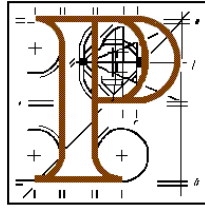


# An Bord Pleanála



## Inspector's Report

PL29N. 245656

**DEVELOPMENT:** Supermarket with off-licence, café, retail showroom and hardware store, and 4 houses

**ADDRESS:** 12-52 Old Cabra Road & 8-16 Annamoe Road, Dublin 7

### PLANNING APPLICATION

**Planning Authority:** Dublin City Council

**Planning Authority Reg. No.:** 2965/15

**Applicant:** Lidl Ireland GmbH

**Application Type:** Permission

**Planning Authority Decision:** Grant permission subject to conditions

### APPEAL

**Appellants:**

1. Lidl Ireland GmbH
2. Seofrai De Burca
3. Michael Butler
4. Mark Jameson
5. Patricia Gorey
6. Des and Mary Farrelly
7. Tesco Ireland Ltd.

**Type of Appeals:**

1<sup>st</sup> party vs. conditions  
3<sup>rd</sup> parties vs. grant

**Observers:**

1. Bernard O'Connor
2. North Circular Road & Area Residents' Association

**DATE OF SITE INSPECTION:**

4<sup>th</sup> February 2016

**INSPECTOR:**

Stephen J. O'Sullivan

## **1.0 INTRODUCTION**

1.1 This report deals with 6 third party appeals against a decision by Dublin City Council to permit the redevelopment of the site of a builders' suppliers to provide a supermarket, café, hardware store and 4 houses, and a first party appeal against conditions attached thereto.

## **2.0 SITE**

2.1 The site is in an inner suburban part of Dublin, c2.5km north-west of the city centre. It has a stated area of 8,370m<sup>2</sup>. It has frontage onto both the Old Cabra Road which is a main route from the city centre, and the Annamoe Road which serves a more local function. Most of it is occupied by a builder's providers trading as PH Ross, but it also includes a vacant lot to the south with its own access off the Annamoe Road. PH Ross has access from both the Old Cabra Road and the Annamoe Roads, but the latter is not in use. There is a neighbourhood centre at Hanlon's Corner at the junction of those two roads immediately to the south of the site. It includes the eponymous public house and a parade of shops along the Old Cabra Road. There is a terrace of 6 Victorian houses along Annamoe Road to the south of the site, called Donard Terrace. The northern boundary of the site adjoins the curtilages of detached and semi-detached houses. There is a large modern office block on the other side of the Annamoe Road that dates from the middle of the last century. The builders' providers includes two buildings on the site, one of which fronts onto the Old Cabra Road in line with the parade of shops to the south. The rest of its yard is under hard standing. The vacant plot includes a derelict single storey building along the boundary of the site behind the shops on the Old Cabra Road.

## **3.0 PROPOSAL**

3.1 It is proposed to clear the site and erect the following –

- A supermarket with a gross floor area of 2,555m<sup>2</sup> and a net retail sales area of 1,251m<sup>2</sup>. The supermarket would be at first floor level in a building with undercroft parking at ground floor level, and with a roof height of 9.8m.
- A café of 95m<sup>2</sup> and a retail showroom of 277m<sup>2</sup> at ground floor level in the same building as the supermarket fronting onto the Old Cabra Road.
- A warehouse and DIY store within the site with a floor area of 900m<sup>2</sup> and a height of 7.7m.
- 4no. three-bedroom two-storey houses in a terrace along Annamoe Road.
- A surface car park in the north-western part of the site with 34 spaces supermarket. There would be 7 spaces within the site serving the

hardware store. Along with the 47 spaces beneath the supermarket, there would be a total of 91 spaces for the commercial development. Access to the parking for the supermarket would be from the Old Cabra Road. Another access from Annamoe Road would facilitate deliveries and the hardware store. 34 bicycle spaces are also shown. The houses would have 6 parking spaces with a gated access from the Annamoe Road.

#### **4.0 POLICY**

4.1 The Department of the Environment issued Guidelines for Planning Authorities on Retail Planning in April 2012. They state that enhancing the vitality and viability of town centres through sequential development is an overarching objective in retail planning. There are 5 key policy objectives – ensuring plan led development; promoting town centres through sequential development; promoting a competitive market place; encouraging sustainable travel by locating shops in locations accessible by such modes; and realizing high quality urban design. Section 5.3 states that design is a critical issue for any planning application for retail development. Short design statements are recommended to describe how the design responds to its context. A design manual was published with the guidelines.

4.2 The Dublin City Development Plan 2011-2017 applies. The site is zoned Z6 for employment and enterprise. Neighbourhood shops including supermarkets are deemed permissible in this zoning, while retail warehouses and residential uses are open for consideration. The commercial properties to the south are zoned Z3 as a neighbourhood centre. Hanlon's Pub is a protected structure. The neighbouring houses are zoned Z1 for residential use. Policy QH9 is to prohibit gated residential developments. Policy RD 19 seeks to maintain and strengthen the existing district and neighbourhood centres and to revitalise, reinvent and prevent the obsolescence of older suburban district and neighbourhood centres. Policy RD 25 is to promote and facilitate the provision of supermarket shopping primarily in district centres and neighbourhood centres. The retail planning strategy in appendix 4 of the plan states that neighbourhood centres can generally provide for one supermarket between 1,000 to 2,500m<sup>2</sup>. A sequential test is appropriate where a retail development over 2,000m<sup>2</sup> is proposed outside the Z3, Z4, Z5, Z10 or Z13/14 zones.

#### **5.0 HISTORY**

5.1 PL29N. 209076, Reg. Ref. 1810/04 – The board granted permission on 14<sup>th</sup> February 2005 for 26 apartments in a four-storey building on part of the current site behind Annamoe Road. The permission was not implemented.

#### **6.0 DECISION**

6.1 The planning authority decided to grant permission subject to 24 conditions

Condition no. 4 was –

*The proposed supermarket signage shall be amended as follows:*

- a) The totem signs on the Old Cabra Road and on Annamoe Road shall be omitted.*
- b) The most northerly wall mounted sign on the north western elevation shall be omitted.*
- c) A ground mounted sign may be located at the Annamoe Road entrance.*

*Details of the revised signage shall be submitted to the Planning Authority prior to the commencement of development.*

**Reason:** *In the interests of visual amenity.*

Condition no. 9 was –

*The opening retail hours of the supermarket and DIY store shall not exceed the following times:*

- 8.00 to 21.00 hours Monday to Saturday.*
- 9.00 to 21.00 hours Sunday.*

*Deliveries shall not commence prior to 7.30am Monday to Saturday and 8.30 am Sunday and no delivery vehicles shall be on the site after 22.00 hours Monday to Sunday.*

**Reason:** *In the interests of orderly development.*

## **7.0 REPORTS TO THE PLANNING AUTHORITY**

7.1 Planner's report – The final report stated that the applicant's responses to the request for further information were satisfactory, including those relating to shadow analysis; noise management measures; security and boundary treatments; private open space for the proposed houses; the proposed floor area for alcohol sales; deliveries; and a swept path analysis for the access on Annamoe Road. The proposed development would provide an intensification of urban land with a mixed use development beside a neighbourhood centre. The streetscape elevation would be acceptable. The proposed signage is excessive, but this can be addressed by condition. The level of amenity in the proposed houses would be acceptable. There were concerns that the DIY store would unduly impact on the residential amenity of the houses on Annamoe Road, but the submitted shadow analysis and measures to manage deliveries and noise are acceptable. A 2m high wall should be constructed on the northern and western site boundary which is currently marked by sheeting and fencing. A grant of permission was recommended.

- 7.2 Traffic Planning Division – The first report stated that there were concerns regarding the proposal to have two accesses near a complex junction of four roads which experiences significant queuing, particularly at the junction of the NCR and Annamoe Road. This would be exacerbated by the proposed access on the latter road. Further information should be sought whereby the Annamoe Road would not have vehicular access with all deliveries from the Old Cabra Road. A subsequent report from the division was quoted by the planner to the effect that it was satisfied with the proposal to use the Annamoe Road access for trade and delivery vehicles only.
- 7.3 Environmental Health Officer – The proposal regarding deliveries is unacceptable in that it would have trucks in the vicinity of houses. Conditions to be attached to any permission are recited.
- 7.4 Railway Procurement Agency – the Old Cabra Road is the emerging preferred route for a Bus Rapid Transit and primary cycle route from Blanchardstown to UCD. This may compromise the efficiency of the access to Lidl from that road, but the agency does not object to the development.
- 7.5 Submissions – Several persons objected to the proposed development on grounds similar to those raised in the subsequent third party appeals and observations.

## **8.0 GROUNDS OF APPEAL**

- 8.1 The grounds of the third party appeals are similar and can be summarised as follows-
- The proposed development of largely retail uses would not be in keeping with the Z6 employment and enterprise zoning that applies to the site. The uses in that zone should, according to the zoning objective, create dynamic and sustainable employment and include innovation, creativity, research and development in primarily office based industry and business and technology parks. The proposed supermarket and hardware store would not provide such uses. The opportunity cost in removing the site from the land bank for strategic employment generating uses also needs to be considered.
  - The site is not within a designated retail centre. It merely adjoins a lower order neighbourhood centre. The retail strategy for Dublin is to reinforce the established hierarchy of retail centres. This hierarchy includes higher order district centres at the Park Centre, the Maple Centre and Phibsborough in the same retail catchment as the site. The proposed development would therefore contravene the retail strategy adopted by the planning authority.

- The proposed development would give rise to traffic congestion on the road network. Annamoe Road is a residential street with speed bumps where a 3.5 tonne weight limit applies. It has a complex junction with the North Circular Road near the major junction of Hanlon's Corner and the exit from the car park serving the office block across the road. Traffic queues are frequent there, even outside peak traffic hours. The road is not suitable to accommodate the heavy vehicular traffic that would be generated by the proposed development, as the planning authority correctly determined in its initial assessment of the application and stated in its request for further information. The access onto the Old Cabra Road would interfere with the proposal by the NTA to install a rapid bus transit along that road. As an adequate access cannot be provided to the site, it should not be regarded as suitable for the type of development now proposed due to the nature and amount of traffic that it would generate.
- The proposed development would result in the loss of 4 on-street parking spaces and create a demand for a lot of additional parking in the area. This would have a serious negative impact on the residents of the area who depend upon the use on spaces on the street for adequate access to their houses, in particular the residents of Donard Terrace. The proposed development would not provide adequate parking on the site in line with development plan standards.
- The use of the proposed shops would give rise to noise and disturbance that would seriously injure the residential amenities of houses in the vicinity, particularly those at Donard Terrace. This would arise from the traffic movements, deliveries and loading, and the operation of air handling plant would necessarily occur in the operation of the shops. The location of a delivery and loading bay for a DIY store immediately behind the houses on Donard Terrace would be a particular cause of nuisance. The failure to adequately secure and supervise the site after business hours would give rise to a risk of anti-social behaviour and threaten the security of adjoining houses, as would the sale of cheap alcohol.
- The development would seriously injure the amenities and tend to depreciate the value of property in the vicinity. The hardware store would overshadow the houses at Donard Terrace to an unacceptable extent. The height of the store is not consistently shown on the drawings. The submitted shadow analysis is incomplete and misleading, and fails to account for the shadow cast on summer evenings.
- The proposed houses on Annamoe Road would not respect the building line and forms along that street. They would also form a gated community contrary to the provisions of the development plan.
- The proposed signage would be garish and would detract from the character of this Victorian residential area.

- The development would disturb contaminated soil on the site.
- The proposed development would encroach onto the building at No. 10 Cabra Road owned by some of the appellants. The party wall with the appeal site may not be interfered with unless those appellants give their consent.
- The planning authority's role as the vendor of part of the site gave rise to a conflict of interest.

8.2 The grounds of the first party appeal can be summarised as follows-

- The appeal is against condition no. 4 of the planning authority's decision regarding signage, and condition no 9 regarding opening times.
- A consistently recognised brand is key to the applicant's business. It has already made significant concessions to the standard store design to meet the planning authority's requirements regarding streetscape and urban design. The proposed totem sign on Old Cabra Road would be an important wayfaring device for customers to the car park. Totem signs area are a well-established part of the Lidl branding strategy and have been used in similar urban locations. The Annamoe Road entrance is secondary but it would still be important to mark it with a totem sign. The wall mounted sign on the northwest elevation would not be obtrusive outside the site. Appendix 27 of the plan states that arterial routes would be suitable for outdoor advertising, and the proposed signs would be compatible with the
- The limits on the opening hours of the proposed shops should be from 0800 to 2200 seven days a week. Other supermarkets in the area operate with longer hours. Opening hours should only be restricted when there is a clear need to do so, and the more restricted opening hours specified by the planning authority are not justified.

## **9.0 RESPONSES AND OBSERVATIONS**

9.1 The planning authority's response stated that it had no further comments.

9.2 The applicant's response to the third party appeal can be summarised as follows-

- The development of the site will be managed to make every effort to ensure that the impacts on residents are minimised. Once operational the



development will integrate positively into the area. The Lidl store in Terenure is a good example where residents' fears of a development have not come to pass. The development will provide an intensification of an urban site and a mix of uses that are compatible with this urban node.

- A neighbourhood shop is permitted in principle in the Z6 zoning, while retail warehouse and residential uses are open for consideration. The proposed development therefore complies with the zoning and there is no question of a material contravention of the provision of the plan arising in this case. The proposed development would generate more employment than the established use of the site, with the retention of the 20 jobs in PH Ross with an additional 35 jobs in the supermarket and café.
- Part of the site was owned by the city council who sold it to the applicant to achieve a better planning outcome.
- The planning authority were satisfied that the road network in the area could accommodate the proposed development. The consolidation of the metropolitan area cannot be achieved in traffic congestion is used to oppose the regeneration of brownfield sites. The report from the applicant's engineers demonstrates that the parking provision and traffic movements generated by the development would not have a detrimental impact on the existing parking and congestion situation. It would not result in an increase of more than 2% in the traffic at the junctions in the vicinity of the site. The 3.5 tonne limit on the Annamoe Road refers to through traffic and does not prohibit deliveries into the area by heavy vehicles. In the absence of committed BRT proposals for the Old Cabra Road, the two proposed accesses should be authorised
- The proposed development would reduce the number of on-street parking spaces in the vicinity of Donard Terrace from 10 to 6. Residents can park in the existing loading bay in the evenings and on Sundays which can accommodate 8 cars.
- The proposed DIY store would be to the west of Donard Terrace and will have little impact on the daylight and sunlight available to the houses there. Permission was granted in 2005 for the erection of a four storey apartment building at 1A Annamoe Terrace but it was not implemented. The planning authority's decision was made after consideration of a shadow analysis report submitted to it as further information. A supplementary report is submitted with the appeal which demonstrates compliance with the BRE 2011 guidance document on Site Planning for Daylight and Sunlight.
- With regard to noise, the planning authority's decision included a condition placing a limit on noise. The established use of the site is as a builders' yard. The proposed activity is more compatible with the adjoining

residences, with the heavy merchandise element of the PH Ross business being moved to Glasnevin. The main public access will be from the Old Cabra Road and the level of activity in the vicinity of Donard Terrace will be limited during business hours. Hanlon's Corner is already a busy commercial node and the proposed uses would be consistent with this.

- The site will be closed and properly secured after business hours and pedestrians will not have access to it.
- The proposed houses would follow the appropriate building line which is the one established by the houses on the adjoining land to the north.
- A grant of permission would not entitle the developer to interfere with a party wall.
- In response to the appeal from Tesco, the compliance of the proposed supermarket with the zoning of the site is re-stated. The gross floor area is less than 5,000m<sup>2</sup> and so according the section 6.6.1 of the retail strategy for the GDA a retail impact assessment is not required. The site is just outside the inner city area with a very large residential catchment area. The other supermarkets in the area at the Park and Maple centres are both owned by Tesco. The nearest major convenience centres are in the city centre and at Blanchardstown. The proposed supermarket with a net retail sales area of 1,251m<sup>2</sup> is appropriate in this context and would comply with the retail planning guidelines.

9.3 The third party observations on the file raised similar objections to the development as the third party appeals. They also expressed concerns that its construction would threaten the foundations and structure of buildings in the vicinity. The design of the buildings along the Old Cabra Road would be out of keeping with the established character of that street. The mural on the projecting wall at No. 10 Old Cabra Road should be retained.

## 10.0 ASSESSMENT

The planning issues arising from the proposed development can be addressed under the following headings-

- Policy
- Urban Design
- Access and parking
- Impact on residential amenity

### *Policy*

10.1 The description of the Z6 zoning objective at section 15.10.5 of the development plan refers to various high order office uses which the proposed development would not provide. However the objective states that neighbourhood shops are permitted in the zone. The definition of neighbourhood shops includes supermarkets between 1,000m<sup>2</sup> and 2,500m<sup>2</sup>. So the proposed supermarket with a retail area of 1,250m<sup>2</sup> is explicitly allowed by the zoning objective. The proposed hardware store and showroom would correspond to retail warehousing, which is open for consideration under the zoning. It should be regarded as compatible with the objective as it represents an evolution of the established use of the site. Residential use is also open for consideration under the zoning. The proposed houses would adjoin existing houses on land zoned residential and would face a predominantly residential street. In these circumstances they should also be regarded as compatible with the zoning of the site. The proposed development would therefore be in keeping with the zoning objective that applies to the site.

10.2 The site is land zoned for commercial uses that encompasses two sides of land zoned as a neighbourhood centre. It includes a building designed to continue a terrace formed by the parade of shops in that neighbourhood centre. The site should therefore be regarded as part of a neighbourhood centre for the purposes of retail policy. The proposed hardware store and showroom would continue an established use on the site. It would mainly involve selling bulky goods and associated items, which is a type of shop that retail planning policy does not attempt to direct towards higher order shopping centres. Policy RD25 of the development plan encourages supermarkets in neighbourhood centres. The retail strategy for the city set out in appendix 4 of the development plan specifies that a neighbourhood centre can provide a single supermarket. There is no other supermarket in the neighbourhood centre at Hanlon's Corner. The supermarket proposed in this application would therefore be in keeping with the retail policies and strategy that actually apply in Dublin. The café would be a compatible use for a neighbourhood centre. A more prescriptive or restrictive retail strategy may or may not be required by the proper planning and sustainable development of the area. However this would have to be determined through the plan making process set out in part II of the planning act rather than in the context of an individual application under part III. As argued by the applicant, the appeal site is within walking distance of a

significant residential population. It is also reasonably well served by public transport, lying on an arterial route to the city centre along which a Quality Bus Corridor runs. It would not threaten the vitality or viability of a better located retail centre. So it would comply with the sequential approach set out in the retail planning guidelines. The supermarkets in the nearest three district centres are run by the same operator, and so the proposed supermarket would tend to increase competition in the marketplace. The proposed development would therefore comply with the applicable retail planning policy made at national and local level.

### *Urban Design*

- 10.3 The Old Cabra Road is a main route from the city centre. Hanlon's Corner is a prominent junction on that route. The scale, form and design of the Victorian building on that corner makes an important contribution to the character of this part of the city. It also establishes a building line and streetscape for the south-eastern end of the Old Cabra Road. The extent to which development on the appeal site respects this context is therefore an important issue. The proposed development is acceptable in this regard. The front of the supermarket would follow the building line established by the shops between the site and the corner. It would be similar in height to them. The use of brick on this façade would accord with the older buildings. The details and proportions of the façade are coherent and would harmonise with the existing streetscape, without replicating the pastiche which the existing building on the site provides. The development would provide active frontage onto the Old Cabra Road, with entrances to the shop, café and showroom there.
- 10.4 Annamoe Road at the other side of the site has a more residential character, despite the Z6 zoning of the site and the big office block opposite. It is therefore reasonable that houses would be provided on the site facing that road. The proposed continuation of the building line established by houses to the north on the adjoining part of the appeal site is acceptable. The scale, form and detailed design of the houses is appropriate to their design context. Nevertheless there are particular aspects of the proposed development along Annamoe Road which are not. The proposed houses would form a gated development. This form of development is explicitly prohibited under policy QH9 of the development plan. It would be out of keeping with the established character of residential development in the area and would militate against the proper integration of the proposed housing into social and built fabric of the city. The issue was raised by third parties, but does not seem to have been addressed by the planning authority. The width and curve radii at the access from the proposed gated development to the Annamoe Road are grossly disproportionate to its function. The loss of shared on-street parking required to facilitate such an appropriate layout was a particular cause of complaint by the third parties appellants. Their complaints in this regard are justified. The development would also leave an area behind the building line immediately to the north of No. 7 Donard Terrace without any discernible use. This area would

not be secured by any boundary treatment, and would not be overlooked by the adjoining buildings. This represents an unsatisfactory layout that would facilitate the type of anti-social behaviour about which the third party appellants have complained, including loitering and littering. Curtailing such activity would require ongoing attention and effort by neighbours and public authorities which would not be required if the layout of the proposed development respected the existing form of the street.

- 10.5 The proper planning of the area and the public good in general requires the corporate signage of the applicant to be subservient to the established character and amenities of the area. The arguments to the contrary in the first party appeal are not accepted. The proposed totem signs would be discordant and unsightly features that seriously detracted from the visual amenities of an established urban area that has a well-defined streetscapes. They should be omitted. The sign referred to in condition 4 b) of the planning authority's condition would not intrude on the public realm and its omission is not necessary. The proposed access on the Annamoe Road is for trade and delivery vehicles. It does not require signage to be erected along a residential street.

*Access and parking*

- 10.6 The site is located in an established urban area not far from the city centre. The potential demand to use the road network in the area would greatly exceed its capacity regardless of the proposed development. Planning policy does not seek to create or maintain unused capacity on urban roads. Attempts to do so would be counterproductive, as travel patterns and transport modes would simply change to fill any such capacity. They would also reduce the amount the population and range of facilities in places that were accessible by means other than the private car, thus increasing the overall level of traffic in the city. The applicant is therefore correct to argue that generalised concerns about traffic congestion would not justify stymieing the redevelopment of brownfield urban land, as is now proposed. The specific impacts on traffic of a particular proposal on a particular site are of greater relevance. In this case it is noted that the Annamoe Road is a secondary road where a 3.5 tonne limit applies and speed bumps have been installed. There is also a complicated arrangement for access to it from the North Circular Road, with a priority junction opposite which traffic queues often form on the approach to the major signalised junction between the NCR, Prussia Street and the Old Cabra Road. Nonetheless the proposed access to the Annamoe Road would be used by a limited amount of commercial traffic. Contrary to the arguments of the third parties, this restriction can be readily enforced by the physical means (the bollards proposed by the applicant) which can be controlled by the planning system. The applicant has demonstrated that the Annamoe Road and its junction with the NCR have adequate dimensions to accommodate the goods vehicles that would use the entrance. The 3.5 tonne limit would not apply to deliveries to premises within the area. In any event the site is within the HGV

cordon for Dublin city which, so the site could not be accessed by 5-axle vehicles after 7am and the applicant has undertaken not to make deliveries before that hour. So the occurrence of heavy goods traffic to the site would be subject to control by the roads authority in any event. With regard to the Old Cabra Road, it is noted that the RPA, while raising no objection, referred to the potential impact of the proposed building and access on the emerging BRT proposals along that road. However the proposed development would maintain an existing building line, and the location of the proposed access would be much the same as the existing one. The RPA's comments would not, therefore, justify requiring significant alterations to the proposed development.

10.8 The roads layout of the development, including the width and curve radii of the proposed accesses from the public road, was not designed in accordance with the applicable design standards set out in the Design Manual for Urban Roads and Streets issued by the minister in 2013. Some of the drawings showed a ramp at the entrances to the site, others do not. However the various deficiencies of the proposed development in this regard could be remedied without changing its built form, and so the matter could be properly addressed by a condition attached to a grant of permission. However if the board refuses permission, then the failure of the applicant to conform with the statutory guidance on the matter should be adverted to.

10.9 The proposal would provide an amount of car parking that was c80% of the maximum allowed under the development plan standards. Given the accessible location of the site relative to the surrounding population, this provision is more than adequate. The proposed bicycle parking provision is acceptable.

*Impact on residential amenity*

10.10 The proposed houses would provide an adequate standard of residential amenity for their occupants, with suitable levels of habitable accommodation and amenity space.

10.11 The proposed hardware store would be between 9m and 13m from the back of the curtilages of the houses in Donard Terrace. It would stand west-northwest of them. There is an apparent discrepancy between the parapet level of the store shown in elevation, at 38.15OD and in section, at 37.65mOD. Its floor level in both cases is shown as 30.55mOD. This is similar to the ground floor level of the houses at Donard Terrace, which is raised above the road level in front of them. Given the separation distance and relative orientation of the houses and proposed store, the loss of sunlight and daylight at the houses and gardens of the houses that would arise from the development would not be likely to seriously injure residential amenity to an extent that would, in itself, justify refusing permission or substantially modifying the proposed development, even using the higher figure for the height of the hardware store. In particular, the conclusions of the shadow analysis submitted

by the applicant - that the impact on sunlight and daylight at the windows on the houses and of sunlight to the gardens would not breach the limits advised in the BRE 2011 guidance document - are accepted. The proposed development would have the potential to cast a shadow on the residential properties to the west at certain times on summer evenings which does not currently occur. However the planning system does not attempt to provide an absolute protection for all existing access to daylight and sunlight when this is not required to provide a reasonable standard of residential amenity.

10.12 A greater concern arises from the proposed location of a delivery and loading dock for the hardware store immediately to the rear of the houses at Donard Terrace. The curtilages of those houses are shallow and would not mitigate the impact of noise on their rear boundary. The loading area would be used in a way that would create disturbance and noise that would have a significant negative impact on the amenities of adjoining residential property. The applicant proposed, and the planning authority accepted, various detailed proposals to control the behaviour of those using the loading bay so that it would not generate such noise and disturbance. However the planning system controls the built form of the environment. It only has a limited capacity to control how people behave when they use it which relates to changes of use that are material in planning terms. It is entirely unrealistic to imagine that the enforcement procedures set out part VIII of the planning act could be used to ensure an consistently high level of courtesy and consideration by a wide range of persons using the delivery bay, many of whom would not be employed by the occupier of the site, and when there is a commercial imperative to behave otherwise to reduce the time and expense involved in deliveries. Attempts to do so would involve significant time and expense by private individuals and significant effort by public authorities, and would be unlikely to be effective. The obligation on the planning authority and the board is to ensure that the layout of the development is consistent with the need to provide reasonable protection for the amenities of residential property in the vicinity without purported reliance on conditions that could not be enforced. A grant of permission for the development as currently proposed would not fulfil this obligation. No alterations to the proposed development occur to me that could remedy this defect and which could be stated so clearly that they could be imposed by a condition on a grant of permission.

10.13 The hardware store would also be close to the upper floor windows at the back of the buildings housing the shops along the Old Cabra Road. The store would be to the north of those buildings and would not overshadow them, but it would interfere with the outlook from the windows. However it is not clear whether any residential use persists on the upper floor of those shops.

10.14 The proposed sale of alcohol in a restricted and designated area in the supermarket would not threaten residential amenity. However, as stated at section 10.4 above, the development would leave an area behind the building line beside No. 7 Donard Terrace that was unsupervised, unused and

unsecured. This would reduce the actual and perceived level of personal security along Annamoe Road. The proposals to secure the rest of the development are adequate. With regard to the first party appeal against the restriction of opening hours under condition no. 9 of the planning authority's decision, I would agree with the argument that, in the absence of a properly adopted planning policy on the matter, and particular restriction would have to be individually justified. It would not be unusual or unreasonable for a supermarket to open between 0800 and 2200 from Monday to Saturday. However I would consider that Sunday mornings and evenings are not normal shopping times in this city, and restricting opening before 1000 and after 2100 then would be justified.

#### *Other issues*

- 10.14 The carrying out of the proposed development would not unduly threaten the structural integrity of other buildings in the vicinity, or the party wall and tiled projection at No. 10 Old Cabra Road. The need to properly handle soil disturbed during construction would not preclude consideration of a grant of permission. The board is not constrained by the decision or opinions of the planning authority in this case, and no conflict of interest therefore arises at this stage.

### **11.0 CONCLUSION**

- 11.1 The proposed development would be in keeping with the zoning of the site and the retail policy set out in the national guidelines and the city development plan. It would achieve an acceptable standard of urban design along the Old Cabra Road. The access and parking arrangements are generally satisfactory, subject to alterations to comply with DMURS that could be implemented by condition. However there are serious defects in the layout of the development at the vicinity of the Annamoe Road, including the provision of a gated housing development and unsupervised area behind the building line that would threaten the perceived security of residents and pedestrians in the vicinity. It would reduce the amount of parking that is available to be shared by the residents and visitors to the area. It would also introduce a delivery yard immediately behind the curtilages of houses, causing a threat to residential amenity that would not be ameliorated by the size of the curtilages of those houses or by measures that could be enforced under planning conditions. The proposed development would therefore seriously injure the character of the Annamoe Road and the amenities of property in the vicinity of the site, and would be contrary to the proper planning and sustainable development of the area.

### **12.0 RECOMMENDATION**

- 12.1 I recommend that permission be refused for the reason set out below.



## **REASONS AND CONSIDERATIONS**

The proposed development would introduce a delivery area immediately to the rear of the residential properties at Donard Terrace which would be likely to give rise to significant noise and disturbance there. It would provide a gated residential development on the Annamoe Road, contrary to policy QH9 of the Dublin City Development Plan 2011-2017, result in the loss of shared on-street parking and would have vehicular accesses and internal roads that do not comply with the applicable standards set down in the Design Manual for Urban Roads and Streets issued by the minister in March 2013 under section 28 of the Planning and Development Acts 2000-2015. It would also create an unused, unsupervised and unsecured area behind the building line beside No. 7 Donard Terrace. The proposed development would therefore detract from the character of the Annamoe Road, and would seriously injure the amenities and tend to depreciate the value of property in the vicinity of the site.

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Stephen J. O'Sullivan  
5<sup>th</sup> February 2016