



An
Bord
Pleanála

Inspector's Report

ABP-318976-24

Development

The removal of part of Condition 1 of permission F18A/0754 - "This permission is for a period of 5 years only" for approved warehouse unit. The permission seeks to maintain the warehouse unit permanently on lands within the Abco Kovex site.

Location

Lands within the Abco Kovex site, Swords Business Park, Swords, Co. Dublin

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

F23A/0578

Applicant

Behzr Ltd. & Sullivan Partnership

Type of Application

Permission

Planning Authority Decision

Grant Permission with conditions

Type of Appeal

First Party v Condition(s)

Appellant

Behzr Ltd. & Sullivan Partnership

Observer

None

Date of Site Inspection

11th April 2024

Inspector

Emma Nevin

1.0 Site Location and Description

- 1.1. The appeal site, which is a greenfield site, is located within the Swords Business Park, between the M1 motorway, to the east, and the existing Abco Kovex building, to the west. The site area is stated at 0.83 hectares.

2.0 Proposed Development

- 2.1. The proposed development comprises the removal of part Condition No. 1 of the development permitted under Ref: F18A/0754, to maintain the warehouse unit permanently on lands within the Abco Kovex Site, within the Swords Business Park.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission, following further information request, on the 9th January 2024 subject to 9 no. conditions.

Condition No. 2 , the subject of this appeal, states;

“The permission shall be for a period of five (5) years only from the date of the final grant of planning permission, after which time the structure shall be removed, and the site reinstated to its original form unless a prior grant of planning permission has been granted for the retention of the structure by the Planning Authority or An Bord Pleanála on appeal.

Reason: In the interest of clarity and the proper planning and sustainable development of the area”.

This appeal relates to Condition 2 only.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 16th November 2023 and 9th January 2024 have been provided.
- 3.2.2. The original planning report considered it necessary to seek further information on the following items:

- The applicant was requested to demonstrate that the proposed warehouse unit was finished building in March 2023, to confirm the date of first occupation.
- To clarify the discrepancy between the gross floor space of the subject warehouse as stated in Reg. Ref. D18A/0754 and as stated as part of the instant application.

3.2.3. The planners report concluded that the outstanding issues were addressed as part of the further information submission and that Planning Authority considers that the development is consistent with the Fingal County Development Plan 2023 – 2029, however, a temporary permission should of five years should be conditioned as per the previous grant on site under Reg. Ref. F18A/0754 to ensure the site could be redeveloped at a future date as part of an overall redevelopment of Swords Business Park over the medium to long term to facilitate the provision of MetroLink.

3.2.4. Other Technical Reports

Transport Planning Section – No objection subject to conditions.

Water Services Section – No objection.

3.3. Prescribed Bodies

Uisce Éireann – No comments received.

3.4. Third Party Observations

None received.

4.0 Planning History

Lands within the Appeal Site

PA. Ref. F18A/0754 – Permission granted by Fingal County Council on the 29th July 2019, for a temporary period of 5 years for the development of a single storey warehouse/light industrial unit. The development also included all associated ancillary site development works, including drainage and utilities necessary to facilitate the development.

There is an extensive planning history pertaining to the overall Swords Business Park.

5.0 Policy Context

5.1. Fingal County Development Plan 2023 – 2029

- 5.1.1. The appeal site is located within 'MRE' Metro Rail Economic Corridor Zoned Lands, with a stated objective *"To facilitate opportunities for high-density mixed-use employment generating activity and commercial development and support the provision of an appropriate quantum of residential development within the Metro and Rail Economic Corridor"*.
- 5.1.2. Section 13.4 Ancillary Uses is of relevance "Planning permission sought for developments which are ancillary to the parent use, i.e. they rely on the permitted parent use for their existence and rationale, should be considered on their merits irrespective of what category the ancillary development is listed in the zoning objectives, vision and use classes section".
- 5.1.3. The following objectives of the Fingal Development Plan 2023 – 2029 are of relevance:
- Objective EEO15 – Metro and Rail Economic Corridor Lands, *"Protect the integrity of the Metro and Rail Economic Corridor from inappropriate forms of development and optimise development potential in a sustainable and phased manner"*.
 - Objective EEO16 – Design Proposals on MRE Zoned Lands, *"Ensure high quality urban design proposals within the Metro and Rail Economic Corridor Zoning, incorporating exemplary public spaces, contemporary architecture and sustainable places within a green landscape setting"*.
 - Objective SW10 – *"Ensure that no development, including clearance and storage of materials, takes place within a minimum distance of 10-15 metres measured from each Bank of any river, stream or watercourse"*.
 - Objective ZO4 – Ancillary Uses, *"Ensure that developments ancillary to the parent use of a site are considered on their merits"*.

- Objective IUO41, Storage of SEVESO Substances, “Attach to any grant of permission for new warehouses or similar industrial buildings, a condition to exclude use/storage of SEVESO substances (or require a separate planning permission for it)”.

5.2. Natural Heritage Designations

- 5.2.1. The subject site is not located within a designated European Site. The closest such sites are the Broadmeadow/Swords Estuary Special Protection Areas (Site Code: 004025), the Malahide Estuary Special Area of Conservation (Site Code: 000205) and the North-west Irish Sea cSPA (Site Code: 004236). However, the proposed site is not connected with any of the aforementioned European Sites, and having regard to the scale of the development there is not likelihood of any significant effect on any adjoining European Site.

5.3. EIA Screening

- 5.3.1. I refer the Board to the completed Form 1 and Form 2 in Appendix 1. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, as well as the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, 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

This is a first-party appeal against Condition No. 2 of the Planning Authorities Notification of Decision to Grant Permission.

Condition No. 2 restricted the use of the structure for a period of five years.

The grounds for appeal can be summarised as follows;

- The sole purpose of lodging planning application F23A/ 0587 was to remove part of condition one of planning permission F18A/ 0754 but including Condition 2 as noted above was in effect pointless.
- Due to Covid restrictions commencement of the construction of the warehouse only started in March 2022 and the building was completed in March 2023, therefore the building will only be permitted for a period of less than six years.
- The project costs make no sense neither financially nor environmentally. The lifespan of the building is at least 30 years and removing it prior to that makes no practical sense.
- A five year permission makes it difficult to secure long-term contracts for the building.
- The location of the warehouse close to Dublin City College Dublin port, M1 motorway and an hour from the border with Northern Ireland is strategic for the movement and storage of goods especially post Brexit.
- The embodied carbon for the building for five years is extremely high due to the high level use of concrete in the construction.
- It is requested that the Board omits Condition No.2.

6.2. Planning Authority Response

- 6.2.1. A submission has been received from the Planning Authority stating that it has no further observations to make.
- 6.2.2. In the event that the Planning Authority's Decision is upheld, the Planning Authority requests that conditions requiring financial contributions and/or Bonds in accordance with the Section 48 Development are included.

6.3. Observations

None received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Scope of Appeal
- Condition No. 2 - subject of appeal
- Appropriate Assessment

7.2. Scope of Appeal

7.2.1. The proposed development entails permission for a permeant warehouse unit on site located within an existing business park. I have read all of the documentation attached to this file including the appeal and the report of the Planning Authority, in addition to having visited the site and while the appellant has not specifically stated it, I am satisfied that the appeal is against the imposition of Condition No. 2 of the decision to grant permission. I consider it is appropriate that the appeal should be confined to Condition No. 2 only and I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted and that it would be appropriate for the Board to use the provisions of Section 139 of the Planning and Development Act 2000, as amended, in this case.

7.3. Condition No. 2 – subject of appeal

7.3.1. Condition No. 2 of the Notification of Decision to Grant Permission made by Fingal County Council requires that “*permission shall be for a period of five (5) years only from the date of the final grant of planning permission, after which time the structure shall be removed*”. The rationale for limiting the timeframe for the use of the warehouse structure is based on the use of the building and the zoning of the site. The Planning Authority also considers that the condition will ensure that the site could be redeveloped at a future date as part of an overall redevelopment of Swords Business Park over the medium to long term in particular to facilitate the provision of the MetroLink.

7.3.2. Having regard to the zoning objective for the site, 'MRE', "Metro Rail Economic Corridor Zoned Lands", I note that warehousing is not listed as a use that is not permitted under this zoning objective. However, Section 13.4 and Policy Objective ZO4 of the Fingal County Development Plan 2023 – 2029, provides that permission sought for developments that are ancillary to the parent use should be considered on their merits. In this instance the application for the warehouse unit relies on the parent use i.e. the existing Abco Kovex building and provides ancillary warehousing for same. The appellant also confirmed that the warehouse building was completed 21st March 2023.

7.3.3. Notwithstanding the issues raised by the appellant in respect of Covid restrictions, cost implications and difficulties securing clients for the unit, these are not planning related matters. In respect of Condition 2, as noted above the warehouse unit was permitted due to its reliance on the existing Abco Kovex Building for its existence and rationale and therefore, would not be permitted as a use on its own right under the zoning objective. In this regard and to limit the number of ancillary uses and associated structures within the existing Swords Business Park, I consider that the requirement of Condition 2 is warranted in this instance.

7.4. Appropriate Assessment

7.4.1. Having regard to the nature and limited scale of the proposed development and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

8.0 Recommendation

8.1. I recommend that the Planning Authority be directed to ATTACH Condition 2.

9.0 Reasons and Considerations

1. Having regard to the nature of the condition which is the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant

application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs Fingal County Council under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended to –

(i) ATTACH Condition No. 2 for the reason as follows:

Having regard to the provisions of the Fingal County Development Plan 2023-2029, in particular the zoning of the site, Section 13.4 and Policy Objective ZO4, which requires that the warehouse unit permitted is ancillary to the parent use on site, it is considered reasonable that a temporary permission be granted in accordance with the Fingal Development Plan and to ensure the ongoing and sustainable development of the Swords Business Park. The development would, therefore, be contrary to the proper planning and sustainable development of the area. Condition No. 2 (a) of the Planning Authorities Notification to Grant Permission, is therefore warranted.

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.

Emma Nevin
Planning Inspector

4th April 2024