



An
Bord
Pleanála

Inspector's Report

ABP-315618-23

Development	Change of use of Unit A5A, as constructed under PA ref. FW21A/0049, from warehouse to office use and all associated works
Location	Unit A5A, North City Business Park, Finglas, Dublin 11
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW22A/0220
Applicant(s)	Creative Technology (Audio Visual) Ireland Limited
Type of Application	Permission (s. 34)
Planning Authority Decision	Grant with Conditions
Type of Appeal	Financial Condition (s. 48)
Appellant(s)	Creative Technology (Audio Visual) Ireland Limited
Observer(s)	None
Date of Site Inspection	27 th November 2023
Inspector	Philip Maguire

1.0 Site Location and Description

- 1.1. The appeal site is located in the North City Business Park in Finglas, Dublin 11. It is situated to the west of the Business Park campus, between the estate road and the M50 motorway. It forms part of a recently constructed warehouse building with parking to the front and side with semi-enclosed loading bay and service area to the rear. Two similar buildings lie to the west and further construction work is ongoing to the east.
- 1.2. The appeal site is flat and has a stated area of 0.98ha. It is marginally elevated above the estate road with a frontage of c. 49m. The eastern half of the subject building, Unit A5A, is occupied by Creative Technology Ireland, a supplier of audio-visual equipment and services. The western half of the building, Unit A5B, is occupied by CEL, an electrical power system manufacturer. External finishes are predominantly cladding.

2.0 Proposed Development

- 2.1. The proposal sought permission for a partial change of use of Unit A5A, as constructed under PA ref. FW21A/0049, from warehouse to office including mezzanine extension.
- 2.2. Section 12 of the Planning Application Form indicates that the floor area of the existing unit is 2,237sq.m. The floor area of the proposed works is stated as 622sq.m.
- 2.3. Section 13 of the Form appears to provide the originally permitted floor areas for Unit A5A i.e. 290sq.m (Office) and 1,947sq.m (Warehouse). The 'existing' and 'proposed' office space has been hatched in blue and orange respectively on the drawings.
- 2.4. In this regard, the proposal seeks to change the use of c. 382sq.m of the previously permitted warehouse unit to office use at ground floor level and primarily to the front of the building. It also seeks a c. 240sq.m office extension at mezzanine level.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Permission was granted for the proposed development on 15th December 2022.
- 3.1.2. Condition 6 is directly relevant to this appeal. It states:

Prior to Commencement of development the developer shall pay the sum of €58,935 (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 Contribution Scheme for Fingal County made by the Council. 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.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report (09/11/22): It notes that the provision of office space ancillary to a permitted use is permissible in principle in the subject 'GE – General Employment' zoning but it considered that the applicant's intended use of the building was unclear. It notes that the Roads Section also queried whether the proposal was ancillary to the overall warehouse use. They also raised car parking and staff welfare facility concerns. Further information was sought on this basis.
- Planning Report (12/12/22): Basis for the Planning Authority decision. Considered the proposed use to be ancillary to the permitted use of the unit for warehouse/industrial purposes. Also considered the proposed car parking arrangements and staff welfare facilities to be acceptable. Concluded that the proposal would accord with the zoning and not impact on the amenities of the area.

3.2.2. Other Technical Reports

- Roads (03/11/22): Further information requested.
- Roads (09/12/22): No objection.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Appeal site:

PA ref. FW21A/0049 – permission granted in May 2021 for 2 no. single-storey semi-detached industrial and/or warehouse units etc. Condition 2 restricted the use of the building to warehouse/industrial use only with the office’s ancillary to these units.

5.0 Policy Context

5.1. Development Contributions

5.1.1. Under Section 2 of the Development Contributions Guidelines (DECLG, January 2013), as amended, planning authorities are required to include specific exemptions and waivers in their Development Contribution Schemes, however it states that no exemptions or waivers should apply to any applications for retention of development.

5.1.2. It also states that the practice of “double charging” is inconsistent with the primary objective of levying development contributions and reminds planning authorities that contributions already levied and paid should be deducted from the subsequent charge.

5.2. Development Contribution Scheme 2021-2025

5.2.1. The Planning Authority decision of 15th December 2022 was made under the Fingal County Council Development Contribution Scheme (DCS) 2021-2025 which came into effect on 1st January 2021. Section 17 states that this Scheme will remain effective until 31st December 2025 unless a new scheme is made in the interim.

- 5.2.2. Section 9 of the DCS relates to the 'level of contribution' and indicates that a rate of €76.69/sq.m will be applied to industrial/commercial class of development except where an exemption or reduction applies.
- 5.2.3. Section 9, Note 2 states that this rate was fixed from 1st January 2021 to 31st December 2021 and subject to indexation annually from 1st January 2022 in accordance with the Society of Chartered Surveyors of Ireland (SCSI) Tender Price Index. The Planning Authority website indicates that a rate of €94.75/sq.m for commercial development applies from 1st January 2023.
- 5.2.4. Section 9, Note 3 states that the floor area of proposed development where buildings are involved shall be calculated as the gross floor area. This means the gross floor area determined from the internal dimensions of the proposed buildings including the gross floor area of each floor including mezzanine floors¹.
- 5.2.5. Section 11 sets out various circumstances where exemptions and reductions apply. Section 11(v) states that change of use applications are exempt, unless the revised usage constitutes a substantial intensification of use of the building or service.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A 1st Party appeal has been lodged by IMG Planning on behalf of the applicants, Creative Technology Ireland Ltd. The applicants are appealing against the development contribution of €58,935 being applied on the following grounds:
- It is submitted that the Planning Authority's failure to apply section 11(v) of the DCS has not been justified and therefore the subject condition should be omitted. It is stated that the resulting use of the building does not represent an intensification and any increase in staff and vehicle movements will be imperceptible.
 - In the event that section 11(v) does not apply, it is submitted that the calculation of the development contribution includes 'double counting' i.e. Condition 6 requires contributions to be paid on all but 252sq.m of the proposed office floor area.

¹ A similar definition is provided in article 3 of the Planning and Development Regulations 2001 (as amended) and specifically includes internal walls and partitions.

- In the event that it is considered that section 11(v) does not apply, it is considered reasonable and equitable that contributions are payable only on the net additional floor area i.e. the extension to the offices at mezzanine level.
- It is requested that the Board omits Condition 6 or at the very least amends the terms of the condition to reflect the additional floor area i.e. 252sq.m.

6.2. Planning Authority Response

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

- The development contribution was calculated as follows:

Change of use area 382sq.m

Additional floor area 240sq.m

Area calculated 622sq.m

622sq.m x €94.75 (commercial rate) = €58,935

- It is stated that due to an administrative error the full exemptions applicable under the DCS were not applied.
- The amended calculation is as follows:

Change of use area 382sq.m

Additional floor area 240sq.m

S. 11(v) exemption 382sq.m

Area to be levied 240sq.m

240sq.m x €94.75 (commercial rate) = €22,740

- It is requested that Condition 6 be amended to €22,740, subject to indexation.

7.0 Assessment

7.1. Preliminary Points

7.1.1. The appeal relates to Condition 6 only, which imposes a development contribution in accordance with the provisions of s. 48 of the Planning and Development Act 2000 (as amended) and as per the terms of the Fingal County Council DCS 2021-2025.

7.1.2. Section 48(10)(b) of the Planning Act makes provision for an appeal to be brought to the Board where an applicant considers that the terms of the relevant DCS have not been properly applied in respect of any condition laid down by the Planning Authority.

7.1.3. In that context, the Board is required to apply the scheme as adopted by the Planning Authority and not to evaluate the merits or otherwise of the Scheme itself. Furthermore, as this appeal relates to a development contribution only, the Board cannot determine the application as if it was made to it in the first instance and is confined to considering whether the terms of the Scheme have been properly applied.

7.2. Application of the Scheme

7.2.1. Condition 6 of PA ref. FW22A/0220 requires the payment of the sum of €58,935 to Fingal County Council in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority. The Planning Report of 12th December 2022, the basis for the decision, sets out a schedule of recommended conditions including Condition 6 which states the total development contribution due.

7.2.2. The calculation is set out in a separate document entitled 'Section 48 Assessment of Financial Contributions and Bonds' dated 14th December 2022. It indicates that the total levy due is €58,935 based on 622sq.m at a commercial rate of €94.75/sq.m.

7.2.3. The Planning Authority's appeal submission indicates that the exemption under section 11(v) of the DCS does apply to the area subject of the change of use, stated as 382sq.m, and only the residual, or additional, floor area is subject to development contributions, stated as 240sq.m. In this regard they accept that an error was made, and this is common ground between the parties. Although I note that the applicant has indicated that the additional floor area is 252sq.m, as opposed to 240sq.m. This is however their fallback position, as they have sought to omit Condition 6 entirely.

7.2.4. I have reviewed the documentation associated with the development permitted under PA ref. FW21A/0049 and the relevant floor areas are detailed in section 2.4 above i.e. the change of use from warehouse to office use relates to a floor area of 382sq.m and the mezzanine extension above, for office use, relates to a floor area of 240sq.m. This is notwithstanding the applicant's calculation of the additional floor area, as noted.

7.2.5. I do not therefore consider it appropriate to apply development contributions to the area as originally determined by the Planning Authority for three reasons. Firstly, the

Planning Authority, by their own admission, failed to apply the exemption under section 11(v) of the DCS for the area subject of the change of use i.e. 382sq.m. Secondly, the application of the subject contribution would amount to “double charging” for this 382sq.m of industrial/warehouse floor space authorised by virtue of PA ref. FW21A/0049. Finally, having regard to the development applied for, and notwithstanding the applicant’s failure to clearly document the relevant floor areas, which was unhelpful, the only additional floor area is that of the mezzanine extension.

7.2.6. Section 9 of the DCS sets out a charge of €76.69/sq.m for commercial development. This has been index-linked to €94.75/sq.m for 2023. Section 11(v) provides that changes of use applications are generally exempt. This however does not apply to the additional 240sq.m provided by the mezzanine extension and therefore the condition should not be entirely omitted as requested by the applicant. The applicable development contribution for the proposed development is therefore €22,740.00.

8.0 Recommendation

8.1. I recommend that the Planning Authority be directed to **AMEND** Condition 6 of PA ref. FW22A/0220 for the reasons and considerations set out hereunder.

9.0 Reasons and Considerations

9.1.1. Having regard to the provisions of the Fingal County Council Development Contribution Scheme 2021-2025, s. 48(10) of the Planning and Development Act 2000 (as amended) and relevant Guidelines, I consider that the terms of the Scheme have not been properly applied in respect of Condition 6 for the following reasons:

- In calculating the area liable to development contributions, the Planning Authority failed to apply the exemption under section 11(v) of the Development Contribution Scheme (DCS) for the area subject of the change of use i.e. 382sq.m.
- In calculating the area liable to development contributions, the Planning Authority failed to consider the works carried out by virtue of PA ref. FW21A/0049 which would amount to “double charging” for the area subject of the change of use.
- In calculating the area liable to development contributions, the Planning Authority failed to specifically consider the mezzanine extension i.e. 240sq.m.

9.1.2. As per the terms of the DCS, the applicable development contribution is:

- 382sq.m (change of use): Nil (exempt)
 - 240sq.m (mezzanine extension): 240 x 94.75 = €22,740.00
- Total: €22,740.00**

9.1.3. I conclude that Condition 6 should be amended to reflect the terms of the Development Contribution Scheme 2021-2025 as follows:

10.0 Conditions

6.	<p>The developer shall pay to the planning authority the sum of €22,740.00 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 area of the planning authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.</p> <p>Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilitates 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.</p>
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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.

Philip Maguire

Planning Inspector

29th November 2023