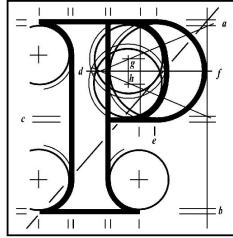


# An Bord Pleanála



## Inspector's Report

**Development:** Construction of a single storey convenience store building and adjacent external storage yard with delivery area, ESB sub-station, solid fuel storage;

Construction of forecourt area, canopy with illuminated fascia above forecourt with 4 dual fuel dispensing islands and underground fuel storage tanks (40,000 litres x 4);

Car wash facilities;

16 on-site car parking spaces and bicycle parking area;

2 main identification signs (MID) and associated and secondary signage;

Part construction of local distributor road to link Seatown Business Park to the north and Mountgorry, Swords, Co. Dublin;

All at Mountgorry, Swords, Co. Dublin.

### Application

Planning authority: Fingal County Council

Planning application reg. no. F13A/0037

Applicant: John Aherne

Type of application: Permission

Planning authority's decision: Grant, 12 conditions

**Appeal**

Appellants: John Aherne  
Mark Moloney  
IDA Ireland  
Kevin Shelly  
Noel McGuinness

Type of appeal: Section 49  
Third parties -v- Decision

Observer: Seamount View Residents Association  
RPA

Date of site inspection: 13<sup>th</sup> August 2013

**Inspector:** Hugh D. Morrison

## Site

The appeal site is located 1.2km east of Swords town centre. This site lies on the northern side of the east/west Malahide Road (R106) in a position beside the roundabout between this Road and Milesian Avenue/Feltrim Road to the south. At present, it forms part of a larger unused vacant site beyond the southern extremity of Swords Business Park. The main body of the site is bound by this Business Park to the north, the M1 to the east, the Malahide Road to the south and the remainder of the larger site to the west. As the M1 passes the appeal site, it is within a cutting, and as the Malahide Road passes this site, it is on a raised platform. To the southwest of the aforementioned roundabout lies a multi-storey apartment complex, known as St. Werburgh's, and to the west of the larger site is the Seamount View housing estate.

The main body of the appeal site is of irregular shape and relatively flat topography. This site extends over an area of 0.54 hectares and it is bound to the east and the west by mature trees and hedgerows. A security fence also runs along the top of the motorway embankment. The remaining boundaries are open, except for a crash barrier along the northern edge of the Malahide Road and stone boulders at the end of the access road within the Swords Business Park, which is also known as Seatown Business Park. To the south of these boulders is a gravelled area that leads to a disused fenced compound. The appeal site and the adjoining unused vacant land are criss-crossed by desire lines on roughly north/south axis.

## Proposal

The development will consist of:

- Construction of a single storey convenience store building with retail area, counter, office and storage rooms, staff facilities, in-store ATM, café, seating area, hot food deli counter, kitchen and preparation area, staff and customers toilets with ancillary off-licence (total floorspace 435 sqm);
- Adjacent external storage yard with delivery area, ESB sub-station, solid fuel storage;
- Construction of forecourt area, canopy with illuminated fascia above forecourt with 4 dual fuel dispensing islands;
- 4 underground fuel storage tanks with capacity of 40,000 litres each with associated pipework and overground fill points;
- Car wash facilities: 1 pressure wash enclosure and 1 brush wash enclosure with ancillary water tanks and recycling kiosk;
- 16 on-site car parking spaces and bicycle parking area;

- 2 main identification signs (MID);
- Associated corporate signs and insignia with secondary signage throughout the site; and
- Part construction of local distributor road to link Seatown Business Park to the north and Mountgorry, Swords, Co. Dublin.

### **Planning authority's decision**

Following receipt of further information, permission was granted subject to 12 conditions.

### **Technical reports**

- RPA: Section 49 Metro North levy condition requested,
- Environmental Health: No objection, subject to conditions,
- Water Services: No objection, subject to conditions, and
- Transportation Planning: Following receipt of further information, no objection, subject to a condition.

### **Grounds of appeal**

#### **First party: John Aherne**

Objection is raised to the imposition of condition 12 on the planning authority's draft permission, which requires payment of a Section 49 levy towards Metro North. The applicant requests that this condition be omitted in its entirety for the following reasons:

- Metro North, as a public transport project, would lead to a reduction in private transport usage with a consequent reduction in the demand for fuel. It would, therefore, be of dis-benefit to the proposal.
- The Development Contributions Guidelines state with respect to supplementary development contributions that the projects concerned must be of direct benefit to the proposal for a levy to be justified. An Bord Pleanála has previously ruled that service stations would not benefit from Metro North (cf. PL06F.237218 & 241299) and so a Section 49 levy is unjustified.
- Under Section 49(3A) of the Planning and Development Act, 2000 – 2012, the Board is empowered to consider the appeal of conditions pertaining to supplementary development contributions on their own.

### **Third parties:**

#### **Mark Moloney (General Manager/Director of Renishaw (Ireland) Ltd)**

- The proposed link road would entail works within the existing estate road to Swords Business Park. This road and accompanying services are believed to be in the ownership of the IDA and yet permission from this body has not been forthcoming. If it was to proceed, then the provision of a publically accessible through road would adversely affect Renishaw's operations and threaten its continuation insitu.
- The proposed link road would generate higher levels of traffic on the estate roads. Such through traffic would be in conflict with HCVs manoeuvring to and from sites and the design and layout of the roads would be unsuited to such traffic. Furthermore, the application is not accompanied by a RSA and the present security of the Business Park, which is derived from the existing entrance barrier, would be undermined.
- The proposed link road would lead to a change in the environmental conditions pertaining to Renishaw's site. The selection of this site was linked to low levels of traffic and its quiet ambience, factors that are of importance to the firm's precision operations. In locating upon the site, Renishaw drew comfort from the IDA and Fingal's commitment to the protection of industrial and high-technology employment generators and yet the proposed link road would run contrary to this commitment.
- The proposal would contravene the CDP in the following ways:
  - It is questionable that it would accord with the Vision for the Zoning Objective of high density mixed use employment generating activity and commercial development.
  - The employment potential would be limited unlike the appreciable employment afforded by Renishaw.
  - The design of the proposal would not deliver a landmark building.
  - The LAP for the area has yet to be prepared.
  - The proposed link road is only shown indicatively in the CDP. It is reasonable, therefore, to assume that its feasibility would have been teased out subsequently with stakeholders, such as the IDA. Such a process would have been likely to result in its omission.

- In the absence of the LAP, the proposed link road has not been subject to the scrutiny that such a Plan affords to emerging proposals.
- The proposed fuel storage is not permitted under the relevant zoning objective and its safety implications for the adjacent M50 and an underground car park to the north of the appeal site have not been considered.
- The proposal has not been subject to an AA as required under the Planning and Development Act, 2000 – 2012.

### **IDA Ireland**

- The roads within the Swords Business Park are owned and maintained by the IDA. No permission has been given to the applicant to connect the proposed link road to these roads. Information submitted by the applicant with a view to demonstrating his right to so connect is critiqued. Essentially, he has what amounts to a way-leave for the purposes of laying and maintaining pipes.

Previously, the proposed link road was the subject of a Part 8 scheme, which was subsequently abandoned. Its re-emergence now provides a further opportunity for this questionable road to be built.

- The proposal has not been subject to an AA as required under the Planning and Development Act, 2000 – 2012.
- Under specific Local Objective 293, the proposed use of the appeal site as a petrol station can be considered, notwithstanding the non-specification of this use under the Zoning Objective “ME”. However, such consideration entails its assessment in the light of this Objective and the accompanying Vision. In these respects, the use would be non-compliant.
- While the proposed link road is presented as ancillary to the proposed petrol station, it would represent a first step towards a through route between the R106 and Swords Business Park. The establishment of such a route is opposed for the following reasons:
  - The environmental impact of additional traffic within the Business Park would be unwelcome. In particular, the firm Renishaw (Ireland) Ltd has stated that vibrations caused by such traffic may interrupt its precision operations and threaten employment.
  - The design and layout of the roads on the Business Park is such that there are multiple access points to individual sites with an attendant high incidence of

HCV manoeuvres. The introduction of traffic using the Park as a short-cut would lead to conflicts between slower and faster moving vehicles, which could be hazardous. In this respect, no RSA has been conducted.

- The safety and security of the Business Park is achieved primarily by the existing single barrier controlled entrance/exit point. The introduction of a second such point would undermine the same.
- The CDP's Swords Map shows the area within which the appeal site lies as being the subject of an objective to prepare a LAP. In advance of such a Plan, the current proposal is premature, especially as it would affect the strategically important frontage of the area concerned with the R106.
- The proposal would, as a non-strategic non-conforming use, be unsuitable within the Metro North Economic Corridor. In this respect, the planning authority's assessment that it could prove to be a temporary use, with subsequent redevelopment of the appeal site to a higher density once Metro North is delivered, is flawed.
- Attention is drawn to concerns raised at the application stage by existing convenience retailers in the locality as to the impact of the proposal upon their businesses. Attention is also drawn to the CDP's objectives for local support facilities to serve the needs of employees. The proposal would fall short of what is envisaged in these objectives.
- The proposed fuel storage is not permitted under the relevant zoning objective and its safety implications for the adjacent M50 and an underground car park to the north of the appeal site have not been considered.

#### **Kevin Shelly**

- The proposed link road would connect to the existing roundabout on the R106 to the south of the appeal site. This roundabout is now heavily trafficked, e.g. commuters from Malahide use it en route to accessing the M1/M50 to the south at Holywell. The applicant's traffic consultant draws attention to the anticipated addition of a fourth arm to this roundabout. However, such anticipation could not have foreseen its subsequent heavier use.
- The proposed road link would add to the traffic at the aforementioned roundabout. Such addition would include HCVs, for whom the roundabout was not designed.

- The proposed link road would also entail the provision of an access point to the west. Should this western site be developed in the future, more traffic again would have cause to use the roundabout.
- Given the aforementioned increased usage, the absence of any requirements to upgrade the junction in question, which is presently laid out as a roundabout, is anomalous.
- Attention is also drawn to the poor forward visibility on the approach to the eastern arm of the roundabout, due to the camber in the M1 flyover.

### **Noel McGuinness**

- The proposal would fail to comply with the zoning objective for the appeal site as elucidated by the accompanying vision statement.
- The proposal would adversely affect the amenities of local residents in terms of the additional traffic movements that it would generate, the noise of the proposed car washes, visual intrusion and light nuisance during the night time.
- The proposed link road would facilitate HCVs egressing the Swords Business Park en route to the M1. Such vehicles would pose a danger to local residents.

### **Responses**

The applicant has responded to the appellants' grounds of appeal.

In relation to the appeals by Mark Moloney and IDA Ireland, he makes the following points:

- Completion of portion of link road

All the lands necessary to provide the link road are legally within the curtilage of the applicant's site as outlined by his solicitor in a supporting letter dated 28<sup>th</sup> June 2013.

- Perceived creation of a traffic hazard

The appellants' perception in this respect is not accompanied by any technical or professional justification. The design and layout of the roads on Swords Business Park have remain unchanged since Reinshaw's first located there in 1998 and they proved no obstacle to the firm obtaining permission for a 2500 sqm extension in 2012.



By contrast, the applicant's proposal is informed by traffic consultants and it has the support of Fingal's Transportation Planning Section.

- Requirement for AA

The appeal site is not in a Natura 2000 site and the nearest one is almost 2km away. The proposal would avail of a separate foul and surface water drainage system, which serves Swords Business Park, and is connected to Swords WwTP. Accordingly, no AA issues would arise.

- Site suitability

The proposed link road would not only serve the proposed petrol station on the appeal site but a further site to the west. These combined sites are presently overgrown and they are blighted by fly tipping and anti-social behaviour. The sites have been the subject of employment or industrial/commercial zoning in successive development plans for the last 20 years. In the current CDP they continue to be so zoned. The current proposal would be of "shell and core" construction and so subsequent redevelopment to a higher density would be facilitated.

The appeal site is fully serviced and it is well located with respect to the R106. Its development to provide the proposed petrol station would rejuvenate this site, create 25 jobs, and help compensate for the closure of 5 petrol stations in the wider locality. Once complete, the proposed link road would be "taken-in-charge".

Attention is drawn to permitted application reg. no. F03A/0682. Under this application, the office building to the north of the appeal site would have been converted to a hotel and extended onto this site, while the site to the west would have been developed to provide a leisure centre. This more intensive development would have been served by a link road similar to that now proposed and yet neither of the current appellants' objected to this application.

In relation to the appeal by Noel McGuinness, the applicant makes the following points:

- Zoning objective

The appellant takes exception to the design of the proposal and, on that basis, considers that it should not proceed, notwithstanding its compliance with the relevant zoning objective.

- Suitability of the site

Attention is drawn to the relative remoteness of the appeal site from residential areas, i.e. the nearest such area at Seamount View is c. 150m away beyond a line of mature trees and public open space. Thus, amenity concerns are considered misplaced.

- Traffic

Again, attention is drawn to the applicant's traffic consultants and the absence of objection from Fingal's Transportation Planning Section over alleged danger to local residents.

In relation to the appeal by Kevin Shelly, the applicant reiterates the points he made under the above headings of suitability of the site and traffic.

The planning authority has responded to the appellants' grounds of appeal as follows:

- LAP

The view that the current proposal is premature in advance of a LAP is challenged by reference to Section 7.15 of the Development Management Guidelines, which state that a statement of objectives in a development plan "does not relieve the planning authority of responsibility of considering the merits or otherwise of particular applications." Fingal followed this advice.

Under Local Objective 293, petrol stations are permitted in principle.

The appeal site is modest in size and it is located in the south east extremity of the area that is subject to the Zoning Objective "ME" at Seatown in a position between the M1 embankment and the line of the proposed link road. Given these factors, the planning authority does not consider that the proposal would prejudice the preparation of a LAP.

- AA

The appeal site is located over 1km away from the nearest Natura 2000 sites. No stream or watercourse runs through it and conditions imposed on the draft permission would ensure that there is no hydrological transfer or connection between this site and these sites.

- Metro North

If the Board decides to levy a supplementary development contribution, then the amount cited in condition 12 imposed on the draft permission is requested.

## **Responses to responses**

The applicant concurs with the planning authority's response and requests that it be read in conjunction with his own.

### **IDA Ireland**

- With respect to the planning authority's response, the IDA stands over its grounds of appeal.
- Likewise, with respect to the applicant's response, the IDA stands over its grounds of appeal.
- A legal opinion is attached to this response, which addresses matters of land ownership and associated rights, and supports the IDA's position on these matters.

### **Kevin Shelly**

- The criticism that his concerns are without technical documentation and professional rationale is said to be unfair, as it is for the applicant to undertake a TIA rather than an appellant. In this instance, the traffic report submitted falls short of being a TIA.
- How was the question of traffic addressed under the previous larger proposal (application reg. no. F03A/0682) for the appeal site and adjoining land?
- The alleged incidences of fly tipping and anti-social behaviour on the appeal site is questioned on the basis that the appellant has resided nearby for the last 13 years and not witnessed the same.
- Three housing estates are nearer to the appeal site than the applicant indicates. Other residents would have raised objection had they known about the current proposal in time.

## **Observers**

### **Seamount View Residents Association**

- The proposal would greatly affect the observer's neighbourhood and apprehension is expressed over the intrusion that it would lead to, e.g. litter, extra traffic and footfall, and anti-social behaviour.
- Particular concern is expressed over the 24 hour opening times and the disturbance that this would generate.

- The applicant has not stated what his intentions are for the wasteland to the west of the appeal site. Residents have security concerns over this land, as it lies beside open space adjacent to their dwelling houses.

## RPA

The following observations are made on the first party's grounds of appeal only:

- Attention is drawn to Sections 49(1)(c) and 49(3A) of the Planning and Development Act, 2000 – 2012, which do not refer to any direct benefit, but to benefit that any public infrastructure service or project may have upon a proposal. (In this respect, the wording in the Development Contributions Guidelines would appear to be incorrect. Furthermore, these Guidelines pertain to the preparation of schemes rather than their subsequent interpretation).
- The applicant fails to refer to the Indecon report entitled "Economic Development Strategy for the Metro North Economic Corridor", which highlights the economic benefits that Metro North would bring to the Corridor, and which provides the basis for Fingal's Supplementary Development Contribution Scheme for Metro North. The second paragraph of Section 6 of this Scheme delineates some of these general benefits, which are non-site specific. It reads as follows:

*The project will benefit the scheme area, enabling its development in a sustainable manner to higher densities in accordance with the CDP and the Residential Guidelines. The project will improve the attractiveness and marketability of the scheme for residential, commercial and retail development and will add significantly to the value of the development on land in the Scheme area.*

- While it is acknowledged that some developments would not benefit from Metro North, e.g. temporary uses that would expire before the advent of this project, the current proposal would *prima facie* benefit.
- The two appeal cases cited by the applicant illustrate that the Board has adopted a case-by-case approach to the levying of retail convenience floorspace and so they cannot be relied upon for precedence. Furthermore, the Board applied the wrong legal test in both these cases by referring to "direct benefit" rather than simply "benefit" as required by the aforementioned Act and given expression in the second paragraph of Section 6 of Fingal's Scheme. The Board is, therefore, invited to reconsider its approach in this matter.

## Planning history

- F97A/0419: an outline application for a 72 bedroom hotel was refused,
- F98/0419 for a three storey office development was permitted,
- F03A/0682 pertained to the current appeal site and adjoining land to the west in the applicant's ownership. A proposal on this combined site for a 119 bedroom hotel, leisure centre, underground swimming pool, bars, gym, administrative block, signage, and construction of distributor/link road and all ancillary works was permitted, and
- Pre-application consultations occurred during December 2012 and January 2013.

## Development Plan

The Fingal County Development Plan 2011 – 2017 (CDP) shows the appeal site as lying within an area that is subject to the Zoning Objective “ME” – Metro Economic Corridor 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 Economic Corridor.” (The wider area of the site, which is subject to this Zoning Objective, is to be the subject of a Local Area Plan (LAP)). Map based Local Objective 293 applies to the appeal site. It states: “Applications on lands zoned ME – Metro Economic Corridor for uses allowable under GE – General Employment zoning which would not compromise the overall vision for the ME zoning, the preparation of the LAP or the Metro North Railway Scheme shall be considered on their merits.”

Within the Metro Economic Corridor, the following two objectives apply:

*EE12: Protect the integrity of the Metro Economic Corridors from inappropriate forms of development and optimise development potential in a sustainable and phased manner.*

*EE13: Ensure high quality urban design incorporating exemplary public spaces, contemporary architecture and sustainable places within a green landscape setting.*

Table T04 identifies the road improvement schemes that Fingal aims to carry out within the life of the CDP. One of these schemes is the R106 Malahide – Swords Road Upgrade. The accompanying Swords Map shows the appeal site as subject to a road's proposal to connect the R106 to Swords Business Park.

Objective T047 states the following:

*Require developers to provide a detailed Traffic Impact Assessment and Road Safety Audit where new development will have a significant effect on travel demand and the capacity of surrounding transport links and taking into account cumulative effects.*

### **National planning guidelines**

- Retail Planning
- Development Contributions

### **Assessment**

I have reviewed the proposal in the light of national planning guidelines, the CDP, relevant planning history, and the submissions of the appellants, the observers, the applicant, and the planning authority. Accordingly, I consider that these appeals should be assessed under the following headings:

- (i) Legal matters,
- (ii) Prematurity, access, traffic management, road safety, and security,
- (iii) Prematurity, land use and design,
- (iv) Environmental impact, public safety, and residential amenity,
- (v) Drainage and AA, and
- (vi) Section 49 Levy for Metro North.

#### **(i) Legal matters**

1.1 The current application includes drawing no. A001 revision A, which comprises a site location map and a site, road and water services layout plan. This map and this plan show variously, by means of red and blue edges, the extent of the application/appeal site and the land in the applicant's ownership. The former edge extends beyond the latter edge to encompass a gap between the applicant's land ownership and the end of the existing road within the Swords Business Park and a short portion of this road and a short portion of grass verge. The aforementioned plan also shows a "right of way" which is outlined and shaded in yellow. This right of way abuts the blue edge along its northern boundary and it encompasses the aforementioned gap, road and accompanying grass verge.

1.2 As originally submitted, the application was accompanied by a letter from the owner and company director of the adjoining commercial lands, which gave his

consent, agreement and permission to the applicant “to enter onto the property to make connections to all services on the said lands.”

1.3 At the application stage, IDA Ireland, as an adjoining land owner, stated that it had not given permission to the applicant to connect to either the aforementioned road or services, i.e. water supply pipes and foul and surface water drains. The planning authority raised this matter with the applicant under a request for further information. His solicitor responded by stating that “the applicant has all necessary rights to carry out the subject development and make infrastructural connections to all adjoining roads and services necessary to carry out the works proposed.” By way of authority for this response, the solicitor draws attention to a relevant burden imposed upon Land Registry Folio 117104F for the Swords Business Park.

1.4 These matters have been revisited at the appeal stage. Thus, the applicant has stated that, in addition to the easement cited under the aforementioned burden, he is entitled under statute and common law to connect to public water mains and sewers and to use the said road which, notwithstanding its ownership, may be public. The appellant, IDA Ireland, has responded by referring to a document entitled “Lease of Easements” that each of its tenants on the Swords Business Park is furnished with. This document refers to the aforementioned right of way, highlighted in yellow, to the effect that only ingress and egress to and from the tenant’s premises from this right of way is available. He/she also refers to a series of legal cases and proceeds to argue that the subject road is not a public right of way and that the applicant is not entitled to use this road to form a through road, as envisaged under the current application.

1.5 From the above exchanges, there is a clearly an outstanding dispute over the status of the road within the Swords Business Park and whether the applicant would be entitled to effectively extend this road through his site to provide a through road in place of the existing cul-de-sac. There are legal questions here that the Board is ultimately not in a position to arbitrate upon.

1.6 The relevant portion of the description of the proposal states “Part construction of local distributor road to link Seatown Business Park to the north and Mountgorry to the south.” Thus, the description states not only the envisaged works but the purpose/intended effect of those works. I am satisfied from my assessment of this proposal that these works would be physically capable of both accessing the proposed petrol station and providing the said link. I am also satisfied from my site inspection that the road network within the Swords Business Park is publically accessible. (Thus, during the time of my visit, the barrier at the entrance to this Business Park was open). However, I accept that such accessibility, in and of itself, does not demonstrate the existence or otherwise of public rights of way along the roads comprised in this network.

1.7 Given the legal questions that have yet to be definitively answered and given, too, my assessment of the practical feasibility of the proposal, I consider that the Board is in a position to decide upon the current application, in the light of Section 34(13) of the Planning and Development Act, 2000 – 2012, which states that “A person shall not be entitled solely by reason of a permission under this section to carry out any development.”

**(ii) Prematurity, access, traffic management, road safety, and security**

2.1 The appellants draw attention to the proposed local distributor road, which would follow the route for such a road shown indicatively in the CDP. They also draw attention to the CDP’s commitment to prepare a LAP for those areas within Swords that are subject to the Zoning Objective Metro Economic. These areas include the appeal site and the adjoining Swords Business Park, which is also known as Seatown Business Park. The appellants express concern that in advance of the preparation of this LAP, which would afford the opportunity for the said road to be scrutinised, the proposed local distributor road would be premature.

2.2 The applicant has responded to this concern by citing the precedent for the said road, which is provided by its effective inclusion in application reg. no. F03A/0682 for a hotel and leisure centre. This application was permitted on 25<sup>th</sup> November 2003 and it expired 5 years later. Evidently, the current appellants did not object to the same.

2.3 I note that under Variation 29 to the Fingal County Development Plan 2005 – 2011, which was adopted on 14<sup>th</sup> July 2008, one of the local road augmentations introduced was for Seatown Development Area Link Road (Swords Business Park to Mountgorry Roundabout). The rationale for these augmentations was stated as being “To develop and augment the local road network to facilitate the optimum and sustainable development of Swords.” Thus, this Variation was a precursor to the inclusion of the indicative link road in the current CDP and so, as a proposal, this road is of longer standing than this Plan.

2.4 I note, too, that the aforementioned LAP has yet to be prepared and that the appellants consider that to decide upon the current application in advance of such preparation would be premature. I accept that such a Plan would provide a vehicle for teasing out the details of the road in question. However, as the principle of this road is endorsed again under the current CDP, I do not anticipate that the LAP, as the subsidiary plan in the hierarchy, would afford the prospect of the omission of this road, which is what I understand the appellants to be seeking. In these circumstances, I do not agree that the road proposal is premature.



2.5 The planning history of the appeal site indicates that the said link road was the subject of a Part 8 local authority development proposal, which ultimately was not progressed. The preparation of this proposal was informed by a report written by consulting engineers to the planning authority and dated February 2010. (A copy of this report was submitted as an appendix to IDA Ireland's appeal). It includes an ARCADY analysis of the performance of the existing roundabout on the R106 off which the proposed link road would be constructed. (The report also includes a parallel analysis of the roundabout which serves the entrance to the Swords Business Park). This analysis is based on traffic counts that were made in 2006. (These counts were found to be similar to further counts taken in 2010). It examines the performance of the existing roundabout to provide a baseline and, then, the performance of the roundabout with an additional arm to serve the proposed link road, under 4 different scenarios. These scenarios are as follows:

*Scenario 1: 2006 base model with access road,*

*Scenario 2: 2020 do minimum, number of road upgrades with access road and without business park redevelopment,*

*Scenario 3: 2020 do minimum, number of road upgrades with access road and with business park redevelopment, and*

*Scenario 4: 2020 do something, additional road upgrades with access road and without business park redevelopment.*

Curiously, scenario 4 is not accompanied by a fifth scenario for the "with business park redevelopment" option. The maximum baseline RFC during the evening peak (16.30 – 18.30) is 0.667. The highest RFC during this period occurs under scenario 4 and it would be 0.873. Presumably, under the aforementioned fifth scenario, this figure would be exceeded. Given the desirability of not exceeding 0.85, appreciable congestion would begin to occur under scenario 4.

2.6 The appellant, Kevin Shelly, expresses concern that with the advent of Junction 3 on the M1, the R106 between Malahide and Swords has become more heavily trafficked at peak times by commuters who use the M1. Consequently, the aforementioned roundabout is congested at these times.

2.7 I have sought to ascertain when Junction 3 opened and, by way of reference to OS maps, I have established that this was between 2004 and 2007. Thus, a traffic count in 2006 may or may not have captured the increased traffic levels that the appellant refers to. The aforementioned report states that these figures were confirmed by a further traffic count, which was undertaken in 2010. This latter count would reflect both the downturn in the economy and the pattern of commuter travel movements described by the appellant. Clearly, any upturn in

economic activity locally and/or any increase in the pattern of commuter travel movements in the intervening years would have implications for traffic count figures.

2.8 The appellant, Kevin Shelly, acknowledges that the roundabout in question has been formed in a manner that denotes an intention to add a fourth arm to the north to facilitate access to the applicant's lands and beyond. However, he points out that the increased usage of this roundabout could not have been foreseen when it was constructed and he questions why neither the applicant nor the planning authority has addressed the question as to the continuing utility of this junction type. As it is not uncommon for heavily trafficked roundabouts to be reconstructed as signalised junctions, I concur with this question.

2.9 The proposed petrol station would attract passing trade from the proposed link road and the roundabout on the R106. This station would also be likely to attract a measure of custom as a destination in its own right. Thus, its contribution to the generation of traffic movements at the roundabout in question needs to be factored in to any assessment of the same, too.

2.10 In summary, I find it surprising that the current application was made without any accompanying (updated) Traffic Impact Assessment (TIA) of the adjacent roundabout on the R106 and without any express consideration being given to whether this form of junction remains appropriate to the needs of the same. In this respect, Objective T047 of the CDP is relevant, insofar as it requires a TIA in situations where proposals would have a significant effect upon travel demand and the capacity of surrounding transport links. The applicant has thus not demonstrated that this roundabout would be capable of handling traffic efficiently during peak periods following the completion and opening of the proposed link road and petrol station. If the Board is so minded, the submission of a TIA and, as appropriate, a re-specification for the junction on the R106 could be the subject of a Section 132 Notice.

2.11 The appellants express a series of safety and security concerns. Thus, while the proposed link road would be designed and laid out to accord with relevant DMRB standards, attention is drawn to the layout of the road network on the Swords Business Park and in particular to the multiple access points to individual site plots. Attention is also drawn to the incidence of HCVs manoeuvring within this network and to its inherent unsuitability to function as a through road.

2.12 During my site visit, I observed that the said road network is laid out to a high specification, i.e. generous carriageway widths, grass verges, footways, street lighting, and landscaping are all present. Likewise, individual site plots have been laid out to ensure that both operational and non-operational parking, standing, and manoeuvring can occur off the road network. Thus, I do not

anticipate that HCVs need to undertake reversing manoeuvres within this network, as distinct from forward gear accessing/egressing manoeuvres.

- 2.13 During my site visit, I also observed that the proposed through route would pass through a double bend, which incorporates partial and complete “T” junctions. The aforementioned report addresses the completion of this partial junction. Whether priority changes at these junctions would be appropriate, too, is not explicitly addressed. The appellants draw attention to the absence of a RSA from the application. I consider that such an audit should be conducted for the envisaged through route, including the aforementioned double bend/“T” junctions. In the event that the Board is minded to permit the current proposal, this matter could be the subject of a condition.
- 2.14 The appellants are concerned not only over the safety aspects of the creation of a through route in Swords Business Park, but with how from their perspective security would be compromised, too. In this respect, they draw attention to the single entrance/exit to the Business Park, which pertains at present, and to the presence of barriers at the same along with cctv.
- 2.15 Clearly, the security of individual premises is the responsibility of their users. The wider security of the Business Park as a whole is affected by its existing access/egress arrangements and accompanying security measures. The formation of a through route would bring changes in these respects. It is not clear whether the existing security measures would be duplicated at the new southern entrance/exit or whether the existing ones would be removed from the existing northern one. Furthermore, the effect of a through route upon security may have some positive aspects in terms of increased informal surveillance from passers-by. Clearly, any perceived loss would need to be weighed with the advantages that increased accessibility would afford.
- 2.16 I conclude that the current proposal is not premature in advance of the preparation of an LAP for the wider area of the appeal site. While the proposed link road *per se* and access arrangements for the proposed petrol station would be satisfactory, the applicant has not demonstrated by means of an updated TIA that the existing roundabout on the R106 would be able to handle traffic efficiently during peak periods with these items insitu and operational. Safety concerns on foot of the formation of a through route in the Swords Business Park could be addressed by means of a RSA and any perceived loss of security to users of this Business Park would be capable of being balanced by ensuing gains in accessibility.

### **(iii) Prematurity, land use and design**

3.1 The CDP is the operative development plan for the appeal site. This Plan shows the site as lying within the development boundary around Swords. The route of this boundary, as it passes this site, coincides with the top of the M1 embankment and the eastern boundary to the site itself. The Plan also shows the site as lying within the south eastern tip of an extensive area to the north which lies between the M1, in the east, and the R132 Swords town centre by-pass, in the west. This area is subject to the Zoning Objective "ME" Metro Economic Corridor, which states the following:

*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 Economic Corridor.*

3.2 Part of the proposal is for a petrol station, which would encompass the ancillary services of a convenience store and a café (coffee and deli counter and seated area). Petrol stations are not cited under the use classes related to the Zoning Objective "ME". An accompanying note advises that, in such circumstances, the use in question is to be assessed in terms of its contribution towards the achievement of the Zoning Objective and Vision and its compliance and consistency with the policies and objectives of the CDP. The relevant Zoning Objective is cited above and the accompanying Vision and Objectives related to the Metro Economic Corridor are set out below:

*Provide for an area of compact, high intensity/density, employment generating activity with associated commercial and residential development which focuses on the Metro within a setting of exemplary urban design, public realm streets and places, which are permeable, secure and within a high quality green landscape. Landmark buildings will provide strong quality architectural features, which respect and enhance the character of the area into which they sit. The designated areas will be developed in a phased manner subject to the necessary provision of social and physical infrastructure.*

*EE12: Protect the integrity of the Metro Economic Corridors from inappropriate forms of development and optimise development potential in a sustainable and phased manner.*

*EE13: Ensure high quality urban design incorporating exemplary public spaces, contemporary architecture and sustainable places within a green landscape setting.*

3.3 The aforementioned area is also subject to Objective Z03 to prepare and implement a local area plan (LAP) and the Map Based Local Objective, denoted as 293, which states the following:

*Applications on lands zoned ME-Metro Economic Corridor for uses allowable under GE – General Employment zoning which would not compromise the overall vision for the ME zoning, the preparation of the LAP or the Metro North Railway Scheme shall be considered on their merits.*

Petrol stations are permitted in principle under the use classes related to the Zoning Objective “GE”.

3.4 The other part of the proposal is for a local distributor road. The alignment of this road would coincide with that shown indicatively on the CDP Map of Swords, i.e. it would traverse the applicant’s land on a roughly north/south axis, and it is encompassed in the R106 Malahide – Swords Road Upgrade cited under Road Improvement Schemes in Table T04. This road would connect the roundabout on the R106, Malahide Road, to the Swords Business Park. It would both serve the proposed petrol station and bound the site of the same to the west. The R106 would bound this site to the south, the M1 to the east and an office building, at the south eastern extremity of the Swords Business Park, to the north.

3.5 In view of the foregoing extracts from the CDP, the proposed petrol station would be acceptable provided it contributes towards the achievement of the Zoning Objective and Vision and is compliant and consistent with Objectives EE12 & 13. Furthermore, as an allowable use under the “GE” Zone, it can be considered on its merits, provided it does not compromise the aforementioned Vision, the preparation of the LAP or the Metro North Railway Scheme.

3.6 The foregoing paragraph effectively sets out two tests: the first requires that a positive contribution be made, while the second requires that compromise be avoided. The former is more onerous than the latter. Consequently, if the second test is passed, but not the first, then the question arises as to what the relationship is between these two tests and their underlying status within the CDP. The latter arises from a Map Based Local Objective and so it is more site specific than the former. Accordingly, I take the view that it is essential that this test be passed, while it is desirable that the other test be passed, too, but not essential.

3.7 Turning to the first test, the Zoning Objective seeks the provision of high density, mixed use development and the accompanying Vision seeks that such development exhibit exemplary urban design and high quality landscape. For the envisaged development to be realised, sites of considerable size would ordinarily be needed. By contrast, the appeal site is relatively small and it disaggregates into that portion which would be needed to provide the proposed local

distributor road and that portion which would accommodate the proposed petrol station. As noted above, the latter portion of the site would be effectively isolated as an island site. It would be of elongated form and it would extend over approximately half the overall site area, at c. 0.28 hectares. Given that the route of the proposed road reflects that shown in the CDP Map of Swords, the aforementioned characteristics of the petrol station site would arise under any likely development scenario for the same, i.e. it would not lend itself to being assembled into a larger site. (An exception to this prediction is provided by the planning history of the appeal site, which indicates that this portion of the site was formerly envisaged as being developed to provide an extension to the adjacent office, which would have been converted to a hotel (application reg. no. F03A/0682)). Any reasonable application of the Zoning Objective and accompanying Vision to this site should, therefore, take cognisance of this situation.

- 3.8 The appellants express concern over the density of the proposed development. While no plot ratio or site coverage figures for this development have been submitted the petrol station would, as a single storey building, undoubtedly be of low density. The applicant has responded to this concern by indicating that the “shell and core” construction of this building would allow it to be readily adapted/extended in the future to provide a higher density of development.
- 3.9 The appellants express concern over the limited employment potential of the petrol station. The applicant has indicated that 25 jobs would be created by this station, although he has not distinguished part from full time ones within this total.
- 3.10 The appellants have drawn attention to the concerns of existing convenience retailers over the prospect of the proposed convenience store within the petrol station. In this respect, the Retail Planning Guidelines place a cap of 100 sqm net floorspace upon such stores, to ensure that some measure of protection is afforded to existing retailers. The proposed one would coincide with this cap. The petrol station would also have a coffee/deli counter and a seated area. On the submitted plans, this part of the station is distinguished from the adjoining convenience store and so I consider that it is reasonable to regard it as a café and so not a “shop” as defined under Article 5(1) of the Planning and Development Regulations, 2001 – 2013. Accordingly, the subject floorspace does not need to be aggregated with that of the convenience store for the purpose of calculating the aforementioned cap.
- 3.11 The appellants express concern that the proposed convenience store and café would fall short of the local support facilities that the CDP seeks to encourage in employment areas. However, I consider this concern to be overdrawn, i.e. the

petrol station would make a contribution to the provision of such services at a location that would be convenient for staff and visitors to Swords Business Park.

- 3.12 The design of the proposed petrol station would be in a contemporary idiom, which would incorporate extensive glazing to the publically accessible parts of the building. These parts would be further emphasised by the continuation of the forecourt canopy over the same to form, what would in plan view be, an apostrophe shape. The height associated with this canopy would ensure that, notwithstanding the lower level of the site to that of the adjacent roundabout, the building would maintain a profile of some prominence from public vantage points to the south on the R106. Landscaping would accompany the southern elevation of this building.
- 3.13 The appellants express the concern that the proposed petrol station would not be a landmark building, as befits its location. I note that its relatively low height would limit its prominence. However, given that the development is essentially that of a petrol station, I consider that its integrated and creative design would enable it to make an attractive contribution to the local streetscape. I note, too, that the remainder of the applicant's land on the western side of the proposed local distributor road is more substantial in size and it maintains a longer frontage to the R106. This land would be accessed via the said road, too, and, as it is subject to the same Zoning Objective as the appeal site, there would still be the opportunity to site a more prominent building upon it.
- 3.14 In summary, then, I consider that the proposed petrol station would have too low a density, at least as currently proposed, and too limited employment potential to clearly pass the first test. As a petrol station, this station would exhibit an aesthetically appropriate design. However, it would not be a landmark building.
- 3.15 Turning to the second test, the proposed petrol station's relationship to the Zoning Vision, the outstanding LAP, and the Metro North Railway Scheme fall to be examined. From my discussion of the first test, I consider that the remote position of the site of the petrol station, at the south eastern extremity of the area zoned "ME", the self-contained nature of this site and its discrete size combine to ensure that the petrol station would not compromise the wider Vision for the overall area. I concur with the planning authority's view in this respect.
- 3.16 The "ME" zoned lands throughout Swords are to be the subject of an LAP. Given the view that I have adopted in the preceding paragraph, I do not consider that the proposed petrol station would prejudice the preparation of such a Plan. Likewise, as the site of the proposed petrol station would be physically at a

considerable distance from the proposed route of Metro North, I do not consider that it would affect the same.

3.17 I, therefore, conclude that the proposed petrol station would not compromise the Vision for the “ME” zoned lands and that it would not prejudice the preparation of a LAP for these lands or affect the proposed route of Metro North. Accordingly, this station can, under what I have styled the second test, be considered on its merits, i.e. I raise no land use or design objection to it.

**(iv) Environmental impact, public safety, and residential amenity**

4.1 The appellants and one of the observers express concerns over the impact of the current proposal, in terms of the environment, public safety, and residential amenity. I will discuss each of these in turn.

4.2 The appellant, Mark Moloney, expresses concern that the local environment, within which the firm Reinshaw (Ireland) Ltd operates, would be adversely affected by the current proposal. Specifically, this firm is involved in conducting highly precise activities, which are susceptible to interruption if the local environment changes due to increased vibrations. The proposed local distributor road would facilitate a change in the status of the majority of the road network in the Swords Business Park from that of a cul-de-sac to a through road, which would attract increased traffic movements and hence vibrations.

4.3 The appellant refers to the firm’s experience of managing delivery times to avoid interference with sensitive equipment and of suspending operations during particularly disruptive periods in the life of construction projects elsewhere in the Swords Business Park. His concern, however, with the proposed local distributor road is that ensuing vibrations may be so disruptive as to undermine the viability of the firm’s existence on its present site.

4.4 From the appellant’s submission, I deduce that strong vibrations from either HCV’s manoeuvring in close proximity to the equipment in question or from construction activities are the essential issue for the firm. In this respect, I note that the proposed local distributor road would be further away from the firm’s site than the existing internal access road to the Swords Business Park, over which the firm has no control. Thus, at present HCVs could/probably do pass-by on this road. Under the current proposal, it would be likely that the numbers of such HCVs would increase. Accordingly, the firm would not experience an absolute change, but only a relative one, in its operating environment.

4.5 Under the current CDP, the proposed local distributor road is shown indicatively. I have discussed above under the second heading the relationship between the inclusion of this road in the CDP and how it may be subsequently addressed in any LAP. Quite apart from that discussion, the Zoning Objective and Vision for



the Metro Economic Corridor, which includes the Swords Business Park, anticipates that with Metro North in prospect possibly major redevelopment of the area would ensue, including revisions to the existing layout of roads/streets. Thus, the pattern of development in this area is not likely to remain static. Accordingly, the current proposal may simply be one of a number of projects that contribute to the refashioning of the area. Such projects would ensure that the potential socio-economic benefits pursuant to Metro North are realised in practise. In these circumstances, I do not consider that it would be proportionate to attach appreciable weight to the appellant's very specific concern regarding the incidence of vibrations external to his/her site.

4.6 The appellants draw attention to the fact that fuel storage is not permitted under the "ME" zoning objective for the appeal site. They also draw attention to the absence of any assessment as to the public safety aspects of installing underground fuel tanks close to both an existing underground car park and the cutting of the M1.

4.7 Under the CDP's use classes, fuel storage is twinned with fuel depot and petrol station is a use class in its own right. Given this distinction and the appropriateness of categorising the current proposal as entailing the provision of a petrol station, I consider that the implication of the appellants' submissions, that the proposed underground fuel tanks constitute a use in their own right which is susceptible to the CDP's prohibition, lack cogency. Furthermore, I am not aware that the proximity of these tanks to the said features would pose any insurmountable problems with respect to ensuring public safety, provided the relevant engineering, fire safety, and good management codes, regulations, and practices are adhered to.

4.8 The appellant, Noel McGuinness, and the observer, Seamount View Residents Association, have expressed concerns over the impact of the proposed petrol station upon the residential amenities of the area. In this respect, they draw attention to the proximity of, particularly, the Seamount View housing estate and the apartment complexes known as St. Werburgh's. Specifically, their concerns relate to noise and general disturbance, light spillage, and the 24 hour opening time. Associated concerns relate to the increased activity in the area, the possible incidence of anti-social behaviour, and uncertainty over the remainder of the applicants' land.

4.9 The applicant has responded to these concerns, generally, by drawing attention to the separation distance between the proposed petrol station and the housing estate of c.150m and the screening properties of mature trees along the boundary between his westerly site and public open space adjacent to dwelling houses in this estate. Given these factors, he considers that the aforementioned concerns are misplaced.

- 4.10 During my site visit, I noted that the context of the appeal site comprises the M1, which passes close-by within a cutting, and the relatively heavily trafficked R106 between Swords and Malahide. Thus, the environmental impact of traffic within this context upon the aforementioned residential areas is already quite pronounced. The current proposal would lead to an extension of traffic movements within this context and, if a through route does emerge, then an appreciable increase in such movements could be anticipated, too. However, the ensuing additional environmental impact would be unlikely to be significant.
- 4.11 The presence of an operational petrol station at anti-social hours would be evident from St. Werburgh's. (I concur with the appellant's view that the Seamount View housing estate would be effectively screened from the same). However, the environmental impact of this station would be mitigated by the separation distance of c.90m, the lower level of the station's site, and, in time, the establishment of landscaping. Thus, I do not consider that noise and general disturbance would affect residents of the apartments to any significant extent and the risk of light spillage could be addressed under the specification of lighting for the station forecourt, building and signage.
- 4.12 The aforementioned associated concerns would be alleviated by the proper lighting of the proposed petrol station and street lighting to the proposed local distributor road. As to the future of the applicant's westerly site, while he is not obliged to address this question under the current application, I note that the proposed road would provide access to this site, too, and so its development would be promoted thereby.
- 4.13 I, therefore, conclude that the environmental, public safety and residential amenity concerns raised by the appellants and one of the observers do not warrant objection, in my view, to the current proposal.

**(v) Drainage and AA**

- 5.1 The appellant, IDA, draws attention to the presence of Natura 2000 Sites within c.2km of the appeal site, i.e. the Malahide/Swords/Broadmeadow Estuary SAC and SPA. He/she states that AA should, therefore, have been undertaken and yet it was not.
- 5.2 The applicant has responded to this critique by stating that the current proposal would be connected to the public surface and foul water sewers that serve the area. He refers to the oil and grease separators that would be installed as part of the development and which would be the subject of regular cleaning. He, also, refers to interceptor traps that would be installed as a precaution against any emergency discharge or fuel spill. Given these pollution mitigating measures, he concludes that a, presumably, Stage 2 Appropriate Assessment is not required.

5.3 The applicant has addressed the issue of possible pollution of surface water. I have examined the current proposal within the context of the wider area of the appeal site and I am unable to identify any other possible source/pathway/receptor routes between this site and the aforementioned Natura 2000 Sites or other such Sites further afield. Accordingly, I concur with the applicant's conclusion.

5.4 I, therefore, conclude that having regard to the nature and scale of the proposal and the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### **(vi) Section 49 Levy for Metro North**

6.1 The applicant has appealed the imposition of condition 12 on the planning authority's draft permission, which requires payment of a Section 49 levy towards Metro North. The applicant requests that this condition be omitted in its entirety for the following reasons:

- Metro North, as a public transport project, would lead to a reduction in private transport usage with a consequent reduction in the demand for fuel. It would, therefore, be of dis-benefit to the proposal.
- The Development Contributions Guidelines state with respect to supplementary development contributions that the projects concerned must be of direct benefit to the proposal for a levy to be justified. An Bord Pleanála has previously ruled that service stations would not benefit from Metro North (cf. PL06F.237218 & 241299) and so a Section 49 levy is unjustified.
- Under Section 49(3A) of the Planning and Development Act, 2000 – 2012, the Board is empowered to consider the appeal of conditions pertaining to supplementary development contributions on their own.

6.2 The RPA, as one of two observers to the current appeals, has responded to the applicant's appeal by making the following series of points:

- Attention is drawn to Sections 49(1)(c) and 49(3A) of the Planning and Development Act, 2000 – 2012, which do not refer to any direct benefit, but to benefit that any public infrastructure service or project may have upon a proposal. (In this respect, the wording in the Development Contributions Guidelines would appear to be incorrect. Furthermore, these Guidelines pertain to the preparation of schemes rather than their subsequent interpretation).

- The applicant fails to refer to the Indecon report entitled “Economic Development Strategy for the Metro North Economic Corridor”, which highlights the economic benefits that Metro North would bring to the Corridor, and which provides the basis for Fingal’s Supplementary Development Contribution Scheme for Metro North. The second paragraph of Section 6 of this Scheme delineates some of these general benefits, which are non-site specific. It reads as follows:

*The project will benefit the scheme area, enabling its development in a sustainable manner to higher densities in accordance with the CDP and the Residential Guidelines. The project will improve the attractiveness and marketability of the scheme for residential, commercial and retail development and will add significantly to the value of the development on land in the Scheme area.*

- While it is acknowledged that some developments would not benefit from Metro North, e.g. temporary uses that would expire before the advent of this project, the current proposal would *prima facie* benefit.
- The two appeal cases cited by the applicant illustrate that the Board has adopted a case-by-case approach to the levying of retail convenience floorspace and so they cannot be relied upon for precedence. Furthermore, the Board applied the wrong legal test in both these cases by referring to “direct benefit” rather than simply “benefit” as required by the aforementioned Act and given expression in the second paragraph of Section 6 of Fingal’s Scheme. The Board is, therefore, invited to reconsider its approach in this matter.

6.3 I have reviewed the submissions of the parties with respect to the Section 49 Levy for Metro North, along with the appeal cases cited. In particular I have considered the difference between the applicant’s contention that the Levy should be set aside, as Metro North would be of no direct benefit to the current proposal, and the RPA’s contention that the word “direct” is misplaced and so, since the more general benefits outlined in the second paragraph of Section 6 of Fingal’s Supplementary Development Contribution Scheme would be applicable, the Levy should stand.

6.4 Section 49(1) of the Planning and Development Act, 2000 – 2012, refers to “the payment of a contribution in respect of any public infrastructure service or project – (c) that will benefit the development to which the permission relates when carried out.” (Section 49(3A) refers to benefit, too). This Section, unlike Circular Letter PD 4/2003 and the Development Contribution Guidelines, does not qualify the word “benefit” by placing the word “directly” in front of it. The purpose of the introduction of this qualifying word in these advisory documents

is not elucidated and, clearly, any tension between the Act and these documents must be eased in favour of the former over against the latter.

- 6.5 The RPA's position is that the benefits of Metro North to the lands within its corridor have been delineated in Fingal's Supplementary Development Contribution Scheme. The nature of these benefits is such that they are of virtually automatic and indiscriminate application to all proposals within the corridor, except for those proposals explicitly exempted within the Scheme and the further example of proposals for temporary uses that would expire before the advent of Metro North. This blanket approach contrasts with the Board's previous concern to ascertain whether there would be any discernible specific benefit to the proposal in question resulting from Metro North.
- 6.6 I consider that the RPA's position is too sweeping. The benefits in question relate to the marketability and attractiveness of development and the significant additional value that would accrue to development. Section 49(1)(c) has as its point of reference "the development to which the permission relates when carried out." Thus, it cannot be assumed that an implemented permitted development would necessarily share in these benefits. Further exploration is required to ascertain whether or not they would apply. Viewed in this light the use of the word "directly" in the aforementioned advisory documents appears to be capable of reconciliation with the Act.
- 6.7 In the case of the current proposal, the applicant has outlined under the third heading how its form of construction would lend itself to subsequent adaption/extension and so the future densification of the development can be contemplated. I, therefore, consider it reasonable to conclude that significant additional value would accrue to the development by virtue of its location within the Metro North Corridor and so a supplementary development contribution is warranted.
- 6.8 The planning authority calculated the levy in questioned by applying the current retail floorspace rate of 43 euro per sqm to the floor area of 435 sqm in the proposed building, i.e.  $43 \times 435 = 18,705$  euro. This appears to be a reasonable approach to the calculation of this levy.
- 6.9 I, therefore, conclude that, in the event that the Board permits the current proposal, the supplementary development contribution cited under condition 9 of the planning authority's draft permission should be levied.

## **Recommendation**

In view of my assessment, I recommend that the construction of a single storey convenience store building and adjacent external storage yard with delivery area, ESB sub-station, solid fuel storage; the construction of forecourt area, canopy with illuminated fascia above forecourt with 4 dual fuel dispensing islands and underground fuel storage tanks (40,000 litres x 4); car wash facilities; 16 on-site car parking spaces and bicycle parking area; 2 main identification signs (MID) and associated and secondary signage; and part construction of local distributor road to link Seatown Business Park to the north and Mountgorry, Swords, Co. Dublin; all at Mountgorry, Swords, Co. Dublin, be refused.

## **Reasons and considerations**

The applicant has failed to demonstrate, by means of an up to date Traffic Impact Assessment, that the roundabout on the R106, from which access to the proposed local distributor road would be taken, would be capable of handling ensuing traffic movements efficiently. This local distributor road would provide access to the proposed convenience store building and fuel dispensing forecourt and it would link Seatown Business Park to the north with Mountgorry to the south. Accordingly, it would have a significant effect upon travel demand and the capacity of surrounding transport links, such as the said roundabout, and so under Objective T047 of the Fingal County Development Plan 2011 – 2017, it should be the subject of a detailed Traffic Impact Assessment. Thus, to permit the proposal would contravene this Objective and risk the creation of traffic congestion, which would be contrary to good traffic management and, thus, the proper planning and sustainable development of the area.

Hugh D. Morrison

Inspector

27<sup>th</sup> August 2013