



An
Bord
Pleanála

Inspector's Report

ABP-308169-20

Development	Retention of 3 standalone coated steel prefabricated units for canteen, welfare use and office use, entrance ramps and site development works.
Location	Luas Depot, Red Cow, Clondalkin, Dublin 22
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD20A/0150
Applicant	Alstom Transport Ireland Ltd.
Type of Application	Permission for Retention
Planning Authority Decision	Grant Permission for Retention
Type of Appeal	First Party v Development Contribution Only
Appellant(s)	Alstom Transport Ireland Ltd.
Observer(s)	None
Date of Site Inspection	10.11.2020
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 of the development. Condition No. 6 relates to the payment of a development contribution of €23,797.93 in accordance with the South Dublin County Council Development Contribution Scheme 2016-2020. 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. The site is located at the Red Cow Luas Depot, immediately south of the Red Cow Luas Stop and park and ride facility in west Dublin.
- 2.2. The three prefab structures subject of the planning application for retention are located immediately adjacent to the west (canteen and welfare structures) and south sides (office structure) of the Luas Depot building beside a parking area.

3.0 Proposed Development

- 3.1. Permission for retention is sought for three prefabricated units used as a canteen, welfare use and office use.
- 3.2. The canteen and welfare structures have a floor area of 31.2sqm and heights of 3.1 metres. The office structure has a floor area of 198.8sqm and a height of 3.7 metres.
- 3.3. In addition to standard planning application plans and particulars the application was accompanied by a 'Planning Report'.

4.0 Planning Authority Decision

4.1. Decision

4.1.1. The planning authority decided to grant permission subject to six conditions. Condition No. 2(a) restricted the life of the permission to five years as follows.

2. (A) This retention permission shall expire five years after the date of final grant unless a further grant of retention permission has been sought and issued.

(B) The prefabricated structures and associated facilities shall be removed within four weeks of the expiry of this retention permission.

Reason: In the interests of the proper planning and sustainable development of the area and to ensure that effective control is maintained.

4.1.2. Condition No. 6 requires the payment of a financial contribution as follows.

6. The developer shall pay to the planning authority a financial contribution of €23,797.93 (twenty three thousand seven hundred and ninety seven euros and ninety three cents), in respect of public infrastructure and facilities benefitting development within 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 2016-2020, made under Section 48 of the Planning and Development Acts 2000-2011 (as amended). This contribution is to be paid on receipt of Final Grant of Permission.

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

4.2. Planning Authority Reports

4.2.1. The Planning Report forms the basis of the planning authority decision. The report concludes that, having regard to the zoning objective and existing established use as part of the LUAS depot, the proposed retention would not significantly detract from the

character of the surrounding area and would be in accordance with the current South Dublin County Council Development Plan.

4.2.2. **Other Technical Reports**

Water Services – Further information recommended in relation to surface water.

Roads Department – No objection.

Environmental Health Officer – The proposal is acceptable.

4.3. **Prescribed Bodies**

Irish Water – No objection. Observations made.

4.4. **Third Party Observations**

4.4.1. None.

5.0 **Planning History**

5.1. None relevant.

6.0 **Policy Context**

6.1. **South Dublin County Council Development Plan 2016-2022**

6.1.1. The site is in an area zoned 'Objective EE; To provide for enterprise and employment related uses'.

6.2. **South Dublin County Council Development Contribution Scheme 2016-2020**

6.2.1. Article 9 (Level of Contribution) states that the total contribution payable per square metre of industrial/commercial development is €91.11.

6.2.2. Article 10 (Definitions Exemptions and Reductions) outlines categories of development either exempted from the requirement to pay development contributions

or will pay a reduced rate. Subsection (xxix) states ‘Developments permitted by way of a single permission of a temporary duration or cumulative temporary permissions of not greater than 5 years in total, shall be exempt. Subsequent permissions which cause the total duration to exceed 5 years will be assessable for the purposes of applying development contributions’.

6.3. Natural Heritage Designations

- 6.3.1. The closest Natura 2000 site is Glenasmole Valley SAC approx. 6.3km to the south. The closest heritage area is Grand Canal pNHA approx. 1.5km to the north.

7.0 The Appeal

7.1. Grounds of Appeal

The main points made can be summarised as follows:

- It is a first party appeal against Condition 6 of the planning authority grant of permission.
- Condition 2 permits the proposed development for a period of five years after which it must be removed, or further consent is required. The permission is, by condition, a temporary permission. Condition 6 requires payment of a development contribution. Section 10 (xxix) of the Development Contribution Scheme 2016-2020 states a single permission of temporary duration or cumulative temporary permissions of not greater than five years in total, shall be exempt.
- This is the first permission granted for the development and is a single permission of temporary duration for five years. Therefore, it should be exempt.
- The appellant fully understands that should a further consent be sought and approved in five years, contributions would be payable at that time, provided the Scheme does not change.

7.2. Planning Authority Response

- 7.2.1. The planning authority confirms its decision. The issues raised in the appeal have been covered in the planner's report. Having reviewed the planning file, the Council has no further details to add regarding the calculation and levying of the financial contributions.

7.3. Observations

- 7.3.1. None.

7.4. Further Responses

- 7.4.1. None.

8.0 Assessment

- 8.1. The planning application was for retention of three prefab structures. The application appeared to be for a permanent permission as no temporary retention period was sought. The planning authority Planning Report states that, 'given the proposal is to retain prefabricated structures it is deemed appropriate to attach a condition limiting the duration of the permission to five years in the event of a grant of permission'. Condition 2(a) was applied.
- 8.2. The planning authority response to the grounds of appeal states that the issues raised in the appeal have been covered in the planner's report. The planning authority declined to submit any detail regarding the calculating and levying of the development contribution despite a specific request from the Board to do so. The only reference in the report to development contributions is that the three units measure 261.2sqm. The contribution of €23,797.93 was calculated by multiplying the overall floor area (261.2sqm) by the €91.11 required per square metre of industrial/commercial development.
- 8.3. I consider that Article 10(xxix) of the Development Contribution Scheme 2016-2020 is clear. It exempts a single permission of temporary duration of not greater than five

years. The planning authority restricted the duration of the permission to five years by Condition 2 (a)

- 8.4. I consider that the planning authority failed to correctly apply the terms and conditions of the Development Contribution Scheme in this instance and the condition should be omitted.

9.0 Recommendation

- 9.1. I recommend that the planning authority be directed to remove Condition No. 6 on the grounds that the terms of the Development Contribution Scheme 2016-2020 have not been properly applied.

10.0 Reasons and Considerations

Having regard to:

- (a) The provisions of Article 10(xxix) of the South Dublin County Council Development Contribution Scheme 2016-2020) which state, inter alia, that developments permitted by way of a single permission of a temporary duration or cumulative temporary permissions of not greater than five years in total, shall be exempt,
- (b) Condition 2(A) of the grant of permission under P.A. Reg. Ref. SD20A/0150 which states that this retention permission shall expire five years after the date of final grant unless a further grant of retention permission has been sought and issued, and
- (c) The fact this application is the first such application on site,

It is considered that the terms of the South Dublin County Council Development Contribution Scheme 2016-2020 have not been properly applied.

Anthony Kelly
Planning Inspector
22.12.2020