



An
Bord
Pleanála

Inspector's Report

ABP-305962-19

Development	The proposed construction of a Data Centre (accommodating Data Halls, Plant and Equipment Rooms); associated External Plant area and all associated site works.
Location	Backweston Campus , Ballymadeer, Celbridge, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	19164
Applicant(s)	Office of Government Chief Information Officer
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party
Appellant(s)	Office of Government Chief Information Officer
Observer(s)	None

Date of Site Inspection

19th February, 2020

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The site is located within an existing business campus located at Backweston approximately 2km east of Celbridge and to the south east of the junction with the R403 and R404 regional roads. Weston aerodrome is located approximately 1km to the north of the site and the site is close to the boundary between counties Kildare and South Dublin.
- 1.2. The site of the proposed data centre is located at the southern end of the existing Backweston Business Campus which currently houses the State Laboratory, agricultural laboratories, food safety offices and a shared facilities building. Information presented as part of the Planning Report submitted with the application indicates that c.800 staff are employed across the activities on the Backweston Campus site.
- 1.3. The site is well landscaped and access is from the L5050 local road that runs south from the R403 / R404 junction and along the western boundary of the site. The site is well screened by existing boundary planting when viewed from the L5050 and the R403 to the north.
- 1.4. The site has a stated area of 1.359 ha. and forms part of a larger extent or campus of lands at this location comprising c.36 ha. There is an adjoining farm connected with the site (Backweston Farm) that brings the overall site area up to c.140 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:

The construction of a data centre building of c.5474sq. metres floor area with an additional c.2,826sq. metres in external plant area. The building is proposed to be made up of three distinct parts with the central two storey block has a mono-pitch roof structure, the ridge height of which is c.15.15 metres, and is proposed to accommodate the data halls and associated plant and equipment rooms. The front block is proposed to have a flat roof structure with a parapet and to be two storey with height of c.10.60 metres. This section is proposed to accommodate the entrance reception, offices, meeting room, associated support areas, tea station, toilets, stores and plant areas including 5 No. backup generators and 2 No.

substations (3MV). The backup generators are proposed to be diesel powered and to be fuelled via tow tanks each with a capacity of c.38 cubic metres. The third block is proposed to be located to the rear of the main data hall block and comprises external two storey plant space with external stairways with intermediate level gangways.

A perimeter service road is proposed to be constructed around the building to allow for access and maintenance of equipment to the front and rear of the block is proposed. Car parking is proposed to be provided with a total of 14 spaces dedicated to the data centre development provided within the consented parking area associated with the forensic science laboratory.

A perimeter fence and access gates, hard and soft landscaping, signage and all associated site works are also proposed.

The application documents state that if the recovery of energy from the development is feasible that it will be used to heat existing buildings on the campus. It is stated that the development will require a power input of 3.5 MW and that this will be sourced from the new ESB 110kv sub station located to the east of the site in Adamstown.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 25 no. conditions, the most significant of which are considered to be as follows:

- Condition No.2 requires that the R403 / R404 junction located to the north west of the appeal site would be the subject of a 4 arm junction upgrade to the standards set out in the Design Manual for Urban Roads and Streets and the National Cycle Manual. These works are specified to include right turning lanes, carriageway width improvements and improvements for vulnerable road users as well as specified signalling and CCTV upgrades. These specified works and junction improvement works are to be undertaken by and at the expense of the developer.

- Condition No. 3 requires that the developer shall submit details of the road widening / improvement works to be undertaken to the Stacumny Lane between the site entrance and the proposed construction traffic entrance. Details to include that adequate visibility exists to the south west of the proposed construction access.
- Condition No. 5 specifies that the proposed data centre shall be used solely for uses as specified in the application.
- Condition No.8 requires that prior to the commencement of development, the developer shall sign a connection agreement with Irish Water and that proposed connections to the water and waste water network shall be subject to the constraints of the Irish Water Capital Investment Programme.
- Condition No.12 relates to noise control and sets construction and operational phase noise limits for the development and a requirement for the submission of a Noise Assessment Study to be submitted post completion of the development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the Planning Officer notes the characteristics of the site and the internal reports received, notably those from the Transportation section and the area engineer. Initial report recommends further information and subsequent reports recommend clarification of further information relating to the R403 / R404 junction and construction access to the site. The third planning Officer report notes the outstanding concerns of the Transportation Department but recommends a grant of permission consistent with the notification of decision which issued and including Condition No.2 which is the subject of this appeal.

3.2.2. Other Technical Reports

Area Engineer – No objection subject to conditions.

Transportation Department – Reports identify issues with regard to the capacity of the R403 and R404 junction located to the north of the appeal site and with the construction access to the site. Refusal of permission recommended. Stated that in the event that a grant of permission is being considered that there is a requirement that this junction would be upgraded.

Water Services – No objections subject to conditions.

Environmental Health Officer – Recommends conditions relating to noise, dust, working hours and a CMP.

Fire Officer – No objection subject to conditions.

3.3. **Prescribed Bodies**

Irish Water – No objections.

Irish Aviation Authority – No objections subject to conditions including that the applicant engage with Weston Aerodrome to ensure aircraft safety during construction.

3.4. **Third Party Observations**

An observation was submitted by Bird Watch Ireland which requests that provision be made in the development for nesting sites for swifts. Nesting boxes with calling system to be installed.

4.0 Planning History

There are a number of planning applications referenced in the report of the Planning Officer as follows:

Kildare County Council Ref. 05/1063 – Permission granted by the Planning Authority to the commissioners of Public Works for a development of 6,050 sq. metres for site laboratories related to the Department of Agriculture and Food.

Kildare County Council Ref. 03/781 – Permission granted by the Planning Authority for a single storey office extension to the Department of Agriculture and Food laboratories located on the site and under construction at this time.

Kildare County Council Ref. 002278 – Permission granted by the Planning Authority to the commissioners of Public Works for development comprising a total of 37,582 sq. metres of laboratory and office accommodation for the Department of Agriculture Food and Rural Development.

Part IX application for the development of a new forensic laboratory on a site that is close to the appeal site.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the *Kildare County Development Plan, 2017-2023*. The site is located on lands that are outside of the settlement of Celbridge and which are not zoned for any particular purpose.

There are a number of policies contained in the plan relating to economic development and these are set out at 5.3.3 of the Plan. These policies include

ECD 1 which states that it is policy of the council to '*facilitate and support the growth of the economy of Kildare and the Greater Dublin Area in a sustainable manner and in accordance with the RPGs economic strategy (or the forthcoming Regional Spatial and Economic Strategy)*).

ECD10 states that it is policy to co operate with local and national development agencies to maximise job creation opportunities and to engage with existing and future large scale employer's in order to maximise job creation opportunities.

Objective EO12 states that it is an objective of the council to '*continue to work with key state agencies and other stakeholders to seek opportunities for employment creation in the county*'.

Table 6.2 of the plan sets out a number of regional road schemes that it is an objective to progress over the lifetime of the plan subject to funding. These include works to the R403 from the county boundary to Clane via Celbridge and the R404 from Leixlip to the junction with the R403.

5.2. Natural Heritage Designations

The site is not located within any European site and the closest such site is the Rye Water / Carton SAC which is located c. 2.6 km to the north of the appeal site at the closest point.

5.3. EIA Screening

The application the subject of the current appeal is not accompanied by an EIAR.

Data Centres are not in themselves a class of development for the purposes of EIA, however the proposed development could potentially comprise an infrastructure project that would exceed the area thresholds set out in Class 10 of Part 2 of the Fifth Schedule of the Planning and Development Regulations which relates to

'Urban development which would involve an area greater than 2 hectares in the case of business district, 10 hectares in the case of other parts of a built up urban area and 20 hectares elsewhere.'

In the case of the proposed development, the site has a stated area of 1.359 ha. and so is significantly below the thresholds set out in Class 10(b)(iv). The appeal site forms part of a larger extent or campus of lands at this location, however the location is such that it is not a built up urban area and the overall scale of development would be approximately 36.76 ha.

Given the location of the site, the site size and the overall size of the development in the overall campus of which the appeal site forms part, I do not consider that the provisions of Class 13(a) regarding Changes or Extensions to authorised or executed development is applicable in the circumstances of this case.

Based on a preliminary examination of the nature, size and location of the proposed development there is no real likelihood of significant effects on the environment.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party grounds of appeal:

- That the appeal relates to the requirements of Condition No.2 attached to the Notification of Decision which requires that upgrading works to the R403 / R404 junction would be undertaken prior to the commencement of development and at the expense of the developer (first party).
- The appeal submission is accompanied by A Transport Technical Note prepared by Transport Insights Limited and by a drawing of a typical DMURS R404 / R403 layout prepared by Malone O'Regan Consultants.
- Requested that condition No.2 be omitted or else that it would be amended to reflect the very limited impact that the proposed development would have on capacity of this junction.
- That the information provided by the Planning Authority is lacking in detail to justify the inclusion of such a condition.
- That the upgrade of the R403 and R404 is set out as an objective in the County Development Plan and in the Draft Leixlip LAP.

- That s.34(4)(m) of the Act and 7.3.5 of the Development Management Guidelines state that where conditions require the provision of infrastructure in excess of the requirements of a development then the Planning Authority should cover the cost of the proposed works.
- That a test of reasonableness as set out in section 7.3.5 of the DM Guidelines makes reference to whether a condition can be complied with without encroachment on land outside the applicants ownership or without otherwise obtaining the consent of some other party. The works required by Condition No.2 fails this test.
- That the works required by Condition No.2 would have a very high cost and timeframe implications for the project. The delay is such that it would be contrary to the provisions of the guidelines that state that conditions which would result in deferral of a project for a very long time period are unreasonable.
- That it is possible that third party lands would need to be acquired to accommodate the scope of works specified in condition No,2. (see layout as per DMURS requirements submitted with the appeal).
- That in addition to the requirement of Condition No.2, development contributions have also been attached to the permission.
- That the number of staff anticipated to be on site comprises 2 security staff, 4-6 facilities management and 12 no. office / hot desk staff with additional maintenance planned over the course of the year. The traffic count for the R403 / R404 junction shows 15000 movements over a 12 hour (7AM to 7PM) period and the traffic associated with the proposed development is therefore very low. Based on the assessment undertaken by Transport Insights and submitted with the appeal, the construction traffic would be <4 percent increase in existing traffic levels and the operational phase traffic less than a 1 percent increase.
- Submitted that these levels of increased traffic do not warrant a major upgrade of the junction and that the levels of projected increase are such that a Traffic and Transportation Assessment.

- That there is scope to mitigate construction phase traffic impacts so as to avoid clashes with the peak traffic times.

6.2. **Planning Authority Response**

The planning authority response to the grounds of appeal states that the junction is at capacity at peak times and that the proposed development would endanger public safety by reason of a traffic hazard. Considered that junction improvement works at the R403 and R404 junction are required in order to provide safe access and turning movements to the development on completion of the proposed development and during the construction phase. Requested that condition No.2 be retained.

7.0 **Assessment**

7.1. The following are considered to be the main issues in the assessment of the subject appeal:

- Appropriate Assessment
- Principle of Development and Consideration of Appeal De Novo
- Traffic Impacts and Appropriateness of Condition No.2

7.2. **Appropriate Assessment**

7.2.1. The proposed development comprises the construction of a data centre with a floor area of 5,474 sq. metres and an additional 2,826 sq. metres of external plant area. The development also provides for ancillary car parking, landscaping of the site and service connections to existing foul sewerage and water main services. The maximum height of the proposed building is 15.15 metres and the area of the site is 1.359 ha.

- 7.2.2. The closest European site to the appeal site is the River Rye Water Carton SAC site which is located approximately 2.5 km to the north of the appeal site at the closest point. The confluence of the Rye Water and the River Liffey is at a point downstream of the surface and foul water drainage discharges from the appeal site however no part of the main Liffey channel is covered by this SAC. There are no watercourses within or close to the appeal site that could provide a pathway to the Rye Water / Carton SAC site and there is therefore no potential discharges during the construction or operational phases of the development that could impact on this European site. It is specifically noted that while the Cloneyburrow stream is indicated on historical mapping as flowing through the Backweston Campus lands, that there is no evidence of this watercourse remaining on the ground.
- 7.2.3. Having regard to the above, the proposed development is not considered likely to have significant effects on the River Rye Water SAC site having regard to its conservation objectives

7.3. Principle of Development and Consideration of Appeal De Novo

- 7.3.1. The appeal site is located on lands that are located approximately 2km to the east of Celbridge. The site is located outside of the boundary of the *Celbridge LAP, 2017-2023* which extends as far as the lands located to the north west of the junction of the R404 and R403 regional roads to the north of the appeal site. Lands to the east, within the administrative area of South Dublin County Council, are zoned as are lands to the north in the administrative boundary of the Leixlip LAP. The site is therefore located on unzoned lands and in an area that is outside of any established settlement.
- 7.3.2. The environs of the site have been the subject of development as part of the Backweston State Campus development with the Department of Agriculture having laboratories and office accommodation on the site, and the campus also accommodating state laboratory and service buildings including a crèche. There is no specific reference to the Backweston Campus in the *Kildare County Development Plan, 2017-2023*, however the fact that the site comprises part of an overall site that has been the subject of development is noted.

- 7.3.3. The existing campus on which the site is located is **well screened** from surrounding public roads and sites, including from Stacumny Lane to the west and from the R.403 to the north. Boundaries to these roads comprise a double line of mature planting which has the effect that the existing buildings on the site are not clearly visible from surrounding locations outside of the site. The subject application includes proposals for the landscaping of the site including the site boundaries and the development is proposed to be undertaken in conjunction with the permitted Part 9 forensic science laboratory to the south. The proposed data centre building while having a height of c.15.15 metres would be set back by a distance of c.175 metres from Stacumny Lane and given the proposed landscaping, the scale of development and the existing level of visibility of and proximity to the adjoining State Laboratory Building, would not be have any significant visual impact.
- 7.3.4. With regard to **noise** and other potential emissions, the main potential issue arising would arise from the proposed 5 No. backup generators and 2 No. substations (3MV). The backup generators are proposed to be diesel powered and therefore a potential source of noise, however the separation distances to the nearest noise sensitive location to the site (house to the south) at over 200 metres together with the limited usage of the proposed generators would be such that noise is not considered likely to be a significant issue. This conclusion is supported by the noise assessment contained at Appendix D of the Engineering Report which concludes that even during periods of what is referred to as 'Emergency Site Operation' (when the generators are active, the plant noise levels at the identified sensitive receptors off site would not exceed 30 dB LAeq T.
- 7.3.5. With regard to **site servicing and drainage**, the existing foul drainage network on the site is proposed to be utilised with the proposed data centre development to be connected to the existing foul sewer that runs to the west of the site. This drains towards the north west corner of the overall campus site and is then pumped to the public foul drainage network. I note that the initial report on file from the Water Services Section of the council states that there are concerns regarding foul water overflows at Cloneyburrow to the north west of the site and to the north of the R403. To help mitigate these overflows, proposals for on site foul water attenuation is requested to be provided. The response to this issue provided as part of the response to further information from the first party indicates that the existing foul

storage capacity on the site at 72 hours significantly exceeds the 24 hour volume specified by Water Services and that there are protocols in place for the facilitation of maintenance of the foul system by Kildare County Council. I would also note that the projected additional foul loading as a result of the proposed data centre development would equate to only c.4.5 percent of the existing loading in the system. With regard to water demand, the proposed development would result in additional supply requirements, particularly in periods of warmer weather when water would be required for cooling. During such periods (when air temperature is above 15 degrees) water demand would increase by approximately 45 percent over that on the existing campus. Water supply is proposed to be via a new connection to the existing watermain on Stacumny Lane. It is noted that there is a submission on file from Irish Water stating that there is no objection to the proposed development subject to a connection agreement being in place. Surface water is proposed to be discharged to the existing surface water drainage system on the campus which discharges to an attenuation pond at the northern end of the site. This pond is connected to the public surface water system with a controlled discharge rate of 2 l/sec/ha. The calculations presented in the Engineering Report submitted with the application indicate that the design is based on a 1 in 100 year rainfall event and a flood risk assessment submitted as Appendix C of the Engineering Report indicates that the site is located within flood zone C and that the proposed use is therefore acceptable in this location. Overall, on the basis of the information summarised above, the servicing of the site is considered to be acceptable in principle.

7.3.6. With regards to **ecology**, the available information indicates that with the exception of swifts, there are no significant sites or species of interest present on the site that would be potentially impacted by the proposed development. Condition No. 4 attached to the Notification of Decision to Grant Permission requires the submission of proposals for the enhancement of biodiversity on the site and specifically requires the provision of artificial nesting sites for swift species. This condition is considered appropriate and acceptable.

7.3.7. The data centre development is stated to be **proposed to be connected to the grid** via a connection to an existing 110KV substation at Adamstown to the east of the proposed development. No details of the line or type of grid connection are provided with the application and, in the event that it was determined that an Environmental

Impact Assessment was required for the development , it is considered that details of the grid connection would be required and a combined assessment of data centre and grid connection undertaken. As set out at 5.6 above, it is considered that the proposed development is sub threshold for the purposes of EIA, that none of the provisions relating to extensions of existing developments as set out at Class 13 of Part 2 of the Fifth Schedule are applicable and that the nature of the development is such that significant effects on the environment are not considered likely to arise and such that the submission of an EIAR is not required. Given this, the absence of details of a grid connection or inclusion of a grid connection as part of the application the subject of appeal is not considered to be such that permission should be refused.

- 7.3.8. Given the location of the site within the established Backweston Campus, and having regard to the factors discussed above relating to visual impact and landscaping, site servicing, ecology and emissions from the development, it is considered that the principle of the development of the site for the purposes of a data centre is acceptable. The rest of this assessment is therefore confined to the issues of traffic and site access and specifically the appropriateness of Condition No.2 as attached to the Notification of Decision issued by the Planning Authority and which is the basis of the first party appeal.

7.4. Traffic Impacts and Appropriateness of Condition No.2

- 7.4.1. The basis of the appeal as submitted by the first party relates to the requirements of Condition No.2 attached to the Notification of Decision which specifies that upgrading works to the R403 / R404 junction would be undertaken prior to the commencement of development and at the expense of the developer (first party). The appeal submission is accompanied by a Transport Technical Note prepared by Transport Insights Limited and by a drawing of a typical DMURS R404 / R403 layout prepared by Malone O'Regan Consultants. It is requested by the first party that condition No.2 be omitted or else that it would be amended to reflect the very limited impact that the proposed development would have on capacity of this junction.

- 7.4.2. In addition to the data centre activity, the proposed development includes some ancillary services and areas and the submitted information states that the maximum total number of persons within the development at peak times would be c.25. A total of 14 no. car parking spaces are proposed to be assigned to serve the operational phase of the data centre development however these are existing spaces indicated outside the site boundary and associated with the permitted Forensic Science Lab. Additional parking within the overall campus is stated to be available if required.
- 7.4.3. During the construction phase of the development, the submitted information included in the Traffic and Transport Assessment contained at Appendix B of the Engineering Report indicates that the states that a maximum of 50 no. persons would be engaged in construction activity. Construction related delivery traffic is stated to account for an additional 25-30 truck movements into and out of the site per day during the peak period of construction activity with these movements relatively evenly spread throughout the day and a maximum of 7-10 trucks per hour are anticipated at the peak period of construction activity.
- 7.4.4. As part of the construction related traffic implications of the proposed development, Condition No.3 attached to the Notification of Decision to Grant Permission requires the widening of Stacumny Lane in the vicinity of the construction access. While the originally submitted proposals of the first party for construction access were considered to be unacceptable by the Transportation Department of the council, the wording of condition No.3 reflects the recommendation of the final Transportation Department report dated 9th October, 2019 and is in my opinion appropriate and acceptable. Condition No.3 is also stated to be acceptable by the first party, as is Condition No.25 which requires the payment of a financial contribution of €414,667 in accordance with the requirements of the adopted s.48 development contribution scheme for the Kildare County Council administrative area. From the table in section 7 of the adopted section 48 scheme, it is noted that the percentage of the required development contribution relating to roads for commercial and retail developments such as that the subject of appeal is 71.8 percent. Therefore, in the case of the current development, a total of €297,730 of the contribution sought is justified on the basis of contributing towards the capital programme as it relates to roads.

- 7.4.5. With regard to Condition No.2 which requires the upgrading of the R403 / R404 junction, there are in my opinion a number of issues which need to be highlighted. The full text of Condition No.2 is as follows:

The junction of R404 and R403 road is at capacity and requires upgrade to facilitate traffic movements associated with the construction of the development. Prior to the commencement of any development on sit, the developer shall submit a detailed design for a 4 arm junction upgrade and improvement of this junction in accordance with the Design manual for Urban Roads and Streets and the National Cycle Manual for the written agreement of the Transportation Department of Kildare County Council. The design shall detail physical improvements including right turning lanes, additional carriageway width, footpath improvements for vulnerable road users including tactile paving, and public lighting. The developer shall also include a detailed upgrade and junction improvement design for the existing traffic signals. Signal improvement works shall include:

(a) the upgrade of the existing traffic signals to include new LED signal heads with extra low voltage controller,

(b) the installation of a traffic cctv camera and pole at the junction to assist monitoring of traffic flows.

(c) The installation of linked MOVA at the intersection of the R403 and R404.

(d) a public lighting survey shall be undertaken in accordance with Kildare County Council public lighting requirements and incorporated into the design.

The junction and signalised upgrade works shall be carried out by and at the expense of the developer in accordance with details agreed and shall be completed prior to the commencement of any development within the site.

Reason: *To ensure the safe movement of all road and vulnerable road users at this junction.*

- 7.4.6. Firstly, I note the fact that the wording of condition No.2 as attached does not make any reference to the fact that the nature of the condition and the works required is a 'special' contribution under s.48(2)(c) of the Act. In such circumstances where a

'special' contribution is attached, the provisions of s. 48(2)(c) require that basis for the contribution must be explained in the planning decision and that in addition to the scope of works, that cost and basis for calculation including how it is apportioned to a particular development, should be included (see paragraph 7.12 of the Development Management Guidelines for Planning Authorities, (2007)). In the case of the subject appeal, the planning decision and the wording of condition No.2 do not clearly identify that the condition relates to 'special' works not covered by the general s.48 contribution scheme and no costings or justification for the apportionment of costs are provided. At a basic level therefore, I consider that Condition No.2 does not clearly comply with the provisions of s.48(2) of the Act and that the condition should be omitted on this basis. Notwithstanding this interpretation, the following sections relate to the issues raised in the grounds of appeal. This assessment makes specific reference to the Basic Criteria for conditions as set out at paragraph 7.3 of the Development management Guidelines, in particular whether the condition is necessary, precise and reasonable.

- 7.4.7. In order to justify the extent of works required by condition No.2, it is my opinion that the Planning Authority needs to set out a clear case with regard to the capacity issues at the existing junction and the impact of the additional traffic generated by the proposed development. The reports on file from the Transportation Department dated 16th April, 16th August and 9th October, 2019 do not give details with regard to the existing capacity of the R403 / R404 junction. Rather the most detail is provided in the report dated 16th August which states that the '*...Roads and Traffic Department are of the view that the junction of the R403 and R404 is at capacity and requires an upgrade to facilitate traffic movements associated with the development.*' The first party has submitted the results of a 12 hour traffic count at the R403 / R404 junction and these are contained at section 3 of the Traffic Insights report that accompanies the first party appeal. The results of the survey as set out at Table 3.1 of this report indicate that peak hour operational phase traffic flows to and from the site are 18 (Table 4.3) and would result in an operational phase percentage increase in traffic at the R4.3 / R404 junction of only 0.84 percent. This coupled with the nature and floor area of the proposed development is such that a Transport Assessment is not required as per Table 2.1 of the TII Traffic and Transport Assessment Guidelines (2014) and, in my opinion, highlights the limited impact of

the proposed development on overall usage of the junction. I do not consider that it is reasonable that works of the scope and cost required by Condition No.2 would be required to facilitate construction phase traffic generated by a development, however notwithstanding this, on the basis of the predicted construction (+3.86 percent) and operational phase (+0.84 percent) increase in traffic volumes predicted I do not consider that the proposed development would have any appreciable impact on the capacity of the R403 / R404 junction and certainly not such as to justify the requirement that the entirety of the cost would be borne by the first party. It is therefore my opinion that the test relating to **necessity of the condition** as set out at 7.3.1 of the Development Management Guidelines for Planning Authorities has not been met and that the omission of the stated condition would not require that permission should be refused.

7.4.8. In addition to the requirement of Condition No.2, development contributions have also been attached to the permission. As set out at 7.3.4 above, this contribution as it relates to Roads comprises €297,730. It is also noted that the upgrade of the R403 and R404 is set out as an objective in the County Development Plan and in the Draft Leixlip LAP. While it is not clear from the development contribution scheme document whether the R403 / R404 upgrade has been included as a capital works project used in the calculation of the contribution figures set out in the scheme, it is potentially the case that some account has been made for these works and therefore included in the significant contribution figure required under Condition No.25.

7.4.9. The first party appeal makes reference to the provisions of the Development Management Guidelines, and specifically highlight paragraph 7.3.5 which requires that conditions should be **reasonable**. As set out above, I do not consider that the Planning Authority have made a coherent case in either the reports on file or in the response to the grounds of appeal that justifies the scope and extent of the works required under Condition No.2. On the contrary, the first party has set out how the nature of the proposed data centre is such that the operational phase impacts of the development would result in a total of 14 no. one way peak hour light vehicle trips (Table 4.3 of the Traffic Insights Report) resulting in a 0.84 percent increase in peak hour traffic at the junction. No attempt is made by the Planning Authority to apportion the cost of the upgrade to the proposed development on the basis of predicted traffic increases and while it is open to the Planning Authority under

s.34(4)(m) of the Act to require the provision of infrastructure beyond the immediate needs of the development, this is subject to the local authority covering the cost of the additional works. In the case of the proposed development it is in my opinion clear that the entire cost of any junction upgrade works cannot be apportioned to the proposed development.

- 7.4.10. A **further test of reasonableness** of the condition relates to whether a condition can be complied with without encroachment on land outside the applicants ownership or without otherwise obtaining the consent of some other party. On this issue I note the fact that three corners of the R403 / R404 junction are adjoined by third party lands and also note the draft junction layout prepared by the first party and submitted as part of the first party appeal (see Figure 5.1 of Transport Insights Report) indicate that it is not clear that the achievement of the specific requirements set out in Condition 2 regarding compliance with DMURS, the National Cycle Manual and right turning lanes can be accommodated within the existing verges and roadside verges available. In the event that this is not the case it is likely that the delay in the project would be significant due to the necessity to acquire additional lands. I would agree with the first party that any such delay would be contrary to the provisions of the guidelines that state that conditions which would result in deferral of a project for a very long time period are unreasonable.
- 7.4.11. Finally, the lack of clarity with regard to the final design required for the junction and the cost of the works are in my opinion also contrary to **the principle that conditions should be precise**. The wording used, while clear with regard to the specific elements and design guidance to be incorporated, should be more specific with regard to the overall cost of the proposed works.
- 7.4.12. In conclusion, the nature and design of the proposed development is in my opinion such that the implications for operation phase peak hour traffic is very limited and an assessment of such traffic submitted by the first party indicates such traffic to be a maximum of c.18 movements per hour with the additional traffic at the R403 / R404 junction less than 1 percent at peak periods. Such traffic impacts are not in my opinion such that the scale of works required by Condition No.2 can be justified and I note that no clear justification for the condition in terms of traffic impacts has been provided by the Planning Authority. In my opinion, Condition No.2 fails the tests of reasonableness and necessity as set out at section 7.3 of the Development

Management Guidelines for Planning Authorities and should not be retained in its current form. The option of requiring a special financial contribution as part of the cost of the upgrading of the R403 / R404 junction may be explored by the Board, however the information available on file, and in particular the internal reports and appeal response submission from the Planning Authority are in my opinion such that it is not possible to either assess an overall cost of the improvement works or to make an accurate assessment of the extent to which these costs should be apportioned to the subject development. In the event that this option was to be pursued it is considered that significant additional details regarding costs, land take requirements and design are required from the Planning Authority and that any such condition that was proposed on foot of such information should not make the undertaking of the data centre development conditional on the completion of the junction upgrade works. On the basis of the traffic implications of the development as set out by the first party, and having regard to the requirements of Condition 25 (general s.48 development contribution condition) it is not in my opinion clear that a clear need for the junction upgrade has been established or that the traffic implications of the data centre development are such that it is reasonable or necessary that a contribution towards the junction upgrade works be required. For these reasons it is recommended that the Planning Authority, Kildare County Council be directed that Condition No.2 be removed for the final grant of permission.

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8.0 Recommendation

- 8.1. Having regard to the above it is recommended that Kildare County Council be directed that Condition No.2 attached to the Notification of Decision to Grant Permission is omitted from the final decision.

Stephen Kay
Planning Inspector

26th February, 2020