



An
Bord
Pleanála

Inspector's Report ABP 305951-19

Development	Retention of sub-division of light industrial unit into two separate light industrial units.
Location	Units 16 & 17, Annacotty Business Park, Annacotty, Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	19/594
Applicant(s)	Snowvale Ltd.
Type of Application	Planning permission
Planning Authority Decision	Grant permission
Type of Appeal	First Party V condition
Appellant(s)	Snowvale Ltd.
Observer(s)	None
Date of Site Inspection	29th January 2020
Inspector	Fergal O'Bric

1.0 Site Location and Description

- 1.1.** The appeal site is located within the Annacotty Business Park approximately 700 metres to the south-east of the M7 and 2.1 kilometres south -east of Annacotty. The entrance to the business park which is approximately 200 metres west of the appeal site. The business park accommodates a number of existing warehousing, industrial and commercial uses. Access to the two units is from the internal service roads within the business park.
- 1.2.** Access to the industrial estate is from the R506 via a barriered entrance. The R506 has a speed limit of 60kph with no footpath or public lighting.
- 1.3.** Unit 17 is occupied by Infra gel who manufacture gel for use in association with fibre optic cable, while unit 16 is presently vacant. It is stated that unit 16 is to be occupied in the near future as a logistics/warehouse unit.

2.0 Proposed Development

- 2.1.** The proposal seeks the retention of the subdivision of an existing light industrial unit into two separate light industrial units, one with a floor area of approximately 1,360 square metres (sq. m.) and the other with a floor area of approximately 2,950 sq m. The floor area of the entire light industrial unit is 4,310 sq.m..
- 2.2.** It is stated that the separate light industrial units do not result in the creation of any additional floorspace.
- 2.3.** Further Information was submitted to the Planning Authority on the 30th September 2019. This addressed the following: Details of development contributions previously paid on site; existing and proposed uses within the units; details of staffing numbers and the level of car parking requirements associated with each unit.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted planning permission subject to five standard conditions. The relevant condition is noted below: -

Condition 2: financial contribution of €172,400 in respect of public infrastructure and facilities.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer recommended that planning permission be granted following clarification on the matters raised within the further information request.

3.2.2. Other Technical Reports

Chief Fire Officer: No objections, subject to conditions.

Operations and Maintenance Section: No objections, subject to conditions.

4.0 Planning History

Subject Site:

Planning Authority reference number P70/4277: In 1970 planning permission was granted for the erection of a factory unit.

Planning Authority reference number P79/16197: In 1979 planning permission was granted for the renovation of an existing building.

Planning Authority reference number P88/28388: In 1988 planning permission was granted for the erection of an electrical services building and ancillary works.

Planning Authority reference number P98/1564: In 1988 planning permission was granted for the erection of four oil tanks and a bund area.

Planning Authority reference number P00/1396: In 2000 planning permission was granted for the erection of an extension to an existing warehouse.

Adjoining sites:

Planning Authority reference number P80/18074. In 1980 planning permission was granted for the construction of an advanced technology building.

Planning Authority reference number P18/1002 and An Bord Pleanala reference number ABP-304114-19. In 2019 planning permission was granted for the construction of a logistics centre facility incorporating offices and warehousing.

5.0 Policy Context

5.1. Development Plan

Limerick County Development Plan, 2010 – 2016 (as extended).

The appeal site is located within the established Annacotty Business Park. The following objective is considered relevant:

Objective ED O8: Annacotty Business Park: It is the objective of the Council to facilitate the sustainable development of Annacotty Business Park, of a scale, phasing and character compatible with surrounding land uses, and road network. 42.38 hectares of land is zoned in and around the Business Park for this purpose, which is indicated on Map 5.2. All buildings and associated services shall be contained within this area, and a buffer zone, of width of 20 metres abutting the undeveloped north-western portion of the site, be suitably landscaped to screen development from dwellings on the Clyduff road. An appropriate buffer zone must be considered for any future planning application on these lands in the interests of protecting the residential amenity of the area.

Objective IN O15: Specific improvements and additions to the strategic regional road network: It is an objective of the Council to give priority to the protection and improvement of sections of the Strategic Regional road network including the following: d) R506 Annacotty industrial estate to Cappaghmore;

Section 10.6.1 Industrial/Commercial Development of Chapter 10 – Development Management Guidelines is also considered relevant.

The Limerick City and County Development Contribution Scheme (DCS) 2017-2021.

Development Management Guidelines, Dept of Environment, Heritage and Local Government 2007 (Section 7.12)

Development Contribution Guidelines Dept of Environment, Community and Local Government, 2013.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal was submitted by Donal McNally Architects on behalf of the applicant. The appeal is specifically against condition number two only, which requires the payment of a development contribution in accordance with the General Development Contribution Scheme. The appeal submission includes additional details, including notifications of grants of planning permissions, planning conditions pertaining to the planning history files and confirmation that development contributions were paid on planning reference number P79/16197. The grounds of appeal may be summarised as follows:

6.1.1. No additional floor space proposed

The financial contribution has been calculated on the basis of €40 per square metre for the area of the newly formed retail unit within the existing retail unit which is stated as 4,310 sq. m.

The levying of this contribution is in breach of the General Development Contribution Scheme as no additional floor area is proposed. The GDCS sets out within Paragraph 8 that; internal layout changes are considered to be exempt from the requirement to pay a development contribution where no additional floor area is proposed.

6.1.2. Double charging

The appellants state that development contributions were previously levied on this existing unit under planning reference number 79/16197. This contribution amounted to £30,000.00 towards the improvement of the county road between the National Primary route and the site entrance. Under planning reference number P80/18074 a further £5,000.00 towards the improvement of the county roads was levied. The local authority state that they have no record of this development contribution being paid.

The latter planning permission pertained to the development of an advanced factory building within the business park. The appellants state that as the existing units (16 and 17) have the benefit of planning permission for light industrial uses, they are not increasing the floor area of the unit, no intensification of use or change of use is proposed, therefore there should be no requirement to pay additional development contributions in this instance. They also state that there is no provision within the Limerick DCS to justify these additional development contributions.

6.2. Planning Authority Response to grounds of appeal

6.2.1. The planning authority has not responded to the grounds of appeal.

7.0 Assessment

7.1. Introduction

It is noted that the appellant does not raise any concern regarding the grant of permission nor four of the five planning conditions. Therefore, this assessment will focus exclusively on condition no 2, the development contribution of €172,400.

7.1.1. Section 48 (10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be brought against a development contribution condition where the applicant considers that the terms of the General Development

Contribution Scheme have not been properly applied. Therefore, the Board, is restricted to considering the merits of condition No. 2 only and cannot consider the proposed development *de novo*. I have therefore confined my assessment to the terms of the Limerick City and County Council Development Contribution Scheme, 2017-21.

I consider the key issues in determining this appeal are as follows:

- Compliance with the terms of the Development Contributions Scheme.
- Double charging.

7.2. Compliance with the terms of the General Development Contribution Scheme

- 7.2.1.** Condition 2 requires the payment of a development contribution of €172,400 in respect of public infrastructure and facilities benefitting development in the area in accordance with the terms of the adopted Limerick City and County General Development Contribution Scheme, made under Section 48(2)(a) of the Act.
- 7.2.2.** Further guidance on the matter is provided in the Development Management Guidelines, 2007 (Section 7.12) and in the Development Contribution Guidelines 2013.
- 7.2.3.** The Limerick City and County Development Contribution Scheme (DCS) 2017-2021 makes provision for exemptions from development contributions in certain circumstances which are set out in Paragraph 8. One of the categories is as follows:
- Internal layout changes where no additional floor area is proposed.

The current application does not increase the floor area of the unit but does create a new planning unit within Unit 16. However, the DCS is silent on the creation of new planning units. There is, however, provision for the payment of contributions where there is a change of use in certain circumstances. At paragraph 10 it is stated:

Where a proposed change of use does not lead to the need for new or upgraded infrastructure/services or a significant intensification of demand placed on existing infrastructure, and where a contribution was paid previously for the existing use, the development shall be exempt from paying a contribution. In all other circumstances, the change of use shall be charged at

the rate appropriate to the new use, subject to a reduction in respect of the contribution rate already paid for the existing use.

It is noted that the applicant has confirmed that the use of the unit would be as permitted, i.e. as light industrial use and that the development would be governed by the terms of parent permission (70/4277). It is considered, therefore, that the proposed development is unlikely to result in a significant intensification of demand or for an upgrading of existing infrastructure or services.

7.3. Double charging

The applicant has advised that a development contribution was levied under planning permission Reg. Ref. 79/16197 for this element of the business park development. The DCS clearly states that where a contribution was paid previously for the existing use, the change of use development or replacement application shall be exempt from paying a contribution. However, it is further stated: -

10. Change of use applications where contributions have not been paid previously will be subject to contributions at the appropriate rate. Applicant's agents shall provide evidence of payment at application stage in order to expedite assessment and avail of this provision.
12. Replacement applications where the contributions have not been paid previously will be subject to contributions at the appropriate rate. Applicant's agents shall provide evidence of payment at application stage in order to expedite assessment and avail of this provision.

7.3.1. The appellant considers that the requirement to pay a Development Contribution in this instance, constitutes double charging. The Development Contribution Guidelines 2013 state in respect of double charging, that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

7.3.2. The planning authority requested the applicants demonstrate that the development contributions had been fully paid in respect of the light industrial units, the subject of the appeal as part of the further information request. It is apparent from the information response that documentation received from Limerick County Council, dated the 12th September 2002, confirms that the financial contributions in relation to

planning reference number P79/16197 have been fully paid. The Planning Authority have not stated that the absence of development contributions due was the reason behind the imposition of a development contribution in this instance. The Planning Authority state that a change of use has occurred through the sub-division of the original unit permitted on site and that this is the justification of development contributions is based on this premise. I would not concur with this assessment by the planning authority, based on the current Limerick DCS and based on the information provided by the appellants within their further information response and as detailed within Section 3.2.2 above.

- 7.3.3.** I am satisfied that no additional floor area has been developed and no change of used has occurred on site. It is considered, therefore, that the imposition of a second levy in respect of the same floor area would amount to double charging in this instance. I am satisfied that the appellant has provided evidence that the original development contribution was paid in respect of the planning permission (79/16197). I consider, therefore, that the planning authority is not justified in applying a further contribution in respect of the current proposal.

8.0 Recommendation

- 8.1.** I recommend that the Board directs the planning authority to omit Condition 2, for the reasons and considerations set out below.

9.0 Reasons and Considerations

The current Limerick City and County Development Contribution Scheme provides for exemptions from the requirement to pay a development contribution in respect of internal layout changes where no additional floor area is proposed; a change of use where the development would not lead to a need for new/upgraded infrastructure/services or a significant intensification of demand for existing services; or where a development contribution has previously been paid in respect of the existing use. It is considered that the developer has demonstrated that no additional floor area has been constructed and that the development contribution previously levied in respect of the parent permission and existing uses on the site has been paid. The development,

therefore, is exempt from a development contribution in accordance with the current Development Contributions Scheme.

Fergal O'Bric
Planning Inspector

19th February 2020