



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313991-22

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<b>Development</b>	Retention and continued use of unit as Estate Management Office
<b>Location</b>	Unit 2, Block 15, Malahide Marina Village, Malahide, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F22A/0198
<b>Applicant</b>	Sean Reilly
<b>Type of Application</b>	Permission and Retention.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party v s48 contribution
<b>Appellant</b>	Sean Reilly.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	3 <sup>rd</sup> May 2023.
<b>Inspector</b>	Lucy Roche

## 1.0 Site Location and Description

- 1.1. The appeal site is in Marina Village, Malahide, Co. Dublin, c0.4km to the north of Malahide Train Station and c14km north of Dublin City Centre. The site comprises Unit 2, Block 15, Marina Village, a ground floor unit within block of apartments, on the western side of the marina development. The site has a stated area of 0.004 hectares which is commensurate with the stated gross floor area of the unit, 40.6sqm. The unit is set back from the road with a southwest facing orientation. It adjoins an area of hard landscaping that facilities off-road parking. On the date of inspection, the unit was occupied by 'Murphy Moore Property Services Ltd.'
- 1.2. Development within the immediate vicinity of the site comprises mainly high-density residential development of apartment / duplex units. Lands further north are occupied by a mix of commercial and other non-residential uses and surface car parking.

## 2.0 Proposed Development

- 2.1. This application is for the retention and continued use of Unit 2, approved as an Estate Management Office to serve the Malahide Marina Village development under Reg. Ref. F95A/0248, as a General Estate Management Office.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Fingal County Council did by order dated 7<sup>th</sup> June 2022 decide to grant permission and retention permission for the proposed development subject to 3no conditions. Condition 3, the subject of this appeal is as follows:

*3 The developer shall pay to the planning authority a financial contribution of €3,949 in respect of public infrastructure and facilities benefiting the development in the area of the planning 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 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.*

*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.*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- The main issues considered in the assessment of the case planner are: - compliance with the zoning objective, integration, and impact on the visual and residential amenity of the area, water services, transportation, EIAR, and appropriate assessment.
- The report concludes with a recommendation to grant permission, subject to six conditions. This was later revised three conditions as per the granted permission.

#### **3.2.2. Other Technical Reports**

Transportation: Requests additional information in relation to parking provision

Water Services: No objection subject to condition

### **3.3. Prescribed Bodies**

None

### **3.4. Third Party Observations**

The planning authority received one submission during their determination of the application. The issues raised in this in this submission can be summarized as follows:

- The current use of the office, as a private commercial activity, is unauthorised and fails to comply with Condition 2 of planning register reference F95A/0248.
- Development description is not clear and open to misinterpretation as it does not clearly define the current or proposed use.
- Marina Village Development is a managed residential estate which does not permit commercial activity. It should be left residential.
- There is no parking allocation for a commercial enterprise.

## 4.0 Planning History

F95A/0248                      Permission granted (1995) to Malahide Marina Village Ltd, for Retention of converted garages at Block 15 for use as Estate Management Office

*Condition 2    That when the office space is no longer required for use as an estate management office by the applicant, that its use revert to use as part of the ancillary accommodation associated with Block No. 15.*

*Reason: In the interest of the proper planning and development of the area.*

## 5.0 Policy Context

### 5.1. Development Plan

The operative plan for the area is the Fingal Development Plan 2023-2029, which came into effect on the 5<sup>th</sup> of April 2023. The subject site is located within an area Zoned 'TC' Town and District Centre. The objective for this area is to protect and enhance the special physical and social character of town and district centres and provide and/ or improve urban facilities.

## 5.2. Fingal County Development Contribution Scheme 2021-2025

The Council operates a Development Contribution Scheme to part fund the provision of public infrastructure and facilities in the county. All planning permissions are subject to this scheme, including permissions granted on appeal by An Bord Pleanála, unless exempt in accordance with the provisions of the scheme.

It should be noted that from 1st January 2023, the Development Contribution Rates shall be as follows:

Residential Levy            €121.34 m<sup>2</sup>

Commercial Levy            €94.75 m<sup>2</sup>

Residential Retention    €151.67 m<sup>2</sup>

**Commercial Retention    €118.44 m<sup>2</sup>**

These rates of development contributions are payable to the Council in respect of the three classes of public infrastructure referred to under Article 9 of the Development Contribution Scheme 2021 – 2025, adopted by the County Council at its meeting held on 14th December 2020. An additional contribution is payable to Irish Water in respect of public infrastructure provided by them. Developers should contact Irish Water directly in this regard.

### Exemptions and Reductions:

11(i)            The following categories of development will be exempted from the requirement to pay development contributions or may pay a reduced rate, as stated, under the Scheme: -

- (v)            Change of use applications are exempt, unless the revised usage constitutes a substantial intensification of use of the building or service.

## 5.3. Natural Heritage Designations

The site is not within any designated site. The Malahide Estuary has been designated as an SAC (Site Code:00205) and SPA (Site Code:004025). The appeal site is located c50m from the estuary, at its closest point.

## 5.4. EIA Screening

A change of use is not a class of development for which an EIAR is required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

This is a first party appeal lodged on behalf of the applicant Sean Reilly, seeking the removal of Condition 3 as attached to Fingal County Councils decision under F22A/0198. The grounds of appeal can be summarised as follows:

- The applicant welcomes the decision of the FCC to grant permission for the proposed development; however, they consider that the Local Authority have improperly applied the terms of the FCC Development Contribution Scheme (DCS) in this instance.
- In considering whether development contributions apply in this instance, the section of the DCS, pertaining to exemptions should be consulted, in particular Part 11(i)(v) which relates to change of use applications.
- The development approved under FCC Reg: F22A/0198, provides for the retention and continued use of an existing unit approved as an estate management office to serve the Malahide Marina Village development. In the period since the 1995 permission, the occupant of the unit has utilised it to serve the wider needs of the area. The principle of development has been approved by Fingal County Council.
- The approved continuation of use of the unit will not result in any change to the way in which the unit currently operates, any increase in staffing, or change to the extent to which the use is currently being used to serve the surrounding area.
- It is thus strongly considered that the use approved to be retained, does not constitute a substantial intensification of the use of the building or service. The use as it currently operates has not resulted in any marked intensification of its use since 1995, which is considered to warrant in position of the development contributions.

## 6.2. Planning Authority Response

The planning authority's response to the first party grounds of appeal is set out in correspondence dated 22<sup>nd</sup> August 2022 and can be summarised as follows:

- The development contribution, due, was assessed in accordance with Development Contribution Scheme 2021 – 2025 (DCS), which is adopted by Fingal County Council on the 14th of December 2020 and came into effect on the 1st of January 2021.
- All applications decided after the 1st of January 2021, are assessed in accordance with the terms of this scheme. Permissions for retention are charged at the retention rate.
- Condition 3, which requires the payment of €3,949 in respect of the development contribution scheme, was calculated as follows:

Retention area	38sqm
Area to be levied:	38sqm
Total:	38sqm, x €103.91 = €3,949.00

- As this application is for permission for retention and continued use, Exemption 11(i)(v) of the development contribution scheme 2021 to 2025 was not applied.
- In the event the planning permission planning authority's decision is upheld the planning authority requests that condition three is included in the board determination

## 6.3. Observations

None

## 6.4. Further Responses

The applicant's response to the Planning Authority's submission in respect of this appeal is set out in correspondence received 27<sup>th</sup> September 2022 and can be summarised as follows:

- The current use of Unit 2 was first approved under a change of use application (FCC Ref: F95A/0248) which provided for the change of use of the unit from garages ancillary to the wider development for use as an Estate Management Office.
- Condition 2 attached to the grant of permission under FCC Ref: F95A/0248 is noted.
- In the period since the grant of permission under FCC Ref: F95A/0248, the need to retain the current use of the unit as an estate management office to serve the wider development has remained and it has not been necessary to revert the use of this unit to ancillary accommodation associated with Block 15.
- This planning application provides for a retention and continuation of the change of use approved under the 1995 permission thus it is considered that the change of use exemption under Part 11(i)(v) of the DCS applies.

## 7.0 Assessment

- 7.1.1. This is an appeal against a contribution condition imposed by Fingal County Council under the adopted Fingal County Council Development Contribution Scheme 2021-2025. Section 48(10)(b) of the Planning and Development Act 2000, as amended, provides that an appeal may be made to the Board by an applicant for permission where the applicant considers that the terms of the adopted development contribution scheme have not been properly applied by the planning authority. This appeal relates solely to the development contribution condition, and I propose to deal with the appeal in that manner.
- 7.1.2. Planning permission has been sought for the retention and continued use of Unit 2, approved as an Estate Management Office to serve the Malahide Marina Village Development under Reg. Ref. F95A/0248, as a General Estate Management Office.
- 7.1.3. Condition 3, attached to the Fingal County Council decision, requires that a development contribution in the order of €3,949 is made to the Council. The development calculation was calculated on the basis of a retention area of 38sqm,



charged at a Commercial Retention Rate of €103.91 / sqm (38sqm, x €103.91 = €3,949.00). The floor area and rate of contribution applied are not disputed.

However, the Board should note that as of the 1<sup>st</sup> of January 2023, the development contribution rate for Commercial Retention increased, to €118.44 /sqm.

- 7.1.4. It is the contention of the applicant / first party appellant, as set out in the grounds of appeal, that Fingal County Council erred in this application of the DCS by not applying the ‘*change of use*’ exemption provided under Section 11(i)(v) of the scheme, as follows:

*11(1) (v) Change of use applications are exempt unless the revised usage constitutes a substantial intensification of use of the building or service.*

- 7.1.5. The case put forward is that the change of use exemption under Section 11(i)(v) of the DCS is applicable to this development as it seeks for the continuation of the change of use to an estate management office approved under the previous grant of permission, FCC Ref: F95A/0248 and that the continuation of this change of use does not constitute a substantial intensification of the use of the building or service.

- 7.1.6. The development, as described in the application form, published notice and site notice etc, is for the for the ‘retention and continued use of the Unit’ as a General Estate Management Office. The retention element is I consider relevant in the consideration of this appeal.

- 7.1.7. As per the information available, F95A/0248, permitted the retention of converted garages at Block 15 for use as Estate Management Office for Malahide Marina Village only. Condition 2 attached to the grant of permission stipulated that when the office space is no longer required for use as an estate management office by the applicant that its use revert to use as part of the ancillary accommodation associated with Block No. 15. The reason for the application of Condition 2 is in the interest of the proper planning and development of the area.

- 7.1.8. It would appear from the information on file and from site inspection, that the premises is no longer in use as an estate management office by the applicant and

that it is currently occupied by a third party, Murphy Moore Property Services Ltd, who utilise the unit as a general estate management office, for the wider area. In my opinion the current use of the premises by a third party, as a general estate management office, contravenes the conditions attached to the grant of permission under FCC Ref: F95A/0248. I consider that my opinion this regard is supported by the 'retention' element of the application.

- 7.1.9. Further to the above, it is my opinion, that once the use of Unit 2, by the applicant (Malahide Marina Village Ltd), as an estate management office to serve the Malahide Marina Village Development, ceased, the 'authorised use' of the premises, was as ancillary accommodation (storage etc) for Block 15. Therefore, in terms of the DCS and the application of the exemption under Section 11(i)(v), I consider it appropriate to consider the change of use of Unit 2, from its authorised use, as ancillary accommodation, to its current use as a general estate management office.
- 7.1.10. The change of use from ancillary accommodation (i.e., storage etc) to commercial use as a General Estate Management Office, would in my opinion constitute a substantial intensification of use of the building (Unit 2) and therefore the change of use exemption under Section 11(i)(v) of the DSC 2021-2025, is not applicable in this instance.
- 7.1.11. As previously noted, the development contribution rate for 'Commercial Retention' increased to €118.44 /sqm, from the 1<sup>st</sup> of January 2023. As such the development contribution payable to the Planning Authority under this application has increased to €4,500 (38sqm x €118.44). I recommend that that Condition 3 be amended to reflect this new rate.

## 7.2. **Appropriate Assessment:**

- 7.2.1. Having regard to the nature and scale of the proposed development which relates solely to the use of an existing premises, the location of the site on zoned and serviced lands within a built-up area, 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.

## 8.0 Recommendation

8.1. On the basis of by assessment, I recommend that the planning authority be directed to amend Condition 3 of its decision to the following –

3 The developer shall pay to the planning authority a financial contribution of **€4,500** in respect of public infrastructure and facilities benefiting the development in the area of the planning 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 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.

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

## 9.0 Reasons and Considerations

Having regard to the nature of the development proposed, the planning history of the site, namely Fingal County Council Reference: F95A/0248 and the conditions attached to said grant of permission, the Board considers, that prior to the grant of permission under Fingal County Council Reference: F22A/0198, the 'authorised use' of the premises was as ancillary accommodation associated with Block No. 15 and that the change of use from the ancillary accommodation to the current commercial use as a General Estate Management Office, would constitute a substantial intensification of use of the building (Unit 2). As such, the exemption provided under Section 11(i)(v) of the Fingal County Council Development Contribution Scheme 2021-2025, is not applicable. Therefore, the Board is satisfied that provisions of the Fingal County Council Development Contribution Scheme 2021-2025, have been applied correctly in this instance.

The increase Development Contribution reflects the increased Development Contribution Rates payable for commercial retention under the Fingal County Council Development Contribution Scheme 2021-2025, which came into effect on the 1<sup>st</sup> of January 2023.

## 10.0 **Disclaimer**

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Lucy Roche  
Planning Inspector

22<sup>nd</sup> of May 2023