



An
Bord
Pleanála

Inspector's Report ABP-312371-22

Question

Whether the use of building no. 7 as a Data Centre and physical works proposed is or is not development or is or is not exempted development.

Location

Former Hewlett Packard Site,
Celbridge Road, Co. Kildare.

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED907

Applicant for Declaration

The Davy Platform ICAV.

Planning Authority Decision

No declaration

Referral

Referred by

Kildare County Council.

Owner/ Occupier

The Davy Platform ICAV.

Observer(s)

None.

Date of Site Inspection

21st of September 2022

Inspector

Karen Hamilton

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1.0 Site Location and Description

- 1.1. The site is building no. 7 of the Liffey Valley Park Technology Campus, Celbridge, Co. Kildare. The Liffey Valley Business Park, known as the former Hewlett Packard site, is located to the south of the M4 and is occupied by various companies.
- 1.2. Building No. 7 is currently unoccupied and located central to the overall campus. The building is three storeys in height and faces north towards a carpark and landscaped area. The building is connected into the main building by a pedestrian access. Visitor parking and staff parking are shared for the entire campus with the visitor parking separate, along the south of the site.

2.0 The Question

- 2.1. The following is questioned by the referrer:

Whether the use of building No. 7 as a Data Centre (and ancillary offices) and physical works is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

On the 04th of January 2022 the Planning Authority (PA), Kildare County Council received a Declaration of Exempted Development under Section 5 from the applicant.

The applicant requested the PA determined whether a change of use of Building No. 7 from manufacturing to temporary use as a Data Centre was development. The applicant considers the change is not material and “computer programme and original database” are deemed to be appropriate industrial uses as per Part 2, Article 5 of the Planning and Development Regulations 2001 (as amended) (Regulations).

The PA consider the determination of the question is difficult as there is no definition of Data Hall/ Data Centre in the Regulations.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The PA referred the question to the Board for determination; therefore, no PA report is available.

3.2.2. Other Technical Reports

None.

4.0 Planning History

- 4.1.1. There is a significant amount of planning history on the overall business park. Most of the history relates to buildings other than Building No.7 aside from that planning permission listed below.

Reg Ref 96/1287

Permission granted to Hewlett Packard (Man) Ltd for an extension to an existing manufacturing building facility comprising of a new building (29,144m²) and all other associated works. The application was accompanied by an EIA.

5.0 Policy Context

5.1. Leixlip Local Area Plan 2020-2023

Zoning

The site is zoned as H, Industrial and Warehousing, where it is an objective “*To provide for industry, manufacturing, distribution and warehousing*”

Transport

Section 6.2.1

- Given the strategic location of the Hewlett Packard site in proximity to the M4 any planning for significant development will be assessed against the Spatial Planning and National Roads Guidelines for Planning Authorities (DoECLG, 2012).

MT3.11 To ensure that all significant development proposals for KDAs and masterplan lands at Collinstown, Confey and the Liffey Business Campus (former Hewlett Packard site) are subject to Transport Impact Assessments (TIA), to be carried out in accordance with the Traffic and Transport Assessment Guidelines (NRA, 2014) and informed by the 'Area Based Transport Assessment' Advice Note (TII and NTA. 2018).

Energy

Section 9.4 Energy Supply and Communication

- The Hewlett Packard site is served by double circuit 110 Kv Lines and associated loops.

5.2. Natural Heritage Designations

None of relevance.

5.3. EIA Screening

The proposed development relates to a change of use. This proposal is not within a class of development listed under Schedule 5 of the Planning and Development Regulations 2001 (as amended). The need for a screening determination is therefore not required.

6.0 The Referral

6.1. Referrer's Case

The referrer is the PA. As stated above, the PA has referred the question to the Board as they consider there is no definition of Data Hall/ Data Centre.

6.2. Owner/ occupier's response

- 6.2.1. An agent on behalf of the applicant has submitted a response to the PA referral. The submission refers to the initial submission to KCC setting out the rationale for the exempted development. The submission was also accompanied by a Transport Technical Note. The submission is summarised below;

6.2.2. Rationale for request

- A masterplan for the entire business park is being prepared.
- The proposal will include for a new Data Centre on the site.
- The use for Building No 7 as a Data Centre is only for a temporary period.

6.2.3. Manufacturing Process

- Building No.7 has permission for manufacturing.
- The definition of “industrial process” in Part 2, Article 5 of the Regulations includes any process which is carried out during trade or business for or incidental to the making of any article or part of an article which includes computer program or other original database.
- Part 2, Article 5 of the Regulations defines an “industrial building” as a structure used for the carrying on of any industrial process.
- It is clear that manufacturing is an “industrial process” and Building No.7 is an industrial building.

6.2.4. Details of the proposal

- Two data halls are proposed at ground level and one data hall on the first floor.
- There will be c.65 staff.
- There will be minimal changes internally.
- Additional plant on the roof is proposed and would be imperceivable.
- The use of the Data Centre is likely to result in a reduction in vehicle trips in comparison to the manufacturing use.

6.2.5. Material change of use.

- Building No. 7 is an industrial building which houses and industrial process.
- Part 2, Article 5 of the Regulations defines the industrial process as the making of an article or part of an article, where article can include computer program or other original database.

- The Data Centre is a dedicated space within a building used to store, process, share and disseminate a database.

6.2.6. Proposed works

- Section 4 (1)(h) provides a definition of development and works.
- The proposal can be defined as development although is considered exempted as the proposed external works are imperceivable from the outside.

6.2.7. Article 9: Restriction of exemption

- Article 9 only relates to development of a class specified in Parts 1 to 3 of Schedule 2 of the Regulations
- It is considered the proposal is exempted under Section 4 (1) (h) of the Act and not under Schedule 2 of the Regulations.

6.2.8. Appropriate Assessment (AA)/ Environmental Impact Assessment (EIA)

- The proposed works are relatively minor and only includes internal works.
- A screening assessment submitted with KCC Reg: 20/873 (DBS development) concluded no impact on any European Sites.
- It is not considered of a form to require an EIA.

6.2.9. Transport Technical Note

- The baseline traffic conditions to the site are provided.
- There are 1,392 car parking spaces currently provide on-site.
- The 29,144m² manufacturing building would require 292 spaces (based on KCC standards).
- An assessment of the car parking associated Data centres permitted in Ireland has been provide. Based on an 85th percentile of these results 109 spaces would be required.
- The TRICS database does not contain the number of comparable sites to determine a robust trip generation. The traffic impact would be immaterial.
- The use of other similar permitted schemes allows an assessment of the impact of trips on AM and PM peak times.

6.3. Further Responses

- 6.3.1. A submission from the agent was received on the 08th of April 2022 requesting the withdrawal of the Section 5 determination as the applicant no longer required the use of Building No. 7 as a Data Centre.
- 6.3.2. The Board informed KCC of the applicant's request, affording the PA the opportunity to withdraw the request for the Section 5 determination. No response was received from the PA.

7.0 Statutory Provisions

7.1. Planning and Development Act 2000, as amended

- 7.1.1. Section 2(1) of the Act states the following:

'development' has the meaning assigned to it by Section 3 of the Act;

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'

- 7.1.2. Section 3(1) of the Act states that:

'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land'.

- 7.1.3. Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act;

(h) development consisting of the use of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

- 7.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.

7.2. Planning and Development Regulations, 2001

7.2.1. For the purposes of interpretation, Article 5 (1) within Part 2, Exempted Development, of the Regulations, provides the following definitions that are of relevance in the consideration of this case:

- “*industrial building*” means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;
- “*Industrial process*” means any process which is carried on in the course of trade or business, other than agriculture, and which is-
 - (a) for or incidental to the making of any article or part of an article, or
 - (b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,and for the purposes of this paragraph, “article” includes-
 - (i) a vehicle, aircraft, ship or vessel, or
 - (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;

7.2.2. Article 6(1)

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 2.

7.2.3. Article 9(1)

This provides Restrictions on Exemption to which article 6 relates.

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,

7.2.4. Schedule 2: Part 5: Exempted Development-Classes of Use

- Class 4- Use as a light industrial building
- Class 9- Use as a wholesale warehouse or as repository

7.3. **Other**

Environmental Permits

7.3.1. European Communities (Greenhouse Gas Emissions Trading) Regulations 2012

- Schedule 1 includes a list of activities which require a Greenhouse Gas (GHG) emissions permit
- If the thermal input of the standby generators is to exceed 20 MW (units over 3 MW) a CHG permit is required from the Environmental Protection Agency (EPA).

7.3.2. EU (Medium Combustion Plants) Regulations 2017

- Plant with a thermal output of up to 50 MW must be registered with the Irish EPA and must comply with emission limits.

7.3.3. Industrial Emissions Directive 2010/75/EU

- Industrial Emissions Licence (IED) or Integrated Pollution Control licence from the EPA
- Backup generators exceed 50 MW thermal output and are expected to operate for more than 18 hours per year will need an IED Licence.

8.0 Assessment

8.1. Introduction

- 8.1.1. The purpose of this Section 5 referral is to determine if the use of Building No.7 as a Data Centre falls within the scope of exempted development within the relevant legislation.
- 8.1.2. Kildare County Council (KCC) have referred the question to the Board for determination following a request by the owner of Building No.7. This building forms part of the overall Liffey Valley Business Park and is currently vacant. The previous permitted use was for manufacturing. KCC have referred this application for determination as they consider there is no definition for Data Halls/Data Centre the Planning and Development Regulations, and it is therefore difficult to issue an opinion.

8.2. Is or is not development

- 8.2.1. Section 3(1) of the Act states that ‘development’ means, except where the context otherwise requires, “the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land’.
- 8.2.2. To assess if the proposed development is development I consider, in the first instance, it must be established if a change of use has occurred, then if this change is material and finally if there are any works proposed.

Change of Use

- 8.2.3. The last permitted use for Building No.7 (Reg Ref 96/127) is manufacturing. The applicant considers that this permission for manufacturing allows the use to be defined as industrial use. In this regard, the applicant considers the interpretation of “industrial process” as per Article 5 (1) within Part 2, Exempted Development, of the Regulations, relevant in this case.
- 8.2.4. Manufacturing can be described as the making of an article on a large-scale using machinery. It could be assumed that the making of an article would produce a final

product. A more descriptive definition refers to any industry that makes products from raw materials using manual labour or machinery on a large scale¹.

- 8.2.5. The planning legislation does not include a definition of Data Centre/Data Hall. This aside, I consider it reasonable to consider it as the electronic storage of data rather than the making of data. This use may be described as more akin to storage rather than manufacturing, although the applicant notes the definition of “industrial process” in the Regulations which states that the “making of any article or part of an article” can include “a sound recording, film, broadcast, cable programme, publication and computer program or other original database”.
- 8.2.6. I have concerns in relation to the applicant’s assertion that a Data Centre falls within the scope of “any computer programme or original database”. It is clear the proposal does not include the making of any computer program or part of the computer program in so far as the process required to establish that program would consist of a set of software engineers, testers and include a final product for delivery to a client or prospective client. Having regard to the context of all the uses within this section i.e., “a sound recording, film, broadcast, cable programme, publication and computer program or other original database” I consider that a final product would also be produced for an “original database”. In this regard, I consider it difficult to establish a connection with a Data Centre and the “making of any article or part of an article” as originally intended in defining an “industrial process”.
- 8.2.7. Therefore, having regard to the original permitted use as manufacturing, the definition of “industrial building” and “industrial process” in Article 5 of the Regulations and the proposed use of the building as a Data Centre, I consider a change of use would occur.

Material Change of Use

- 8.2.8. Aside from the applicant’s contention that Data Centre falls within the scope of the definition of “industrial” for the purposes of this Section 5 Declaration, for the applicant to claim an exemption of development there needs to be clarity that no material change of use has occurred on the site.

¹ <https://www.britannica.com/technology/manufacturing>

- 8.2.9. The permitted use as “manufacturing” would have been assessed in terms of compatibility with the national, regional, and local planning policy, the impact on the environment and the proper planning and sustainable development of the area. The Data Centre use has an association with increased energy use due to the electricity needed to store the data. A recent government statement² on the role of Data Centres in Ireland notes there is a limited capacity in the energy supply for additional Data Centre development in Ireland, due to the electricity demand generated. Therefore, it is reasonable to conclude the proposed use as a Data Centre in Building No. 7 would use a significantly larger amount of energy than previously envisaged for the initial manufacturing use. There would have been no requirement to specifically addresses the proposed energy use in the original application for manufacturing.
- 8.2.10. The increased use of energy has the potential to negatively impact the environment. Data Centre use, and associated thermal inputs and outputs, are strictly controlled by the need to comply with certain environmental standards and where required, environment permits as stated above in Section 7.3. I note a similar development³(Data Storage facility with a GFA of c.28,566m²) was accompanied by an EIAR which notes the development would have a maximum demand of 48 MW and fall within the scope of the EU Emissions Trading Scheme (ETS). Again, there would have been no requirement to specifically consider these environmental impacts when assessing the original manufacturing proposal.
- 8.2.11. Case law has determined that a change of use is material is the use of the first use is substantially different in planning terms from the second use and if a change of use would impact the proposer planning and sustainable development to the area. In the case, Monaghan County Council v. Brogan [1987] I.R.333, it was determined that in planning terms ‘material’ is whether the issues raised by the change of use would raise matters that would normally be considered by a planning authority if it were dealing with an application for planning permission, such as residential amenity, traffic safety or policy issues in relation to statutory plans.

² Government Statement on the Role of Data Centre in Ireland’s Enterprise Strategy, Government of Ireland, July 2022

³ ABP 310729-21 (Reg Ref 21/663)

- 8.2.12. As stated above, I do not consider the proposed use of a Data Centre is sufficiently like a manufacturing use to conclude that a change of use would not occur. Even if the Board considered this change of use did have similarity, I would reiterate the required energy use and output emissions would not have been assessed within the original planning application.
- 8.2.13. Having regard to the complex considerations in relation to energy use and emissions during the operation of a Data Centre, I do not consider the use is comparable to a standard industrial use. I consider the proposed change represents a material change from manufacturing and as such would comprise development.

Proposed Works

- 8.2.14. A new internal layout is proposed to accommodate the Data Centre. External works include the addition of louvres at ground level along both side elevations and additional roof plant. The applicant considers the appearance of the building will remain generally consistent with the existing appearance and modifications would be imperceivable from the outside of the site. Internally the proposal includes the removal of most of the offices, plant and various spaces involved in the manufacturing use. These will be replaced with large halls to store generators, electrical units, and data halls. Having regard to the proposed alterations I consider works will be undertaken on the site and the proposal is development.

Conclusion

- 8.2.15. Having regard to nature and scale of the proposed change of use and reference to “development” in Section 2 (1) and Section 3(1) of the Act states, I consider the proposal a change of use on the site is considered a material change. Therefore, I consider the proposed use of the site as a Data Centre is development.

8.3. Is or is not exempted development

- 8.3.1. As stated above, it is considered the proposed development would constitute a material change of use from manufacturing to a Data Centre as it is not defined in any of the classes of use of Part 4 of the Second Schedule of the 2001 Regulations.

Therefore, I do not consider that exemption provided in Part 4 relative to Class 4 “Use as a light industrial building” would apply and the exemptions under Article 10 (change of use) apply. The change of use is not considered exempted development.

8.3.2. The applicant considers the proposed alterations would fall within the scope of Section 4(1) of the Act which sets out various forms and circumstances in which development is exempted development for the purposes of the Act including the following:

(h) development consisting of the use of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

8.3.3. Externally, the main changes include the amalgamation of the plant on the roof. Existing and proposed elevations have been submitted which do not illustrate any significant external alterations. I do not consider the external works would alter the external character of the building.

8.3.4. Whilst I do not consider the external appearance of the building would be inconsistent with the surrounding area, I do not consider the significant alteration of internal floorspace over c. 30,000 m² and change to the use as a Data Centre is exempt and therefore, I do not consider reference to Section 4 (1) of the Act is relevant in this instance.

8.4. Restrictions on exempted development

8.4.1. As I have concluded that the proposal is not exempted development, there can be no restrictions on this exemption. This aside, should the Board consider, the proposal can be assessed in the context of “industrial process” I have elaborated on the restrictions involved with such exemptions.

8.4.2. Article 9 of the regulations places further restrictions on exempted development. The applicant states that this article only relates to development of a class specified in Parts 1 to 3 of Schedule 2 of the Regulations. The applicant considers the proposal is exempted under Section 4 (1) (h) of the Act and not under Schedule 2 of the Regulations.

8.4.3. I note the restrictions on exemptions in Article 9 which I consider relates to Parts 1 to 3 of Schedule 2 of the Regulations. I do not consider Article 9 is not applicable to the determination of this declaration. It is my opinion that the restrictions on exempted development under Article 9 (1) (a) (i) of the Regulations do not apply although I consider the restriction in Article 10 apply as below.

8.4.4. Article 10 permits a change of use within any one of the classes of use specified in Part 4 of Schedule 2 provided the development would not;

(c) be inconsistent with any use specified or included in such a permission.

8.4.5. As stated above the proposed development does not fall within the class of development as “industrial” and would constitute a material change of use from manufacturing to a Data Centre leaving it inconsistent with that permission on the site. It is my opinion the restrictions in Article 10 (c) would apply in this instance.

8.5. **Screening for Appropriate Assessment**

Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the 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. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the use of the existing Building No.7, at the former Hewlett Packard Site as a Data Centre (with ancillary offices) is or is not development or is or is not exempted development:

AND WHEREAS Kildare County Council requested a declaration on this question from An Bord Pleanála on the 05th day of January 2022,

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 9(1) and article 10 (1) (c) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The use of the site as a Data Centre does not come within the scope of the definition of “industrial process” in Article 5 (1) Planning and Development Regulations 2001, as amended,
- (b) The change of use from manufacturing to a Data Centre would constitute a material change of use,
- (c) There are no provisions in the Planning and Development Act 2000, as amended or in the Planning and Development Regulations 2001-2019, made thereunder, whereby the said change of use is exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the use of

Building No. 7 as a Data Centre is development and is not exempted development.

Karen Hamilton
Senior Planning Inspector

04th of October 2022