



An  
Bord  
Pleanála

## Inspector's Report

**ABP 318968-24**

### Development

Retention of, and permission for, extension to self-storage container park and new vehicular access

### Location

Site D+E, Rosemount Business Park, Blanchardstown, Dublin 11

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

F23A/0106

### Applicant(s)

Titan Containers Ireland Ltd.

### Type of Application

Permission

### Planning Authority Decision

To grant permission subject to conditions

### Type of Appeal

First Party v Condition

### Appellant(s)

Titan Containers Ireland Ltd

### Observer(s)

None

### Date of Site Inspection

15<sup>th</sup> May 2024

### Inspector

Brendan McGrath

## **1.0 Site Location and Description**

- 1.1. The site is a large plot in a mature business park on the south-east side of Blanchardstown. The site is level ground beside one of the main roads (Rosemount Park Drive) in the estate. The application is for the greater part of the plot. The extension area has a stated area of 2.47ha. It excludes the northern end where the existing entrance and office is located.

## **2.0 Proposed Development**

- 2.1. The proposal is for retention of a self-storage container development granted under Reg. Ref FW20A/0170, and retention permission to extend development by 2.47 ha. A 10 year temporary permission is sought for both the existing and extension area.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant subject to conditions, including condition 12, a financial condition requiring a contribution of €996,019.20 in accordance with the Development Contribution Scheme of Fingal County Council 2021 – 2025, made under Section 48 of the Planning and Development Act 2000 as amended. The levy was calculated on the 9<sup>th</sup>. January 2024.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The report sets out how the financial contribution was calculated. It is calculated primarily on the basis of the aggregate floor area of the storage containers to be permitted i.e.

Item	Number of units	Floor area (m <sup>2</sup> )
40 ft storage container (28.8m <sup>2</sup> )	218	6278
20ft storage container (14.16m <sup>2</sup> )	115	1628
Office extension (14m <sup>2</sup> )	1	14
total		7,920

Applying the retention rate for an industrial/commercial building of €125.76 per m<sup>2</sup> the levy is €996,019.20 (€125.76 X 7920)

### 3.2.2. Other Technical Reports

Water Services No objection

Transportation No objection but revised design of roundabout arm required

### 3.3. Prescribed Bodies

Uisce Éireann

No objection

### 3.4. Third Party Observations

None received

## 4.0 Planning History

FW17A/0198 Temporary Retention Permission for a container storage facility for 3 years

FW20A/0170 Temporary Permission and Retention permission for container-storage facility granted in March 2021 for a 3-year period

## 5.0 Policy Context

### 5.1. Development Plan

Fingal Development Plan 2023-2029

The site is zoned GE to 'Provide provide opportunities for general enterprise and employment'

### 5.2. Natural Heritage Designations

None relevant

### 5.3. EIA Screening

Having regard to the nature of the proposed development and 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

## 6.0 The Appeal

### 6.1. Grounds of Appeal

This is an appeal against condition 12 of the grant of permission on the basis that the Financial Contribution Scheme of Fingal County Council has been misapplied.

The basis of the appeal is:-

- Containers are not permanent buildings and therefore should not attract a levy. The levy should only apply to durable/permanent buildings on the application site. In support of this assertion the appellant points out that the planning fee for the application was calculated under Class 7 of the planning fees schedule. This class includes 7c 'the open storage of motor vehicles or other objects or substances'.
- The containers on site do not avail of any of the public infrastructure services which are funded by the Financial Contribution Scheme

- The average number of containers on site is generally much lower than the number shown on the site layout plan and the actual number in use for storage purposes is even lower
- Other local planning authorities (Kildare and Limerick) charge much lower levies for this type of development based on a charge per hectare of land and a square metre levy only in respect of administration buildings.

## 6.2. **Planning Authority Response**

The PA has responded by setting out how financial contributions have been calculated for the three relevant planning applications, involving 2 financial contribution schemes (2016-2020 and 2021-2025)

## 6.3. **Observations**

None received

## 6.4. **Further Responses**

The appellant asserts the following:-

- A levy based on the aggregate gross floor area is wrong

But, notwithstanding that

- The number of containers is wrong
- The floor area area is wrong (It should be 7778m<sup>2</sup> not 7920m<sup>2</sup>)
- The levy per m<sup>2</sup> is wrong (it should be €95.86 per m<sup>2</sup> not €125.76 per m<sup>2</sup>)
- A 50% levy reduction is appropriate having regard to 11(n) of the Scheme

## 7.0 Assessment

Having examined all the application and appeal documentation on file I consider that the main issues in this appeal, which relates only to a financial contribution condition, are the nature and extent of the development for which a retention permission has been granted and the correct application of the Fingal County Council Development Contribution Scheme to that decision.

### 7.1. The nature and extent of the development which has been granted permission

A retention permission has been granted for development within the application site boundary as shown on the site layout plan (Drawing A003 Rev 27 submitted on 5<sup>th</sup> December 2023). The permission is also restricted to Areas 2 and 4 of the site (landscaping only permitted in Areas 1 and 3) as per Condition 2 of the permission. The permitted development is further restricted in Area 4 by the requirement to omit development on the southern and western boundaries as per Condition 4 of the permission. The development permitted therefore and for which a levy has been calculated consists of a total of 333 storage-containers. These comprise 218 20-foot containers and 115 40-foot containers.

The 20-foot containers measure 13.53 m<sup>2</sup> and the 40-foot containers 27.62m<sup>2</sup>. The aggregate total of 333 equates with initial calculation by the appellant (para 4.2 of the appeal letter) but not the aggregate total of 324 in his response to the planning authority's response.

In terms of number of storage containers involved my assessment concurs with the breakdown presented by the planning authority in its response to the appeal. However, the container dimensions are different, utilising the measurements in the submitted drawings. I have also excluded the office extension because it is outside the red line bounded area of the application site. The aggregate area I have calculated, based on the submitted dimensions on the planning application drawings is therefore 7577.11m<sup>2</sup>, which is somewhat lower than the aggregate total used by the planning authority.

On the basis of the documentation on file I consider it reasonable for the planning authority to have calculated a fee based on the site layout plan submitted rather than one on the basis of an average number of containers on site as proposed by the applicant. I do not consider that other Financial Contribution Schemes by other planning authorities has any relevance to this appeal.

Item	Number of units	Floor area (m <sup>2</sup> )
40 ft storage container (27.62m <sup>2</sup> )	218	6021.16
20ft storage container (13.53 m <sup>2</sup> )	115	1555.95
total		7577.11

## 7.2. The correct application of the Fingal County Council Development Contribution Scheme

The calculation of the contribution has the following main components, as set out in the contribution scheme, are:-

- The physical size of the development and how it is quantified (Section 9 of Scheme, Note 2)
- A development levy charged at €76.69 per m<sup>2</sup> of industrial/commercial floorspace (2021 prices) (Section 9 of Scheme)
- The levy to be adjusted for inflation according to Tender Price Index (Note 2 of Section 9),
- A retention application multiplier of 1.25 (Section 10), and
- The application of exemptions and reductions allowed for under the Scheme (Section 11)
- The scope for adjusting a levy to reflect the extent to which services and infrastructure items which are being funded are availed of by the subject development.

### The physical size of the development and how it is quantified (Section 9)

This is the key issue. The local authority has treated the containers as structures/buildings for which an aggregate floor area can be calculated and a 'pro rata' floor space fee applied. The appellant asserts that containers are not 'buildings' and that therefore gross floor area cannot be the basis of the levy calculation. I have examined the terms of the contribution scheme and also reviewed the planning act and regulations and found no definition of 'container' or 'building' to elucidate the status or otherwise of a storage container as a type of building. The definition of 'business premises' in the regulations would seem to encompass containers and enable the planning authority to treat them as though they were buildings.<sup>1</sup> Business premises are *'any structure or other land (not being an excluded premises for the carrying out of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons'*<sup>2</sup>

---

<sup>1</sup> Part 2, Article 5, 1 of the Regulations

<sup>2</sup> 'Excluded premises' are premises used for religious educational recreational purposes and guest houses blocks of flats and dwellings.'



The main approach in the planning code to determining what constitutes 'development' is by defining what is not 'development'. But I cannot find a description of any class of development in Schedule 2 (Exempted Development) of the Regulations which elucidates the nature of the development on the subject site. That being the case, I consider it reasonable to treat the containers as buildings/ structures which can be quantified in terms of a gross floor area and upon which a financial contribution can be levied. In my opinion, because a self-storage container park is not defined in the Scheme or in the general planning code, it should by default be treated as development that will attract a development levy rather than the converse.

But I also consider that the small office building which is outside the red lined site, should not have been levied, as was the case.

A development levy to be charged at €76.69 per m<sup>2</sup> of industrial/commercial floorspace (Section 9)

This is the levy stated in the Scheme for 'industrial/commercial class of development'. The proposal concerns a commercial development so this is the appropriate levy to charge

The levy to be adjusted for inflation according to Tender Price Index (Section 9, Note 2)

It is presumed that the planning authority has adjusted the levy to €100.61 per m<sup>2</sup> to allow for inflation, in accordance with the Tender Price Index, and in accordance with Note 2 of Section 9 of the Scheme, but this calculation is not made explicit by the planning authority. The appellant has calculated a levy of €76.69 per m<sup>2</sup> which assumes no increase in the Tender Price Index since 2021, which is unlikely.

A retention multiplier of 1.25 (Section 10)

The 1.25 retention multiplier is stated in Section 10 Scheme and applies to this application which is an application for retention

#### Exemptions and reductions allowed for under the Scheme (Section 11)

- The appellant points out that previous applications (FW20A0170 and FW17A/0198) qualified for exemptions. The planning authority has explained that the previous applications were for temporary permissions, qualifying for exemptions under part 10(9) of the 2016 -2020 Scheme and Part 11 (u) of the 2021-2025 Scheme. FW23A/0106 is a full grant of permission and no exemptions are available for a full grant.
- Section 11 (n) of the Scheme allows for a 50% reduction in respect of commercial car parks. The appellant has requested such a reduction to apply to this proposal, but the proposal is clearly not a commercial car park and therefore the reduction does not apply.

#### Scope for reduction of levy to reflect the level of use of the services and infrastructure which are being financed (Section 9)

The Scheme, as far as I can determine, provides no justification for reducing a levy or not imposing a levy on the basis that the development under consideration does not avail of services or infrastructure for which a payment is being levied. That justification would have had to be made explicit in the Scheme and no such justification has been made. It should also be noted that the greater part of the levy is for transportation infrastructure and facilities and that commercial use under consideration would be a significant generator of traffic and therefore user of transportation infrastructure.

In summary I am in general agreement with the manner in which Fingal County Council has applied its financial scheme and I do not accept the appeal arguments advanced by the applicant/appellant. However, I am also not satisfied, on the basis of the information on file, that there is sufficient clarity about how the amount to be paid has been determined.

The levy calculation should be based on the following:-

- The number of storage containers shown on the site layout plan (Drawing A003 Rev 27 submitted on 5<sup>th</sup> December 2023), making due allowance for the

exclusions specified by conditions 2 and 4 of the grant, and the levy calculation to be restricted to structures within the red line of the site,

- The aggregate gross internal floor area of the containers based on the stated container dimensions shown on drawing A 0001 dated 2/2/23, and
- The levy rate per m<sup>2</sup> as specified in the Scheme (€76,69) adjusted for inflation, according to the Tender Price Index ratio which applied on 9<sup>th</sup> January 2024 (the ratio to be explicitly stated in the calculation)

## 8.0 Recommendation

A revised contribution to be paid in accordance with the current Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000 as amended, the contribution to be agreed between the planning authority and the developer.

## 9.0 Reasons and Considerations

Having regard to Section 48 of the Planning and Development Act 2000, as amended and the Fingal County Council Development Contribution Scheme 2021 – 2025, made under that Act, it is considered reasonable that the developer pay a financial contribution in respect of public infrastructure and facilities benefiting development in the area.

## 10.0 Condition

12.	The developer shall pay to the planning authority a financial contribution 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. The contribution shall be subject to any applicable indexation provisions of the Scheme at the time of payment.
-----	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.
	<b>Reason:</b> It is a requirement of the Planning and Development Act 2000 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.

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.

---

Brendan McGrath  
Planning Inspector

11<sup>th</sup> June 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	ABP 318968-24		
<b>Proposed Development Summary</b>	Self-storage container park		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b> <input checked="" type="checkbox"/>	No further action required
<b>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?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>			Proceed to Q.3
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		N/A	No EIAR or Preliminary Examination required
<b>Yes</b>		Class/Threshold.....	Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_