



An
Bord
Pleanála

Inspector's Report ABP 308309-20

Development	Facility for the recovery, storage and transfer of a glass cullet product and all ancillary site services.
Location	Main Street, Garristown, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0328
Applicant(s)	Johmick Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	First Party v Condition
Appellant(s)	Johmick Limited
Observer(s)	None
Date of Site Inspection	23 rd February 2021
Inspector	Brendan Coyne

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1.0 Site Location and Description

1.1. The site is located on the eastern side of Main Street (R130), Garristown in Co. Dublin and comprises a backland site to the rear / east of Garristown Community Centre. The site is accessed via a separate vehicular entrance and laneway to the southern side of the community centre. The site contains a large warehouse building with a stated floor area of 846 sq.m. The premises is in use as a facility for the recovery, storage and transfer of a glass cullet product. Its elevation finishes comprise concrete walls and painted galvanised sheeting. A lorry parking bay and car parking area is located to the northern side of the premises and a concrete yard is located to its front / west. Adjoining lands to the south contain a large grain store and lands to the north contain a series of warehouse structures. These are within the applicant's ownership, as outlined in blue on the place map submitted. Lands to the east are mostly greenfield.

2.0 Proposed Development

2.1. Permission sought for the following;

- A facility for the recovery, storage and transfer of a glass cullet product.
- All ancillary site services.

3.0 Planning Authority Decision

Fingal County Council GRANTED permission for the proposed development subject to 9 no. Conditions. Noted Condition of relevance to the appeal includes:

Condition No. 9. Prior to commencement of development, the developer shall pay the sum of €64,880 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and / or that is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Fingal County Council Contribution Scheme. The phasing of payments shall be agreed in writing with the Planning Authority prior to the commencement of development.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.

Note on above Condition: With effect from 1st January 2014, Irish Water are now the Statutory Body responsible for both water and wastewater services (excluding surface water). Accordingly, the contribution payable has been reduced by the amount of the contribution associated with these services. A separate charge will be levied by Irish Water in relation to the provision of water and/or wastewater treatment infrastructure and connections to same.

3.1. **Planning Authority Reports**

3.1.1. **Planning Report**

Basis for the Planning Authority's decision. Includes:

- The proposal would appear to be analogous with a 'waste disposal and recovery facility (excluding high impact)', as detailed in Appendix 4 of the Development Plan.
- The principle of a waste disposal / recovery facility is considered acceptable under the 'RV' zoning objective of the area.
- Under previous permissions P.A. Ref.'s F13A/0080 and F16A/0077, temporary permission was granted for a facility for the recovery, storage and transfer of a glass cullet product on the basis of the strategic nature of the site within the Garristown Local Area Plan and Village Design Framework as part of a development site. The Garristown Local Area Plan has recently expired. The strategic nature of the site remains. Noting the acceptability of the use at this location, the Planning Authority consider that a permanent permission should be granted.
- The proposal would not impact on the amenity of the area or neighbouring property.
- A Waste Facility Permit (renewal) will be sought for the application.
- From the documentation submitted, it is considered that there will be limited impact in relation to noise, odour and air quality from the proposal, due to the nature of the material used and it being stored internally.

- Having regard to the location of the site and the nature of the proposed development, no negative impacts on Natura 2000 sites are anticipated.

3.1.2. Other Technical Reports

Transportation Section: No objection subject to Conditions.

Water Services Department: No objections.

3.1.3. Prescribed Bodies

Irish Water: No objection subject to Conditions.

4.0 Planning History

P.A. Ref. F16A/0077 Temporary permission GRANTED to Johmick Limited on the 14th of July 2016 for a facility for the recovery, storage and transfer of a glass cullet product and all ancillary site services. Relevant Condition(s) include:

Condition No. 2 This is a temporary permission only and shall expire four (4) years from the date of the final grant of permission, unless by that time, permission for its retention has been granted by the Planning Authority or An Bord Pleanála on appeal.

P.A. Ref. F13A/0080 Temporary permission GRANTED to Johmick Limited on the 11th of June 2013 for a change of use for the existing grain drying, storage and transfer facility to a facility for the recovery, storage and transfer of a glass cullet product and all ancillary site services. Relevant Condition(s) include:

Condition No. 3 The of use of the site as a glass cullet facility shall be for a period of three years only. On expiry of this period, the site shall be reinstated to the satisfaction of the Planning Authority.

P.A. Ref. F07A/0420 & ABP Ref. PL06.226750 Permission GRANTED on the 04th September 2008 for the demolition of all structures on site and the construction of a mixed use block (A) along the road frontage, two residential blocks (B and C) along

the eastern side of site, a singular vehicular entrance for the commercial and residential development between block A and the community centre, a 6m wide road with footpaths on each side, pedestrian access routes to the main road along the northern and southern boundaries, 67 no. car park spaces and a service yard.

P.A. Ref. F07A / 0420/E1 An extension of duration of permission was granted for the development permitted under P.A. Ref. F07A/0420. Permission expiry date – 3rd September 2018. This permission was not implemented and has since expired.

P.A. Ref. F01A/0790 & ABP Ref. PL06F.126726 Temporary Permission GRANTED to retain the change of use of the grain store and shop to retail warehouse unit and retail shop unit.

4.1.1. **Adjoining site to the South**

4.1.2. **P.A. Ref. F18A/0606** and **ABP Ref. 304910-19** Permission Granted by the Planning Authority for the demolition of the existing grain store and the construction of 20 no. dwelling houses.

4.1.3. The appeal was a first party appeal against a Development Contribution Condition (No. 27) imposed by the Planning Authority. The Board considered that the levy imposed under condition number 27, in lieu of the shortfall in open space provision, is in accordance with Fingal County Council's Development Contribution Scheme 2016-2020, that the Scheme is the applicable contribution scheme in this case and that it had been properly applied.

5.0 **Policy and Context**

5.1. **Development Plan**

Fingal County Development Plan 2017-2023 is the statutory plan for the area. The following provisions are considered relevant:

Zoning: The site is zoned 'RV - Rural Village' which has the objective to 'Protect and promote the character of the Rural Village and promote a vibrant community in accordance with an approved Local Area Plan, and the availability of physical and community infrastructure'.

Appendix 4 Technical Guidance Notes - defines 'Waste Disposal/Recovery Facilities (Excluding High impact)' as follows;- 'The use of land or buildings for the removal or re-use of industrial or domestic refuse which has a low potential for odour, noise, dust and other nuisances and includes non-putrescible waste. Examples of such waste management facilities may be: transfer stations, processing of dry recyclable material which are contained within buildings, short term storage of small quantities of garden waste, civic waste facilities accepting material for recycling including the acceptance of WEEE and household hazardous waste, facilities for the treatment of end of life vehicles provided there is no stacking of vehicles, processing storage of de-polluted vehicles, scrap metal or recycling residues outside of buildings. Excludes landfills and waste facilities with high potential for odour, noise, dust, fire, and other nuisances in particular operations dealing with putrescible waste'.

5.2. **Fingal County Council Development Contributions Scheme 2021-2025**

Section 9 sets out the level of contributions to be paid (except where an Exemption or Reduction applies) in respect of the different classes of public infrastructure and facilities as follows: -

Class of Public Infrastructural Development	€ per square metre of Residential Development	€ per square metre of Industrial/Commercial class of Development
Class 1: Transportation Infrastructure & Facilities	€54.02	€42.18
Class 2: Surface Water Infrastructure & Facilities (incl. Flood Relief)	€ 4.91	€ 3.83
Class 3: Community & Parks facilities & Amenities	€39.28	€30.68
Total of Contributions Payable	€98.21	€76.69

5.2.1. Relevant National Planning Guidelines

Development Contributions Guidelines for Planning Authorities (2013)

Development Management Guidelines (2007)

5.3. Natural Heritage Designations

The site is located c.16.1 km to the north-west of the Rogerstown Estuary SPA (Site Code: 004015) and SAC (Site Code: 000208).

5.4. EIA Screening

Having regard to the existing previously permitted development on site, the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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. A first-party appeal was received from BGM Consulting representing the applicant Johmick Limited, appealing the financial contributions made by Fingal County Council under Condition No. 9 of the grant of permission.

The following is a summary of the grounds of appeal.

- The applicant has been established on the site since 2013.
- Temporary permission was previously granted for the existing development on the site under P.A. Ref.'s F13A/0080 and F16A/0077, i.e. for a facility for the recovery, storage and transfer of a glass cullet product and all ancillary site services.
- The applicant has applied for permission for the proposed development under the subject application in order to continue the use on the site.
- Prior to 2001 and the development permitted thereafter, the site was used as a grain store and shop for many years.
- The buildings and use on the site date back to the 1950's.
- The appellants contest that any expenditure that was / or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefitting the development in the area of the Authority is not warranted because of the established commercial development at the site, even prior to the inception of the Planning Regulations.
- Development Contributions would not be levied on similar development in other local authority area.
- The appellant asserts that the conditioning of financial contributions is unjustified and request that the requirement for same be removed.
- The appellant is open to the option of An Bord Pleanála applying a time limit to the activity on the site, to a suggested period of 5 to 10 years, as a condition on the permission. This would remove the necessity for a financial contribution.

- The building on the site is coming to the end of its structural life span and will need to be extensively up-graded within the next 10 years.
- The applicant intends to move the business to a purpose built facility within that timeframe, irrespective of the outcome of the subject appeal.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response is as follows;

- Condition No. 9 requires the payment of €68,880 which was calculated as follows;
$$846\text{m}^2 \times \text{€}76.69 = \text{€}68,880.00 \text{ [sic]}$$
- This levy was applied in accordance with Section 48 of the Planning and Development Act 2000 (as amended), and in accordance with the Development Contribution Scheme 2016 – 2020 [sic], as adopted by the Council on the 14th of December 2015.
- In the event that the Planning Authority's decision is upheld, the Planning Authority requests that Condition No. 9 is included in An Bord Pleanála's determination.

6.3. Further Responses

6.3.1. The appellant's response to the Planning Authority's submission, is as follows;

- The appellant now requests that An Bord Pleanála apply a time limit to the activity on the site for a minimum of 4 years, as per the previous grant of permission on the site.
- The appellant would prefer if the timescale could be in the region of 5 – 10 years as a condition on the grant of permission, if deemed possible / acceptable.
- Based on previous grants of permission, this would remove the necessity for a financial contribution.
- The building on the site is coming to the end of its structural life span and will need to be extensively upgraded within the next 10 years.

- The appellant intends to move the business to a purpose built facility within that timeframe, irrespective of the outcome of this appeal.

7.0 Assessment

- 7.1. This is an appeal against the financial contributions made by Fingal County Council under Condition No. 9, attached to its grant of permission for a facility for the recovery, storage and transfer of a glass cullet product, and all ancillary site services.
- 7.1.1. Under Section 48(10)(b) of the Planning and Development Act, 2000 (as amended), an appeal may be brought to the Board where an applicant for planning permission considers that the terms of the Development Contribution Scheme have not been properly applied in respect of any condition laid down by the Planning Authority.
- 7.1.2. Condition No. 9 of the permission requires the developer to pay a development contribution sum of €64,880.00 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority, as a contribution towards expenditure that was and / or that is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Fingal County Development Council Contribution Scheme.
- 7.1.3. In the Planning Report, the total floor area of the proposed development is stated as 846 sq.m. and is levied at a rate of €76.69 per square metre of industrial / commercial class of development, as per Section 9 of the Fingal County Council Development Contribution Scheme 2021-2025. The Planning Authority calculated the total development contribution levies for the permitted development as €64,880.00.
- 7.1.4. In the grounds of appeal, the appellant contests that 'any expenditure that was / or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefitting the development in the area of the Authority is not warranted because of the established commercial development at the site'. The appellant details how the site has been in commercial use since the 1950's. In response to the Planning Authority's submission to the grounds of appeal (as detailed in Section 6.2 above), the appellant requests the Board to apply a time limit to the

activity on the site for a minimum of 4 years, as per the previous grant of permission on the site or, if possible, a temporary permission of 5 to 10 years. The appellant states that such a temporary permission would remove the necessity for a financial contribution, as per previous grants of permission on the site. The appellant details how the building on the site is coming to the end of its structural life span and will need to be extensively upgraded within the next 10 years. The appellant states that it is their intention to move the business to a purpose built facility within the next 5 to 10 years, irrespective of the outcome of the subject appeal.

7.1.5. Section 11 of the Fingal County Council Development Contributions Scheme 2021-2025 sets out exemptions and reductions whereby certain categories of development are exempted from the requirement to pay development contributions or may pay a reduced rate, as stated under the Scheme. Section 11(u) sets out exemptions for temporary planning permissions as follows;

(u) Temporary Planning Permissions

- Exempt up to 5 years duration
- 50% reduction for 5 – 10 years duration
- Full rate when permission or combination of permissions exceed 10 years (less any previous payments under the 5 -10-year reduction).

7.1.6. Under previous applications P.A. Ref.'s F16A/0077 and F13A/0080, temporary planning permission was granted to the applicant Johmick Limited for the use of the premises and site as a facility for the recovery, storage and transfer of a glass cullet product and all ancillary site services. Under P.A. Ref. F16A/0077 temporary permission was granted for a period of four years, as per Condition No. 2 of the permission. Under P.A. Ref. F13A/0080 temporary permission was granted for a period of three years, as per Condition No. 3 imposed. This provided a combined temporary permission period of seven years.

7.1.7. Section 7.5 of the Development Management Guidelines (2007) sets out guidance with regards 'Temporary permissions' and states (inter alia) that: -

'the grant of a temporary permission will rarely be justified where an applicant wishes to carry out development of a permanent nature that conforms with the provisions of the development plan'.

7.1.8. Furthermore Section 7.5 of the Guidelines states that: -

'In the case of a use which may possibly be a "bad neighbour" to uses already existing in the immediate vicinity, it may sometimes be appropriate to grant a temporary permission in order to enable the impact of the development to be assessed, provided that such a permission would be reasonable having regard to the expenditure necessary to carry out the development. A second temporary permission should not normally be granted for that particular reason for it should have become clear by the expiration of the first permission whether permanent permission or a refusal is the right answer. In other circumstances, an application for a second temporary permission may be quite genuine and should be dealt with on its merits. For example, where a temporary permission has been granted for a structure which is inherently impermanent, an application for a permission for a further limited period could reasonably be made if the structure has been well maintained and there has been no other change in circumstances relating to the proper planning and sustainable development of the area concerned'.

7.1.9. The development under the subject appeal comprises a facility for the recovery, storage and transfer of a glass cullet product and ancillary site services. As detailed above, the appellant has been previously granted temporary permission twice for the development on the site. The premises on the site are a permanent structure and the established use on the site has been permitted and in use since June 2013, as per its previous temporary permissions.

7.1.10. The Planning Authority in its assessment of the application note that under previous permissions P.A. Ref.'s F13A/0080 and F16A/0077, temporary permission was granted for the facility on the basis of the strategic nature of the site within the Garristown Local Area Plan and Village Design Framework, as part of a development site. The Planning Authority further state that the Garristown Local Area Plan has since expired. Noting the acceptability of the use at this location, the Planning Authority consider that a permanent permission should be granted under the subject application. The Planning Authority conclude that the proposed development accords with the 'RV' zoning objective of the site and would not unduly impact on the amenity of neighbouring property or the surrounding area.

7.1.11. Having regard to the permanent nature of the development on the site, which conforms with the provisions of the Fingal County Development Plan and in the absence of evidence to demonstrate that the development has adversely impacted on the amenity of the surrounding area under its previous temporary permissions, it is my view that a third temporary permission is not warranted. I acknowledge the applicant's case that the building on the site is coming to the end of its structural life span and will need to be extensively upgraded within the next 10 years. However, in the absence of evidence to demonstrate same, I do not consider the merit of this ground of appeal sufficient to warrant a third period of temporary permission. A grant of a third temporary permission would be contrary to Section 7.5 of the Development Management Guidelines (2007), as detailed above. On this basis, I am satisfied that the Fingal County Development Contribution Scheme has been **correctly** applied. The calculation of the quantum of the financial contribution levied by the planning authority appears to be correct.

8.0 **Appropriate Assessment**

8.1.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment and the separation distance from of the appeal site to any European sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 **Recommendation**

9.1.1. I recommend that Condition no. 9 should remain as stated by the planning authority.

10.0 **Reasons and Considerations**

Having regard to:

- (a) The submissions made in this appeal,
- (b) The provisions of the Fingal County Council Development Contribution Scheme 2021-2025 and in particular Section No.'s 9 and 11 of the scheme,

(c) Section 7.5 of the Development Management Guidelines (2007).

The Board considers that Condition no. 9 has been correctly applied and determined in accordance with the Fingal County Council Development Contribution Scheme 2021-2025.

Brendan Coyne
Planning Inspector

24th February 2021