



An
Bord
Pleanála

Inspector's Report

ABP-307312-20

Development	Change of use of Building No. 3 and part of Building No. 4
Location	Liffey Business Campus, Barnhall Road, Leixlip, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	20/60
Applicant	EFIV Irish Property ICAV
Type of Application	Permission for Retention
Planning Authority Decision	Grant Permission for Retention
Type of Appeal	First Party v Development Contribution Only
Appellant	EFIV Irish Property ICAV
Observer(s)	None
Date of Site Inspection	25.08.2020
Inspector	Anthony Kelly

1.0 Introduction

- 1.1. This report relates to a first-party appeal against Condition No. 6 of the planning authority decision to grant permission for retention for the development. Condition No. 6 refers to the payment of a development contribution of €742,363.39 in accordance with the Kildare County Council Development Contribution Scheme 2015-2022. Section 48(10)(b) of the Planning & Development Act, 2000 (as amended) states that an appeal may be brought to the Board where an applicant considers that the terms of the development contribution scheme have not been properly applied.

2.0 Site Location and Description

- 2.1. Liffey Business Campus is south of the built-up urban area of Leixlip and on the opposite side of the M4 motorway in north east Co. Kildare.
- 2.2. The application relates to Building Nos. 3 and 4 which are in the north east area of the built footprint of the campus. There is extensive car parking and landscaping within the campus. The campus was formerly the Hewlett Packard campus.
- 2.3. The overall site has a stated area of approx. 80.56 hectares.

3.0 Proposed Development

- 3.1. The application is for permission for retention for:
 - The change of use of Building No. 3 from permitted warehouse use to manufacturing use (4,421sqm gross floor area including ancillary offices).
 - The change of use of part of Building 4 from permitted manufacturing use to office use (9,002sqm).
 - Ancillary office space at first floor level in Building 4 (246sqm gross floor area).
- 3.2. In addition to standard planning application plans and particulars the application was accompanied by a detailed cover letter and a 'Transport Assessment'.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission subject to six conditions. Condition No. 6 requires the payment of a development contribution as follows:

6. The Applicant/Developer to pay to Kildare County Council the sum of €742,363.39 being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 5th November 2015 in accordance with Section 48 of the Planning and Development Act 2000 as amended. Payments of contributions are strictly in accordance with Section 13 of Development Contribution Scheme adopted by Kildare County Council on 5th November 2015.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Irish Water.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority.

4.2. Planning Authority Reports

4.2.1. The Planning Officer's report is the basis for the decision. It states that, having regard to the nature, extent and design of the development and the zoning objective, the development for retention does not seriously injure the amenities of the area or property in the vicinity and would be in accordance with the Kildare County Development Plan 2017-2023, the Leixlip Local Area Plan 2020-2026 and the proper planning and sustainable development of the area.

4.2.2. The Planning Officer's report recommends five conditions. No development contribution condition was included and no reference to development contributions was made within the report.

4.2.3. Other Technical Reports

Area Engineer – No objection subject to conditions.

Transportation Department – Further information recommended relating to car parking and addressing pedestrian, cycling and roads objectives in the Leixlip Local Area Plan.

Environment – No objection subject to conditions.

Environmental Health Officer – No objection subject to conditions.

Chief Fire Officer – No objection subject to a condition.

Water Services – No objection subject to a condition.

National Roads Office (NRO) – Further information recommended relating to traffic modelling assessments and potential for driver distraction.

4.3. **Prescribed Bodies**

Transport Infrastructure Ireland (TII) – No observations to make.

Inland Fisheries Ireland – Comments provided.

4.4. **Third Party Observations**

4.4.1. None.

5.0 **Planning History**

5.1.1. The parent permission for the development is:

P.A. Reg. Ref. 95/923 – Permission was granted in 1995 for a manufacturing facility of 42,640sqm for industrial purposes on an 80.56 hectares site. Building No. 3 was granted as a warehouse and Building No. 4 was granted as a manufacturing area.

5.1.2. A 'Planning History Overview' is provided as Appendix A to the applicant's cover letter.

6.0 Policy Context

6.1. Leixlip Local Area Plan 2020-2023

- 6.1.1. This Plan was prepared on foot of a Ministerial Direction issued in regard to the 2017-2023 Local Area Plan.
- 6.1.2. The site is in an area zoned 'H: Industry and Warehousing' which has a zoning objective 'to provide for industry, manufacturing, distribution and warehousing'. Light industry and general industry are both permitted in principle, and offices are open for consideration, under the land use zoning matrix.
- 6.1.3. Section 6.2.1 (Supporting Employment Growth) of the Plan states that 'the Liffey Business Campus at Barnhall comprises the Hewlett Packard (HP) site which is now occupied by a number of small and medium enterprises. Given the size and scale of the former HP campus it is an objective of the Council to work with local and national agencies to ensure the site can be redeveloped in an appropriate manner and remain a key employment hub for Leixlip and the Dublin Metropolitan Area'.

6.2. Kildare County Council Development Contribution Scheme 2015-2022

- 6.2.1. Section 8 (Level of General Contributions for Kildare County Council effective from adoption of this Scheme) (iii) (Commercial Development (including Warehousing/Industrial and Commercial extensions)) gives a rate per square metre of €43.46 between 0-250sqm, €54.31 per square metre between 251-3,000sqm and €61.55 per square metre for development over 3,000sqm.
- 6.2.2. Section 9 (Modification/Retention Applications) (b) (Retention) states:
- (i) Development Contributions will not be applied where a valid application is received for retention of minor alterations (as determined by the Planning Authority) and where there is no increase in floor area.
 - (ii) Development contributions in respect of retention applications will be applied at the rate of "standard" applications for planning permission.
 - (iii) Where development contributions have not previously been paid, applications for retention of development will have contributions applied, based on the proposed floor area of the permitted development...

- (iv) An application to retain an extended area to that previously granted, where contributions have been previously paid in full will have contributions applied to the extended floor area only. No exemptions will apply and charges will be based on the total extended floor area granted. The rate of contributions applicable will be based on the current contributions scheme in place at time permission is granted.

6.2.3. Section 12 (Exemptions and Reduced Contributions) (g) (Change of Use) states the Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.

6.2.4. Section 12 (Exemptions and Reduced Contributions) (q) (Retention Permission) states no exemptions or waivers shall apply to any developments subject to retention permission save where it applies to a previously permitted development e.g. temporary permission.

6.3. Natural Heritage Designations

6.3.1. The closest Natura 2000 site to the subject buildings is Rye Water Valley SAC approx. 1.6km to the north and north east. The closest heritage area is Royal Canal pNHA approx. 1.45km to the north.

7.0 The Appeal

7.1. Grounds of Appeal

The main points made can be summarised as follows:

- Condition 6 has been incorrectly applied and does not conform to the Scheme.
- Buildings 3 and 4 have already been levied for development contributions in the parent permission. They have been paid in full and it is understood that this is not disputed. The application of Condition 6 is onerous and inequitable.

- The warehouse (Building 3) permitted under P.A. Reg. Ref. 95/923 had a floor area of 4,252sqm. The manufacturing building (Building 4) had a floor area of 11,781sqm; a total of 16,033sqm.

Under the current application for retention, Building 3 (manufacturing) has a floor area of 4,421sqm, Building 4 (in manufacturing use) has a floor area of 3,025sqm and Building 4 (in office use) has a floor area of 9,002sqm); a total of 16,448sqm.

It is requested the amount payable is reduced to €22,538.65 relating to the overall 415sqm increase in gross floor area (16,448sqm – 16,033sqm).

- Section 9(b)(iv) of the Scheme stipulates an application to retain an extended area to that previously granted, where contributions have been previously paid, will have contributions applied to the extended floor area only. The contribution rate should only be charged on this extended 415sqm floor area. The applicable contribution is the same whether it is office or manufacturing.
- The permitted floor area was warehousing and manufacturing. The Scheme treats office, warehousing and manufacturing as the same, 'commercial development', therefore charging the development contribution again would result in double charging. The 'Development Contributions Guidelines for Planning Authorities' (2013) states the practise of double charging is inconsistent with both the primary objective of levying contributions and with the spirit of capturing 'planning gain' in an equitable manner.
- The Development Contributions Sheet provided by the planning authority (attached as Appendix A to the grounds of appeal) states that a waiver is available for change of use permissions once it does not lead to an increase in floor area or to an increase in demands placed on existing infrastructure. The Sheet provided states that 'as the proposed development will lead to an intensification on the demands placed on existing infrastructure, development contributions will apply'. This is incorrect and the proposal has been misinterpreted. There is a net decrease in warehousing of 4,252sqm, a net decrease in manufacturing of 4,335sqm and a net increase in office space of 9,002sqm. The office space has approx. 100 no. people on site, approx. 1

person per 90sqm, which is an extremely high ratio. As a result of this low intensity it is more likely that there will be a substantial decrease in demand.

- Section 12(k) of the Scheme, which relates to redevelopment, could also apply.
- Section 12(q) of the Scheme relates to retention permission. It is clear that where a development has previously been permitted i.e. the 16,033sqm, then exemptions or waivers shall apply. This exemption seeks to avoid a scenario where contributions are levied against a development that has already been subject to charges.
- The applicant understands that the levy was calculated as follows: Building 3 (manufacturing) 4,421sqm + Building 4 (office) 9,002sqm + Building 4 (ancillary office) 246sqm = 13,669sqm. This includes floor area that has already been subject to a development contribution. Building 3 has also been included as a new use even though there will be a net decrease in manufacturing. The contribution should only be applied to the new commercial floor area which is 415sqm and at €54.31 per sqm gives a total of €22,538.65.

7.2. Planning Authority Response

7.2.1. No comment.

7.3. Observations

7.3.1. None.

8.0 Assessment

8.1. The facility was originally owned and operated by Hewlett Packard primarily as a print cartridge manufacturing business. This was closed in 2017 though Hewlett Packard Enterprise, focusing on business and services, remains on campus. The applicant purchased the property in 2018 and, as part of the due diligence process, it was noted that Building Nos. 3 and 4 were not being used for the purposes permitted under P.A. Reg. Ref. 95/923. The purpose of the application is to regularise the planning status. The manufacturer is MGS, specialising in plastics moulding and tooling, and have

been operating at this location since 2010. The operator of the office space is GES which specialises in the provision of office space as a disaster recovery facility which provides larger companies, generally in the financial and industrial sector, with fully functional back up offices in the event their primary premises are not suitable because of, for example, weather events or power cuts. It has been a tenant since 2011.

- 8.2. A Transport Assessment was submitted with the application. The number of car parking spaces on site is 1,570. They are unallocated spaces and the utilisation of spaces is generally below 85%. The Council's maximum parking requirements for new developments suggests a maximum of 1,822 spaces could be provided for the overall floor area of 135,805sqm. As the current provision falls below the maximum standard the Transport Assessment considers it is policy compliant. Database figures provided suggest the current uses would generate significantly more trips than the permitted uses for the two buildings; 251 no. AM trips and 318 no. PM trips (569 no.) as opposed to 138 no. AM trips and 100 no. PM trips (238 no.). It is noted in the Transport Assessment that these additional trips are already on the network.
- 8.3. The planning authority Planning Report contains no reference to development contributions. The development contribution condition was not recommended in this report but was included in the decision to grant permission. A contribution of €742,363.39 was cited. Appendix A of the grounds of appeal contains what is purported to be the Development Contributions Sheet provided by the planning authority. This is the only document which refers to the development contribution and how or why it was applied. This calculates the contribution by multiplying an area of 13,669sqm x €54.31 rate per sqm. The 13,669sqm area is the floor area subject of the application. It is unclear why the €54.31 rate per sqm (for gross floor areas of between 251sqm-3,000sqm) was used rather than the €61.55 rate per square metre for gross floor areas of more than 3,000sqm.
- 8.4. The planning application under which Buildings 3 and 4 were permitted and constructed was P.A. Reg. Ref. 95/923. It is stated applicable contributions have been paid in full and this has not been disputed by the planning authority. Under Section 8(iii) of the current Scheme there is no differentiation in types of commercial development e.g. warehousing, manufacturing or office, in terms of the rate of charge per square metre. Therefore, in the current application, the type of use is not relevant as it is all considered 'commercial development'.

8.5. Section 9(b) of the Scheme relates to retention applications.

- Subsection (i) states contributions will not be applied for retention of minor alterations and where there is no increase in floor area. I do not consider the application to comply with this as I do not consider the application to be for minor alterations and an increase in floor area is involved, albeit internally.
- Subsection (ii) states there is no additional levy/charge for retention applications.
- Subsection (iii) does not apply because development contributions have previously been paid.
- Subsection (iv) states that where an application is made to retain an extended area to that granted, where contributions have been paid, the contributions will apply only to the extended floor area. There will be no exemption.

Having regard to Section 9(b) I consider that the 'new' area constructed is liable for development contributions. That area is 415sqm i.e. the first floor office spaces in Buildings 3 and 4. The ground floor areas to the buildings have not been extended and the Scheme makes no differentiation between the specific uses.

8.6. Subsection 12(g) of the Scheme provides for a 100% reduction for a change of use permission where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure (the Development Contribution Sheet attached to the grounds of appeal misquotes the specific wording of Section 12(g)). I do not consider that the change from warehousing and manufacturing to manufacturing and office space respectively, in two buildings within a substantial campus in a zoned part of the Dublin metropolitan area, could be considered to comprise a significant intensification of demand placed on existing infrastructure. In this regard I note that there was no concern raised by the planning authority's Environment Section, Water Services Section or the Area Engineer and permission was granted without seeking further information as recommended by the Transportation Department and NRO. I also note that TII did not raise a concern. Therefore, I do not concur with the planning authority position, as set out in the Development Contribution Sheet, that the development will lead to an intensification on the demands placed on existing infrastructure.

- 8.7. I do not consider the development can be considered a redevelopment project as suggested in the grounds of appeal (Section 12(k) of the Scheme). The same development remains in situ, it has not been replaced. In relation to Section 12(q), the original grant of permission granted the first phase of the overall campus including the 16,033sqm floor area in Building Nos. 3 and 4 and development contributions were paid.
- 8.8. Having regard to the foregoing, I consider that the previously permitted floor areas, where development contributions have already been paid and where the change of use does not lead to new or upgraded infrastructure or services or to a significant intensification of demand on existing services, is not liable to be charged a second time under the terms of the Scheme. Therefore, I consider that the floor area provided subsequent to P.A. Reg. Ref. 95/923, which is 415sqm, is liable for development contributions under the terms of the Scheme. This results in an amended development contribution of €22,538.65 (415sqm x €54.31 per sqm).

9.0 Recommendation

I recommend that Kildare County Council be directed to amend Condition No. 6 on the grounds that the terms of the Development Contribution Scheme 2015-2022 have not been properly applied.

10.0 Reasons and Considerations

Having regard to:

- The provisions of the Kildare County Council Development Contribution Scheme 2015-2022; and
- The nature of the permitted and existing developments;

The Board considers that the terms of the Development Contribution Scheme has not been properly applied and Condition No. 6 shall be amended as follows;

The developer shall pay to the planning authority a financial contribution of €22,538.65 (twenty two thousand five hundred and thirty eight euro and 65 cent) in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Anthony Kelly

Planning Inspector

10.09.2020