



An
Bord
Pleanála

Inspector's Report

ABP-318151-23

Development	Construction of 6 no. data centre buildings
Location	Kildare Innovation Campus, Barnhall Meadows, Leixlip, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2360047
Applicant(s)	The Davy Platform IC & OBO the Liffey Sub-Fund
Type of Application	Permission
Planning Authority Decision	Grant subject to 53 no. conditions
Type of Appeal	First Party v. Financial Contribution
Appellant(s)	The Davy Platform IC & OBO the Liffey Sub-Fund
Observer(s)	None
Date of Site Inspection	Not applicable
Inspector	Bernard Dee

1.0 Introduction

- 1.1. This report relates to a first-party appeal against Condition No. 53 of the planning authority decision to grant permission for the development of a data centre. Condition No. 53 refers to the payment of a development contribution of €9,471,938.40 in accordance with the Kildare County Council Development Contribution Scheme 2023-2029. Section 48(10)(b) of the Planning & Development Act, 2000 (as amended) states that an appeal may be brought to the Board where an applicant considers that the terms of the development contribution scheme have not been properly applied.
- 1.2. Accordingly, the description of development and policy provisions and the assessment of the grounds of the First Party appeal below, relate only to aspects of the permitted development which are relevant to the calculation of the financial contribution in this case and also the manner in which the provisions of the Kildare County Council Development Contribution Scheme 2023-2029 were applied by the Planning Authority in this instance. Section 139(1) of the Planning & Development Act, 2000 (as amended) provides for the Board to assess a condition in isolation from the overall permission.

2.0 Site Location and Description

- 2.1. The appeal site is located on the Kildare Innovation Campus (formerly the Hwelett Packard Campus) which is located immediately south of the M4 and Leixlip village. The site is accessed from the R104 to the east of the appeal site and Barnhall Road to the west.

3.0 Proposed Development

- 3.1. The development to which this appeal relates is comprised of the following main elements:
 - Demolition of existing Buildings No's 7, 8 and 9 (total gfa c. 84,838m²).
 - Retention of existing Buildings No's 1 – 6 for deep tech and innovation related uses (total gfa c.42,862m²).

- Construction of 2 no. new deep tech buildings all including ancillary office spaces with a combined total gfa of c. 72,135m².
- Construction of 4 no. new data centre buildings, all including ancillary office spaces with a combined total gfa of c. 76,225m².
- Decommissioning and removal of the existing 110 kV Rinawade substation and its replacement with a new 110 kV substation and electrical infrastructure.
- All necessary site development ancillary works.
- The total gfa of the proposed development is stated to be 152,773.20m² and the Planning Authority has based its financial contribution amount on this figure.

4.0 Planning Authority Decision

4.1. Decision

Permission for the development to be retained was granted on 7th September 2023 subject to 53 no. conditions.

Condition No. 53 relates to a financial contribution of €9,471,938.40 and is the subject of this First Party appeal.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- The Planner's Report does not make any specific comments in relation to the financial contribution calculation associated with the proposed development.

4.2.2. Other Technical Reports

- Water Services, Environment, Transportation and Heritage Services - no objections subject to conditions.
- Chief Fire Officer – requested Further Information.
- Financial contribution calculation:

Rate Bands	Description	Rate Per Sqm	Floor Area sqm	*Exemption Reduction	Area Considered for Contribution Sqm	Contribution
8.2	Data Centre	€62.00	152773.2	0	152773.2	€9,471,938.40
					Development Contributions Applicable	€9,471,938.40

In addition to this financial contribution calculation, it is noted that there are outstanding financial contribution payments related to the application site as follows:

- Ref. 22/1096 - €14,260.00 remains unpaid.
- Ref.12/708 - €32,633.48 remains unpaid.

4.2.3. Prescribed Bodies

- HSE, Inland Fisheries, NTA and EPA - no objections subject to conditions.
- TII and NRO – requested Further Information.

4.2.4. Observations

- Three submissions were received by the Planning Authority during the five week period. One submission by Killross Properties Limited became a Third Party appellant but this appeal was withdrawn on 21st November 2023.

5.0 Planning History

5.1. On the Appeal Site

- Ref. RL09.312371 (PA Ref. 20873) - relates to a referral on whether the use of building no. 7 on the Kildare Innovation Campus as a Data Centre and physical works proposed is or is not development or is or is not exempted development and this case is yet to be decided. This case was due for decision on 10th May 2022. This building is proposed to be demolished and replaced in the current development proposal.
- Ref. ABP-307312-20 (PA Ref. 2060) - relates to a permission for a change of use of building no. 3 and part of building no. 4 which was the subject of a First Party appeal against financial contributions where the Board decided that the provisions of the Kildare County Council Development Contribution Scheme

2015-2022 were not correctly applied and reduced the financial contribution from €742,363.39 to €22,538.65.

- Ref. 97/893 - relates to a grant of permission in 1997 for an extension to an existing manufacturing facility comprising of a new manufacturing building incorporating production spaces and offices , a new Energy Centre , service and pedestrian links between proposed and existing buildings all of total floor area of 34,870m². Condition Nos. 18 & 19 of this permission required a financial contribution of €300,160 which the First Party states has been paid in full and provides proof of payment in the appeal submission (Appendix B). The First Party states that this permission relates to building nos. 8 & 9 on the campus which are proposed to be demolished and replaced in the current development proposal.
- Ref. 96/1287 - relates to a grant of permission in 1996 for an extension to existing manufacturing facility comprising a new building of 29,144m². Condition No. 17 of this permission required a financial contribution of €99,600 which the First Party states has been paid in full. The First Party states that this permission relates to building no. 7 on the campus which is proposed to be demolished and replaced in the current development proposal. However, the First Party states that the floor area of 29,144m² referred to in the statutory notices is incorrect and that the true gfa is 49,661m² due to the installation of mezzanine floor areas as shown in the section drawings submitted with the application. Having reviewed the drawings on file I can confirm that the First Party is incorrect and that the gfa of 29,144m² does include the mezzanine area shown on the drawings as the footprint of the building is approximately 152.4m x 91.4m = 13,929.36m² which multiplied by 2 = 27,858.72m². The 1,285.28m² shortfall in floor area is explained by the two storey stairwells (6 no.) which are external to the rectangular footprint of the building and which would raise the amount of floor space of the building to floor area of 29,144m² as per the statutory notices.
- Ref. 95/923 – relates to a grant of permission in 1995 for a manufacturing facility of 42,640m² for industrial purposes on an 80.56 hectares site – parent permission.

- In addition, there are multiple planning history cases referenced in the Planner's Report on file which I draw the Board's attention to but are of marginal relevance in the assessment of the current appeal.

5.2. In the Vicinity of the Site

- None relevant to this appeal against financial contributions.

6.0 Policy and Context

6.1. County Development Plan & Leixlip LAP

The Kildare County Development Plan 2023 - 2029 is the statutory plan for the area.

Chapter 15: Development Management Standards

15.1.4 Development Contributions

The Council, taking into consideration the capital expenditure necessary for the provision of public infrastructure and facilities, will require the payment of financial contributions in accordance with the Development Contributions Scheme.

Developers may also be required to carry out works at their own expense to facilitate their development and these will be specified as a condition of their planning permission.

The appeal site is zoned 'H: Industry & Warehousing' in the Leixlip Local Area Plan 2020- 2023 (as extended to 30th March 2026).

To provide for industry, manufacturing, distribution and warehousing. Note: Where employment is a high generator of traffic, the location of new employment facilities at an appropriate scale, density, type and location will be encouraged to reduce the demands for vehicular travel.

There is no specific reference to data centres in H zoned lands in the zoning matrix in Section 13.1 of the LAP.

6.2. Kildare County Council Development Contribution Scheme 2023-2029

Section 8.2 of the Development Contribution Scheme 2023-2029 states that for non-residential development such as the data centre, which is the subject of this appeal, the development contribution rate shall be €62 per square metre.

Section 10.10 of the Development Contribution Scheme 2023-2029 in relation to replacement buildings, states that *“contributions will not be applied to permissions for the construction of replacement buildings on the same footprint or the same area as the original building following extensive damage by subsidence, flood or fire. Where extensions are added to such buildings, the contribution rates or relevant exemptions outlined in Section 8.1 or 8.2 shall apply”*.

Section 10.11 of the Development Contribution Scheme 2023-2029 states that *“the Chief Executive shall have the discretion to reduce or waive development contributions where, in his or her opinion, it is warranted, having Regard to National Policy in relation to specific classes of development, the particular economic, social or cultural benefits of the development or other exceptional circumstances”*.

6.3. Development Contribution Guidelines 2013

Section 2. Supporting Economic Development

Subject to the overriding principles of proper planning and sustainable development, adopted development contribution schemes should contribute to the promotion of sustainable development patterns, economic activity and to securing investment in capital infrastructure and economic activity. They should also reflect the reduced costs of infrastructure provision in recent years relative to when schemes were last revised. To bring this about, planning authorities are required to include the following in their development contribution schemes:

- provision to charge only net additional development in cases of redevelopment projects (e.g. a redevelopment totalling 200m² of which 150m² is replacing existing development, contribution should only be levied on the additional 50m²).

Double Charging

The practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

6.4. Natural Heritage Designations

The following natural Heritage designation is located in the vicinity of the appeal site:

- Rye Water Valley SAC (001398) – is located approximately 1.5km to the NE of the appeal site.
- Royal Canal pNHA (002103) is located approximately 1.3km to the north of the appeal site.
- Rye Water Valley Carton pNHA (001398) – is located approximately 1.5km to the NE of the appeal site.
- Liffey Valley pNHA (000128) – is located approximately 1.5km to the NE of the appeal site.

6.5. EIA Screening

- Not applicable as an EIAR has been submitted with the planning application documentation.

7.0 The Appeal

7.1. Grounds of Appeal

The First Party appeal relates to the financial contribution imposed by Condition No. 53 of the grant of retention permission in the amount of €9,471,938.40 and the main grounds of appeal can be summarised as follows:

- The financial contribution sought should be reduced to €5,240,922 to take account of the financial contributions previously paid for building nos. 7, 8 and 9 (a total gfa of 84,838m²) which are to be demolished as part of the proposed development.
- The Development Contribution Guidelines (2013) require Planning Authorities to have regard to “*only net additional development in cases of redevelopment projects*” and the Kildare Development Contribution Scheme 2023-2029 does not follow this advice.

- Consequently, by not taking into account financial contributions previously paid the Planning Authority is double charging the applicant which is a practice which the Development Contribution Guidelines (2013) does not permit.
- Ref. ABP-307312-20 which relates to an appeal against a financial contribution for development on the same campus as the current appeal saw the Board decision reduce the financial contribution required from €742,363.39 to €22,538.65 as the Board decided that the provisions of the Kildare County Council Development Contribution Scheme 2015-2022 were not correctly applied in that case and amounted to double charging by the Planning Authority.
- The proposed gross floor space is 152,773.20m² but the area of floor space to be demolished is 84,531m² and therefore, the financial contribution sought should be reduced to €5,240,922 to reflect the gfa of building to be demolished as part of the proposed development.¹
- Section 28(2) of the Planning Act requires the Board to have regard to Ministerial Guidance such as the Development Contribution Guidelines (2013) and we would ask the Board to revise Condition No. 53 to the amount cited above to take into account the levies already paid on the buildings to be demolished and replaced with new structures.

7.2. Planning Authority Response

- The Planning Authority has applied the correctly calculated financial contribution as per the provisions of section 8.2 of the Development Contribution Scheme 2023-2029.

¹ **Inspector's Note:** The gfa of 84,531m² cited by the First Party as the area of buildings to be demolished has been incorrectly calculated in respect of building no. 7, see Ref. 96/1287 in Section 5.1 above. The gfa for building no. 7 of 29,144m² referenced in the statutory notices is correct and the 49,661m² gfa cited by the First Party is erroneous and based on a misreading of the planning application drawings. The correct cumulative gfa of building nos. 7, 8 & 9 to be demolished is 64,014m² and not 84,531m². Therefore, a gfa of 152,773.20m² proposed minus 64,014m² of demolition gfa = 88,759.20m² of net gfa associated with the proposed development. 88,759.20m² x €62 per square metre would result in an actual contribution requirement of €5,503,070.40 if the argument of replacement buildings being exempt from contributions was applicable in this instance.

- Replacement buildings on the same footprint are only eligible for exemption from financial contributions if the replacement is due to damage by subsidence, flood or fire.
- Extensions to buildings are governed by Sections 8.1 and 8.2 of the Scheme.

7.3. Observations

- None received.

8.0 **Assessment**

8.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise.

8.2. The primary planning issue therefore is whether the Development Contribution Scheme 2023-2029 has been applied correctly by the Planning Authority in this case. The issue of AA Screening is also addressed in this assessment.

8.3. Financial Contribution

8.3.1. The Planning Authority state that the provisions of the Development Contribution Scheme 2023-2029 have been correctly applied and that no exemption or waiver can be used in cases of replacement buildings for demolished buildings except in the case of subsidence, flood or fire damage which is not applicable in the present case.

8.3.2. The First Party case is that the area of building nos. 7, 8 and 9 which are to be demolished and replaced by 6 no. new buildings should be offset against the financial contribution imposed by the Planning Authority. The First Part suggests a reduced contribution of €5,240,922.

8.3.3. Section 48(10)(b) of the Planning and Development Act 2000 (as amended) states that:

An appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the planning authority.

- 8.3.4. My interpretation of this section of the Act is that the Board is limited in the consideration of this appeal to whether the Development Contribution Scheme 2023-2029 has been applied correctly by the Planning Authority.
- 8.3.5. I draw the Board's attention to Section 8.2 of the Development Contribution Scheme 2023-2029 which states that for non-residential development (e.g. Commercial / Retail / Warehousing) the development contribution rate shall be €62 per square metre.
- 8.3.6. Section 10.10 of the Development Contribution Scheme 2023-2029 in relation to replacement buildings, states that *"contributions will not be applied to permissions for the construction of replacement buildings on the same footprint or the same area as the original building following extensive damage by subsidence, flood or fire."*
- 8.3.7. Having regard to the above, and to the fact that the replacement buildings are not being constructed to replace buildings damaged by subsidence, flood or fire damage, this is a clear case where the Planning Authority have correctly applied the Development Contribution Scheme as set down in Section 48 of the Planning Act as there are no exemptions or waivers in the Development Contribution Scheme that are applicable in the current case.
- 8.3.8. As an aside, I would comment that the Kildare County Development Contribution Scheme 2023-2029 has not taken the provisions of the Development Contribution Guidelines 2013 into account in respect of the provision to charge only net additional development in cases of redevelopment projects. The Planning Authority by adding the caveat that replacement buildings are only eligible for an exemption in cases where the building in question needs to be replaced due to damage caused by subsidence, flood or fire damage goes against the spirit and the written advice of the Development Contribution Guidelines 2013 and in this instance is a clear case of double charging which is not in accordance with best planning practice and procedure.

8.4. AA Screening

- 8.4.1. Having regard to the relatively minor development proposed within an existing unit 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.

9.0 Recommendation

I recommend therefore that a financial contribution condition be affixed to a Board Order as per the format outlined below.

10.0 Reasons and Considerations

Having regard to the provisions of the Kildare Development Contribution Scheme 2023-2029, and to the limitations placed upon the Board in assessing appeals against financial contributions by the provisions of Section 48(10)(b) of the Planning and Development Act 2000 (as amended), it is considered that Condition No. 53 should not be omitted from the grant of permission issued by the Planning Authority and that a financial contribution should be imposed by a condition as worded below.

53	The developer shall pay to the planning authority a financial contribution of in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord
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	<p>Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</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.

Bernard Dee
Planning Inspector

8th May 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318151-23		
Proposed Development Summary	Construction of 6 no. data centre buildings		
Development Address	Kildare Innovation Campus, Barnhall Meadows, Leixlip, Co. Kildare		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	√
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes	√		EIA Mandatory EIAR required
No			Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			

		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: 8th May 2024

Bernard Dee