



An  
Bord  
Pleanála

## Inspector's Report ABP-303460-19

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<b>Development</b>	Extension to enclose the garden centre area, and new signage on the newly-created southern elevation; an ancillary café, and all associated site development works.
<b>Location</b>	Units 5-8, Liffey Valley Retail Park West, Quarryvale, Dublin 22.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD18A/0380
<b>Applicant(s)</b>	CDS (Superstores International) Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	CDS (Superstores International) Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	20 <sup>th</sup> March 2019.
<b>Inspector</b>	Michael Dillon

## 1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.045ha, comprises units 5-8, Liffey Valley Retail Park West, at Quarryvale, Dublin 22. There are 15 units within an L-shaped block – with extensive surface car-parking located in front. Units 5-8 are occupied by ‘The Range’ – selling home decor and household goods. The area for the proposed café currently comprises retail floor area. The garden centre area is currently unroofed – surrounded on two sides by units within the retail park, and on the other two sides by a 1.5m high wall, which is surmounted by 3.0m high palisade fencing (painted green). The entire area is covered with netting; against birds.

## 2.0 Proposed Development

- 2.1. Permission sought on 17<sup>th</sup> October 2018, for extension to existing retail warehouse – to enclose an external garden centre area of 707m<sup>2</sup> and to create a café area within the retail warehouse of 199m<sup>2</sup>. The development also provided for an external sign, measuring 2m x 6m, on the southern elevation of the new extension.
- 2.2. The application is accompanied by a letter of consent from the site owner to the making of the planning application.

## 3.0 Planning Authority Decision

By Order dated 11<sup>th</sup> December 2018, South Dublin County Council issued a Notification of decision to grant planning permission, subject to 9 no. conditions. Condition 9 states-

9. The developer shall pay to the planning authority a financial contribution of €72,235.38 (seventy two thousand two hundred and thirty five euros and thirty eight cents), in respect of public infrastructure and facilities benefiting development within the area of the planning authority, that it is provided, or intended to be provided by or on behalf of the authority, in accordance with the terms of the Development Contribution Scheme 2016-2020, made under Section 48 of the Planning and Development Acts 2000-2011 (as amended).  
The contribution shall be paid prior to commencement of development, or in such phased payments as the planning authority may facilitate. Contributions

shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced as outlined in the South Dublin County Council Development Contribution Scheme 2016-2020.

REASON: The provision of such facilities will facilitate the proposed development. It is considered reasonable that the payment of a contribution be required, in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

#### 4.0 **Planning History**

There is an extensive planning history attaching to this retail park.

**S97A/0523:** This would appear to be the parent permission – insofar as it refers to revision to previously approved permissions ref. PL 06S.093483, S95A/0127, S95A/0414, S95A/0639, S96A/0306 and S96A/0623 for District Town Centre Development – including provision of 15 no. retail warehousing units – all at Quarryvale [now Liffey Valley].

**SD05A/0577:** Permission granted for coffee dock area of 34m<sup>2</sup> within the existing retail area.

#### 5.0 **Policy and Context**

##### 5.1. **Development Plan**

The relevant document is the South Dublin County Council Development Plan 2016-2022. The site is zoned objective 'MRC' – "To protect, improve and provide for the future development of a Major Retail Centre". Garden centre and café uses are 'permitted in principle'.

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

The site is neither within nor immediately abutting any nature conservation area.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The appeal from TBP Planning and Development Consultants, agent on behalf of the applicant, CDS (Superstores International) Ltd, received by An Bord Pleanála on 16<sup>th</sup> January 2019, relates to condition no. 9 only. It can be summarised in bullet point format as follows-

- Condition 9 required payment of a development contribution of €72,235.38. The contribution was calculated by applying the rate of €79.73 per sq.m to the 707m<sup>2</sup> extended floor area of the garden centre, and 199m<sup>2</sup> of ancillary café.
- The contribution should not have been applied to the proposed café, as this is a change-of-use, from one commercial use to another (199m<sup>2</sup>).
- A development contribution has already been paid for this floor area by way of permission ref. S97A/0523 – which required payment of a development contribution of £1,067,931 punts, by way of condition no. 20.
- The café is ancillary to the retail warehouse use.
- The SDCC Development Contribution Scheme 2016-2020, was applied. Section 10 of the Scheme provides for exemptions which include change-of-use – where contributions were paid in respect of the former use.
- The contribution should be reduced to at least €55,369.11.
- No contribution should have been applied for the garden centre area. The development will enclose the current external garden centre area. The garden centre forms part of the overall sales space of the unit. Goods are displayed for retail sale – just as they are within the store. Although they would not have applied at the time of permission for the retail park (S97A/0523), the Retail Planning Guidelines 2000 (as amended in 2005 and 2012), included a cap on individual retail warehouse units of 6,000m<sup>2</sup> gross, including any ancillary garden centre (RPG p.37). The garden centre was considered as part of the gross floorspace of the unit.
- The applicant is not extending the retail sales area – rather covering it in.

- The applicant was forced by the PA to apply for an “extension”, as a previous application (SD18A/0332) was invalidated, as it included in its description of development – “enclosure of the existing garden centre area”.
- Enclosure is a more accurate description than extension. The applicant was forced to use the word “extension”.
- The appellant contends that the contribution paid under condition no. 20 of permission ref. SD97A/0523, applied to the garden centre portion of Unit 4/5. The applicant is now being double-charged.
- Condition no. 9 should be removed by the Board.

6.1.2. The appeal is accompanied by the following documentation of note-

- Copy of permission ref. S97A/0523 – dated 9<sup>th</sup> October 1997.
- Letter from SDCC to O’Callaghan Properties Ltd. (dated 13<sup>th</sup> October 1999) – stating that all financial contribution conditions, insofar as they apply to the Retail Park West development, have been complied with.

## 6.2. Planning Authority Response

The response of SDCC, received by An Bord Pleanála on 11<sup>th</sup> February 2019, can be summarised in bullet point format as follows-

- The total development area is  $707\text{m}^2$  and  $199\text{m}^2 = 906\text{m}^2$ .
- There was no proof of payment of a development contribution for the  $199\text{m}^2$  change-of-use café area, when the application was made to the PA.
- The rate used was €79.73 per sq.m.
- However, following the submission of proof of payment for the café area of  $199\text{m}^2$ , the net area for the application of financial contribution is  $707\text{m}^2$ .
- The revised contribution is  $707\text{m}^2 \times €79.73$  per sq.m = €56,369.11.

## 6.3. Further Responses

6.3.1. The response of SDCC, received by An Bord Pleanála on 11<sup>th</sup> February 2019, was referred to the appellant for comment, on or before 19<sup>th</sup> March 2019.

6.3.2. The response of TBP Planning and Development Consultants, agent on behalf of the applicant, CDS (Superstores International) Ltd, received by An Bord Pleanála on 13<sup>th</sup> March 2019, can be summarised in bullet point format as follows-

- The applicant is in agreement with the new position adopted by SDCC, in relation to the contribution for the café element of the development.
- In relation to the garden centre element, the applicant maintains its case, that the Development Contribution Scheme does not apply. Contributions in relation to the overall retail park were paid – as set out in the original grounds of appeal.

## 7.0 Assessment

7.1. This appeal relates to a financial contribution. The 1<sup>st</sup> Party appeal is against condition no. 9 only. Section 48 of the Planning and Development Act, 2000, as amended, states as follows-

(1) A planning authority may, when granting planning permission under section 34, include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided, or that it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities).

(10)(a) Subject to paragraph (b), no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with a scheme made under this section.

(10)(b) An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

(10)(c) Notwithstanding section 34(11), where an appeal is brought in accordance with paragraph (b), and no other appeal of the decision of the planning authority is brought by any other person under section 37, the authority shall make the grant of permission as soon as may be after the

expiration of the period for the taking of an appeal, provided that the person who takes the appeal in accordance with paragraph (b) furnishes to the planning authority security for payment for the full amount of the contribution as specified in the condition.

The effect of section 48(10)(c) is to restrict the Board to consideration of the condition appealed, and the Board cannot look at the appeal *de novo*. The applicant may already have given the PA security for payment of the amount, and construction/development may have commenced, by the time the Board comes to adjudicate on the appeal now before it.

- 7.2. It is noted that the response of SDCC to the grounds of appeal submitted, in relation to the café element, is to acknowledge the case made by the appellant, and to recommend that the Board reduce the amount of contribution – to reflect the fact that the café element relates to a change-of-use. I noted, on the date of site inspection, that the proposed café area is currently in use for retail sales. I do not propose to comment further on this element of the proposed development: the floor area for calculation of the relevant development contribution payable, should be reduced by 199m<sup>2</sup>.
- 7.3. The garden centre element of this appeal is located externally; and it is proposed to roof-over this area. The applicant contends that the external sales area of the garden centre was included in the development contribution for the parent permission for the overall retail park development – which contribution was paid in full. The appellant has submitted no details of the relevant planning permission(s); has not indicated the relevant development contribution conditions(s); and has not given any clear indication if relevant contribution condition(s) were paid in full. The applicant simply attests that the outdoor sales area of the garden centre was included in the original calculation of the floor area of the retail park development, for the purposes of calculating the relevant development contribution. SDCC has not given any indication as to whether the outdoor garden centre retail area was or was not included in the calculation of the retail floor area of the overall retail park development.
- 7.4. There is an extensive planning history attaching to this retail park. Reference is made to planning permission ref. SD05A/0577 in the planning application form,

submitted by the applicant to SDCC. This relates to provision of a coffee dock of 34m<sup>2</sup> within the Atlantic Homecare building at units 5-8. An external garden centre area is shown on the plans submitted. The 1<sup>st</sup> Party appeal includes a letter from SDCC (dated 13<sup>th</sup> October 1999), confirming that all conditions of planning permissions relating to financial contributions have been complied with – insofar as they relate to the Retail Park West element of the development. This is not a clear indication that a development contribution was ever levied for the external garden centre area.

- 7.5. Permission ref. S97A/0523 relates to a grant of permission, on 15<sup>th</sup> December 1997, for revisions to previously approved permissions – including provision of 15 no. retail warehousing units. Documents in relation to this file would not appear to be available to view on the website of SDCC. In any event, it should not be incumbent on the Board to trawl through extensive planning history files, where the Board could not be aware or informed, as to whether permissions had been implemented (in part or in full); whether conditions imposed had been complied with; and whether unauthorised development had taken place on any site.
- 7.6. The inclusion of a cap in the Retail Planning Guidelines 2000 (as amended in 2005 and 2012), on individual retail warehouse units of 6,000m<sup>2</sup> gross, including any ancillary garden centre, is not a relevant consideration. Neither is the fact that the Guidelines consider ancillary garden centre areas to be part of a retail warehouse, for the purposes of calculating the retail cap of 6,000m<sup>2</sup>. The permission for this development was granted before the Guidelines came into force. What is at issue, is whether the external garden centre area was included in the sq.m floor area for the overall development, for the purposes of calculating the area which would be subject to the relevant development contribution requirement.
- 7.7. I note that within the Development Contribution Scheme, a reduction in the development contribution rate is applied for vehicle display area spaces (for the purpose of sale) – to be charged at 10% of the non-residential rate, on a per space basis. Similarly, open storage/hard surface non-residential space development (uncovered storage space) is liable for a 10% rate of the relevant non-residential rate. These provisions are outlined at Section 10(viii) & (ix) of the Scheme. The garden centre sales area is an outdoor sales/display form of commercial development. Other commercial developments which have external sales area



would be builder's providers, fuel merchants, caravan/boat sales, timber mills, concrete products, and agricultural providers. There could be no sense, where the sq.m basis of such sales could be equivalent to the sq.m basis of an enclosed building – which would be readily adaptable to change-of-use to other more intensive forms of retail sales. This is acknowledged in the Development Contribution Scheme – as referenced above. For this reason, I would agree with the interpretation of the development contribution applied by SDCC – particularly in the absence of any concrete evidence that a development contribution on a sq.m basis was already applied to the external garden centre area of units 5-8.

7.8. The South Dublin County Council Development Contribution Scheme 2016-2020, indicates an updated rate of €85.47 per sq.m for commercial development – as of 1<sup>st</sup> January 2019. Condition 9 specifically states that- “Contributions shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced”. I note that this rate of €85.47 per sq.m is an increase on the rate of €79.73 per sq.m, which was included by way of condition no. 9 (relating to the year the Notification of decision to grant permission was made – 2018). Any revision to the condition, as notified by the Board, should be cognisant of this change in the rate per sq.m.

## 8.0 Recommendation

I recommend that the planning authority be directed to amend condition no. 9 to reflect the change-of-use nature of the proposed café area, and to reflect the increased retail floor sales area which the extension into the outdoor garden centre area would represent.

## 9.0 Reasons and Considerations

Having regard to:

- (a) the provisions of the South Dublin County Development Contribution Scheme 2016-2020, which does not provide for any exemption or reduction in payment for an extension to an existing retail warehouse,
- (b) the submissions made in the appeal,

- (c) the acknowledgement by South Dublin County Council that the café element of the proposed development comprises a change-of-use, within the relevant commercial development class, and
- (d) the absence of any indication that a development contribution was paid on a per sq.m basis, for the external garden centre area of units 5-8 (equivalent to the development contribution rate paid per sq.m for internal retail warehouse space),

it is considered that condition no. 9 should be amended as follows-

The developer shall pay to the planning authority, a financial contribution for the proposed 707m<sup>2</sup> extension to units 5-8; in respect of public infrastructure and facilities benefiting development within the area of the planning authority, that it is provided, or intended to be provided by or on behalf of the authority, in accordance with the terms of the Development Contribution Scheme 2016-2020, 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. Contributions shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced, as outlined in the South Dublin County Council Development Contribution Scheme 2016-2020.

**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.

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**Michael Dillon,  
Planning Inspectorate.**

**1<sup>st</sup> April 2019.**