



An
Bord
Pleanála

Inspector's Report ABP-318151-23A

Development	Demolition of buildings, construction of 2 deep tech buildings, 4 data centre buildings and all associated works. Environmental Impact Assessment Report submitted with application.
Location	Kildare Innovation Campus (KIC), Barnhall Meadows, Leixlip, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	23/60047
Applicant(s)	The Davy Platform IC & OBO the Liffey Sub-Fund
Type of Application	Permission.
Planning Authority Decision	Grant
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

Susan McHugh

1.0 Introduction

- 1.1. This report is an addendum report to the Inspector's report in respect of ABP-318151-23 dated 8th May 2023.
- 1.2. On 28/06/2024 the board decided to issue a Section 132 notice to the applicant regarding the following;

'The Board notes the appeal of condition no. 53 of Kildare County Council Decision 2360047 and that the Kildare County Development Plan 2023-2029 took effect on the 28th day of January 2023 and Kildare County Council Development Contribution Scheme 2023-2029 applies. In that regard, the Board requests that further information is provided to demonstrate the compliance of the said Development Contribution Scheme with the Minister's Development Contribution Guidelines 2013 given that an element of the proposed development is the replacement of existing buildings thereby potentially impacting on the net additional development.'
- 1.3. A period of 3 weeks (on or before 22/08/2024) was allowed for circulation of responses to all parties and return to the Board for further consideration.
- 1.4. On 04/10/2024 the board decided to request an addendum report from the Inspector, to consider the additional information received on 20/08/2024.
- 1.5. This report considers the additional information received by the Board on foot of the request for an addendum report.

2.0 Planning History

- 2.1. **Ref. RL09.312371 (PA Ref.20873):** The Board issued a determination 12/11/2024 that the use of the building no. 7 as a Data Centre and physical works is development and is not exempted development.

3.0 Applicants Response

- 3.1.1. A response to the Section 132 Notice was received from the applicants agent on behalf of the applicant on 20/08/2024.
- 3.1.2. The response to issues raised can be summarised as follows;

- [Development Contribution Guidelines for Planning Authorities 2013](#) were issued by the Minister under section 28 of the Planning and Development Act, 2000 (as amended).

- Section 28(1) of the Act requires planning authorities to 'have regard to (section 28 ministerial guidelines) in the performance of their functions,

- Section 28(2) requires the Board to 'have regard to any (section 28 ministerial guidelines) issued to planning authorities...in performance of its functions.

- The [Kildare County Council Development Contribution Scheme](#) (KCC DCS) 2023-2029 was adopted on 19/12/2022. Section 4 of the Scheme confirms that the Scheme 'has been prepared in accordance with the ..2013 Guidelines'.

- This principle of interpretation was affirmed by Holland J in the context of the incorporation of ministerial guidelines into a development plan in *Ballyboden Tidy Towns v. An Bord Pleanála* (2022) IEHC 7 at para. 135:

'The relevant elements of the Development Plan are expressed in terms of accordance with ministerial guidelines necessitates that the intelligent layperson, in interpreting those elements of the Development Plan, will also have to interpret the correspondingly relevant elements of those guidelines.'

- DCS does not expressly address the treatment of the replacement of existing buildings in the context of a proposed re-development. Notes, the 2013 Guidelines under the heading 'Double Charging' states:

'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'.

- Submit this applies to the proposed development which includes the demolition of three existing buildings (referred to as buildings 7,8,9), which have each been the subject of prior grants of planning permission, which required the payment of development contributions, and which contributions have been paid.

- Maintain that the applicant is entitled to a reduction in the floor area to which the relevant development contribution rate is to be applied, equivalent to the area of buildings 7,8, and 9.
- Note the PA confirmed it had calculated the development contributions for the proposed development by reference to sections 8.2 and 10.10 of the Scheme.
- Section 8.2 refers to the relevant contribution rate to be applied which the Council say is the Non-residential Development rate of €62 per square metre – applicants agree this is the correct unit rate.
- Section 10.10 is an exemption, as permitted under section 48(3)(c) of the Act, from the obligation to pay development contributions where the development consists of 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’. Note KCC had previously confirmed in their submission to the Board that ‘the listed exemptions for replacement buildings do not apply in this instance’.
- Disagree with KCC’s conclusion that Section 10.10 of the Scheme does not apply. Submit that KCC has erred in its interpretation of the Scheme and/or misinterpreted the Applicants position.
- Asserts the applicant is entitled to rely on the 2013 Guidelines.

Summary

- The application submits:
 - The provisions of the Scheme are not inconsistent with the Guidelines,
 - The treatment of existing buildings demolished as part of a redevelopment is not expressly addressed in the Scheme,
 - The Scheme incorporates the Guidelines and,
 - The Guidelines are clear that the development area to be levied should be the net additional development area.

4.0 Planning Authority Response

- 4.1.1. The response to the Section 132 Notice was circulated by the Board under Section 131 of the Planning and Development act (as amended) to the Planning Authority for response on 26/08/2024.
- 4.1.2. A response to the Section 131 Notice was received from the Planning Authority on 16/09/2024. The response to issues raised can be summarised as follows;
- The KCC DCS 2023-2029 was prepared and signed off in accordance with the following guidance documents;
 - [Development Contribution Guidelines for Planning Authorities for Planning Authorities \(Departments of the Environment, Community and Local Government, January 2013\)](#) and
 - Departmental Circulars [PL3/2013](#), PL15/2013¹, [PL18/2013](#) and [PL03/2018](#)
 - The PA have no further comments to make at this time.

5.0 Assessment

- 5.1. The Board direction sought further information requesting the applicant demonstrate that the Kildare County Council Development Contribution Scheme 2023-2029 complies with the Development Contribution Guidelines 2013. Specifically, the Board highlights that an element of the proposed development relates to the replacement of existing buildings, and therefore potentially impacts on the net additional area for the purposes of calculating the Section 48 Financial Contribution.
- 5.2. The applicant submits that Section 4 of the KCC DCS 2023-2029 confirms that the DCS has incorporated the 2013 Guidelines into the Scheme. It is also submitted that this principle of interpretation was affirmed by Holland J in the context of the incorporation of ministerial guidelines into a development plan in *Ballyboden Tidy Towns v. An Bord Pleanála* (2022).

¹ Not available on www.gov.ie

- 5.3. The applicant acknowledges that the KCC DCS does not expressly address the treatment of the replacement of existing buildings in the context of a proposed re-development.
- 5.4. I have examined the DCS and would accept that the scheme broadly complies with the Guidelines 2013. I would however suggest that the scheme is effectively silent on the treatment of the replacement of existing buildings.
- 5.5. The applicant also accepts that the relevant contribution rate has been correctly applied by the PA.
- 5.6. What is disputed (between the applicant and the PA) is whether an exemption for replacement buildings applies. The PA are of the view that the exemption does not apply, as the existing buildings to be demolished have not undergone extensive damage as a result of subsidence, flood or fire.
- 5.7. I have considered this assertion by the applicant, and the view of the PA. I am satisfied (given that no evidence of damage to the buildings has been provided in the application or appeal) that Section 10.10 of the DCS does not apply in this instance.
- 5.8. I have had regard to the section on 'double charging' in the Guidelines, and I concur with the previous inspector's assessment that 'double charging' goes against the spirit of the Guidelines. I note the PA response to the Section 131 notice and Planning circulars referenced but they do not comment on or refer to 'double charging', per se.
- 5.9. The Board is confined solely to the consideration of whether the terms of the scheme were properly applied by the planning authority. Similarly, the Board cannot consider the merits or otherwise of the scheme itself. These restrictions have been very strictly applied by the courts in JR.
- 5.10. As noted by the previous inspector under section 5 of the report the buildings to be demolished referred to as 7, 8 and 9 were permitted under
- Ref. 96/1287 in 1996 for building no. 7 &
 - Ref. 97/893 in 1997 for building no.s 8 & 9
- and were therefore levied under the DCS at that time which predate the 2013 Guidelines.

- 5.11. I would note that the PA have not indicated that development contributions pertaining to the previous permissions are outstanding. None the less the applicant is clear that development contributions were paid and as such, to not give an offset for this is contrary to the Guidelines.
- 5.12. While I accept the rational set out in the applicants submission that the floor areas of the three buildings to be demolished should be deducted / subtracted from the overall area to which the development contribution rate is applied, the KCC DCS 2023-2029 does not explicitly provide for this.
- 5.13. I am satisfied therefore, that the KCC DCS 2023-2029 which was in place at the date of the PA decision has been applied correctly by the PA.

6.0 Recommendation

- 6.1. I refer to the previous Inspector's Report and recommendation on this application dated 8th May 2023. Having regard to the further assessment of the further information submitted by reference to the material submitted by the applicant, and the planning authority I am satisfied that all matters have been addressed fully and no change to the recommendation arises.
- 6.2. Therefore, I consider that the total floor area of buildings 7, 8 and 9 should not be deducted from the overall floor area liable for development contributions under the terms of the Scheme.

7.0 Reasons and Considerations

Having regard to:

- The provisions of the Kildare County Council Development Contribution Scheme 2023-2029;
- 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),
- The nature of the permitted and existing developments to be demolished and
- The nature of the proposed development,

The Board considers that the terms of the Development Contribution Scheme has been correctly applied and that Condition No. 53 should not be AMENDED or 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.

8.0 Conditions

53. The Applicant/Developer to pay to Kildare County Council the sum of **€9,471,938.40** being the appropriate contribution to be applied to this development in accordance with the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022 in accordance with Section 48 of the Planning and Development Act 2000, as amended. Payments of contributions are strictly in accordance with Section 34 of the Development Contribution Scheme adopted by Kildare County Council on 19th December 2022.

Note: Please note water and wastewater development contribution charges now form part of the water connection agreement, if applicable, with Uisce Éireann.

Reason: It is considered reasonable that the developer should make a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

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.

Susan McHugh
Senior Planning Inspector

26th November 2024