme and that in the event of a grant of permission, where the development is not exempted, a supplementary development contribution condition should apply.

7.0 Assessment

The issues arising in this case may be addressed under the following headings:

7.1 Introduction

7.2 Principle / policy

- 7.3 Impact on amenities
- 7.4 Traffic and transport issues
- 7.5 Visual impact
- 7.6 EIA Screening
- 7.8 AA Screening

7.1. Introduction

- 7.1.1. This first party appeal is against the attaching of conditions nos.2, 3, 4, 5 and 6 to the grant of permission. Conditions nos.2 and 3 relate to a S.48 development contribution and to a S.49 supplementary development contribution. As the appeal is not solely in respect of the two said contribution conditions, the Board's consideration of the case is not restricted by S.48(10)(c) of the Act, 2000, as amended. However, having regard to the provisions under section 139(1) of the Planning and Development Act, 2000, as amended, the Board has the discretion to limit its considerations to the conditions concerned.
- 7.1.2. Condition no.4 omits the use of the site for private corporate / group / ticketed events; condition no.5 limits the public opening hours to between 12.00-19.00 7 days per week; and condition no.6 limits consumption of alcohol by visitors to within the identified bar/visitor area.

7.2. Principle / policy

- 7.2.1. The site is zoned Z6 employment / enterprise where the zoning objective is '*to provide for the creation and protection of enterprise and facilitate opportunities for employment creation*'. The primary use of the site as a brewery is an industrial use. The proposed ancillary use as a visitor centre and events centre is related to and secondary to the principle use. As submitted in the appeal, the proposed additional uses may be considered to fall within the scope of cultural / recreational building use similar to the Guinness Storehouse visitor centre (notwithstanding that it includes a small bar of c.100-sq.m), which is permitted in principle on Z6 lands. Within the context of the apparent evolution of older industrial estates in terms of the nature and

ranges of uses accommodated, the accommodation of the proposed use is reasonable.

- 7.2.2. The visitor centre would be a showcase for the company's products where guests come to sample new and unusual beers, with guided tours during the day between the hours of 1200 and 1900. Occasionally, more structured visitor events would be held during the evening, including corporate events as a particular feature, limited to a maximum of 200 guests (reduced from figure of 400 in the application submission) would held between about 1900-2330 at latest. The applicant suggests that these may take place 2-3 times per month, or a maximum of once or twice per week at peak. I would have some reservations about the suitability of this peripheral location for the holding of such events, however the use is not contrary to the zoning objective or policies for the subject area.
- 7.2.3. Additional works described as modifications to layout and elevations permitted under previous application reg.ref.3358/15, including amendments to the permitted elevational treatment, additional openings to front and rear, and the provision of 2no. 6.4m high silos to the north of the building are either insignificant within the context of a run-down industrial estate (e.g. omitting permitted façade cladding) or are related to the industrial operations on site and are acceptable.
- 7.2.4. In note that the two silos were already erected in place at the time of the site inspection and the Board should consider whether or not it would be appropriate to uphold the Council's decision to grant permission in respect of such works. Having regard to the provisions of section 32(1)(b) of the Act of 2000, as amended, the issue of whether or not the said works constitute unauthorised development is a matter for the planning authority, not the Board.

7.3. **Impact on amenities**

- 7.3.1. The area is industrial in nature and rundown in appearance, with a mix of industrial uses and non-industrial uses evident, including a community church and a gym within immediate proximity, and a restaurant and a retail wholesaler (open to the general public) within the vicinity. Whilst traditional industrial warehouse uses still remain, the area reflects the long-term trend apparent throughout similar older industrial estates in the city towards more mixed uses, including more intense,

service type uses, and this can be seen to be facilitated by the Development Plan. Some of the newer uses would be more sensitive than traditional uses to impacts from noise or other emissions.

- 7.3.2. The nearest residences are situated c.195m south of the visitor centre building, separated therefrom by a row of double-height industrial warehouses and the raised canal embankment and railway.
- 7.3.3. The visitor centre use entailing guided daytime visiting tours, accommodating 25 visitors, at a rate of 1 tour per hour between the hours of 1200-1900, would not be expected to have any appreciable impact on amenities on existing premises within the industrial estate or on residential amenities within the wider area.
- 7.3.4. Although the nature of the proposed evening events has not been described in any detail (e.g. whether they will entail amplified music), it would seem unlikely that the proposed use would have any appreciable impact on distant residential properties subject to appropriate controls on noise levels. I therefore consider that condition no.4 be omitted in an event of a decision to grant permission.
- 7.3.5. Given the proposed hours of evening events, which would be outside standard business hours, I would not anticipate impacts on neighbouring business premises within the industrial estate or neighbouring industrial estates arising from the proposed evening events. Should the hours of evening events overlap with the community church services, it is possible that some adverse impact may arise, however I consider that this can be satisfactorily resolved by an appropriate noise condition.
- 7.3.6. Having regard to the foregoing, I do not consider condition no.5, limiting the public opening hours further to the hours proposed, to be necessary. I also consider condition no.6, limiting consumption of alcohol by visitors to within the identified bar / visitor area, to be unreasonable given the nature of the proposed visitor use. The two conditions should be omitted in the event of a decision to grant permission.
- 7.3.7. On balance, I consider the proposed ancillary use to be a positive development within the existing industrial estate. However, in the event of a grant of permission, the Board may consider it reasonable to attach a condition requiring the proposed ancillary uses to be operated wholly ancillary to the primary use of the site as an

operational brewery only and specifying that ancillary uses shall cease and expire in the event that the brewery operations cease on site.

7.4. Traffic and transport issues

- 7.4.1. A key issue arising in this case is the potential traffic and transport impact of the proposed evening events, as were raised in the reports of the Council's Road Planning Division. I consider these to be legitimate concerns given the scale of the evening events which were indicated as accommodating up to 400 guests at a frequency of one or two per week at peak. Based on the inadequate level of information on file and the lack of thorough consideration of potential traffic issues by the applicant, I consider the attaching of condition no.4 omitting the use on the basis of the RPD's final report was justified. However, these issues have been addressed in more satisfactory detail in the appeal and, of particular note, the applicant has revised down the maximum number of guests from 400 to 200 in the appeal, thereby halving any potential traffic impact.
- 7.4.2. The applicant submits that the majority of visitors attending structured evening event would arrive by public transport, particularly by Luas or special buses, with the ticketed events ending in sufficient time for guests to catch the late night Luas (last tram Monday-Saturday at 00.16hrs) from Broombridge Station a few minutes on foot via Ballyboggan and Broombridge Roads, or via the pedestrian gateway to the canal towpath (stated as 5 minutes). I can confirm that the site is accessible on foot from Broombridge Luas station in about 10 minutes, via Broombridge Road and Ballyboggan Road. The suggested alternative pedestrian route via the Royal Canal towpath is not currently feasible and the applicant has submitted no details of the works that would be necessary to make it so.
- 7.4.3. There is ample space within the application site, within adjacent common areas of the industrial estate to which the applicant claims to have parking rights, and within neighbouring lands under the applicant's control. This is somewhat incidental as it would not be desirable to encourage access by private car. The appellant makes a valid point that use of private cars to attend an organised beer tasting evening would be unnecessary. This would seem particularly so in light of recent reduction in blood alcohol limits for drivers.

- 7.4.4. It has been submitted that the applicant intends maximising use of public transport to serve the centre, proposing to compile and implement a Final Travel Plan in co-operation with the planning authority as outlined in the Preliminary Travel Plan by NRB Engineers, including appointment of Travel Plan Coordinator and provision of cycle parking facilities agreed with the planning authority. The Preliminary TP is reasonable.
- 7.4.5. Given the character of this industrial area, the distance to sensitive properties, the existing adjacent road network, the available car parking, the hours of proposed evening events, and having regard to the proximity to the Luas at Broombridge and the nature of the facility, I am satisfied that the road traffic impact would not be significant.

7.5. Contributions

- 7.5.1. The appellant does not dispute that contribution levies apply under the S.48 DCS and the S.49 Supplementary CS only that the sums are based on the proposed development inclusive of the entire visitor centre facilities, whereas conditions no.4 and 6 effectively limit the visitor centre to the small first floor bar.
- 7.5.2. The Dublin City DCS 2016-2020 is the operative S.48 scheme and Luas Cross City (St. Stephen's Green to Broombridge Line) Supplementary DCS is the relevant S.49 scheme. Both scheme apply levies at either a commercial rate or at a residential rate. A rate of €70.06 per sq.m applies to commercial development under the S.48 Scheme and a rate of €38 per sq.m applies to commercial development under the S.49 Scheme. Based on a sum of €42,176.12 (condition no.2 S.48) and €22,876 (condition no.3 S.49) the levies were applied to an area of 602-sq.m.
- 7.5.3. S.12 of the Dublin City DCS provides that '*permissions for a change of use from one commercial use to another are exempt; any net additional floorspace will be charged at the commercial rate*'. A similar exemption is provided for under s.11 of the Supplementary DCS.
- 7.5.4. The applicant proposes an additional floor area of 193-sq.m, with 409-sq.m existing ground floor space proposed to change use from industrial / commercial to ancillary visitor events space, which is a commercial use. Contributions should only have been applied to the additional commercial floorspace, as the existing floorspace

proposed for change of use being exempt. The planning authority therefore did not correctly apply the terms of either scheme. Conditions nos. 2 and 3 should be amended to include the correct sums, set out below:

Condition no.2 – €13,521.58

Condition no.3 – €7,334.00

7.6. EIA Screening

- 7.6.1. The proposed development, including works and a change of use comprising an additional ancillary use to the existing use, is development of a class under Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, namely Class 13 *Changes, extensions* to development falling within a class listed in Part 2 of Schedule 5, in this case the existing development, a brewery, would potentially fall within the scope of Class 7 *Food Industry* projects, (d) commercial brewing. The threshold for Class 7(d) projects in excess of 100,000 tonnes per annum. The additional threshold for Class 13 projects include an increase in size greater than 25%, or an amount equal to 50% of the 100,000 tonnes p.a. threshold, whichever it the greater.
- 7.6.2. It is my understanding that the existing brewery has a potential production capacity well below the class 7(d) threshold, in the region of 10,000 tonnes per annum. The proposed additional silos would likely have a moderate impact on current production capacity. The size and nature of the development and its location within an area that is not of particular environmental sensitivity. I am satisfied that EIA is not required.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the scale and nature of the development proposed, comprising relatively minor physical amendments to an existing project within an existing built-up area of Broombridge, in addition to relatively minor changes in the nature of uses on site, it is not considered that the proposed development would be likely to have a significant effect, directly or indirectly, individually or in combination with other plans or projects on any European site. I consider no Appropriate Assessment issues to arise.

8.0 Recommendation

Having regard to the nature of conditions 4, 5 and 6 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 directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 (as amended) to **REMOVE** Conditions nos. 4, 5 and 6, and to **ADD** the Condition set out under section 10.0, for the reasons and considerations set out hereunder;

And having regard to the nature of the contribution conditions nos. 2 and 3 the subject of the appeal, and to the provisions under section 48 of the Planning and Development Act, 2000, as amended, based on the reasons and considerations hereunder, the Board directs the Council to **AMEND** condition nos.2 and 3, as set out under section 10.0, below, to the sum of €13,521.58 and €7,334.00, respectively.

9.0 Reasons and Considerations

Having regard to the character of the industrial area within which the site is located, the zoning objective for the site and the range of uses permitted thereon, the distance of the site to sensitive premises, the ancillary nature of the proposed visitor centre use and events centre use, and the scale of the events centre use which has been clarified in the appeal, it is considered that conditions nos. 4, 5 and 6 are unnecessary, and that an additional condition requiring the proposed visitor centre use and events centre use to be wholly ancillary to the primary use of the site as a brewery is necessary in the interest of clarity.

Having regard to the provisions of the Dublin City Development Contribution Scheme 2016-2020 and to the provisions of the Luas Cross City (St. Stephen's Green to Broombridge Line) Supplementary Development Contribution Scheme, both of which provide an exemption from levies for a change of use from one commercial use to another, the planning authority erred in applying the levy under conditions nos.2 and 3 to the 409-sq.m area proposed for change of use, in addition to the 193-sq.m area of new floor space.

10.0 Conditions

Additional condition

The visitor centre facility and the private functions / corporate / group / ticketed events use shall be operated wholly ancillary to the primary use of the premises as an operational brewery and the said ancillary uses shall cease and expire on in the event brewery operations cease on site.

Reason: In the interest of clarity.

Amended conditions

2. The developer shall pay to the planning authority a financial contribution of €13,521 (thirteen thousand, five hundred and twenty one 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

3. The developer shall pay to the planning authority a financial contribution of €7,334 (seven thousand, three hundred and thirty-four euro) in respect of Luas Cross City St Stephen's Green to Broombridge Line, in accordance

with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

John Desmond
Senior Planning Inspector

20th December 2018