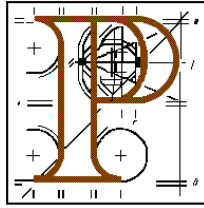


An Bord Pleanála



Inspector's Report

PL15. 246457

DEVELOPMENT: Petrol station, gym and light industrial unit

ADDRESS: Cappocksgreen, Ardee, Co Louth

PLANNING APPLICATION

Planning Authority: Louth County Council

Planning Authority Reg. No.: 15/721

Applicant: Moffett Property Management Ardee Ltd.

Application Type: Permission

Planning Authority Decision: Grant permission subject to conditions

APPEAL

Appellants: Transport Infrastructure Ireland

Type of Appeal: 3rd party vs. grant

Observers: None

DATE OF SITE INSPECTION: 13th July 2016

INSPECTOR: Stephen J. O'Sullivan

1.0 INTRODUCTION

- 1.1 This report deals with a first party appeal against a decision of Louth County Council to grant permission for a petrol station, gym and industrial unit on a site on the outskirts of Ardee.

2.0 SITE

- 2.1 The site is just to the north-east of the town of Ardee, Co. Louth. It has a stated area of 2.22 ha. It is undeveloped land. It lies on the northern side of the N33, which is a single carriageway national primary road that was built around the turn of the century to link to M1 with the N2. A roundabout has been built on the N33 where the 100kph speed limit applies. An access road serving the site runs from the northern arm of that roundabout. No other development has occurred off that access road.

3.0 HISTORY

- 3.1 Reg. Ref. 09/0509 – the planning authority granted permission on 1st March 2010 for a development of 29 light industrial or warehouse buildings, a building for a restaurant and gym and a builders' providers. The site of this permission encompasses the current appeal site. The authorised development included access from the roundabout on the N33. Permission was granted for 10 years. 4 of the buildings authorised under this permission would stand on the site of the current appeal. Part of one of the buildings would accommodate a restaurant.

PL15. 245481, Reg. Ref. 15/419 – the board refused permission on the 22nd January 2016 for a supermarket on a site on the other side of the N33 as the current appeal site and on the same landholding. The reasons for refusal referred to the generation of more traffic turning movements on the roundabout on the N33 and its impact on the capacity and safety of a national route; and to the location of that site outside the town centre where policy favoured retail development. The planning authority had decided to grant permission.

PL15. 245128, Reg Ref. 15/5 – The board refused permission on the 3rd November 2015 for a development with a petrol station, café, shop and gym on a site to the north of Ardee near the junction of the N2 and the N33. The reason for refusal referred to the impact of the development on that junction and remote location from the commercial core of the town. The planning authority had decided to grant permission.

4.0 PROPOSAL

- 4.1 The applicant described the proposed development as an amendment to that authorised under Reg. Ref. 05/0509.
- 4.2 It is proposed to build a filling station on the plot immediately to the north-west of the roundabout on the N33, with access via the existing service road that runs north from that roundabout. The station would have pumps for cars to the front and trucks to the rear. The canopy over the former would be 5.2m high, that over the latter would be 6.12m high. There would be a building of 557m² c3.6m in height which would contain a restaurant of 310m² and a shop of 50m². 67 car parking spaces would be provided on the site of the filling station. The number of parking spaces had been increased when the applicant submitted further information to the planning authority.
- 4.3 On another plot off the access road it is proposed to erect a building 9.15m high. It would contain a light industrial unit of 526m² and a gym of 548m². 41 parking spaces would be provided on that plot.
- 4.4 A securing kiosk is shown on the access road running north from the roundabout on the N33.

4.0 POLICY

- 4.1 Section 2.8 of the *Guidelines for Planning Authorities on Spatial Planning and National Roads* refers to development planning and service areas on national roads that are not motorways. It says that a proliferation of such facilities would create safety risks and affect the level of service to road users, as well as threatening the vitality of towns.
- 4.2 The Louth County Development Plan 2015-2021 applies. Section 2.16.5 of the plan identifies Ardee as a level 2 settlement, whose growth will consist of gradual expansion that protects and enhances its role as a local service and employment centre. Section 7.3.4 of the plan states that the council will continue to implement measures to safeguard the capacity and safety of national routes so that they can continue to perform their strategic role and maintain their importance to the future development of the county.
- 4.3 The Ardee Local Area Plan 2010-2016 applies. The site is zoned for industrial and related uses. Petrol stations, convenience shops and recreational buildings are open for consideration under that zoning. Restaurants are not

permitted. Section 4.19 of the plan refers to service stations. It states that the need for any proposed service station would have to be justified by the applicant, and if permitted they should be on the edge of the urban footprint and within the speed limit zone. Policy ATC1 of the plan is to strengthen the town centre as the main focus for retail and commercial development.

5.0 DECISION

5.1 The planning authority decided to grant permission subject to 15 conditions. Condition 9 required the proposed access to the petrol station on the south eastern boundary be omitted and replaced by one off the internal roundabout at the eastern corner of the site.

7.0 REPORTS TO THE PLANNING AUTHORITY

7.1 Transport Infrastructure Ireland – Objected to the development on grounds similar to those raised in the appeal.

7.2 Infrastructure Engineer – The initial report recommended that further information be sought with a revised amount of parking and the relocation of the entrance to the car park so that it is 90m from the roundabout on the N33. After the submission from TII was received, a further report stated that the further information should include a revised traffic impact assessment. The report on the further information noted that the applicant had not relocated the proposed access, so this should be required by condition.

7.3 Department of Arts, Heritage and the Gaeltacht – Archaeological monitoring should be required by condition.

7.4 Irish Water – No objection

7.5 Environment Section – Further information should be sought regarding grease traps, interceptors on surface water drains and the treatment of solid waste and oil at the car wash.

7.6 Planner's report – Although it would contravene the zoning of the site, the proposed restaurant is to replace an authorised facility. Signage and landscaping should be considered under the parent permission that applies to the site. It was recommended that further information be sought including a traffic impact assessment and a revised layout with adequate parking. The subsequent report on the further information stated that the roundabout on the

N33 is already in place to give access to the zoned and serviced land on the other side of the national road from the town. The proposed service station would not be a destination for local customers but would cater to passing traffic. A grant of permission was recommended.

8.0 GROUNDS OF APPEAL

8.1 The grounds of the appeal can be summarised as follows-

- The proposed development would generate traffic and turning movements on the N33 national primary road where the 100kph speed limit applies to a greater extent than the authorised development. It would therefore have a negative impact on the safety and efficiency of a national primary road. This would contravene the policy stated in the Guidelines for Planning Authorities on Spatial Planning and National Roads.
- The N33 is a key connecting corridor for the national roads system. The roundabout upon it was permitted to provide access to industrial development in accordance, not for the kind of commercial development now proposed that would generate additional traffic movement. The board's decision to refuse permission for a supermarket at Cappocksgreen under PL15. 245481 is cited as precedent to this effect. The zoning of the site is noted. However TII was not consulted during the making of the local area plan. The development would not be in keeping with section 4.1.9 of the local area plan which states that petrol stations should be within the speed limit zone on the edge of the urban footprint.
- The proposed development would not be in keeping with the policy at section 2.8 of the guidelines about service areas along national roads other than motorways because it would not be part of a co-ordinated approach to the provision of such facilities.

9.0 RESPONSES

9.1 The planning authority's response can be summarised as follows-

- The authority does not consider that the proposed development would represent such a different land use from that authorised on the site. Permission for the roundabout and the authorised business park was granted in consultation with the NRA after extensive traffic impact

assessment. The access is a plan led access point and the revised TIA states that the road network could cater for this level of development.

- The NRA was not a prescribed body under section 20(e) of the Planning and Development Act 2000 or section 13(e) of the Planning and Development Act 2010. However submissions were received from it during the making of the local area plan.
- The applicable statutory plans contain policies to stimulate economic growth in the county and the town, as well as those relating to the protection of road capacity. The minister decided not to direct the planning authority to amend its policies regarding access to national roads from service stations.

9.2 The applicant's response can be summarised as follows-

- The site is zoned for development for which petrol stations are open for consideration.
- The guidelines on planning and national roads accept the principle that service areas such as the proposed development be located on the national road network.
- There is a clear need for the proposed development as there are no existing services to the east of the town. Ardee has two filling stations on its southern outskirts and another to its north. It would create undesirable traffic movements should motorists be required to leave the N33 to access them. The nearest on-line services are at Lusk 50km to the south-east and at Broomfield 35km to the northwest. The proposed development would also serve the future working population in the authorised business park and would be in keeping with its campus style setting.
- The traffic impact assessment demonstrates that the development would not affect the carrying capacity of the national road. It would provide a much needed facility for motorists using the national road network. The appellant's claims that the development would adversely affect the carrying capacity, efficiency, use and safety of the national road network is unsupported. The vast majority of the traffic using the development would be passing traffic that was on the N33 is any event. It would not be as concentrated within the peak periods as that which would be generated

by the authorised industrial use, and so it would have less impact on the national road.

- The development would use existing road infrastructure and is on a site where development is already authorised after a planned and co-ordinated approach as recommended in the guidelines. It will not result in a new access to the national road network. Each proposal must be considered on its merits, and the fact that this proposal amends an authorised proposal means that it would not create a precedent for other development that would affect the national road network. The proposed development can therefore be distinguished from those for which the board refused permission under PL15. 245481 and PL15. 245128. A more appropriate comparison would be the filling station that the board authorised at Clontibret, Co Monaghan under PL18. 240315.

The responses were circulated for comment.

- 9.3 The appellant made a response that restated its position. It stated that it was the additional turning movements at the roundabout which would diminish the priority afforded to through traffic that caused it concern, rather than the generation of more trips along the N33,. The ministerial letter submitted by the planning authority did not appear to relate to the the appeal site, but to other lands off the M1.
- 9.4 The applicant endorsed the response from the planning authority.

10.0 ASSESSMENT

- 10.1 The preservation of the safe carrying capacity of national roads is a clearly stated objective of national and local planning policy. It justifies the control of new accesses onto national roads. It also justifies the control of the use of land in the vicinity of junctions on national roads that would generate traffic that would undermine that objective, as illustrated by the board's decision to refuse permission in the vicinity under PL15. 245481 and PI15. 245128. The grounds of appeal are therefore substantial. A straightforward application of planning policy to the proposed development would therefore require the application to be refused. However the applicant has described the proposed development as an amendment of an existing permission which is currently extant until 2020 and which could be extended further. Following the judgement of the High Court in Southwest Regional Shopping Centre Promotion Association Ltd. and Stapleyside Company vs. An Bord Pleanála, 4th February 2016, the board may not simply determine the application on the basis of the compatibility of the proposed development with current planning policy. Rather it must consider the various contingencies introduced by the planning history of the site.
- 10.2 The large high-capacity roundabout that would provide access to the proposed development has already been built on the N33 national primary road beside the site at a point where the 100kph speed limit applies. This junction has already reduced the carrying capacity of the N33. It also facilitates safe turning movements across it. The land on and around the site is zoned for development that could be carried out on foot of an extant permission whether or not the current application is granted. So activity that would introduce a large volume of turning movements has already been found by the relevant authority to be in keeping with the proper planning and sustainable development of the area. It could commence at any time for many years to come, as permission was granted for 10 years and this period could be extended further.
- 10.3 The appellant argued that the different nature of the traffic that would be generated by the proposed development would result in a materially different impact on the national road because there would be more turning movements by traffic which was already on the N33, compared to the authorised development. The applicant argued to the contrary, that the proposed development would not generate new traffic on the N33 to the extent that the authorised development would, and that the turning movements which it would generate would be less concentrated in peak hours. In this regard the arguments from the applicant are preferred. Roundabouts tend to operate less safely when there is a very large disparity in flows as vehicles that have to wait

for longer periods at the entrance to the roundabout tend to attempt riskier manoeuvres. Furthermore, while the physical fact of the roundabout will slow traffic along the N33 in any event, actual queues and congestion at the junction would be most likely to occur if there is a concentrated movement of employees to and from the authorised development within short periods at the start and end of the working day. So the different characteristics of the proposed development compared to the authorised development would not render it more likely to have an adverse impact on the use of the N33. In these circumstances it is not clear that preventing the proposed development would do anything to preserve the safe carrying capacity of the national road network.

- 10.4 The site is on lands zoned as part of a town under a local area plan, even though a national road with a 100kph speed limit separates it from the rest of the town. It is therefore debatable whether the advice at section 2.8 of the guidelines against new service facilities on national road applies. A formal approach would indicate that it does not, although the practical impact of the proposed service station might be the same as one outside a town.
- 10.5 The main grounds of the appeal are therefore not accepted. Nevertheless there are other matters that need to be considered in the course of the application and appeal, including the specific characteristics of the development and other policy considerations.
- 10.6 The access to the filling station forecourt on the south eastern boundary of the southern part of the site is close to the junctions at the adjacent roundabouts, one of which would be on a heavily traffic national road where the 100kph speed limit applies. It would be unsafe to introduce traffic turning and pedestrian crossing movements so close to such a junction where drivers would just have left a high speed, high volume national road via a roundabout that facilitated fast traffic flow, because a significant proportion of drivers would be slow to react to the changed traffic environment where pedestrians and cars would be crossing in front of them. This impact would be exacerbated by the proximity to the other roundabout to the north, as this would further confuse drivers and pedestrians rendering them less likely to safety predict each other's movements. The applicant's road safety audit did not identify this hazard, although the council's road engineer did. The applicant was given the opportunity to remedy this hazard through the submission of further information to the planning authority. It refused to do so, seeking to justify a departure from roads standards based on a 60kph speed limit. No such departure would be justified on a greenfield site so close to the 100kph zone where a proper access could be provided in accordance with an extant permission. Condition no. 9 of

the planning authority's decision would not remedy this hazard as it is imprecise and may not be capable of implementation without significant alterations to the development that have not themselves been considered. The traffic hazard arising from the proposed development would therefore render it contrary to the proper planning and sustainable development of the area.

10.7 Section 4.19 of the local area plan says that the need for any new service station would have to be justified and that they should be located within the speed limit zone on the edge of the urban footprint. As the site is zoned under an objective that allows petrol stations to be considered, the location of the proposed development would not contravene that provision of the development plan. The plan does not specify how a need for a service station would be demonstrated, and it would not be appropriate for the planning system to try to second guess commercial judgements when no clear public interest is involved. Therefore the proposed development would not contravene section 4.19 of the local area plan. A retail area of no more than 50m² would normally be considered ancillary to a filling station, so the current proposal would not fall within the scope of retail planning policy.

10.8 The proposed restaurant would be substantial in size and it could not be regarded as ancillary to a filling station. It would materially contravene the zoning of the site. The applicant justified this element by reference to the previously authorised restaurant on the site. Given the size of the development authorised by the extant permission, the length of the period for which it granted, and the formal legal recognition now given to permissions to amend permissions under Southwest Regional Shopping Centre Promotion Association Ltd. and Stapleyside Company vs. An Bord Pleanála, the planning histories of such sites are likely to become extensive and complicated. In this case the authorised restaurant would be on a different plot and construction has not commenced to date on any building on any plot within the overall development. A grant of permission for the proposed restaurant would not necessarily prevent the implementation of the other permission for a restaurant or the seeking of permission for another one still. In these circumstances the proposed material contravention of the zoning of the site to provide a restaurant would not be justified.

10.9 The site removed from the existing built up area of the town, even more so from its centre. Access would be across a national primary road where the 100kph speed limit applies via a high capacity roundabout. Effectively the proposed development would only be accessible from by car or other private vehicle. It is therefore an unsuitable location for commercial and recreational facilities that

could be better located in or near the town centre in accordance with policy ATC1 of the local area plan. The location of the proposed gym and restaurant is therefore contrary to this policy, and to the proper planning and sustainable development of the area.

10.10 It is noted that the appeal did not specifically refer to the zoning of the site or policy ATC of the local plan. However the grounds did refer to the departure of the proposed uses from the authorised industrial use of the site and the reasons for refusal by the board under PL15. 245481 which themselves refer to inappropriate uses in a peripheral location removed from the town centre.

11.0 CONCLUSION

11.1 The proposed development would be served by an existing high capacity roundabout on the N33 and would occupy land where commercial development is authorised under an extant planning permission. A grant of permission in this case would not, therefore, be likely to have a further negative impact on the safety or carrying capacity of the national road network. The proposed access to the proposed service station would constitute a traffic hazard. The proposed restaurant would be significant in scale and would materially contravene the zoning of the site. The location of the restaurant and gym on a site removed from the existing town in an area that would only be readily accessible by private car would represent an unsustainable form of development that contravened policy ATC 1 of the local area plan. The proposed development would therefore 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 reasons and considerations set out below.

REASONS AND CONSIDERATIONS

1. The site is in an area that is zoned under objective 'IN – Industrial and related uses' by the Ardee Local Area Plan 2010-2016, under which restaurants are not permitted. The proposed development would include a restaurant of a significant size and would therefore materially contravene that zoning. The site is separated from the built up area of Ardee by a national primary road where the 100kph speed limit applies and which is only readily accessible by car or other private vehicle. The proposed location of a restaurant and a gym in such an area would represent an unsustainable form of development and would contravene policy ATC1 of the local area plan to strengthen the town centre as the main focus for retail and commercial development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The access road between the roundabout on the N33 and that to its north-east within the site would, upon completion of the proposed and authorised development in the vicinity, represent a transitional zone between the national road network where the 100kph speed limit applies and the internal road network within the authorised business park. A significant proportion of vehicles on that access road are likely to travel at high speed regardless of any speed limit signs and it is not an appropriate location for the proposed access to the filling station forecourt and pedestrian crossing. The proposed development would therefore endanger public safety by reason of traffic hazard.

Stephen J. O'Sullivan
26th July 2016