



An  
Bord  
Pleanála

## Inspector's Report

**ABP-316184-23**

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|-------------------------------------|--|
| <b>Development</b>                  | Demolition and construction of warehouse and all associated site works |
| <b>Location</b>                     | McComish, Fosterstown South, Cloughran, Swords, Co. Dublin             |
| <b>Planning Authority</b>           | Fingal County Council  |
| <b>Planning Authority Reg. Ref.</b> | F22A/0422  |
| <b>Applicant(s)</b>                 | Degaemad Developments Ltd  |
| <b>Type of Application</b>          | Permission   |
| <b>Planning Authority Decision</b>  | Grant subject to 12 no. conditions                                     |
| <b>Type of Appeal</b>               | First Party against conditions   |
| <b>Appellant(s)</b>                 | Degaemad Developments Ltd  |
| <b>Observer(s)</b>                  | None   |
| <b>Date of Site Inspection</b>      | 28 <sup>th</sup> June 2023   |
| <b>Inspector</b>                    | Bernard Dee  |

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## 1.0 Site Location and Description

- 1.1. The appeal site is located at a warehouse storage facility in Cloughran which is located to the NE of Dublin Airport, west of the R132 and south of a housing estate called Boromhe. Forest Little golf club lies to the west of the appeal site. The subject site is accessed off the R132 and has a private roadway leading to the warehouse facility.
- 1.2. The appeal site is comprised of an office building at the entrance, the warehouse for which demolition and rebuilding consent is sought and another storage warehouse along the western boundary of the site.
- 1.3. During the site visit there were no signs of activity and it appears that these building have not been used in recent times. The surfaced open areas had some concrete building products stored such as lintels and fence posts. The larger building appears to have been used as a batching plant in the past but it appears that this use has been discontinued.
- 1.4. To the north of the site and in separate ownership there are several storage warehouses of relatively recent build which are rented out to individual tenants.

## 2.0 Proposed Development

- 2.1. The proposed development is comprised of the following elements:
  - The demolition of the warehouse on the eastern boundary of the site and its replacement with a new warehouse.
  - The extension and the upgrading of cladding on the larger warehouse on the west of the site.
  - The removal of the silos and tower at this larger building.
  - Minor works to the office.
  - Upgrading of the layout and .design of the open space area between the two warehouse buildings.
  - Signage and all ancillary works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission for the proposed development was granted on 8<sup>th</sup> March 2023 subject to 13 conditions. This appeal relates to conditions 3 and 4 which are reproduced in Section 6.0 below.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

There are two Planner's Report's on file, the initial report dated 6<sup>th</sup> October 2022 sought additional information and the second report dated 8<sup>th</sup> March 2023 assessed the information received and made a recommendation leading to a decision.

The Planner's Reports, in summary, had regard to the following planning issues:

- The principle of development – non-conforming pre-64 uses on site noted. No change in uses on site proposed in application.
- .Visual and residential amenity of the area – given the separation distance from the site and residential areas, residential amenity should not be affected by the proposed development. The Planner's Report does not specifically assess visual impact but presumably this was not a problematic issue given the positive decision.
- Vehicular access and parking – the report notes that the use of the site is not a retail warehouse open to the public but rather wholesale storage and that the traffic levels, including HGV traffic, will not rise above current levels. The Transportation Section did not support the development on the basis that intensification of use would have an adverse impact on users of the R132 which is a strategic transport corridor.
- Trees and landscaping – a detailed landscape plan will be required in relation to the development.
- Public health, services and drainage – no issues.
- Aviation safety – applicant to engage directly with daa. IAA and daa had no objections.

- Conservation – no issues.
- Waste management – no issues.
- AA and EIA screening – no issues.
- The Planner’s Report did not feel that either Appropriate Assessment or Environmental Impact Assessment was necessary in connection with the proposed development.

### 3.2.2. Other Technical Reports

- The Water Services Section, Parks and Green Infrastructure Section, Water Services Section and the Environment Section (Waste Enforcement & Regulation) all replied that there was no objection to the proposed development subject to conditions.
- The Transportation Section was opposed to the proposed development.

### 3.2.3. Prescribed Bodies

- Following additional information daa and IAA had no objection to the proposed development.

### 3.2.4. Observations

None received.

## 4.0 Planning History

### 4.1. On the Appeal Site

- F98A/0116 – grant of permission for concrete manufacturing buildings, conversion of farmhouse to laboratory and staff canteen, demolition of vacant house, parking provision, ESB substation and storage are for concrete products.

### 4.2. In the Vicinity of the Site

- F02A/0167 – refusal of permission on lands to the north of the appeal site for a new concrete batching plant.

## 5.0 Policy and Context

### 5.1. Development Plan

Fingal Development Plan 2023-2029 is the statutory plan for the area within which the appeal site is situated and it came into effect on Wednesday 5th April 2023. The Planner's Reports on file and the First Party appeal therefore refer to the Fingal Development Plan 2017-2023. and may be disregarded by the Board. Set down below are the relevant Fingal Development Plan 2023-2029 policies and objectives in relation to this appeal.

The appeal site is located within Zoning Objective GB Greenbelt.

Objective - Protect and provide for a Greenbelt.

Vision - Create a rural/urban Greenbelt zone that permanently demarcates the boundary (i) between the rural and urban areas, or (ii) between urban and urban areas. The role of the Greenbelt is to check unrestricted sprawl of urban areas, to prevent coalescence of settlements, to prevent countryside encroachment and to protect the setting of towns and/or villages. The Greenbelt is attractive and multifunctional, serves the needs of both the urban and rural communities, and strengthens the links between urban and rural areas in a sustainable manner. The Greenbelt will provide opportunities for countryside access and for recreation, retain attractive landscapes, improve derelict land within and around towns, secure lands with a nature conservation interest, and retain land in agricultural use. The zoning objective will have the consequence of achieving the regeneration of undeveloped town areas by ensuring that urban development is directed towards these areas.

Warehousing, wholesale and light industrial uses are deemed 'Not Permitted' under this zoning objective.

13.3 Non-Conforming Uses - Throughout the County, there are uses which do not conform to the zoning objective of the area. These are uses which were in existence on 1st October 1964, or which have valid planning permissions, or which are unauthorised but have exceeded the time limit for enforcement proceedings.

Reasonable intensification of extensions to and improvement of premises accommodating these uses will generally be permitted subject to normal planning criteria.

Objective ZO3 – Non-Conforming Uses Generally, permit reasonable intensification of extensions to and improvement of premises accommodating non-conforming uses, subject to normal planning criteria

## 5.2. Natural Heritage Designations

The following natural Heritage designations are located in the vicinity of the appeal site:

- Broadmeadow Swords Estuary SAC – 004025.
- Malahide Estuary SAC – 000205.

## 5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any 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 grounds of the First Party appeal against conditions submitted by Ger Fahy Planning relate to conditions 3 and 4 which state:

*3 The Applicant shall comply in full with the following:*

*a) Operating hours shall remain between 7am and 6:30pm;*

*b) The customers opening time shall remain 7:30am to 5:30pm;*

*c) The selling of materials shall be strictly restricted to concrete lintels manufactured on site to trade only and commercial operators consistent with the existing use and intensity of use of the site.*

*d) The business shall not be open to the general public and no materials shall be sold to the general public on site.*

*REASON: To ensure that the development shall be in accordance with this and previous permissions, and that effective control be maintained.*

4 (i) *The use of the development shall be for concrete lintel manufacture including storage and any wholesale shall remain ancillary to the manufacturing use hereby permitted. No part of the proposed development shall be sold, leased or otherwise separately used, without a prior grant of Planning Permission.*

(ii) *Any change of use, subdivision or amalgamation, whether or not such change or subdivision would otherwise constitute exempted development, under the Planning and Development Act 2000, as amended, or the Planning and Development Regulations 2001, as amended, shall not be undertaken without a prior grant of permission.*

*REASON: IN the interests of clarity.*

The grounds of appeal, in summary, are as follows:

- Conditions 3 and 4 are unnecessary and unreasonable and contrary to the criteria set down for the imposition of conditions in the Development Management Guidelines (2009).
- Condition 3(c) and 4(i) - The manufacture of concrete building elements and their wholesale distribution to the building trade is a pre-64 use and has been confirmed by subsequent permissions on the site. The concrete production was not limited to lintels only and it is unreasonable for this part of condition 3 to impose such a restriction.
- Condition 3(d) – A restriction of use by the general public of the wholesale operations is unnecessary as the applicant has already stated that sales will be to trade members only.
- Condition 4(ii) – This restriction on the use, lease or sale of the subject site is ultra vires as it breaches the constitutional property rights of the applicant. In relation to the uses on site, one light industrial use is being substituted with another and one warehouse use is being substituted with another so there is no material change of use taking place and this restriction is unreasonable.



- Condition 4 – This is contrary to Development Plan provisions which permit reasonable intensification of use and extensions and improvements of structures.
- Condition 3(c) and 4(i) – Restricting the facility to the production of one item only, concrete lintels, is not a matter for the planning authority to determine and is unduly restrictive commercially.

In addition to the summarised points above, the First Party submission includes a legal opinion by Mary Moran-Long BL PhD which concludes that the imposition of conditions 3 and 4 go beyond the limitations placed on a planning authority by Section 34(4) of the Planning and Development Act 2000 (as amended) and are therefore ultra vires.

## 6.2. The Planning Authority Response

The Planning Authority response can be summarised as follows:

- F98A/0116 relates to a grant of permission for the manufacturing of concrete lintels and the applicant has permission to continue operating under this permission including a reasonable amount of intensification.
- The current proposal to expand the items manufactured at this location constitutes a material change of use which is not acceptable to the planning authority.
- Objective Z03 of the Fingal County Development Plan 2023-2029 in relation to non-conforming uses does not apply in this instance as a change from the permitted concrete manufacturing use to a builders providers would constitute a material change of use.
- Condition 6 of F98A/0116 does not permit a light industrial use on the site but instead the term 'light industrial' refers to the building type which was the subject of the application.
- The proposed development has the potential to adversely impact R132 upgrades and BusConnects and also the operations of the proposed bus and cycle lane.

6.3. Applicant Response

Not applicable.

6.4. Observations

None received.

6.5. Further Responses

Not applicable.

## 7.0 Assessment

7.1.1. The appeal relates solely to conditions 3 and 4 of the grant of planning permission issued by Fingal County Council. I have read the file, considered the grounds of appeal and the planning authority's comments and carried out a site inspection. I consider that there are no other planning issues raised in the application, other than conditions 3 and 4, and I recommend that the Board consider the appeal under section 139 of the Planning and Development Acts 2000, as amended, and confine its consideration to the matters raised in the appeal.

### 7.2. Condition 3

7.2.1. The First Party does not contest Condition 3(a) and (b) which relate to operating hours and customer opening hours.

7.2.2. With respect to Condition 3(c) which restricts the facility to the production of one item only, concrete lintels, the First Party states this is unreasonable and commercially restrictive and that other products historically have been manufactured on the site.

7.2.3. I note that F98A/0116 is specifically an application for "*the manufacture of concrete lintels*". There is no reference to any other concrete product manufacture in this permission. If the manufacture of other concrete products is a pre-64 land use the First Party has produced no evidence in the appeal submission to support this assertion.

7.2.4. I agree with the planning authority that to permit a range of concrete products to be manufactured on site would constitute a change of use and an intensification of use, both of which (depending on the degree of intensification) would require planning

permission. Such permission was not sought in the case which is the subject of this appeal.

7.2.5. I note the concerns of the Transportation Planning Section of Fingal County Council regarding the proposal for activities as a builders providers which would be an intensification of use and have serious implication for the sub-optimal access onto the strategically important R132.

7.2.6. Having regard to the above and to my own concerns regarding the ambiguity of the exact uses proposed for the site, I find that Condition 3(c) is both necessary and reasonable and would recommend its retention to the Board.

7.2.7. With respect to Condition 3(d) which excludes members of the public from purchasing items at the proposed facility, the same arguments regarding change of use and intensification of use would apply and hence I also recommend its retention to the Board.

7.3. Condition 4

7.3.1. Condition 4 states:

*(i) The use of the development shall be for concrete lintel manufacture including storage and any wholesale shall remain ancillary to the manufacturing use hereby permitted. No part of the proposed development shall be sold, leased or otherwise separately used, without a prior grant of Planning Permission.*

*(ii) Any change of use, subdivision or amalgamation, whether or not such change or subdivision would otherwise constitute exempted development, under the Planning and Development Act 2000, as amended, or the Planning and Development Regulations 2001, as amended, shall not be undertaken without a prior grant of permission.*

*REASON: IN the interests of clarity.*

7.3.2. Regarding the first sentence of Condition 4(i), as per Condition 3(c), F98A/0116 is specifically a permission for “*the manufacture of concrete lintels*” and any widening of the range of concrete products manufactured at this site would constitute a change of use and/or intensification of use. Planning permission would be required

to manufacture anything other than concrete lintels at this facility and no such consent has been sought in the current application.

- 7.3.3. I would recommend to the Board the retention of the first sentence of Condition 4(i).
- 7.3.4. The second sentence of Condition 4(i) states - *No part of the proposed development shall be sold, leased or otherwise separately used, without a prior grant of Planning Permission*. I do not feel it comes within the powers of the planning authority to restrict a property owner regarding the sale, lease or sub-letting (which I interpret as the meaning of “separately used”) of their own property.
- 7.3.5. While I fully recognise the power of the planning authority to determine what uses can be permitted at this site, I feel that the planning authority have exceeded their remit in restricting the landowner’s rights with regard to selling, leasing or subletting his own property. This part of Condition 4(i) could be interpreted as unconstitutional.
- 7.3.6. I therefore recommend to the Board that the second sentence of Condition 4(i) be omitted from this condition.
- 7.3.7. With regard to Condition 4(ii) which removes exempted development rights with respect to the change of use, subdivision or amalgamation of the proposed buildings and that permission be sought for these actions instead, this is a commonly used condition to control inappropriate changes of use and intensification of use.
- 7.3.8. The First Party has provided no substantive justification, other than quoting from the Development Management Guidelines, that this condition is unnecessary, ambiguous and unreasonable.
- 7.3.9. I would concur with the planning authority that this is a necessary condition and I would recommend the retention of Condition 4(ii) to the Board.
- 7.3.10. In summary therefore, I recommend to the Board the retention of Conditions 3 and 4 with the exception of the second sentence of Condition 4(i).

#### 7.4. AA Screening

- 7.4.1. Having regard to the relatively minor development proposed within an existing housing estate and the distance from the nearest European site, 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

I recommend that conditions 3 be attached and Condition 4 be amended and attached for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

Having regard to the location of the site in an area zoned Greenbelt, and having regard to the non-conforming uses on site and to the need to control changes of use and intensifications of use at this location having regard to the sub-optimal access onto the R132, conditions 3 and 4 (as amended) would allow the planning authority to control the uses permitted on site and to allow an appropriate level of intensification that conforms with the proper planning and sustainable development of the area.

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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**Bernard Dee**  
**Planning Inspector**

**3<sup>rd</sup> August 2023**