



An
Bord
Pleanála

Inspector's Report ABP315567-23 (Section 48 Appeal)

Development	Ancillary garden centre and associated works
Location	The Range, 5 Clonshaugh Road, Coolock, Dublin 17
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	5079 / 22
Applicant(s)	CDS (Superstores International Limited)
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party v Condition 2 (Financial Contribution)
Appellant(s)	CDS (Superstores International Limited)
Observer(s)	N/A
Date of Site Inspection	N/A
Inspector	Leah Kenny

Contents

1.0 Site Location and Description

The subject site is located adjacent to The Range, an existing trading retail store, on the west side of Clonshaugh Road, Coolock, Dublin 17 to the northwest of the Northside Shopping Centre.

2.0 Proposed Development

The proposed development is for an external garden centre to be located to the south and west of the existing retail unit and all associated works.

Based on the information provided on the application form, the Gross Floor Area (GFA) of the proposed Garden Centre is 878sq m.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a decision to grant permission subject to 9 conditions. Condition No.2 imposed a development contribution of €91,364.68 which is the sole matter of this appeal.

A development contribution in the sum of €91,364.68 shall be paid to the Planning Authority as a contribution towards expenditure that was and/or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefiting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contributions Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contributions Scheme or if a new Section 48 Development Contributions Scheme is made by the City Council the amount of the contribution will be adjusted accordingly.

Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefiting development in the administrative area of the locality.

4.0 Planning History

The following planning history is considered relevant to the subject appeal:

- **Reg Ref 3170/22:** An application for a new extension to the retail unit along its southern elevation of 782sqm, and a change of use of the rear yard to external garden centre (228sqm) was Granted.

Condition No. 2 required payment of financial contribution of €81,374.92 based on an increase of the GFA of 'commercial / retail development' of 782sq m as (as set out in the Original Contributions Sheet).

- **Reg Ref 3529/19:** An application for an extension to the existing retail unit to provide storage, and warehousing was Granted on 11th September 2019. It has been constructed.

Condition No. 2 required payment of financial contribution of €32,217.90 based on an increase of the GFA of 'commercial / retail development' of 428sq m (as set out in the Original Contributions Sheet). The amount was revised in December 2021 to €41,184.00 to account for indexation increase (as set out in the Amended Contributions Sheet).

- **Reg Ref 3529/19 / ABP310695-21:** An application for demolition of a building to the south of The Range and construction of a single storey Lidl supermarket was Granted. This has since been constructed.
- **Reg Ref 5950/07:** An application to redevelop the Northside Shopping Centre (and including the subject site) as a large mixed-use development, was Granted. The planning permission expired in 2018.

- **Reg Ref 1650/96 / PL29N.100411:** An application to reconstruct the building (a single storey retail unit) following a fire, was Granted.

5.0 Policy and Context

5.1. Development Plan

In the Dublin City Development Plan 2022 – 2028, the subject premises are in an area zoned ‘Z4 - Key Urban Villages / Urban Villages’ – with the objective ‘to provide for and improve mixed-services facilities’. Retail use (shop (district), shop (local) and shop (neighbourhood)) and garden centre / plant nursery are permissible uses within this zoning objective.

5.2. Dublin City Council Development Contribution Scheme 2020 - 2023

The Dublin City Council Development Contribution Scheme 2020 -2023 was the Development Contribution Scheme in place at the time of the lodgement of the subject planning application. It has since been replaced by the Dublin City Council Development Contribution Scheme 2023-2026. However, Note 1 of that scheme advises *“This scheme is effective in respect of Planning Applications lodged with Dublin City Council from 1st April 2023, where a development contribution is applicable under this Scheme. In the case of existing permissions granted before the 1st April 2023 which have not yet commenced and in the case of applications lodged but not yet decided the applicable scheme is the scheme in place at the time of lodgement of the relevant application.*

Having regard to the foregoing, the relevant Development Contributions Scheme for the subject appeal is the Dublin City Council Development Contribution Scheme 2020 – 2023.

Note 2 of the Dublin City Council Development Contribution Scheme 2020 – 2023 specifies that except for ancillary non-residential surface car parking, the floor area of the proposed development shall be calculated as the gross floor area i.e, the internal wall measurement of the floorspace on each floor of a building (including internal walls and partitions) and including mezzanine floors.

Note 3 of the Dublin City Council Development Contribution Scheme 2020 – 2023 specifies that new extensions to existing developments, will be charged at the rates specified, subject to circumstances where no contribution or a reduced contribution apply.

Section 11 and Section 12 deal with circumstances where no contribution or a reduced contribution apply.

- Section 11: Circumstances where a development will not be required to pay development contributions under the scheme (Section 11) include:
 - Change of use from one commercial use to another. Any net additional floorspace will be charged at the commercial rate.
 - Ancillary uncovered surface car parking.
- Section 12: Circumstances where a development will be liable for a reduced rate of development contributions under the scheme include:
 - Open storage / hard surface commercial space development, other than car parking, shall be liable for development contributions at one third the commercial rate.

5.3. Development Contributions – Guidelines for Planning Authorities 2013

These guidelines were issued under section 28 of the PDA 2000 (as amended) with a stated aim to provide guidance on the drawing up of development contributions to reflect radical economic changes.

6.0 The Appeal

6.1. Grounds of Appeal (First Party Appeal)

The appeal from TBP Planning and Development Consultants, agent on behalf of the applicant, CDS (Superstores International) Ltd, received by An Bord Pleanála on 16th January 2023, relates to Condition No. 2 only, wherein it is submitted that the

application of the Development Contribution Scheme has been incorrectly applied to the proposed development in this instance. The following points are put forward by the First Party Appellant:

- Condition 2 requires payment of a development contribution of €91,364.68. The contribution was calculated by applying the rate of €104.06 per sqm to the 878sqm for the proposed garden centre.
- No development contribution should apply in this case, as garden centre space does not qualify as Gross Floor Area (GFA) for the purposes of applying the contribution scheme.
- DCC had previously determined no development contribution should apply in the case of garden space for a previous application, by the same applicant at the subject site, and they were relying on this interpretation for the larger garden centre.
- Alternatively, the contribution should be reduced to at least €30,424.44 having regard to Section 12 of the Development Contribution Scheme with reference to the development comprising: open storage / hard surface commercial space development, other than car parking and therefore being liable for development contributions at one third the commercial rate.

6.2. Planning Authority Response

The response of DCC, received by An Bord Pleanála on 13th February 2023, recommends for the purpose of calculating the development contribution that the floor area of the proposed garden centre area be reduced by the area of the rear yard (228sq m), which is currently in use as storage (as stated in the application documentation for Reg Ref 3170/22). On that basis the development contribution should be based on 650sqm (i.e., 878sqm – 228sqm).

6.3. First Party Response to Planning Authority Response

The applicant's agent, TBP Planning and Development Consultants, on the 10th March 2023, responded to the comments by DCC. On the basis that DCC recommended deducting the area of the rear yard (228sq m), which is currently in

use as storage; it was argued the whole yard to the south of the store can also be set aside as it is also used for external, commercial storage. Therefore, it is argued, that the entire external storage area which is used for commercial purposes (878sqm) namely retail storage, that will in future be used as a garden centre, should be set aside for the purpose of calculating the development contribution, and no contribution should be applied. The Board is therefore requested to remove Condition No. 2 in its entirety.

7.0 Assessment

7.1.1. This appeal relates to a financial contribution and relates to Condition No. 2 only.

7.1.2. I consider there to be two issues in respect of the subject appeal, as follows:

- Whether external garden centre space qualifies as GFA for the purposes of applying the Dublin City Council Development Contribution Scheme 2020 - 2023; and
- Whether there are circumstances where no contribution or a reduced contribution apply

7.2. Issue No. 1 - Whether external garden centre space qualifies as GFA for the purposes of applying the Dublin City Council Development Contribution Scheme 2020 – 2023

7.2.1. The First Party Appellant argues that no development contribution should apply as external garden centre space does not qualify as GFA for the purposes of applying the Dublin City Council Development Contribution Scheme 2020-2023 (i.e., GFA as ascertained by 'the internal measurement of the floorspace on each floor of a building (including internal walls and partitions and including mezzanine floors)').

7.2.2. I consider this to be a matter of convenient semantics by the First Party Appellant vis-a-vis interpreting GFA in the context of an external garden centre and the application of the Contribution Scheme. In this regard, I note the Applicant / Appellant a) identified a GFA figure for the proposed development in response to Question 10 of the Application Form (782sq m), b) calculated the planning application fee with reference to an increase in 'gross floor space' of 782sq m, and c) refers to an increase in net retail sales area of 878sq in the Planning Report.

- 7.2.3. I consider a garden centre or external garden centre space to be retail or commercial development capable of generating customer footfall and sales and creating employment whether as a standalone development or ancillary to an existing retail store and offer. I therefore consider that it comprises Industrial/Commercial development for the purposes of requiring the payment of a contribution in respect of public infrastructure and facilities benefiting the proposed development as per the Dublin City Development Contribution Scheme 2020-2023.
- 7.2.4. In reaching this conclusion, I am also cognisant that the Contribution Scheme makes specific reference to 'open storage / hard surface commercial space development' under Section 12 where referring to circumstances where no contribution or a reduced contribution may apply. I consider this specifically acknowledges there is a difference between more and less intensive forms of Commercial / Industrial development.
- 7.2.5. In the case of retail, more intensive retail sales (in terms of €sales per sq m) would be associated with a traditional retail store and less intensive retail sales would be associated with, for example, agricultural or builder providers which generate lower intensity sales from a much larger open storage / hard surface commercial space.
- 7.2.6. I consider a garden centre or external garden centre space to comprise open storage / hard surface commercial space development, and as it is specifically referred to in the Contribution Scheme, it applies to the subject case.

7.3. Issue No. 2 - Whether there are circumstances where no contribution or a reduced contribution apply

- 7.3.1. Section 11 and Section 12 of the Dublin City Development Contribution Scheme 2020-2023 deal with circumstances where non contribution or a reduced contribution may apply.
- 7.3.2. Section 11 addresses circumstances where a development will not be required to pay development contributions under the scheme. This includes change of use from one commercial use to another. Any net additional floorspace will be charged at the commercial rate.
- 7.3.3. In the application form for the subject application, I note that the Applicant in providing a basis for the Planning Application Fee, differentiates between a proposed increase in gross floor space of 782sqm, and the garden centre change of use of

228sqm. However, neither the public notices, plans nor planning report, refer to any change of use.

- 7.3.4. In the appeal, the Applicant refers to a previous application (Reg. Ref 3170/22) for The Range which was granted permission. The public notices for this application refer to an extension of the existing retail unit by 782sqms, the increase of internal net sales space of the overall extended unit by 802 sqms and the change of use of the rear yard to a garden centre (228sqms). As per the subject application, the basis for the Planning Application Fee, differentiates between a proposed increase in gross floor space of 782sqm (in this case relating to an extension to the existing retail unit), and the garden centre change of use of 228sqm.
- 7.3.5. It is submitted by the Applicant that under this earlier application the planning authority “*determined*” that “*the Contribution Scheme did not apply to the Garden Centre area of that project and in doing so set an unambiguous precedent upon which our client was relying when they made their application for the larger garden centre*”.
- 7.3.6. I have reviewed the Contributions Sheet prepared by Dublin City Council in respect of both Reg. Ref 3170/22 and the subject application / appeal. I consider that the planning authority applied the Contribution Scheme based on the information provided in the public notices and application forms of the respective applications.
- 7.3.7. I do not consider that the planning authority ‘determined’ that the Contribution Scheme did not apply to the Garden Centre *per se* in the case of Reg. Ref 3170/22 nor has it set any precedent upon which The Range could rely. I consider it may have excluded the garden centre element having regard the notices / application form referring to the garden centre as being a ‘change of use of the rear yard’ and having regard to Section 11 of the Contributions Scheme i.e., where a development will not be required to pay development contributions under the scheme where it involves a change of use from one commercial use to another. While the notes section of the Contributions Sheet for Reg. Ref 3170/22 does not provide any elucidation in relation to this matter, the planning authority’s response to the grounds of the subject appeal would appear to corroborate this. In this regard, in relation to the rear yard element, in respect of the subject case, Dublin City Council acknowledges the case made by the Appellant, and recommends the Board reduce

the amount of contribution – to reflect that the floor area of the proposed garden centre be reduced by the area of the rear yard (228sq m), which is currently in use as storage (as stated in the application documentation for Reg Ref 3170/22).

- 7.3.8. I have considered the nature of the areas surrounding The Range building to the west (rear) and south (side) provided by the applicant in the subject appeal, had regard to background provided in previous applications (including an application for *inter alia* an extension to accommodate a warehouse for the receipt and storage of goods) (Reg Ref 3529/19) and looked at imagery on Google Maps.
- 7.3.9. The planning report which accompanied the subject planning application advises that The Range originally operated from a larger site which included Building A (The Range) and Building B. The area to the south of the Building A / The Range store is referred to as being *“made up of the service area and yard of The Range and Building B. The wider side is largely car parking”*. This is confirmed by viewing the aerial view on Google maps. Building B has since been demolished and a new Lidl discount food store constructed under Reg Ref 3529/19 / ABP310695-21.
- 7.3.10. I also note the background provided by the Applicant for Reg Ref 3529/19, which states the following *“The Range tends to carry high levels of stock within each of their stores and warehouses. To avoid placing stock outside in the open delivery area to the north, and at the south of the building, which would have been unsightly, they have temporarily used Building B for storage and small offices. This practice had been carried on before the current owner bought the properties.”* and *“At the moment palletted deliveries have to be offloaded onto the open tarmac and traversed indoors either by staff members pushing trollies or by forklift. This will involve having to negotiate all weathers and uneven surfaces, which is undesirable for staff and goods. The modern, warehouse extension would eliminate these practices”*. The modern warehouse extension to the north of the building has since been developed.
- 7.3.11. I consider the ‘open delivery’ or ‘yard’ areas around The Range building have provided *inter alia* service and delivery access / circulation, some informal / temporary open storage, and car parking. As such I consider the use of these areas, as ancillary to the retail / commercial use of The Range i.e., the areas would have received goods, and been used to temporarily store goods before they were moved into the retail sales area within the store (as described by the Applicant in relation to

Reg Ref 3529/19). I consider the ancillary nature of the use of these areas is different to the Commercial / Industrial development envisaged by 'open storage / hard surface commercial space development' referred to in the Section 12 of the Contributions Scheme.

7.3.12. However, I do note that the original permission to reconstruct the store following a fire was for Atlantic Homestore and that the statutory notices refer to single storey retail unit with office mezzanine of 2,850sqm. As other documents in relation to this file are not available to view on the Dublin City Council website it is not possible to determine what if any, specific use was assigned to the external areas around the building therefore, for the purpose of the subject appeal, I am focusing on the use of these areas by The Range.

7.3.13. In summary, I consider that the external areas around the building, even those which may have involved the temporary / informal storage of goods (as referred to by the Applicant in Reg Ref 3529/19), support the primary retail / commercial floorspace, within The Range building. The proposed development on the other hand will extend the actual retail / commercial floorspace of The Range, in the form of a garden centre, to an area which did not previously comprise either Gross Retail Floorspace or Net Retail Floorspace (as defined in the Retail Planning Guidelines 2012). I therefore consider that Section 11 does not apply.

7.3.14. Having regard to the above, I consider Dublin City Council's concession that the development contribution should be based on 650sqm (i.e., 878sqm – 228sqm) to reflect that the floor area of the proposed garden centre be reduced by the area of the rear yard (228sq m), to be a generous interpretation of the 'external storage area which is used for commercial purposes' (described by the Applicant) in the context of applying Section 11 of the Contributions Scheme, but one which I do not concur with.

7.3.15. However, I consider that Section 12 circumstances are relevant i.e., where a development will be liable for a reduced rate of development contributions under the scheme. In this regard, I consider that while the proposed garden centre will extend the retail sales space of The Range unit, it comprises 'open storage / hard surface commercial space development, other than car parking', and I consider it should therefore be liable for development contributions at one third the commercial rate. In this regard, I note that in their original submission, the Appellants did identify this as

a 'fall back position' should the Board not agree with the arguments relating to the interpretation of GFA and garden centres (i.e., Issue 1, addressed above).

- 7.3.16. Having regard to the foregoing, the Contributions Scheme should be based on 878sqm, and having regard to Section 12, this should be at one third the commercial rate of the Dublin City Council Development Contribution Scheme 2020 -2023 (in force at the time of the lodgement of the planning application).

8.0 Recommendation

I recommend that the planning authority be directed to amend Condition No. 2 to (a) reflect the increased retail floor sales area which the outdoor garden centre would represent (i.e. 878sq m), and (b) that this increase in retail sales floor area be based on a reduced rate of development contributions (i.e., one third the commercial rate) having regard to Section 12 of the Development Contributions Scheme.

9.0 Reasons and Considerations

Having regard to:

- (a) the provisions of the Dublin City Council's Section 48 Development Contributions Scheme 2020 -2023 (in force at the time of lodgement of the application), and
- (b) the submissions made in the appeal,

it is considered that Condition no. 2 should be amended as follows:

A development contribution based on 878sqm and at one third of the Industrial / Commercial development rate shall be paid to the Planning Authority as a contribution towards expenditure that was and/or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefiting development in the administrative area of the Authority in accordance with Dublin City Council's Section 48 Development Contributions Scheme. The contribution is payable on commencement of development. If prior to commencement of development an indexation increase is applied to the current Development Contributions Scheme or if a new Section 48 Development Contributions

Scheme is made by the City Council the amount of the contribution will be adjusted accordingly.

Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.

Reason: It is considered reasonable that the payment of a development contribution should be made in respect of the public infrastructure and facilities benefiting development in the administrative area of the locality.

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.



Leah Kenny
Planning Inspector

7^h August 2023