



An
Bord
Pleanála

Inspector's Report ABP-312345-21.

Development

Amalgamation of units F2 and F3 (with connecting doors at ground and first floor levels) and its use for warehouse and distribution with ancillary trade counter and showroom at ground and first floor levels; Retention of offices at second floor level which are ancillary to the overall warehouse operation; Retention of all signage and external illumination of the signage.

Location

Units F2 & F3 Weatherwell Business Park, Clondalkin, Dublin 22.

Planning Authority

South Dublin County Council.

Planning Authority Reg. Ref.

SD12A/0236.

Applicant(s)

O&S Doors Limited.

Type of Application

Planning Permission.

Planning Authority Decision

Grant with conditions.

Type of Appeal

First Party – V – Condition No. 4.

Appellant(s)

O&S Doors Limited.

Observer(s)

None.

Date of Site Inspection

2nd April, 2022.

Inspector

P.M. Young.

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1.0 Site Location and Description

- 1.1. The appeal site has a stated site area of 0.04ha and contained thereon are two existing warehouse/distribution units that also contain a trade counter and showroom that are associated with the First Party's business 'O & S Doors Limited'. These units are referred to as Units F2 and F3. They form part of the *Weatherwell* Business Park which is accessed from the Lucan Newlands Road on the western side of this business park and is also accessible from Cloverhill Road/Station Road via Weatherwell Road on its eastern side. The site is located in the Dublin city suburb of Clondalkin, circa 14km by road to the west of the city centre.

2.0 Proposed Development

- 2.1. Amalgamation of units F2 and F3 (with connecting doors at ground and first floor levels) and its use for warehouse and distribution with ancillary trade counter and showroom at ground and first floor levels; Retention of offices at second floor level which are ancillary to the overall warehouse operation; Retention of all signage and external illumination of the signage.
- 2.2. The planning application form indicates that the gross floor space, new and retained, relating to this application is 1,097m².

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By order dated the 24th day of November, 2021, the Planning Authority decided to grant planning permission subject to 5 mainly standard conditions. Of relevance to this appeal case is the requirements of Condition No. 4 which reads:

"Financial Contribution.

The developer shall pay to the Planning Authority a financial contribution of €99,947.67 (ninety nine thousand nine hundred and forty seven euros and sixty seven cents), in respect of public infrastructure and facilities benefitting development within the area of the Planning Authority, that is proved, or intended to be provided by or on behalf of the authority, in accordance with the terms of the Development Contribution Scheme

2021 – 2025, made under Section 48 of the Planning and Development Acts 2000-2011 (as amended).

The contribution shall be paid prior to commencement of development, or in such phased payments as the Planning Authority may facilitate. Contributions shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced as outlined in the South Dublin County Council Development Contribution Scheme 2021 – 2025.

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.

Note: Re: CONDITION – Please note that with effect from 1st January 2014, Irish Water is now the statutory body responsible for water services. Further details/clarification can be obtained from Irish Water at Tel. 01 602 1000 or by emailing customerservice@water.ie.”

I also note to the Board that the order to grant permission also included a financial contribution for the Irish Rail Kildare Route Project under Condition No 5.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **final Planning Authority’s Planning Officers report**, dated the 24th day of November, 2021, considered that the applicant had satisfactorily addressed the concerns raised in the Planning Authority’s further information request and that all other matters could be dealt with appropriately by condition. This report is the basis of the Planning Authority’s decision and concludes with a recommendation to grant permission.

3.2.2. Other Technical Reports

Water Services: No objection.

Transportation: No objection.

3.3. Prescribed Bodies

3.3.1. **Irish Water:** No objection, subject to safeguards.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Site

P.A. Ref. No. SD05A/0035: Permission was **granted** subject to conditions for a change of use for: (a) retention of part of second floor as industrial logistics, (b) retention of first floor and part of second floor as gymnasium, (c) change of use of ground floor from industrial use to gymnasium use and (d) alterations to front elevation.

Decision Date: 5th day of October, 2005.

5.0 Policy Context

5.1. Development Plan

5.1.1. The South Dublin County Council Development Plan, 2016 to 2022, is the operative plan. Under this plan the site is zoned 'EE' which has a stated land use objective: "to provide for Enterprise and Employment Related Uses". Under this land use the principle of the various uses to which the appeal site relates are generally deemed to be acceptable, subject to safeguards.

5.2. South Dublin County Council Development Contribution Scheme, 2021 – 2025.

5.2.1. Section 1 states that: "*Sub-section (1) of Section 48 of the Planning and Development Act 2000, as amended ('the Act'), enables a planning authority, when granting a planning permission under Section 34 of the Act, to include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority, and that is provided, or it is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities)*".

- 5.2.2. Section 3(a) states that: “*Subsection (3) of Section 48 specifies that a scheme shall state the basis for determining the contributions to be paid in respect of public infrastructure and facilities, in accordance with the terms of the scheme*”.
- 5.2.3. Section 3(b) states: “*in stating the basis for determining the contributions to be paid, the scheme must indicate the contribution to be paid in respect of the different classes of public infrastructure and facilities which are provided or to be provided by any local authority and the planning authority shall have regard to the actual estimated cost of providing the classes of public infrastructure and facilities, except that any benefit which accrues in respect of existing development may not be included in any such determination*”.
- 5.2.4. Section 3(c) states: “*a scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances*”.
- 5.2.5. Section 6 sets out the basis for determination of the contribution.
- 5.2.6. Section 9 sets out the level of contribution.
- 5.2.7. Section 11 sets out circumstances where no or reduced contribution apply.
- 5.2.8. Section 13 states that: “*no reductions in whole or in part shall apply to permissions for retention of development*”.
- 5.2.9. Section 14 sets out the payment of contribution.
- 5.2.10. Section 20 sets out the provisions for appeals to An Bord Pleanála.

5.3. Natural Heritage Designations

- 5.3.1. None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows:
- This appeal relates to Condition No. 4 only.
 - The Council must deduct the amounts of historic contributions paid on the property from the contribution specified in Condition No. 4. This has not happened.

- It is not possible without the assistance of the Council to confirm which contributions have been paid and the former owners of the property have been and gone and with them any records of payments dating back some 40 years.
- During Covid the assistance of the Council to determine past payments were required as it was not possible to do this from information available on-line and during limited in duration 30minute interval appointments that were afforded.
- Subsection XXVI of the scheme is applicable to the entire complex that is the Weatherwell Business Park. Developments at this business park date back to the 1980s and many of these were subject to contributions.
- The Board should assume that the payments required under previous grants of permission were paid and deduct this amount from the contributions applicable.
- Under P.A. Ref. No. SD05a/0035 which related to the retention of floorspace of 355.5m² for change of use and 538m² of proposed development change of use the Council did not apply any contribution to that grant of permission. On this point it is argued that the relevant contribution scheme in place at that time did not include an exemption for change of use and as such payment of a contribution should have been applied to this permission granted. It is considered that this may not have been done due to the Council offsetting historic contributions.
- The Board is therefore sought to omit Condition No. 4.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- When this planning application was assessed for its financial contribution, a search was done by the Council for any previous financial contribution for the relevant area covered by the area associated with it and no records for such were found.
- Therefore, the relevant financial contribution was calculated and attached as a financial condition to the planning permission together with a contribution for the Kildare Route Project.
- The assessment of the financial contribution is as follows:
 - 1,097m² (no proof of previous payment).

- $1,097\text{m}^2 \times \text{€}91.11$ per square metre = €99,947.67.
- Kildare Route Project: $1,097\text{m}^2 \times \text{€}22.35$ per square metre = €24,517.95.

6.3. Applicant Further Responses

6.3.1. The First Party's further response can be summarised as follows:

- Further contact was made to the Planning Authority who indicated that they were unable to find any evidence of any payment on the subject property and they could not see payment for any contribution associated with any property within this estate.
- The evidence provided in our appeal show a price equivalent of over half a million euros in development contributions relating to the properties in this area and the Council are therefore saying that they have no records of any payments of contributions in this area.
- The Council were asked to confirm if they had records of payment of the 1997 application as listed in their appeal and they confirmed that they had no record of the same.
- The appellant has recently purchased this property and has no means of accessing historic information, for example receipts of payments by previous owner(s). The passing of time would render the need to retain such receipts as unnecessary for accounting purposes.
- As a civil matter, the evidential standard is balance of probability. It seems entirely implausible to conclude that none of the contributions associated with the wider estate were paid.
- The Board is requested to use their discretion to conclude that on the balance of probability it would seem more likely that historic contributions would have been paid. This is apparent from evidence of enforcement action to recover outstanding monies.
- On the balance of probability, historic contributions more likely than not were paid and it should find that no contributions are applicable in this case.

7.0 Assessment

- 7.1. The applicant has lodged a separate appeal to the Board which relates to Condition No. 4 only. They essentially seek that this condition be omitted from the Planning Authority's Order to grant planning permission and retention permission for the development sought under P.A. SD21A/0236.
- 7.2. I note that Condition No. 4 requires the developer to pay the sum of €99,947.67 to South Dublin County Council as a development contribution in accordance with their General Development Contribution Scheme, 2021 to 2025, as amended.
- 7.3. This condition also sets out that the contribution shall be paid prior to commencement of development, or in such phased payments as the Planning Authority may facilitate. Contributions shall be payable at the rate pertaining to the year in which implementation of the planning permission is commenced as outlined in their Development Contribution Scheme.
- 7.4. In this regard, I note that the development sought under this application includes a retention component which relates to the provision of offices at second floor level which are indicated as being ancillary to the overall warehouse operation, all signage and external illumination of the signage. As such the development can be considered as commenced.
- 7.5. With the given reason for this condition reading: *"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"*.
- 7.6. At the time, this report has been prepared the Dublin South County Council Development Contribution Scheme, 2021-2025, is the applicable scheme. Section 1 of this scheme states that: *"Sub-section (1) of Section 48 of the Planning and Development Act 2000, as amended ('the Act'), enables a planning authority, when granting a planning permission under Section 34 of the Act, to include conditions for requiring the payment of a contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority, and that is provided, or it*

is intended will be provided, by or on behalf of a local authority (regardless of other sources of funding for the infrastructure and facilities)”.

- 7.7. Section 3 sets out the basis of determining the applicable contribution to be paid under the scheme in relation to permitted developments with subsection (c) allowing for the payment of reduced contribution or no contribution in certain circumstances.
- 7.8. In relation to the determination of the contribution this is provided for under Section 6 and Section 9 sets out the level of contribution with this based on the class of public infrastructure and of relevance to the development sought under this application provides for a €91.11 per square meter total contribution for industrial/commercial class of development.
- 7.9. I note that the Planning Authority in their response to the grounds of this First Party Appeal indicated that in relation to Condition No. 4 that the basis of their determination was on 1,097m² of which they indicate that there is no proof of previous payment for at a sum of €91.11 per square metre with this totalling €99,947.67.
- 7.10. The First Party have indicated that they are recent owners of Units F2 and F3 to which this application relates and that is circa four decades since their construction. They indicate that as the original applicants of these units are long gone, they have endeavoured to find proof from the Council that no proof of previous payment for the floorspace relating to these units was never paid. They also indicate that they have sought to do this with the assistance of the Council through the limited provisions available to them during the Covid period and of concern the Council can not find any proof that supports that no proof of either no contributions ever having paid or that contributions have been paid.
- 7.11. I note that Section 11 of the scheme sets out circumstances where no contribution or a reduced contribution apply. It includes subsection (xix) which states: *“internal layout alterations where no additional floor area is created and external walls are not being removed shall be exempt”* and subsection (xxvi) which states: *“change of use: In respect of a permission for change of use, where development contributions were paid in respect of the former use the contribution payable on the new use will be net of the quantum of development previously paid for. Where a contribution was not previously paid, or the original development was carried out before 1963 it shall be treated in its entirety as new development and assessed accordingly. The Development*

Contribution Scheme does not provide for any rebate or refund in this regard. Agents/applicants should provide evidence of prior payment at application stage to expedite assessment and avail of this exemption”.

- 7.12. This development which consists of firstly the amalgamation of units referred to in this application as Units F2 and F3 at the Weatherwell Business Park with connecting doors at ground and first floor level. Together with its use for warehouse and distribution with ancillary trade counter and showroom at ground and first floor levels.
- 7.13. In relation to the circumstances set out under subsection (xix) of the scheme and the documentation provided it is clear that no additional floor area and no external walls removed as part of this development. Notwithstanding, the exemption and the circumstance it provides an exemption from the payment of development contribution does not include change of use.
- 7.14. As set out above change of use circumstance where payment of contribution is exempt is provided for under subsection (xxvi) of the scheme. Of concern neither the First Party or the Council can demonstrate by way of evidence of prior payment to avail of this exemption. This is one of the requirements to meet the criteria to qualify for an exemption under this particular subsection of the scheme and of further concern Section 13 of the scheme clearly sets out that: *“no reductions in whole or in part shall apply to permissions for retention of development”*.
- 7.15. In relation to where an appeal can be brought to An Bord Pleanála under Section 34 of the Planning and Development Act, 2000, as amended, the Boards remit is to make a determination on whether or not the terms of the scheme have been properly applied in respect of any conditions laid down by the Council. Based on the considerations above, crucially the lack of evidence to support that the development circumstance meets the qualifying criteria of subsection (xxvi) and the fact that this application relates to change of use of Units F2 and F3 in the Weatherwell Business Park I consider that there is no basis for an exemption in relation to the development sought under this application. I therefore consider that the Council have properly applied the terms of their scheme under this grant of permission and outstanding matters that arise from the issues raised in this appeal are outside of the Boards remit in their determination of this case.

8.0 Recommendation

8.1. In accordance with Section 48 of the Planning and Development Act, 2000, as amended, and based on the reasons and considerations set out below, I consider that the terms of the South Dublin County Council Development Contribution Scheme, 2021 to 2025, have been properly applied in respect of condition number 4 for the reasons and considerations set out below. I therefore recommend that condition number 4 should not be omitted from their notification to grant permission for P.A. Ref. No. SD21A/0236.

9.0 Reasons and Considerations

9.1. The Board, in accordance with Section 48 of the Planning and Development Act, 2000, as amended, considered, based on the reasons and considerations set out below, that the terms of the Development Contribution Scheme for the area considers that condition number 4 has been correctly applied and determined in accordance with South Dublin County Council Development Contribution Scheme, 2021 – 2025.

Having regard to:

- (a) The submissions made in this appeal.
- (b) The nature, scale and extent of the development sought under this this application together with the associated documentation provided on file.
- (c) The planning history of the site.
- (d) The provisions of South Dublin County Council Development Contribution Scheme, 2021 – 2025.

The Board considers that condition no. 4 has been correctly applied and determined in accordance with the provisions of the South Dublin County Council General Development Contribution Scheme, 2021 – 2025, and that condition no. 4 should be maintained verbatim.

Patricia-Marie Young
Planning Inspector - 4th day of April, 2022.