

An
Bord
Pleanála

Inspector's Report

ABP-317915-23

Development	Inland port uses
Location	at Dubber and Merryfalls, Harristown Lane, St. Margaret's, County Dublin
Planning Authority	Fingal County Council
Prospective Applicant	Dublin Port Company
Type of Application	Pre-Application Consultation under 37B of the Planning and Development Act 2000, as amended
Date of Site Inspection	10 th October 2023
Inspector	Tomás Bradley

1.0 Introduction

Under the provisions of Section 37B of the Planning and Development Act 2000, as amended (PDA), Dublin Port Company (DPC) has made a pre-application request to An Bord Pleanála (the Board) for the development of inland port uses at Dubber and Merryfalls, Harristown Lane, St. Margaret's, County Dublin.

The Board is requested to determine whether the proposed development constitutes Strategic Infrastructure Development (SID). The applicant is of the view that the proposed development does not constitute SID.

2.0 Site Location and Description

The site is located in the townlands of Dubber and Merryfalls, Co. Dublin. The site which is approximately 11 ha. is bounded to the north by Harristown Lane and to the west by the R122 Regional Road. The Horizon Logistics Park is to the east. To the south, it is predominantly agricultural land with occasional urban uses. The site is in close proximity to Dublin Airport and the M50 Motorway.

The site itself is currently being used for agriculture and in particular tillage. It is good quality, level land with mature trees and hedgerows enclosing it. On the day of the site visit, it had been ploughed. Some electricity infrastructure crosses the site. There are several single rural dwellings in a linear form along Harristown Lane and the R122 jutting into the holding. A commercial area is operating to the south-west part of the holding including a petrol station.

There are no specific natural heritage designations in respect to the subject site. In terms of built heritage, an enclosure is recorded by the National Monuments Service (NMS) in the agricultural field. There are no known flood issues associated with the site.

The Fingal County Development Plan 2023-2029 (FCDP) is the relevant plan for the subject site. The site is zoned GE - General Employment. The general objective for which is to “provide opportunities for general enterprise and employment”. The Use Classes related to the zoning objective which are permitted in principle include: road transport depot, logistics and warehousing.

3.0 Prospective Development

The particulars submitted as part of the pre-application consultation sets out the prospective development, which, in summary, includes:

- a yard for storage and logistics use, comprising stacked shipping container storage with a container handling system that utilises electrically operated Rubber Tyred Gantry cranes (RTG). Container storage / reefer gantries will be provided. A notional stacking arrangement has been indicated on accompanying drawings submitted with this request.
- an administrative office, welfare facilities and security hut.
- access/egress arrangements, internal roads, high strength surface treatment, drainage infrastructure, electricity infrastructure and boundary treatments, fence, walls and gates.

The prospective development is needed to optimise lands and ensure more efficient operations at the main port in Dublin City. Containers will be brought to the site, stored and collected for either export or delivery within Ireland. The movement of containers through this yard will be aligned to the dwell times implemented across the Port and will allow containers to be moved from the quayside more efficiently. It will also facilitate the consolidation of loads before they reach the quayside.

A 'Further Phase' is indicated in the drawing submitted and it is noted that it will be subject to a separate future planning consent. DPC indicate in its written submission that it will likely contain further container storage facilities and logistics uses related to the port should the need arise.

4.0 Planning History

A review of the FCC Planning Portal and the Board's case files was carried out the on the 21st of September 2023 to collate any relevant planning history for the site.

There was no recent planning history (within 10 years) for the subject site, save for this pre-application application consultation.

5.0 Precedent

A review of the Board's case files was carried out the on the 21st of September 2023 to collate any relevant planning precedent cases for this class of development. There was no relevant precedent specific to the circumstance of this application.

6.0 Submission of the Prospective Applicant

The submission prepared by RPS on behalf of the prospective applicant, DPC, accompanied the application in respect of this case file. The prospective applicant does not consider that the prospective development constitutes SID for the following reasons:

- The prospective development does not fall under classes of development set out under 'Transport Infrastructure' in the Seventh Schedule (Infrastructure Developments for the Purposes of Sections 37A and 37B) of the PDA.
 - The prospective development does not include intermodal transportation of goods. The only mode of transport in this instance is by road.
 - The site will be used for container storage and will exceed 5 ha in area and could be considered as a goods facility. However, it is not an intermodal goods facility as the only mode of transport in this instance is by road. The delivery of good will be by Heavy Goods Vehicle (HGV) only.
 - There is no clear precedent on 'intermodal', however, it is reasonable to assume that it was intended to apply to the entire provision. Otherwise a significant volume of developments could meet the broad definition of goods facility (e.g. warehouses) which is a standard commercial land use.
 - The prospective development does not include an intermodal terminal or passenger facilities. Previous examples of local authority planning applications are provided where SID was not considered relevant.
 - It is also noted that while there is a commercial and functional relationship with the port, it is the view the prospective applicant that what it is proposing is not SID in spirit of the SID legislation.
 - There is no railway infrastructure required for the prospective development.
 - The prospective development is not a harbour or port development per se and is secondary to that primary use.
- In respect of the other criteria set out in Section 37 (A) (2), it is not considered that the prospective development fall under it.
 - The prospective development is not of social importance to the state.
While port infrastructure is generally of economic important to the state, the prospective development is not given its use and the fact that it will not

generate any significant economic dividend to the state such as employment. it should be considered similar to any other logistic/ warehouse type development.

- The prospective development will contribute substantially to the fulfilment of any policy objective in force in respect of the area in which the prospective development is situated.
- The prospective development is located entirely within Fingal County Council. While it is required to optimise operations at Dublin Port in Dublin City Council the impacts cannot be considered significant in terms of traffic, and land use. The prospective applicant relies on a previous application (FCC Ref: FW20A/0021) for similar uses at Dublin Airport Logistics Park in which an Environmental Impact Assessment Report was prepared and found no significant impacts arising.

7.0 Legislative Context

In the context of the prospective development, Section 2 (1) of the PDA defines 'strategic infrastructure' as including, *inter alia*:

- (a) *any proposed development in respect of which a notice has been served under section 37B(4)(a)*

Section 37A of the Act states that:

- (1) *An application for permission for any development specified in the Seventh Schedule (inserted by the Planning and Development (Strategic Infrastructure) Act 2006) shall, if the following condition is satisfied, be made to the Board under section 37E and not to a planning authority.*
- (2) *That condition is that, following consultations under section 37B, the Board serves on the prospective applicant a notice in writing under that section stating that, in the opinion of the Board, the proposed development would, if carried out, fall within one or more Of the following paragraphs, namely—*
 - (a) *the development would be of strategic economic or social importance to the State or the region in which it would be situate,*
 - (b) *the development would contribute substantially to the fulfilment of any of the objectives in the National Planning Framework or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate,*
 - (c) *the development would have a significant effect on the area of more than one*

planning authority.

The Seventh Schedule which sets out infrastructure developments for the purposes of Sections 37A and 37B and includes:

Transport Infrastructure

2.— *Development comprising or for the purposes of any of the following:*

—An intermodal transshipment facility, an intermodal terminal or a passenger or goods facility which, in each case, would exceed 5 hectares in area.

—A terminal, building or installation associated with a long-distance railway, tramway, surface, elevated or underground railway or railway supported by suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport, but excluding any proposed railway works referred to in section 37(3) of the Transport (Railway Infrastructure) Act 2001 (as amended by the Planning and Development (Strategic Infrastructure) Act 2006).

—A harbour or port installation (which may include facilities in the form of loading or unloading areas, vehicle queuing and parking areas, ship repair areas, areas for berthing or dry docking of ships, areas for the weighing, handling or transport of goods or the movement or transport of passengers (including customs or passport control facilities), associated administrative offices or other similar facilities directly related to and forming an integral part of the installation)—

- (a) where the area or additional area of water enclosed would be 20 hectares or more, or*
- (b) which would involve the reclamation of 5 hectares or more of land, or*
- (c) which would involve the construction of one or more quays which or each of which would exceed 100 metres in length, or*
- (d) which would enable a vessel of over 1350 tonnes to enter within it.*

8.0 Meeting with the Prospective Applicant.

A meeting was held with the prospective applicant on the 12th of October 2023. The details of this meeting is set out in the record contained on the file.

9.0 Assessment

The Board holds no relevant precedent in respect of the prospective development and the Seventh Schedule of the PDA. The relevant approach has been for promoters of this type of development to apply directly to the local planning authority in the first instance without any application to the Board for pre-application

consultation under Section 37B. It was simply understood by the applicant that it was not SID as it never fit such legislative terminology, criteria or threshold.

The prospective applicant in this instance, who ordinarily may have applied directly to the local planning authority for such a development, has said it has been advised by Fingal County Council to seek a determination in respect of SID.

The prospective applicant has set out its case clearly and is applying through an abundance of caution and to provide certainty to the local planning authority in advance of making any planning application. The applicants conclusions is that prospective development is not considered SID.

The question in this instance centres on the interpretation of the first clause of the Seventh Schedule (Transport Infrastructure) and in particular 'goods facility'. The question being whether this should be read as a 'goods facility' or an 'intermodal goods facility'.

An intermodal transshipment facility, an intermodal terminal or a passenger or goods facility which, in each case, would exceed 5 hectares in area

In breaking down the clause above, grammatically, it could reasonably be the view that 'intermodal' should be read with 'goods facility' and indeed 'passenger' for that matter. Comfort in this reading can also be taken from the overall heading for these clauses which is 'Transport Infrastructure'. An 'intermodal goods facility' (with rail/air/road links) would certainly meet the plain meaning of SID, whereas single modal 'goods facility' (in this instance just road) may not – this view could simply be based on an interpretation of the long title of the *Planning and Development (Strategic Infrastructure) Act 2006* which is to consider "*certain proposed developments of strategic importance to the state*". This is a high bar which is not met in the instance of a single modal facility when reading plainly the Seventh Schedule.

Should the Board interpret this as a 'good facility', then this development would certainly meet the definition for SID given its size in terms of hectarage. But it should be cautioned that a 'goods facility' has a very broad meaning and that it would encompass all manner of developments (such as warehouses, logistics parks etc.) which one could be of the is of view was never intended to constitute SID. Making

such a precedent would need careful consideration as it would change current practice among port operators and indeed private transport/logistic operators.

It is also worth noting that there is no other relevant urban, commercial or industrial type development set out in the Seventh Schedule which one could compare in terms of type and hectarage (i.e. industrial estate, business park). Therefore, it is reasonable to consider that 'intermodal' should be the key criteria for transport infrastructure that would result in a 'goods facility' constituting SID. Otherwise there would be an inconsistent approach between an applicant for a 5 ha. industrial facility and a 5 ha. goods facility when in practice, the operations may be similar.

Furthermore, should the Board interpret this as a 'good facility', then the conditions under 37A (2) are unlikely to be met in any case. A notional assessment in this respect was put forward by the prospective applicant as outlined in Section 6.0 – their assessment is considered reasonable.

The development would not be of strategic economic or social importance to the state – notwithstanding the fact that DPC consider it of strategic economic importance to its internal operations. It is a high bar to be considered as being of being importance to the state. There is no specific policy or objective that the development would contribute to or fulfil. Again there are wider policies and objectives which may be indirectly achieved, but not through the development in of itself.

While the development is in theory affecting both Fingal County, where the development will be proposed, and Dublin City, where the need for the development is generated. It is not considered that there will be significant effects in either jurisdiction as a result of the development.

On the basis of the assessment above, it can be reasonably concluded that the prospective development does not constitute SID.

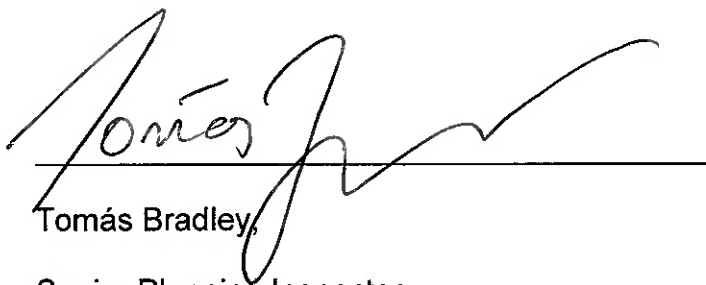
10.0 Recommendation

It is recommended that Dublin Port Company be informed that the proposed development consisting of port related facilities as set out in the plans and particulars received by An Bord Pleanála on the 29th of August 2023, does not fall within the scope of section 37A of the Planning and Development Act 2000, as amended, and

that a planning application should be made in the first instance to Fingal County Council.

Professional Declaration

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.

A handwritten signature in black ink, appearing to read 'Tomás Bradley', is written over a horizontal line. The signature is fluid and cursive.

Tomás Bradley,

Senior Planning Inspector

31st October 2023