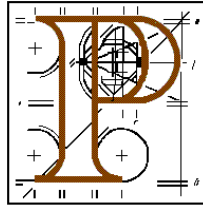


An Bord Pleanála



Inspector's Report

Reference: PL06S.246230

P.A. Reference: SD15A/0293

Title: Provision of new two storey forecourt building with retail shop, deli café, offices, new forecourt for petrol station.

Location: Former Esso Priory Service Station, Nutgrove Avenue, Rathfarnham, Dublin 14.

Applicant: Sirio Property Company Limited

Appellants: David McMunn

Observers: None

PA: South Dublin County Council

Type of Appeal: Third party against grant

Decision: Permission granted

Date of Site Visit: 7th July 2016

Inspector: Philip Davis

1. Introduction

This appeal is by a local resident against the decision of the planning authority to grant permission for a new petrol service station with offices and retail on Nutgrove Avenue in Rathfarnham. The grounds of appeal relate mostly to amenity and traffic issues. I note that the appeal site is almost directly on the boundary of an adjoining planning authority and that it directly impacts on a bus lane and bus stop – the planning authority did not appear to consult either the neighbouring authority or the NTA/Dublin Bus. I further note that a new Development Plan has been adopted by the planning authority since the submission of this appeal.

2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

Nutgrove Avenue, Rathfarnham

The appeal site is on Nutgrove Avenue (R821), an urban trunk link road between Rathfarnham and Churchtown/Dundrum in the south suburbs of Dublin. The road is a typical urban single urban lane each way road with a westbound bus lane and a pavement, with a partial dedicated cycle lane on each side – varying from running on the road and occasionally on the pavement and disappearing intermittently. The road is bounded on each side mostly by semi-detached and detached dwellings, mostly dating from various periods of the second half of the 20th Century. There are some shops and community facilities randomly scattered along the road. The appeal site is a derelict site roughly mid-way along the road on the southern side. The Avenue is divided along part of its length by the boundary between South Dublin County Council and Dun Laoghaire/Rathdown Council.

The site and environs

The appeal site, with a site area given as 0.2755 hectares, is an irregularly shaped flat derelict site on the south side of Nutgrove Avenue. There is some hardstanding on the site, but it is generally overgrown with shrubs and trees. Older OS plans indicate it to have been the site of a former manor house (Nutgrove House) which seems also to have been used as a school in the 19th Century. The site is bounded by a mix of high stone/brick walls and palisade fencing.

North of the site is Nutgrove Avenue, where a very narrow footpath is divided between a westbound cyclepath and the remainder for pedestrians. There is a bus stop next to the site in addition to a pedestrian crossing. The main road has two way traffic and a westbound bus lane. Across the road, on a narrow site, are two storey apartment buildings, with Castle Golf Course behind them.

West of the site is a large detached dwelling on substantial grounds (some of which may be in commercial use). The house backs onto the appeal site. Beyond this, are smaller terraced dwellings facing the road.

East of the site is a large 2-storey building used by Rathfarnham Boy Scouts. Further terraced houses extend beyond this.

South of the site is an estate of detached and semi-detached dwellings on Stonepark Orchard. The side gable of no. 17 directly bounds the site. A single storey dwelling runs across the rear of nos. 17 and 18, directly abutting the site. The western side of the southern boundary abuts the access road of Stonepark Orchard.

3. Proposal

The proposed development is described on the site notice as follows:

- 1) *Provision of new two-storey forecourt building with 100sqm retail shop, 91.53sqm deli café, 24.29sqm deli café food prep area, offices, stores & toilet facilities;*
- 2) *Sale of specially prepared hot & cold food for consumption both on and off the premises from the deli café area;*
- 3) *New forecourt layout including canopy, fuel pumps, underground tanks, jet was, carwash water pump room and bin compound;*
- 4) *Relocation of existing site entrance and exit crossovers,*
- 5) *157.08sqm first floor office unit,*
- 6) *Ancillary signage, both illuminated and non-illuminated, and*
- 7) *All associated site works.*

4. Technical Reports and other planning file correspondence

Planning application

The planning application, with supporting documentation, was submitted to the planning authority on the 29th September 2015. Documents submitted include a planning report, a transport assessment, Stage 1 Road Safety Audit and Engineering Report. Following a further information request, additional information including revised drawings were submitted on the 4th January 2016.

Internal and External reports and correspondence.

A number of objections from local residents were submitted.

Water Services: Requests additional details on storm attenuation and discharge calculations. Following the submission of further

information, it was stated that there is no objection subject to conditions.

Irish Water: Request additional information on watermains and the connection to the public mains. Following the submission of further information, a number of concerns are expressed about the details – conditions are recommended to deal with these.

Environmental Health: Additional information requested on hours of operation and ventilation and lighting details. Following the submission of further information the proposal was stated to be acceptable subject to a number of recommended conditions.

Roads Department: Notes the submitted reports, requests a number of conditions.

Environment, Water and Climate Change. It is considered acceptable subject to conditions.

South Dublin CC Planners Report: The report noted there was a public meeting where many locals objected. It is noted that it is within an area zoned to protect and/or improve residential amenity. There is no relevant planning history noted. It is stated that there was previously a petrol station on the site. It recommends 6 items of additional information required to further progress the application. Following the submission of further information, a number of issues were considered outstanding, but a recommendation was made to grant permission subject to conditions.

5. Decision

The planning authority decided to grant permission subject to 13 no. conditions. Most are standard conditions. Condition 2 restricts the opening hours of each individual element of the proposed service station. Condition 3 states that the quantum of office floorspace shall not be increased to more than 100 m². Condition 10 sets out detailed additional requirements relating to road design.

6. Planning Context

Planning permissions – appeal site

There are no records of previous planning applications or appeals on the site.

Planning permissions – adjoining areas

None relevant on file.

Development Plan

The planning application and the decision were made when the South Dublin County Council Development Plan 2010-2016 was the operative Development Plan for the area. On the 12th June 2016, the South Dublin County Council Development Plan 2016-2022 was adopted. The site is zoned 'objective A' – *'to protect and/or improve residential amenity'* in the 2010-2016 Plan, and 'RES' in the 2016-2022 Plan, with substantively the same objective. In both, petrol stations are 'open to consideration'. There are detailed objectives in both plans relating to the design and scale of such developments.

Relevant extracts from the South Dublin County Council Development Plan 2016-2022 are attached in the appendix to this report.

7. Grounds of Appeal

- It is argued that the 2-storey office/retail building is contrary to the Development Plan – it is submitted that there is ambiguity about the actual permitted floorspace.
- It is argued that the size and scale of the retail./café space is excessive and contrary to published guideline standards.
- It is argued that no account has been taken of the possible value of the existing stone wall, part of the original abbey structure (Loreto Abbey is south-west of the site).
- It is argued that as the site is bounded by the county boundary, Dun Laoghaire/Rathdown should have been consulted.

8. Applicants response

- It is argued in some detail that the total area ancillary to retail sales is 100 m², which is in accordance with the relevant policy (S.32) and that the issue of defining what constitutes retail space was dealt with by the planning authority.
- It is stated that there will be no alterations or damage to the existing boundary wall. A trellis with landscaping will be used to provide adequate screening.
- It is noted that the site lies entirely within the boundaries of SDCC, it is denied there was any failure to consult more widely.

9. Planning Authority's Comments

The planning authority states that all issues raised in the appeal have been covered in the planner's report and requests that the Board uphold its decision.

10. Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- **Principle of development**
- **Residential amenity**
- **Traffic issues**
- **Heritage**
- **Flooding and drainage**
- **Appropriate Assessment and EIA**
- **Other issues**

Principle of Development

The development plan for the area has changed since the decision was made - the South Dublin County Council Development Plan 2010-2016 was the operative Development Plan for the area, but the 12th June 2016, the South Dublin County Council Development Plan 2016-2022 was adopted. The site was zoned 'objective A' – '*to protect and/or improve residential amenity*' in the 1010-2016 Plan, and 'RES' in the 2016-2022 Plan, with substantively the same objective. In both, petrol stations are 'open to consideration'. There are detailed objectives in both plans relating to the design and scale of such developments. I would consider that the broad principle has remained the same – that the proposed development is not contrary to the zoning designation, but should be assessed on its own merits. However, I would note that my interpretation of the broad thrust of current government policy is that there would be a general presumption in favour of bringing forward derelict sites within well serviced urban areas for high density residential development where practicable.

The site was occupied by a petrol station previously. Aerial photographs indicate that the main structure was in place in 2005 – the applicant states that it closed in 2006. I am satisfied that the site has been unused for at least 5 years and as such the former use can be considered to have fallen out of use.

The proposed development involves a retail element, which is covered by a number of policies within the plan which reflect the Retail Planning Guidelines 2012. In this regard, the Guidelines (4.11.9) states:

The floorspace of the shop should not exceed 100 M₂ net; where permission is sought for a floorspace in excess of 100 M₂, the sequential approach to retail development shall apply, i.e. the retail element of the proposal shall be assessed by the planning authority in the same way as would an application for retail development (without petrol/diesel filling facilities) in the same location.

While there is some dispute over the precise measurement of the floorspace, the planning authority considers it to be just under 125 m², including the Deli food prep area (the retail area is 100 m²). In this regard, I would therefore consider that the sequential test should apply. The planning authority considered that the café was separate from the retail proportion, but given the layout I do not agree with this interpretation – it would seem to be an integrated single unit, and as such dividing the ‘deli’ aspects from the ‘retail’ aspects is a distinction which would not exist in reality.

The site is in a generally residential area – the closest retail centre is a low level neighbourhood centre some 200 metres to the east. This is a line of about a dozen retail/office units including a small grocery outlet and at least two restaurant/takeaways. The site is some 500 metres from the Nutgrove Shopping Centre (to the east) and 800 metres from the Main Street of Rathfarnham Village to the west. In applying the sequential test to the retail/food element of the application, it is clear that it would be more appropriately located next to or closer to existing neighbourhood and local centres. With regard to the petrol station element, there is no evidence submitted to suggest the overall area is lacking such facilities.

I further note that the deli counter would be normally considered a takeaway (it is not described as such on the site notice, but I would assume that takeout food would as a matter of course be part of the business of a petrol station café), and policy R10 objective 2 of the development plan states that it is an objective:

To restrict the opening of new fast food/takeaway outlets in close proximity to schools so as to protect the health and wellbeing of school-going children.

The site is immediately adjacent to a scouts den and close to three schools (two to the south, an Educate Together Primary School and the Loreto College in addition to the Good Shepherd National School to the east).

I do not consider the issue clear-cut as to whether it is in accordance with either national or local policy objectives, but I would conclude on the basis of the available information that while the petrol station/retail/office elements are ‘open to consideration’, the balance of policy considerations would be against permitting it on a derelict site zoned for the protection of residential amenities unless there were strong counterbalancing considerations.

Residential amenity

The site immediately adjoins a scout den and three dwellings – a single storey dwelling on what seems to have been the rear garden of no’s 17 and 18 Stonepark, one of the latter houses, and a two-storey detached dwelling to the west along Nutgrove Avenue. The side gables of these

dwellings are within 10-18 metres of the carwash, 18 to 40 metres from the pump forecourt, and 9 to 50 metres from the retail/office/deli café. The site is bounded by a wall of around 3 metres in height. It would appear that all the houses were built at a time when the previous petrol station was operating.

The existing wall undoubtedly provides a certain amount of noise and light screening, in particular to the single storey dwelling which is lower than the wall. Notwithstanding this, by their nature such service stations operate for long hours and involve noise from machinery and vehicles, fumes, and other forms of nuisance and disturbance. The planning authority set conditions limiting opening hours as a means of minimising this, but I do not consider that this is something that can be adequately controlled by condition alone – I would consider the existing dwellings to be too close by any reasonable standards. Having specific regard to the zoning designation to protect existing residential amenities I would recommend a refusal for this reason.

Parking and Traffic

The proposed outlet involves a typical separate entrance and egress arrangement directly onto Nutgrove Avenue. The accesses would cross the very narrow footpath and cyclepath along this point and the bus lane. The access and egress would straddle on each side the existing bus stop. This bus stop serves three bus routes – no. 17, 61 and 75, all three of which are relatively infrequent – from the Dublin bus timetables it would seem that there would be around 3-4 buses an hour stopping here on weekdays. T

I note that the National Transport Authority was apparently not consulted (Article 28(1)(j) of the 2001 Regulations indicates that there probably should have been such a consultation). It would seem from condition 10 of the decision that the planning authority considers that it is possible the bus stop would have to be relocated.

The applicant submitted a Transport Assessment (TA) and a Stage 1 Road Safety Audit. The TA used an assumption that 30% of trips would be 'new' trips - i.e. most users would be passing traffic, an assumption I consider reasonable. It concludes that the increase in traffic in peak periods will not be significant. I note that it did not assess the potential impact on bus movements.

The only significant discussion of the bus stop and its impact is in the Safety Audit. This notes in paragraph 2.10 that '*a bus stopped here would significantly affect the available visibility from the site exit*'. It concluded that post opening monitoring of the interaction between traffic exiting the development and general traffic would be necessary.

The application was accompanied by an autotrack study to indicate that there is sufficient room for circulation around the fuel pump areas although it seems this was not deemed sufficient by the planning

authority. The planning authority set a condition (no. 10) with no fewer than 10 aspects for revision relating to access, interaction with the cycle lane/bus stop, the proposed new pedestrian crossing and an additional requirement for an autotrack analysis.

I find this situation entirely unsatisfactory. The mix of uses on such a restricted site without a satisfactory demonstration that there will be no queues extending out onto the road, blocking the cycletrack and bus lane in my opinion alone is highly problematic. The very narrow path and cycleway along this side (both of which are barely minimal width) along with a bus stop and a pedestrian crossing already causes a potential hazard. There is a clear potential here for conflict between people using the bus stop, the exit/access to the proposed use, and cyclists, even without the potential issue of a tailback vehicles from the proposed facility. I note that the minimum design standards set out for where cyclepaths meet bus stops and such junctions as set out in the Cycle Design Manual published by the NTA (sections 5.1.5 and 5.4) would not appear practicable along this stretch of road due to the very limited space available. In the absence of a consultation with either the neighbouring planning authority (the opposite side of the road is within Dun Laoghaire/Rathdown, as is all of the road east of the Boy Scouts Den), or with the NTA/Bus Eireann makes it difficult to come to any conclusions as to whether these issues can be resolved satisfactorily without a significant land take from the appeal site, or indeed adjoining sites.

I conclude that the plans and details as submitted are wholly unsatisfactory with regard to the interactions of the site with the footpath, cycleway and bus stop. I do not consider that these issues can be addressed by condition in the absence of a full consultation with the NTA/Bus Eireann and the adjoining planning authority. I would recommend a refusal for this reason.

Heritage

The site is bounded on two sides by high walls, a mix of brick and stone rubble construction. It would appear that these are part of the former boundary walls of the Loreto Abbey, now largely either developed for housing or used as a school. The Abbey is a protected structure, but from the context I would not consider the walls to be a part of the curtilage or attendant grounds. Older OS plans show that a house, Nutgrove House, was on the appeal site and seem to have shared this wall with the Abbey. There is no information about Nutgrove House available and it is not a recorded ancient monument, although it would appear to have been a dower (widows) house associated with Rathfarnham Castle, indicating that it could have early origins. The original 'Nutgrove Avenue' was the entrance avenue to this house. It would seem very likely that due to the past use of the site as a petrol station any underground remains would have been destroyed. As the proposed works would not directly impact upon the

boundary walls, I do not consider that there are any significant impacts on heritage or a need for conditions relating to archaeology.

Flooding and drainage

There are no records of flooding on or adjoining the site. Older OS plans show a watercourse running east to west across the site, apparently supplying garden water features for the now long demolished Nutgrove House. This watercourse flowed into a small unnamed tributary of the Dodder River which flows through the golf course to the north-west. There are no indications as to where this watercourse is now, it is presumably diverted into drains in the area and as such are not likely to represent a flood risk.

Appropriate Assessment and EIS

There is no AA screening attached to the application. The planners report on file states that *'The site is not located within 100m of a stream. As such a Screening report for Appropriate Assessment is not required in this instance'*. I assume from this statement that the planning authority use a 100 metre separation from a watercourse to be a standard criteria for deciding if AA or a screening is required – although I can find no support for this approach in any official guidance (screening should, in fact, be done as a matter of course). As a point of fact, however, the site **is** within 100 metres of a watercourse, an unnamed tributary of the Dodder – I estimate it to significantly less than 100 metres from a surface watercourse which flows through the golf course to the north. This watercourse emerges from a culvert approximately 95 metres north-west of the site. Older OS plans show this watercourse to actually run directly through the site in an east-west direction (this can be seen in the site plan submitted with the application) – it seems to have fed water features in the garden of the now vanished Nutgrove House before running past the house (presumably in a culvert) parallel to the modern road, before running north under the road into what is now the Castle Golf Course. This watercourse is presumably now culverted under the road, possibly the 600mm storm drain which is indicated as running through and along the boundary of the appeal site. I also note that older OS plans show a well a few metres south-west of the site.

The unnamed tributary of the Dodder ultimately flows into Dublin Bay at Ringsend (around 6.5 km from the appeal site), and discharges to the bay where there are European sites, most notably the North Dublin Bay SAC, site code 00206 and the South Dublin Bay and River Tolka SPA, site code 4024. These are designated with conservation objectives relating to the protection of shoreline and littoral habitats, including migratory birds.

There is no indication on file as to whether the underground tanks associated with the former petrol station on the site have been appropriately removed. The proposed development includes new

underground fuel tanks. There is no clear indication on the drawings provided as to the relationship between the storage tanks and any possible hydraulic connection to the watercourse formerly indicated as flowing through the site and the existing watercourse. Given the direct flow from the watercourse to the two Natura 2000 sites I would consider that however unlikely a direct impact would be, it cannot reasonably be ruled out that the proposed development could result in a discharge of oil products directly to the bay, either during construction works or through a spillage during operations. There is an obvious potential pathway for spillage to the SAC/SPA, therefore I conclude that the potential for a significant effect cannot be ruled out. Therefore, on the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European sites No. 00206 and 004024 or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission

Having regard to the thresholds set out in the Fifth Schedule of the 2001 Regulations, as amended and the small scale of the proposed development, I do not consider that, notwithstanding my concerns about AA outlined above, the issue of a requirement for EIA arises.

Other issues

The proposed development would be subject to a standard S.48 Development Contribution. There are no other development contributions that apply.

I do not consider that there are any other issues raised in this appeal.

11. Conclusions and Recommendations

I conclude that the proposed development would seriously injure the residential amenities of the area and would constitute a traffic hazard. I also conclude that adverse effects on a Natura 2000 site cannot be ruled out and as such the Board is precluded from granting permission in the absence of a Natura Impact Statement.

I recommend therefore that for the reasons and considerations set out below planning permission be refused for the proposed forecourt building with retail and deli.

REASONS AND CONSIDERATIONS

1. The proposed petrol station with shop, café and offices is located within an area zoned 'Res' in the 2016-2022 South Dublin County Development Plan, for the protection of residential amenities. In such areas, these uses are 'open to consideration'. It is considered that, notwithstanding the past use of the site, that the proposed use would seriously injure the residential amenities of properties immediately adjoining the site by way of the close proximity of these dwellings to the fuel pumps, jet wash and deli cafe. The proposed development would, therefore, be contrary to the zoning designation of the site and would seriously injure the residential amenities of adjoining dwellings. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location of the site next to a narrow footpath, cyclepath and bus lane, with an adjoining bus stop, the Board is not satisfied, on the basis of the submissions with the planning application and appeal, that the proposed development can be satisfactorily served without resulting in a traffic hazard by way of conflict between vehicles entering and exiting the site with pedestrians, buses and cyclists and causing congestion by way of interfering with the freeflow of traffic on the bus lane.
3. Having regard to the nature of the proposed development, the past use of the site for a petrol station, and the proximity of the site to a watercourse that discharges to the River Dodder, on the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European Site No.00206, or any other European site in Dublin Bay, in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting permission.

Philip Davis,
Inspectorate.
25th July 2016