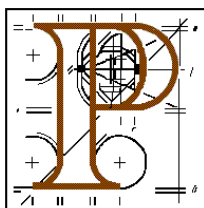


An Bord Pleanála



Inspector's Report

PL. 29S 246314

DEVELOPMENT: Relocation of ESB Substation (unconstructed) permitted under P. A. Reg. Re. 2966/10 / PL 237974 to the north eastern boundary along Mount Argus Road, all associated sit development and layout amendment works.

LOCATION: Lot 1, Kimmage Road Lower and Mount Argus Road, Harolds Cross, Dublin 6W.

PLANNING APPLICATION

Planning Authority: Dublin City Council.
P. A. Reg. Ref: 4275/15
Applicant: Crekav Landbank Investments Ltd.
Decision: Grant Permission.

PLANNING APPEAL

Appellant: Cian O'Tighearnaigh and Eileen Punch
Type of Appeal: Third Party Against Decision to Grant Permission.

Date of Site Inspection: 3rd June, 2016.

Inspector: Jane Dennehy.

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site for the proposed substation is adjacent to the Mount Argus Road frontage at the edge of a residential development of one hundred and eighty apartments, a creche and a community building which is under construction on lands formed from the grounds of Mount Argus Church and Monastery. There is an existing services box at the road frontage at this location. To the east side is an end of terrace two storey house with front and rear gardens which is the property of the appellant party. To the west side is a single storey building in use as a scout den.
- 1.2 Mount Argus Church, former Monastery buildings and new monastery buildings forecourt. A grotto with three statues, the previously approved site to the substation is adjacent to the main entrance to the west of the site. The new entrance to the development is to the south west and a short distance and main entrance from Kimmage Road. Residential development is also located on the opposite, north side of the road and Mount Jerome cemetery is further to the east.
- 1.3 The previously permitted location for the ESB substation (which was not constructed) is adjacent to the main entrance route to Mount Argus Church at south west boundary of the site and west side of Apartment building No 1. At this location overlooking the main entrance to the Church there are three statues and a Tree of Hope which are in the ownership of the Passionist Community.

2.0 THE PROPOSED DEVELOPMENT.

- 2.1 The application lodged with the planning authority on 18th December, 2015 indicates proposals for the construction of an MV substation in a position that is 1.2 metres back from the footpath. The structure is 3.2 metres high x 4.7 metres width and 4.2 metres in length. It is to have a brick faced facade and cement render plinth and a steel door and the site is to be landscaped providing for screening.
- 2.2 The reason for the selection of a new site location for the previously permitted substation is that there is an agreement in the contract of sale that the developer would not interfere with some statues and a Tree of Hope belonging to the monastic community which are located in this area.
- 2.3 The report of the Engineering Department's Drainage Section indicates no objection to the proposed development and there are no submissions from prescribed bodies on file.

3.0 **PLANNING HISTORY:**

3.1 **PL 29S 237974/ P. A. Reg. Ref. 2966/10:** Following appeal, the Board upheld the planning authority decision to grant Permission for the residential scheme of one hundred and eight apartments, a community building and a crèche. The permitted development included an MV substation at the west side of the site adjacent to the community buildings which was not constructed.

3.2 Two minor applications were also recently determined by the planning authority:

P. A. Reg. Ref. 4173/15: Permission was refused for a temporary 9 metres wide construction access from Kimmage Rod Lower opposite Westfield Road.

P. A. Reg. Ref 4276/15 Permission was granted for chimney flues at Block B within the approved scheme for the combined heat and power system.

4.0 **DECISION of the PLANNING AUTHORITY.**

4.1 By order dated, 22nd February, 2016, the planning authority decided to grant permission subject to five standard conditions which include restricted construction hours, (condition No 2) and noise control during construction, (Condition No 5).

4.2 The planning officer in his report indicates satisfaction that residential amenities of adjoining properties would not be adversely affected, particularly in view of the within the landscaping and screening that is to be implemented.

5.0 **THE APPEAL**

5.1 An appeal was received from Colin Mackay, Architect on behalf of the Cian O'Tighearnaigh and Eileen Punch of 72 Mount Argus Road on 18th March, 2016. This property according to the appeal is the only one that is contiguous the site location.

5.2 Locating an ESB substation at the primary pedestrian entrance would have adverse impact on the public open space and the residential amenities enjoyed by the existing established residential community. . The application does not take account of the tree survey and would

affect the root structure of the trees. The substation would lead to anti social behaviour, vandalism and theft. because it would sterilise the immediate locality.

- 5.3 There is no evidence to support the reason given with the application for the need to relocate from the original location on the site. The claim lacks credibility and is not justified.
- 5.4 There are several other locations within the site where there would be no impact on the public open space. To suggest that the selected location is optimal is disingenuous. The proposal does not comply with spec No 13320 MV Substation Buildings (ESB Networks.
- 5.5 Access to the substation is required in day and night time. A three metre wide and four metre wide corridor is required and it should be from the public road. The access is via a pedestrian footpath through public open space.
- 5.6 No assessment of potential archaeological impact has been provided and an archaeological impact assessment should have been required with the application. (Spec 13320 MV Substation Buildings (ESB Networks refers.) There is significant potential for archaeological remains in the area.
- 5.7 Excavations must be to a minimum of 1400 mm to accommodate ducts in the substation floor which are 900 mm deep. Deeper excavation may be required to reach a sufficient stratum.
- 5.8 The application does not include proposals for an attendant switch room. It is assumed it is to be retained in the Community Building as indicated in the original application. Otherwise a further application is required.
- 5.9 The proposed development will seriously injure the amenities and will affect the monetary value of the appellant property. The public open space (with the substation excluded) will maintain or enhance the residential value of the appellant property.
- 5.10 In the attached document there is background information about the appellant's property, comments about the planning process and the application process, the developer and a number of questions relating to the issues raised in the appeal are included.

6.0 RESPONSES TO THE APPEAL BY THE APPLICANT.

- 6.1 A submission was received on 7th April, 2016 according to which the substation position was changed, in the further information proposals to the approved location to facilitate the community building and crèche.

(P. A. Reg. Ref. 29S 237974/ P. A. Reg. Ref. 2966/10 refers.) This approved location is whether the statues and Tree of Hope are located and it is in conflict with the Deed of Sale between the Passionist Community and the previous applicant/developer (A copy of an extract from the Contract is included in the submission.) The solution for the applicant is to relocate the substation.

- 6.2 The criteria for the selection of an alternative location was that there should be vehicular access from a public road, retention of the green setting and minimal impact on the trees along the avenue to the church, the statues and Tree of Hope, minimal visual impact and sufficient space for the substation.
- 6.3 ESB Sub-stations are located throughout urban areas and don't attract anti social behaviour as has been stated in the planning officer's report.
- 6.4 There is no risk to trees or their root structures. Extensive consultations have taken place with the Parks Department at Dublin City Council and landscaping consultants have been retained. There is extensive mature planting along the boundary with the appellant property and hoarding is to be provided for tree protection. The planning authority has no objection
- 6.5 Archaeological issues are addressed by Condition No 8 of the original grant of permission and Condition No 2 of the Planning authority decision requires compliance with the conditions attached to the parent permission. (The conditions are reproduced in the submission.) Extensive monitoring and excavations and recording has and taken place and will take place in connection with the current proposal. The applicant is willing to accept similar requirements by condition.
- 6.6 It can be confirmed that the site location and the design of the proposed development was undertaken in consultation with the ESB.
- 6.7 It is submitted that the grounds of the appeal are exaggerated and it is requested that the decision to grant of permission be upheld.

7. OBSERVATIONS OF THE PLANNING AUTHORITY.

- 7.1 There is no submission from the planning authority and there are no third party observer submissions on file.

7.0 DEVELOPMENT PLAN.

- 7.1 The operative development plan is the Dublin City Development Plan, 2011-2017 according to which the site location is within:

- An area subject to the zoning objective: “Z1: “*to protect provide for and/or improve residential amenities*” and within a zone of Archaeological Interest.

7.2 There are no specific objectives of standards for electricity substation development within the plan.

8.0 **ASSESSMENT**

8.1 The planning issues raised in the appeal and considered are:

Archaeological impact

Impact on the amenity potential of the public open space, landscaping and tree protection,

Visual amenity,

Impact on amenities and value of residential property and,

Access and vehicular safety.

8.2 However, the appellants question the legitimacy and justification for the decision to relocate the substation from the originally permitted position within the overall residential development and this matter is addressed first. In this regard, it should be noted that it is fully within the scope of entitlement of the developer to lodge an application for a proposal which would result in a modification or material change to an element of a permitted development. It is not necessarily essential that the rationale for the decision to propose a material variation to a permitted development be specified in order for a planning assessment to be undertaken by a planning authority or An Bord Pleanála following appeal. Also, there is no basis on which the reason provided on behalf of the applicant should be questioned

8.2 In addition, the appellant party contends that the proposed development does not accord with the standards required in ESB Networks own guidance for substations. However, these matters do not come directly within the planning remit in consideration of a planning application or appeal. It would be matter which it is open to the appellants to follow up with the relevant authorities.

8.3 The planning merits of the proposed development having regard to the selected site location and nature of the proposed development are considered below.

8.4 **Archaeological impact**

It is agreed that the site location has potential for archaeology as is reflected in the identification of the area as being within a zone of Archaeological Interest. However, it is considered that the requirements for archaeological monitoring as provided for under Condition No 8 of the original grant of permission under PL. PL 29S 237974/ P. A. Reg. Ref. 2966/10 are appropriate and adequate. There is no evidential basis on which any modifications to these requirements such as archaeological investigation prior to determination of a decision can be justified. If permission is to be granted a condition can be attached clarifying that adherence to the requirements of condition no 8, along with other conditions of the original grant of permission is required.

8.5 **Impact on the amenity potential of the public open space and tree protection.**

The site location and proposed footprint for the proposed development is over seven metres from the boundary with the appellant property along which there is dense tree and hedge planting. It is very doubtful that there is any root spread from this area within the footprint of the proposed structure from the planting along the boundary or from a tree a short distance to the west side adjacent to the scout den. . The area in which the structure is to be erected had been cleared at the time of inspection.

8.6 **Visual amenity,**

The substation structure is typical of similar development to be found in urban areas and subject to regular maintenance of the structure which is to be faced in brick and is a low profile, flat roofed structure, it should not give rise to any concerns as to negative impact on visual amenity to users of the footpath, views from the public road from which it is to be set back or from any residential units.

8.7 **Residential amenities and value of the appellant's property**

It is not accepted that the proposed development, given the high quality specification, distance from existing residential development and apartment blocks under construction on the site could give rise to any potential for adverse impact on residential amenity or could give rise to depreciation of property value.

8.8. Access and Vehicular Safety.

It is apparent that the location for the substation which is close to the road frontage at the edge of the site of the permitted development is suitable for suitability for vehicular access for maintenance related purposes from Mount Argus road, an existing the public road.

8.9 Appropriate Assessment Screening:

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment which is that of a recently permitted residential development under construction in a fully serviced suburban location, no appropriate assessment issues arise.

9.0 CONCLUSION AND RECOMMENDATION.

Given the foregoing it is considered that the proposed development gives rise to no concern as to any planning issues that would warrant reversal of the decision if the planning authority to grant permission. A draft order for a grant of permission is set out overleaf.

DECISION

Grant Permission on the Basis of the Reasons and Considerations and subject to the Condition set out below:

REASONS AND CONSIDERATIONS

Having regard to the planning history, and to the location of the site of the permitted residential development within an area subject to the zoning objective to provide for and improve residential amenities to the scale and design and proposed finishes for the proposed MV substation and to the landscaping proposals, it is considered that the proposed development subject to compliance with the conditions set out below, would not be seriously injurious to residential amenities of adjoining property or the visual and recreational amenities of the area, would not depreciate the value of residential properties, would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS.

1. The development shall be carried out in accordance with Condition Nos. 1 to 24 attached to the grant of permission under P. A. Reg. Ref. 2966/10, (PL 237974) on 1st April, 2011 except as amended to conform with the provisions indicated on the plans and particulars lodged with the current application and with the following condition:

Reason: In the interest of clarity.

JANE DENNEHY.
Senior Planning Inspector
10th June, 2016.