



An  
Bord  
Pleanála

## Inspector's Report ABP-316115-23

### Development

Planning permission for change of use of the existing light industrial warehouse building over three floors (Reg.Ref. F10A/0044) to an Enterprise Centre.

Planning permission is also sought for the retention of six high level windows at first floor level on the east and west elevations, and for the creation of four new high level windows on the second floor on the west and east elevations, and a new window at second floor on the north elevation.

Permission also sought for a new fire door at the second floor level and external stairs on east elevation, and all ancillary site works.

### Location

Baldoyle House, Unit 111, Baldoyle Industrial Estate, Baldoyle, Dublin 13

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

F22A/0650

### Applicant(s)

Rockway Horizons Limited

**Type of Application** Permission and Retention

**Planning Authority Decision** Grant

**Type of Appeal** First Party

**Appellant(s)** Rockway Horizons Limited

**Observer(s)** None

**Date of Site Inspection** N/A

**Inspector** Lorraine Dockery

## 1.0 Site Location and Description

1.1. The subject site, which has a stated area of 0.10 hectares, is located at Baldoyle House, Unit 111, Baldoyle Industrial Estate, Dublin 13. This is an established industrial area.

## 2.0 Proposed Development

2.1 Permission is sought for change of use of existing light industrial unit over three floors to an enterprise centre, new windows, fire door and external stairs and all ancillary site works.

2.2 Retention permission is sought for a total of 6 no. high level windows.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission GRANTED, subject to 8 conditions.

#### Condition No. 8

Prior to Commencement of development the developer shall pay the sum of €95,602.75 (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.

Note on above Condition: Please note that with effect from 1st January 2014, Irish Water are now the Statutory Body responsible for both water and waste water

services (excluding surface water). Accordingly, the contribution payable has been reduced by the amount of the contribution associated with these services. A separate charge will be levied by Irish Water in relation to the provision of water and/or wastewater treatment infrastructure and connections to same. Further details are available on the Irish Water website [www.water.ie](http://www.water.ie), Tel. (01) 6021000.

Further Information was requested by the planning authority on 12/01/2023 in relation to submission of business plan for proposed use and revised site layout plan showing bicycle spaces and communal bin storage areas.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The main points of the planner's report include:

- Report reflects decision of planning authority; recommends grant of permission

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

Water Services: No objections, subject to conditions

Transportation Division: No objections, subject to conditions

## **3.3 Prescribed Bodies**

None

## **4.0 Planning History**

No recent relevant history

### Of Note:

F10A/0044- Permission GRANTED for the reconstruction of a previously existing light industrial/warehouse unit

## **5.0 Policy and Context**

## 5.1 Development Plan

The Fingal County Development Plan 2023-2029 is the operative County Development Plan.

Zoning: Objective 'GE' which seeks 'to provide opportunities for general enterprise and employment'.

### Development Contribution Scheme

Fingal County Council Development Contribution Scheme 2021-2025 (under Section 48, Planning & Development Act 2000, as amended).

This Scheme is effective in respect of permissions granted from 1st January 2021.

The Development Contributions Scheme, under Section 48 of the Act classifies Public Infrastructural Development as follows

Class 1: Transportation Infrastructure and Facilities

Class 2: Surface Water Infrastructure & Facilities (incl. Flood Relief)

Class 3: Community & Parks facilities & amenities

### 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;

(q) Demolition and Rebuild: Where permission is granted to demolish in part or in full an existing building and replace with another, then the development contribution payable is to be calculated as follows: • Where a contribution has been previously paid – the contribution will be levied on the increased floor area of the new build over the old. • If no contribution was previously paid – reductions in respect of demolition work will be allowed, excluding structures exempt from contributions. Demolition must be necessary to facilitate the proposed development. The Scheme does not provide for any rebate or refund in this regard.

(r) Internal layout alterations where no additional floor area is created, and external walls are not being removed.

(v) Change of use applications are exempt, unless the revised usage constitutes a

substantial intensification of use of the building or service.

## 5.2 Natural Heritage Designations

The appeal site is not located in or immediately adjacent to a designated European Site, a Natural Heritage Area (NHA) or a proposed NHA.

## 5.3 EIA Screening

Having regard to the nature and scale of the development proposed, the site location within an established built-up urban area which is served by public infrastructure and outside of any protected site or heritage designation, the nature of the receiving environment and the existing pattern of residential development in the vicinity, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1 Grounds of Appeal

The main points of the appeal submissions received may be broadly summarised as follows:

- Section 48 appeal against Condition No. 8 only
- Large levy paid in 2011 (€110,000) for this building. Current proposed development solely involves a change of use from one commercial use to another
- Does not involve intensification of use on site or a substantial intensification as set out in Fingal Development Contribution Scheme 2021-2025
- In terms of intensification, highlight car parking demand, which is the same for both light industrial and current proposal. Greater requirement for bicycle parking under recently adopted Plan and surplus of car parking spaces. If an

enterprise centre was deemed a more intensive use than light industrial then one would expect car parking standards to be different- they are not.

- Argues proposal is not a substantial intensification of use- enterprise centre would have 10 staff, light industrial units could have a hundred
- In terms of size of building, number of units in it, amount of traffic it will generate and opening times, there will be no discernible increase in human or vehicular traffic to the site. No change in structure of building or its internal size. Another levy on this building is essentially a double charge
- Notes section 11(i)(v) of Development Contribution Scheme which states that 'Change of use applications are exempt, unless the revised usage constitutes a substantial intensification of use of the building or service'. Also considers that Parts (q) and (r) of this section are also relevant
- Fails to take any cognisance of planning history of site or current Development Contribution Scheme
- Contends that levy should be zero

## 6.2 **Planning Authority Response**

A response was received which states that a recalculated payment of €39,960 was applied by the planning authority on foot of F10A/0044 for new floor area only.

The proposed change of use in this current application is considered an intensification of use from a planning perspective and the levy was applied accordingly. Recommend that this condition is upheld.

See planning authority response for further detail.

## 6.3 **Observations**

None

## 6.4 **Further Responses**

A further response was received on behalf of the first party in which no new planning matters were raised.

## 7.0 Assessment

- 7.1 As this is an appeal in respect of a financial contribution, the provisions of Sections 48 of the Act apply, and the Board is restricted to considering this condition alone (Condition No. 8). The Board cannot therefore consider the proposed development *de novo* and as a result, I have confined my assessment to the condition that has been appealed.
- 7.2 The legislation in this case provides that the Board, in considering this type of appeal, has to decide whether or not the terms of the Development Contribution Scheme have been properly applied by the Planning Authority in this instance. It cannot enquire into, nor determine, any issue relating to the rights or wrongs of the Scheme itself. Therefore, the main issue in this case is whether the development contribution scheme has been correctly applied.
- 7.3 I highlight to the Board that a new County Development Plan has been adopted, since the decision of the planning authority issued. The current Plan was made on 22nd February 2023 and came into effect on 5th April 2023. The Development Contribution Scheme remains unchanged.
- 7.4 I note that in 2010 a grant of permission for demolition and rebuild of a structure on this site issued from the planning authority and a levy of €39,960 was paid for new floor area only. Condition No. 3 of that grant of permission stipulated that the office element remain ancillary. This current application is for change of use of the existing structure from light industrial/warehouse to enterprise centre. Enterprise Centre is defined in Appendix 7 of the operative County Development Plan as 'The use of a building for small scale (starter type/micro-enterprise) industries and/or commercial services, usually sharing grouped service facilities'. There is no alteration to the gross floor area of the structure and its footprint remains the same (aside from external fire escape stairs). The planning authority state that the actual practical use of the building will be similar to the previous use. The parking requirement remains the same for both uses. The appellant states that there will be a likely reduction in the number of staff employed at the premises from that existing and that the opening times will remain



similar. They further state that there will be no increase in human or vehicular traffic accessing the site. The planning authority do not refute this.

7.5 I refer the Board to section 11(i)(v) of the operative Development Contribution Scheme (see above) which states that change of use applications are exempt, unless the revised usage constitutes a substantial intensification of use of the building or service. There does not appear to be any definition with the Scheme for the term 'substantial'. The definition of 'substantial' as set out in the Oxford Dictionary is 'large in amount, value or importance'. Based on the information before me, as I have set out above, I accept that the proposal is for a change of use of the building and that there may be some intensification of use. However notwithstanding this, I have no information before me to believe that the proposal represents a *substantial* intensification of use of the building, as per section 11(i)(v) of the adopted Development Contribution Scheme. The justification put forward by the planning to substantiate their opinion in this regard is not sufficient for me to consider that the proposal represents a *substantial* intensification of use. While I accept that the office element in the previous grant of permission on this site was ancillary (see Condition 3 of F10A/0044 in planning authority response), I concur with the opinion of the planning authority in their report that it appears that the actual practical use of the building will be similar to the previous use.

7.6 It is therefore my opinion that the planning authority were incorrect in attaching a Section 48 Development Contribution to this grant of permission, in accordance with their adopted Scheme. In view of the foregoing, it is recommended that the planning authority should be directed to OMIT Condition No. 8 on the basis of the Reasons and Considerations set out in the attached draft schedule.

## **8.0 Appropriate Assessment Screening**

8.1 Having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the physical separation distances to designated European Sites, and the absence of an ecological and/ or a

hydrological connection, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

## **9.0 Recommendation**

9.1 I recommend that Condition No. 8 be OMITTED from the decision to grant permission

## **10.0 Reasons and Considerations**

It is considered that having regard to the provisions of the adopted Fingal County Council Development Contribution Scheme, and the provisions of Sections 48 of the Planning and Development Act, 2000 (as amended) that Condition No. 8 requiring the payment of a financial contribution in accordance with the requirements of the adopted Fingal County Council Development Contribution Scheme be OMITTED in the schedule of conditions attaching to the permission.

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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Lorraine Dockery  
Senior Planning Inspector

04<sup>th</sup> June 2023