



An  
Bord  
Pleanála

## Inspector's Report ABP320277-24

### Development

Internal modifications to retail warehouse unit. Change of use of the mezzanine from ancillary storage to use as bulky goods sales area. Permission is also sought for associated signage on the north elevation and all associated site and development works.

### Location

Unit 9A, The Retail Park Liffey Valley, Coldcut Road, Dublin 22.

### Planning Authority

South Dublin County Council.

### Planning Authority Reg. Ref.

SD24A/0114.

### Applicant(s)

Intrust Properties co. Ltd. by Guarantee.

### Type of Application

Permission.

### Planning Authority Decision

Grant subject to condition.

### Type of Appeal

First Party

### Appellant(s)

Intrust Properties co. Ltd. by Guarantee.

**Observer(s)**

None.

**Date of Site Inspection**

30/12/24.

**Inspector**

Anthony Abbott King.

## **1.0 Site Location and Description**

- 1.1. The applicant site comprises a warehouse subdivision at no. 9A the Retail Park Liffey Valley within an L streetscape configuration of retail warehouses located at Liffey Valley and a constituent part of the overall Liffey Valley major retail centre.
- 1.2. The unit is presently vacant having previously accommodated "Argos".
- 1.3. Site area is given as 0.09 hectares.

## **2.0 Proposed Development**

- 2.1. Internal modifications to retail warehouse unit. Change of use of the mezzanine from ancillary storage to use as bulky goods sales area. Permission is also sought for associated signage on the north elevation and all associated site and development works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant permission subject to condition including a development contribution condition.

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

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

The decision of the CEO of South Dublin County Council reflects the recommendation of the planning case officer.

#### **3.2.2. Other Technical Reports**

N/A

## **4.0 Planning History**

Under Reg. Ref: SD05A/0143 planning permission was granted for internal alterations comprising extension to the existing mezzanine floor by 563 sqm. for ancillary storage use at Unit 9A Liffey Valley Retail Park (final grant 05 October,

2005). Condition 5 provided for a development contribution in the sum of €42,225 for the provision of such facilities that will facilitate the proposed development.

Under Reg. Ref: SD02A/0645 planning permission (30/12/2002) was granted for a mezzanine floor to provide 340 sqm. of storage space, staff toilets, offices and welfare accommodation and ancillary items at Unit no. 9a Retail Park West, Liffey Valley. Condition 6 of the permission provided for the payment of a development contribution.

#### Adjacent sites

I note that a planning history Reg. Ref: SD22A/0337 that relates to development, including an additional mezzanine floor area of 389 sqm., at Unit 14 within the Liffey Valley Retail Park has been circulated with the hard copy file. Unit 14 is located to the east of the subject Unit 9A. Permission for the development was granted on the 03/01/2023 *inter alia* for the sub-division of the unit. The grant of permission included a development contribution that related to a net increase in floor area.

## 5.0 Policy and Context

### 5.1. Development Plan

The local policy framework is provided by the South Dublin County Development Plan 2022-2028. The relevant policies and objectives in the development plan relate to the functional area of South Dublin County Council (SDCC) and are set-out below:

- Zoning

The relevant land-use zoning objective is 'MRC': *'to protect, improve and provide for the future development of Major Retail Centre'*.

- *South Dublin County Council Development Contribution Scheme 2021-2025 (under Section 48, Planning & Development Act 2000, as amended).*

The following is relevant:

**Circumstances where no contribution or a reduced contribution apply.**



Section 11, Paragraph (xix) states:

*Internal layout alterations where no additional floor area is created and external walls are not being removed shall be exempt.*

Section 11, Paragraph (xxvi) states:

*Change of use: in respect of a permission for change of use, where development contributions were paid in respect of a former use the contribution payable on the new use will be net of the quantum of development previously paid for. Where a contribution was not previously paid or the original development was carried out before 1963 it shall be treated in its entirety as new development and assessed accordingly. The Development Contribution Scheme does not provide for any rebate or refund in this regard. Agents / applicants should provide evidence of prior payment at application stage to expediate assessment and avail of this exemption.*

### **Appeal to An Board Pleanála**

Section 20 states:

An appeal may be brought to an Bord Pleanála where the applicant for planning permission under Section 34 of the Act considers that the terms of the Scheme have not been properly applied in respect of any conditions laid down by the Council.

## **5.2. EIA Screening**

The proposed development is not within a class where EIA would apply.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of appeal prepared by BMA Planning, on behalf of the applicant, are summarised below:

- The appeal relates solely to the development contribution contained in Condition 7 attached to the South Dublin County Council notification to grant planning permission under Reg. Ref: SD24A/0114, which requires payment by the applicant of the sum of €74,819.52.
- The grounds of appeal relate to the incorrect application of the development contribution scheme by the planning authority. The appellant requests the Board to review and delete the subject Condition 7.
- The applicant site comprises Unit 9A at the Retail Park Liffey Valley (former Argos store). Unit 9A is a mid-terrace corner unit within the L-shaped retail warehouse development. The existing mezzanine floorspace (804 sqm GFA) is to be reduced in size and modified to comprise a reconfigured mezzanine (626 sqm. GFA) in order to accommodate a new tenant selling furniture and related items.
- The mezzanine was previously used for ancillary storage. The reconfigured mezzanine will be used as a bulky goods sales area. The combined ground and mezzanine floor area will comprise 1,538 sqm. of bulky goods retail floorspace.
- The application of the development contribution scheme are centred around Section 11 of the South Dublin County Council Development Contribution Scheme 2021-2025. Clauses 11 (xix) and 11 (xxvi) are relevant to the assessment of the contribution, which exempt internal alterations where no additional floor area is proposed and provide for a net contribution in change of use applications where development contributions have previously been paid.
- The appellant claims that Section 11 (xix) should apply providing for an exemption from a development contribution. The appellant details that the specified criteria apply. No additional floor area is being created and no walls are being removed. The existing mezzanine floor area of 804 sqm. is being reduced to 626 sqm.
- The main issue is that the planning authority has not taken into account the existing mezzanine floor area of 804 sqm.

- The existing mezzanine within Unit 9A was granted in 2003 under Reg. Ref: SD2A/0645 and was subsequently enlarged under Reg. Ref: SD05A/0143. Development contribution conditions were attached to these permissions and were paid (Attachment B contains copies of the Notifications of grant of permissions for both Reg. Ref: SD2A/0645 & Reg. Ref: SD05A/0143). The footprint of the proposed mezzanine is significantly smaller than the existing mezzanine.
- The appellant claims Section 11 (xxvi) should apply as development contributions have previously been applied and paid in respect of a larger mezzanine floor area within Unit 9A. Section 11 (xxvi) in change of use applications provides for development contributions to be net of the quantum of development previously paid. Therefore, no contribution should apply in the instance of the subject application, which represents a reduction from a mezzanine of 804 sqm. to a reconfigured mezzanine of 626 sqm.

## 6.2. **Applicant Response**

N/A

## 6.3. **Planning Authority Response**

The Planning authority dated 21<sup>st</sup> August, 2024 confirms its decision. The issues raised in the appeal have been covered in the CEO Order.

## 6.4. **Observations**

None

## 7.0 **Assessment**

- 7.1. Having reviewed the application, the appeal and conducted a site visit, I consider that the only planning matter at issue in this case is Condition number 7 (Section 48 development contribution), which is the sole subject of the appeal and that no other planning matters need to be considered by the Board.



- 7.2. The appellant claims that the Section 48 scheme has not been applied properly. The appellant claims that the planning authority has not taken into account the existing mezzanine floor area of 804 sqm.
- 7.3. The proposed development *inter alia* comprises internal modifications of an existing retail warehouse unit including change of use of the mezzanine area from ancillary storage to use as bulky goods sales area. The gross floor area of the subject retail warehouse is stated as 1,716 sqm. The proposed works would result in a total floor area of 1,538 sqm.
- 7.4. The floor area of the reconfigured mezzanine as revised would have a gross internal area of 626 sqm. (gross floor area of proposed works as stated in the application form). The floor area of the existing mezzanine is stated by the appellant as a gross floor area of approximately 804 sqm. The proposed bulky goods floor area would comprise approximately 912 sqm. at ground floor level and 626 sqm. at mezzanine level. A total floor area of 1,538 sqm.
- 7.5. The planning authority have responded stating that the issues raised in the appeal have been covered in the CEO Order and that the decision of the planning authority stands.
- 7.6. The appellant claims that Section 11 (xix) of the South Dublin County Council Section 48 Development Contribution Scheme 2021-2025 should apply providing for an exemption from a development contribution. The appellant details that the specified criteria apply as no additional floor area is being created and no walls are being removed. The existing mezzanine floor area of 804 sqm. is being reduced to 626 sqm.
- 7.7. The appellant claims Section 11 (xxvi) of the South Dublin County Council Section 48 Development Contribution Scheme 2021-2025 should apply as development contributions have previously been applied and paid in respect of a larger mezzanine floor area within Unit 9A. Section 11 (xxvi) provides in change of use applications for development contributions to be net of the quantum of development previously paid.
- 7.8. The appellant claims that the footprint of the proposed mezzanine is significantly smaller than the existing mezzanine. I have reviewed the submitted drawings illustrating the extent of the existing mezzanine level (Drg. No. 2312-PLA-004) and proposed mezzanine level (Drg. no. 2312-PLA-008). I can confirm that the



mezzanine would be significantly reduced in floor area. A reduction of approximately 178 sqm (804 – 626 = 178).

- 7.9. The appellant claims the existing mezzanine within Unit 9A was granted in 2003 under Reg. Ref: SD2A/0645 and was subsequently enlarged under Reg. Ref: SD05A/0143. Development contribution conditions were attached to these permissions and were paid (Attachment B of the appeal statement contains copies of the Notifications of grant of permissions for both Reg. Ref: SD2A/0645 & Reg. Ref: SD05A/0143). I accept the bona fides of the appellant that the contributions were paid.
- 7.10. I have reviewed the subject legacy grants of planning permission on line. I can confirm that under Reg. Ref: SD2A/0645 planning permission was granted (final grant 5<sup>th</sup> February, 2003) for a mezzanine floor to the existing retail warehouse Unit 9A, comprising a floor area of 340 sqm. (Drg. No. L004-(U9)-PA2-0103 dated September 2002), and that the grant of permission was subject to a development contribution condition (Condition 6) to contribute towards the provision of services.
- 7.11. I can confirm that under Reg. Ref: SD05A/0143 planning permission was granted (final grant 05 October 2005) for extension to the existing mezzanine, to comprise 563 sqm of ancillary storage use, at Unit 9A, which was subject to a development contribution (Condition 5 required the sum payable of €42,225).
- 7.12. I conclude that Condition 7 should be omitted from the grant of planning permission given that the existing mezzanine area has a significantly larger floor area than the mezzanine area proposed, which would result in a net reduction in gross internal floor area.
- 7.13. **Appropriate Assessment Screening**
- 7.14. Having regard to the nature and scale of the proposed development for change of use of an existing structure within an urban area, it is possible to screen out the requirement for the submission of an NIS.

## 8.0 Recommendation

- 8.1. I recommend the omission of Condition 7 having regard to the reasons and considerations below.

## 9.0 Reasons and Considerations

Having regard to the grounds of appeal, the South Dublin County Council Section 48 Development Contribution Scheme 2021-2025 and Condition No. 7 of the notification to grant planning permission, which provides for the payment of a development contribution for the provision of public infrastructure and facilities benefiting development within the area of the Planning Authority, it is considered that Condition No. 7 should be omitted by reason of the application of Section 11 Clauses 11 (xix) and Section 11 (xxvi) of the South Dublin County Council Section 48 Development Contribution Scheme 2021-2025), which exempt internal alterations where no additional floor area is proposed and provide for a net contribution in change of use applications where development contributions have previously been paid.

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.



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Anthony Abbott King  
Planning Inspector

10 January 2025