



An
Bord
Pleanála

Inspector's Report

ABP-304205-19

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| Development | Construction of a production and distribution warehouse building of 7939 sq.m |
| Location | M1 Business Park, Courtlough, Balbriggan, Co. Dublin |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | F18A/0593 |
| Applicants | Motorcombe Ltd |
| Type of Application | Permission. |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | First Party |
| Appellants | Motorcombe Ltd |
| Date of Site Inspection | 4 July 2019 |
| Inspector | Dolores McCague |

1.0 Site Location and Description

- 1.1.1. The site is located at Courtlough, Balbriggan, Co. Dublin, on pasture land, east of the M1 motorway and the R132, which accesses the motorway at junction 5 which is close by. From OSI aerial photos, this section of the M1 motorway was built between 1995 and 2000.
- 1.1.2. The location is described as a business park but there is no evidence of this on the ground. It is located c3km from Balbriggan.
- 1.1.3. The site is rectangular in shape, comprising one field and portions of two other fields, with the short axis roughly parallel to the road, running partly along the road and partly along a triangular portion of other land occupied by an agricultural building between the site and the road.
- 1.1.4. The R132 runs east and close to the M1 motorway in this area. A roundabout on the R132, c 200m north of the subject site, provides access to junction 5, a grade separated interchange. North of the roundabout, land west of the R132, i.e. between the road and the motorway, has been developed since 2005, with industrial / warehousing type buildings.
- 1.1.5. The site is given as 4.6 hectares.

2.0 Proposed Development

- 2.1.1. The proposed development is the construction of a production and distribution warehouse building of 7,939 sq m with loading bays and a yard for articulated lorries; and attached 2 storey office building of 1,385 sq m with first floor terrace and setback roof plant enclosure of 68 sq m, external single storey plant enclosure at ground level of 622 sq m, separate single storey ESB substation, electrical switch room and transformer room at ground level of 49 sq m; landscaped surface staff and visitor car parking; covered bike parking, smoking shelter, 2 no. vehicular entrances from the access road, one of which is also a pedestrian entrance; signage on building and at entrances; boundary fencing and extensive boundary landscaping and all other associated site services and utilities necessary to facilitate the site development.
- 2.2. The total floor area is given as 10,064 sq m.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 19 conditions including:

Condition 19

The developer shall pay the sum of €670, 769 updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the planning authority as a contribution that was and/or is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the planning authority as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments and the provision of security to ensure payment shall be agreed in writing with the planning authority prior to commencement of development.

Reason: 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 which is provided by, or on behalf of the Local Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The initial planning report, recommending a request for further information which issued, includes:

- Zoned GE General Employment, Provide opportunities for general enterprise and employment.
- NTA Rural cycle route to the west.
- Objective 12 states development on these lands, if any, will be restricted by the extent of flooding on the lands and will be further informed by the outcome of the options appraisal process which forms part of the FEMFRAMS study.

3.2.3. Other Technical Reports

3.2.4. Parks Division –

- Further information re, tree survey, protection of watercourse, boundary treatment, materials and finishes, and planting.

3.2.5. Water Services –

- Premature pending resolution of the items raised under F18A/0565; 4.61 is the site area whereas an impermeable area of 1.948 has been used in the calculations, required to substantiate; rainwater harvesting design is queried.

3.2.6. Transportation Planning Section –

- Located in a 80km/hr speed limit. There is a concurrent application F18A/0565 to provide infrastructure for lands to the north which will provide the access road for this development including the access off the R 132.
- Parking – further details required.
- Sightlines - further details required.
- A Traffic and Transport Assessment has been provided. It indicates that the proposed development is the relocation of an existing business from Swords and the impact on the road network is the same as the existing use.
- A Mobility Management Plan submitted is acceptable.
- Further information required.

3.3. Prescribed Bodies

- 3.3.1. TII – insufficient information has been provided to demonstrate that the proposed development will not have a detrimental impact on the capacity, safety or operational efficiency of the national road network in the vicinity of the site.

At variance with Spatial Planning and National Roads Guidelines. A Traffic and Transport Assessment should be carried out.

- 3.3.2. Irish Water – conditions:

3.4. Further Information Request

- 3.5. A further information request issued on 4 points, which reflected the concerns raised in reports.

3.6. Further Reports

- 3.6.1. The second Parks Division report recommended conditions.
- 3.6.2. The second Water Services report recommended conditions.
- 3.6.3. The second Transportation Planning Section report recommended conditions.
- 3.6.4. The second TII report recommended conditions.
- 3.6.5. The second planning report recommending permission includes: responses to the further information request are acceptable.

4.0 Planning History

F18A/0565 Permission granted for the demolition of an existing single storey derelict building and clearance of existing site vegetation to allow for the construction of an access road, junction treatments works with the R132, pedestrian facilities, surface water drainage, foul water drainage, water main infrastructure, flood attenuation basin, landscaping and all other associated site services and utilities necessary to facilitate the site development. This site adjoins to the north and a narrow strip along the eastern and part of the southern boundary (hedgerow), and includes an access road to the north which serves the subject site.

F08A/0127 (& PL.06F.231381 Section 48 Appeal) - Permission granted for the construction of warehouse and distribution development, including ancillary offices and staff facilities totalling 36,190.9m² approximately comprising 12 No. units ranging in size between 1,027m² and 5786m² approximately, in 10 No. individual buildings; new pedestrian and vehicular access/egress points to the former N1 Dublin to Balbriggan Road; internal circulation roads and service areas; 533 No. car parking spaces; a site development sign at the vehicular entrance from the public road; ESB MV substations; waste storage buildings and all associated site development and landscaping works required to facilitate the development. This permission was not implemented and has expired.

PA Reg. Ref. F01A/0765 - Permission granted for the primary infrastructure to serve all the six sites (Sites A-F).

PA Reg. Ref. F01A/0575 - Permission granted for warehousing and distribution buildings on Site B

PA Reg. Ref. F01A/0476 - Permission granted for light industrial/warehousing buildings on Site C.

PA Reg. Ref. F01A/0777/ ABP Ref. PL06F.129151 – A decision to grant permission for light industrial/ warehousing buildings on Site E and refuse permission for development on sites D and F. An Bord Pleanála, granted permission for development on Site E and refused for development on sites D and F. This permission was not implemented and has expired.

PA Reg. Ref. F01A/1383 (& ABP Ref. PL 06F.128755 contribution appeal) - Permission granted for alterations to road network to facilitate access to the proposed light industrial, warehousing and motorway services development including roundabout and access points to Area F, roundabout and access point to the proposed motorway services development on Area C, road widening to facilitate the construction of 2 access points to Area D and E, and construction of 2 access points to Area B. A first party appeal solely against financial contributions No. 6, 9, 12, and 13 was submitted to the Board. The Board removed conditions 9, 12, and 13 and amended condition 6 which required a financial contribution towards roadside planting.

F98A/0394 outline permission granted for a motorway service centre including 150 bedroom motel with restaurant and bar, two petrol filling stations, a truck diesel filling station, 150 seat fast food restaurant, a 40 seat truckers café, a service centre/tourist shop, a car and truck servicing centre, truckers showers and restrooms, a car showroom and sewage treatment system.

5.0 Policy Context

5.1. Development Plan

5.1.1. Fingal County Development Plan 2017-2023 is the operative plan, relevant provisions include:

- Zoned GE General Employment, Provide opportunities for general enterprise and employment.

In the context of the importance of the agri-food sector in the economy of the county the following objectives are included in chapter 6 of the plan:

Objective ED73 Engage and collaborate with key stakeholders, relevant agencies, sectoral representatives and local communities to develop the agri-food sector in Fingal, to promote and showcase the agri-food sector, including supporting events such as the Flavours of Fingal, and to ensure that the economic potential of the sector is secured for the benefit of the local economy, and national economy.

Objective ED74 Ensure the economic benefits associated with promoting the County's agri-food sector are balanced with due consideration for the conservation and protection of the rural environment.

Objective ED75 Promote the growth of the agri-food sector in Fingal by responding to the varying needs and requirements of the different components within the sector and by creating high quality built environments offering a range of building sizes and formats, supported by the targeted provision of necessary infrastructure.

Objective ED76 Encourage and provide opportunities specifically linked to food, horticulture, agriculture and the development of value added opportunities in these areas.

The plan notes the significant tradition of market gardening in the area.

5.2. Fingal County Council Development Contribution Scheme 2016 -2020 (under Section 48, Planning and Development Act, 2000, as amended)

(a) Under the Scheme, the contributions to be paid (except where an Exemption or Reduction applies) in respect of the different classes of public infrastructure and facilities are set out in tabular form. The contribution is €59.46 per square metre of

Industrial/Commercial class of Development (€76.14 per square metre of Residential Development).

Section 10 (i) sets out exemptions under the Scheme;

Item (i) - Agricultural Buildings, glasshouses and poly tunnels are exempt. Buildings associated with the processing, distribution, supply or sale of fruit, vegetables, food or any agri or market gardening products are subject to a 50% reduction in the commercial rate.

Item (l) Signage, shop fronts, entrance gates, railings, fencing, antennae structures, bus shelters, switch rooms, substations, power lines etc.

5.3. Natural Heritage Designations

- 5.3.1. The nearest Natura sites are Rogerstown Estuary SPA, site code 004015, Rogerstown Estuary SAC, site code 000208, both located c 6km, straight line distance, from the subject site and Skerries Islands SPA, site code 004122, located c 7km, straight line distance from the subject site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Downey Planning Consultants have submitted this appeal on behalf of the First Party. The grounds includes:
- They are appealing condition no 19 and request that the Board under section 8.11 and 8.12 of the Development Management Guidelines do not assess the overall development 'de novo'.

- The primary intended use of the proposed production facility is as a banana ripening and distribution centre. The building will also contain a driver's facility and offices all or which are intrinsically connected with the production facility, which will employ up to 120 persons.
- The ground floor contains offices related to the operation of the production facility and staff welfare facilities. The canteen is for staff. The staff facilities have their own front entrance located in the middle of the building and marked by a cantilevered entrance canopy. A formal entrance and reception area on the north side leads to proposed executive corporate offices on the first floor. The offices and staff facilities are intrinsically linked and interconnected to the main warehouse and production facility.
- The council have acknowledged the error in calculating the entire building at the full commercial rate, they are only proposing to apply the 50% discount to the warehouse/production element of the building.
- It is evident that the entire building is a single planning unit and the 50% reduction should be applied to the overall building.
- The appropriate contribution is €335,384.28.
- They refer to the exemption provisions with emphasis: 'Buildings associated with the processing, distribution, supply or sale of fruit, vegetables, food or any agri or market gardening products are subject to a 50% reduction in the commercial rate'.

6.1.1.1. **Planning Authority Response**

6.1.2. The planning authority has responded to the grounds of appeal. The response includes:

- The rate applied did not provide for a reduction of 50% for the warehouse element which they accept is eligible for the reduction.
- The rate applied was the residential rate rather than the commercial and a corrected calculation is provided.
- They state that the appropriate contribution is €385,203.
- In a separate letter the planning authority refers to typographical errors in condition no 5, which are unrelated to the condition the subject of this appeal.

7.0 Assessment

- 7.1.1. This is a first party appeal against a single condition. Although it is an appeal against a development contribution it is not brought under the Section 48 provisions. Under S 139 of the Planning and Development Act the Board is given the discretion to decide whether or not to consider the application 'de novo'. In my opinion since there is only one appeal, an appeal against a single condition, and having regard to the nature of the condition, the Board should decide not to consider the application 'de novo'.
- 7.1.2. The following assessment considers only condition 19, which requires the developer to pay the sum of €670, 769 as a development contribution.
- 7.1.3. The planning authority has corrected errors in the contribution condition, by now applying the commercial rate in lieu of the incorrectly applied residential rate; and by allowing an exemption of 50% of this rate in respect of part of the floor area, i.e. the warehouse element. In addition they indicate that an area of 722 sq m, not specified as to location or use, is exempted from any development charge. They assess the contribution payable on the total floor area of 10046m² less 722 m² as €35.97m² (50% of the full rate) for 7939 m² (warehouse) – (€285.566) and €71.94m² for 1385m² (offices) - €99,637), total €385,203.
- 7.1.4. The first party has supplied a copy of the planning authority's (corrected) breakdown of the S 48 contribution, which includes an exempted area 722 m² – ESB substation, signage and external plant enclosure 10(I).
- 7.1.5. The first party have provided their assessment of the contribution payable as total floor area 10046m² less 722 m² exempted area – 9324 m² all at a rate of €35.97m² (50% of the full rate) = €335,384.28.
- 7.1.6. I note that the schedule, given in the Architect's Design Statement, gives the areas as: warehouse - ground floor 7,939m², operations office - ground floor 722m² first floor - 663m², internal plant 49m², and external plant 622m² ground floor and 68m² roof (total 690m²); which adds up to a total floor area of 10,063m². There is a small discrepancy between this figure and the figure 10046m² stated in the application form. The figure of 10046m² is the figure used in both assessments and it seems reasonable to use this figure.
- 7.1.7. I note that the exemption in 10(I) includes switch rooms and substations. I note that the external plant areas at ground level and roof level are uncovered areas. I note

that there is no disagreement between the parties regarding the extent of the floor area (722 m²) to which the exemption from any development charge is to apply; therefore I consider it reasonable to accept an exempted area of 722 m².

7.1.8. The planning authority's acceptance of the reduced rate of 50% of the commercial rate in respect of the warehouse area reduces the area of dispute to the remainder of the building an area of 1385m² where the application of the full commercial rate is disputed.

7.1.9. The grounds of appeal, quoting from the Development Contribution Scheme, emphasises the use of the term 'associated with' in the relevant exemption.

7.1.10. This paragraph of the Development Contribution Scheme reads as follows:

Section 10 exemptions:

Item (i) - Agricultural Buildings, glasshouses and poly tunnels are exempt. Buildings associated with the processing, distribution, supply or sale of fruit, vegetables, food or any agri or market gardening products are subject to a 50% reduction in the commercial rate.

7.1.11. In my opinion the context for this exemption is the agricultural production and market gardening activities carried out in the county of Fingal and adjoining areas; these areas are important for food production as reflected in the County Development Plan. For the exemption to refer to the general distribution, supply or sale of food, would allow an argument to be made to include supermarkets, their distribution networks and corporate headquarters in the exempted category, which would in my opinion lack any policy basis in the context of the development plan.

7.1.12. The proposed development is stated to be intended for banana ripening and distribution. Bananas are an imported food product and their ripening and distribution has no direct relationship with agricultural production or market gardening in this area.

7.1.13. The planning authority initially applied the full contribution to the warehouse area which seems to me to be a reasonable approach. In my opinion, subject to correcting the errors made in the application of rates the planning authority's calculations are acceptable and the application of a 50% reduction to any of the chargeable floor area is not appropriate. The figure would thus be €554,405.

- 7.1.14. The Board should note that the planning authority propose the application of the 50% exemption to the warehouse. Should the Board consider this reasonable the figure for the levy would be €385,203.
- 7.1.15. I consider that the argument made in the grounds of appeal that the agricultural exemption should extend to the staff areas and the corporate offices, would be completely inappropriate.

8.0 Recommendation

Having regard to the above assessment, I would suggest that the following Draft Decision Order:

The Board considers, based on reasons and considerations set out below, that the terms of Fingal County Council General Contribution Scheme 2016-2020 have not been properly applied in respect of condition No. 19. The Board has decided that the condition should be amended as follows:

The developer shall pay to the planning authority a financial contribution of €554,405 (five hundred and fifty four thousand, four hundred and five 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. The contribution shall be paid prior to the 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 the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 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

In relation to condition No. 19 the Board considered that the Fingal County Council Development Contribution Scheme 2016 -2020 had not been properly applied in respect of condition No. 19 as the residential rate was applied

condition 19 should be amended accordingly.

Planning Inspector

2019

Appendices

Appendix 1 Photographs

Appendix 2 Fingal County Development Plan 2017-2023 extract.

Appendix 3 Fingal County Council Development Contribution Scheme 2016 -2020,
extract