



An
Bord
Pleanála

Inspector's Report

ABP-305092-19

Development	Retention for a car wash facility, portacabin, advertising signage, and floodlighting.
Location	North Road, Drogheda, Co Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	19/372
Applicant(s)	The Pats Investment Ltd.
Type of Application	Retention permission
Planning Authority Decision	Refuse permission (5 no. reasons)
Type of Appeal	First Party
Appellant(s)	The Pats Investment Ltd.
Date of Site Inspection	05/11/2019
Inspector	Conor McGrath

1.0 Site Location and Description

- 1.1. The appeal site is located on North Road, Drogheda. It comprises a stated area of 0.04ha and is in use as a commercial car wash. The site has frontage to North Road to the northeast and to the access road serving Laburnum Square to the northwest. Laburnum Square comprises a development of semi-detached single-storey houses set around a central open space. A block wall separates the appeal site from no. 1 Laburnum Square to the southwest. The site is hard paved and otherwise bounded by palisade fencing along its road frontage.
- 1.2. The site shares access with an adjoining single storey commercial unit occupied by *Vincent's*, a charity clothing and household goods shop and store. Surrounding uses are generally residential, with a public house to the southeast at the corner of Windmill Road. The appeal site and adjoining commercial premises were formerly jointly occupied by a car sales showroom and car compound.

2.0 Proposed Development

- 2.1. The application seeks Retention Permission for the following components:
 - Use of the site as a hand car wash facility,
 - Portacabin of 9.75-sq.m.,
 - 11 no. signs,
 - 2 no. wall / fence mounted floodlights and two floodlights mounted on 3.5m high poles.

The planning application form indicates that opening hours are 9am – 8pm Monday – Saturday, with a stated average throughput of 40 cars per day. This is inconsistent with the appeal submission which indicates that the facility operates until 10pm.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for the proposed development for five reasons as follows:

1. The car wash is located on lands zoned “Residential Existing” (RE) in the Drogheda Borough Council Development Plan 2011-2017. The development is a non-conforming use which does not take account of this zoning objective. To permit retention would materially contravene the policy provisions of the plan*.
2. Having regard to the nature of the development, the existing pattern of development in the area and proximity to residential properties, retention would seriously injure the residential amenity and depreciate the value of residential properties in the area by reason of noise and general nuisance from the use of power washers on a constant basis as a result of the operation of a commercial premises on the site. To permit retention would set an undesirable precedent for similar developments in the surrounding area.
3. Having regard to the design and appearance of the existing portacabin and the over-proliferation of signs to be retained, it is considered that this would seriously injure the visual amenity of the area and would set an undesirable precedent for similar developments in the area.
4. The planning authority is not satisfied that safe visibility splays can be provided in each direction to the required standards. The development would endanger public safety by reason of a traffic hazard.
5. The planning authority is not satisfied that the development provides sufficient measures to protect surface and ground waters from effluent discharges or that adequate measures are in place for waste water treatment.

*Note: Reference in planning authority reason no. 1 to the Drogheda Environs Plan would appear to be an error.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Retention of the use would be a non-conforming use within the residential zoning. The use materially contravenes the plan and is not acceptable in principle. The over-proliferation of signage is harmful to the visual amenities of the area. The portacabin is out of keeping with the surrounding area.

The powerwasher is located on western boundary adjacent to private amenity of no. 1 Laburnum Square. The dwelling to the north is within 10 of the washing area. The development seriously affects residential amenity due to noise, disturbance and nuisance.

3.2.2. **Other Technical Reports**

Environmental Compliance Section: Further information required on the treatment of car wash effluent for silt and means of discharge.

Infrastructure Office: Further information required on the available sightlines at the site entrance.

3.3. **Prescribed Bodies**

Irish Water: No objection subject to conditions including the requirement to obtain a trade effluent discharge license.

4.0 **Planning History**

PA ref. 06/510247 ABP ref. PL54.222204

Permission refused on appeal for demolition of former car sales showroom / garage & construction of 12 no. apartments over ground floor commercial units and basement car parking; with vehicular access off the Laburnum access road. This site included the adjoining retail unit and the subject appeal site. Reasons for refusal related to:

- Overdevelopment of the site, overlooking of adjoining residential property and overbearing impact on adjoining property.
- Substandard quantity and quality of private open space.

Previous permissions granted to T.K.F. Autos Ltd. on this overall site:

PA ref. 99/510217: Extension to side of existing workshop.

PA ref. 94/510054: Change of signage.

PA ref. 89/510180: Retention of showroom display windows.

PA ref. 86/510027: Conversion of residential premises to car-park compound.

PA ref. 86/510107: Revision of boundary walls.

PA ref. 83/510081: Change of use from stores and office to showrooms and additional first floor office accommodation.

5.0 Policy Context

5.1. Drogheda Borough Council Development Plan 2011-2017

The appeal site is located within the Mell / North Road Neighbourhood Character Area, for which objectives include:

- Reinforce the residential character of long-standing residential neighbourhoods, while supporting the provision and retention of local services and progressively integrate newly developed residential areas both within the Borough and the adjacent Northern Environs into the social, economic and urban fabric.
- Promote the development of appropriate employment-generating land uses, both within the Borough and the adjacent Northern Environs

The appeal site and surrounding lands are zoned *RE: Existing Residential*, wherein the objective is to protect and enhance the amenity of developed residential communities.

Non-permissible uses within this zoning objective include:

- Light industry
- Motor sales / repair
- Petrol Station

Car wash facilities are not specifically referenced in the plan. Section 2.7 notes that uses other than the primary use for which an area is zoned may be permitted in certain circumstances, provided that they are not in conflict with the primary use zoning objectives.

5.2. **Development Management Guidelines**

The guidelines note that S.34(2)(a) requires a planning authority to have regard to its provisions when deciding an application. In deciding whether any development would materially contravene the plan, the authority should consider whether there would be a departure from a fundamental provision of the plan or whether the development would seriously prejudice an objective of the plan.

Where a planning authority has decided to refuse permission for a material contravention application, section 37(2) constrains the Board's freedom to grant permission. The Board may grant permission where it considers that there are conflicting objectives in the development plan, or that the objectives are not clearly stated, as far as the proposed development is concerned.

5.3. **Natural Heritage Designations**

The appeal site is not zoned for any nature conservation purposes. The closest site is the River Boyne and River Blackwater SAC, approx. 400m south and southwest of the appeal site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The first party appeal against the decision to refuse permission raises the following points:

Reason #1:

- This low impact use is in keeping with surrounding uses.
- There was no basis to determine that there will be residential amenity impacts.
- Car wash use is not specifically identified in the zoning matrix as not permissible.
- It should therefore be assessed in the context of the purpose of the zoning objective to protect and or improve residential amenity, with which it accords.
- The zoning objective does not reflect the character of surrounding uses which characterise this major transport corridor.

- There is a pattern of permitted non-conforming uses in this area.
- Permission was recently granted on residentially zoned lands for change of use from car sales to kitchen manufacturing and showroom, on the basis of the commercial planning history on the site 19/409 /ABP-305090-19.
- There is a 33-year history of non-conforming uses on the site without complaint, including use for the parking / storage and washing of vehicles.
- The subject use is a reasonable progression from that use and fits with the surrounding pattern of development.

Reason #2:

- There were no objections to the proposed development and reference to impacts on residential amenity have not been substantiated.
- A noise survey undertaken indicates that the operation of washers and pumps gives rise to an inconsequential increase over baseline noise levels.
- Boundary walls and netting prevent spray impacts outside the site. Further netting can be erected if required on the boundary to North Road.
- Floodlighting faces away from adjoining properties and are turned off after 10pm.
- Traffic movements utilise the existing approved entrance and are inconsequential in the context of traffic volumes on the North Road.

Reason #3:

- There is a history of commercial use on the site.
- The portacabin is not large or visually prominent, is typical of such businesses.
- The applicants are willing to remove all signage except two signs and relocate these to the rear boundary wall.

Reason #4

- The development uses an existing authorised entrance.
- Revised plans demonstrate sight lines in excess of minimum standards.

Reason # 5:

- The volumes of water used each day (1600 ltr) is not substantial.
- Effluent is collected within a silt trap in the car wash area. Silt retained in the trap is removed on a regular basis by a licenced contractor.
- An Aco-Drain collects run-off from the remainder of the site and both of these discharge to the foul sewer.

- There is no petrol interceptor currently installed. It is therefore proposed to install a new petrol and silt interceptor which will augment the existing silt trap.
- A trade discharge license will be sought should this permission be granted.

6.2. **Planning Authority Response**

No comment on the appeal was received from the planning authority.

7.0 **Assessment**

7.1. It is proposed to consider the appeal under the following broad headings:

- Land use zoning
- Residential amenity
- Visual Amenity
- Traffic
- Drainage
- Material Contravention

7.2. **Land use zoning**

7.2.1. The 2011 Drogheda Borough Council Development Plan remains the applicable plan for this area. The appeal site is zoned for residential purposes, to protect and enhance the amenity of developed residential communities. While car wash use is not expressly identified in the land use zoning matrix, it is not practical for this matrix to identify every possible land use or development type therein.

7.2.2. There is a history of commercial uses on these lands. The last permission granted for this site was for a change from residential to use as a car parking compound to accommodate up to 16 no. cars (PA ref. 86/510027). It is not clear when this use ceased on the site, however, it is not considered that the subject car wash use can be regarded as a continuance of that use.

7.2.3. In considering whether this non-residential use materially contravenes the zoning objectives for the site regard must therefore be had to whether the development

would seriously prejudice the objectives of the plan. If its operation on the site would erode or reduce the amenities of surrounding residential properties, then it can be held to materially contravene the zoning objective. I refer to section 7.3 below.

7.3. Residential Amenity

- 7.3.1. The appeal site is bounded by residential uses to the north and west. No. 1 Laburnum Square lies within 6m of the boundary with the appeal site, which comprises a block wall with trees / shrubs behind. No. 14 North Road lies approximately 15m north of the site boundary.
- 7.3.2. The change from a car storage / parking compound to the proposed car wash operation comprises a significant intensification of activity on the site in terms of traffic movements, hours of operation, car washing activities and water and wastewater demands. While these uses have similarities, these do not in themselves justify this change of use.
- 7.3.3. Car wash activities carried out at the site involve the use of pumps and power hoses, as well as vehicle movements which give rise to noise emissions. The result of noise level recording have been submitted as part of the appeal submission. That noise survey was conducted mid-week between 12:40pm and 3.05pm and the appeal argues that the increase in noise levels during operations at the site is inconsequential, due to the existing background noise levels at these locations.
- 7.3.4. I note, however, that the submitted background noise measurements were taken at the northern corner of the site, closest to North Road and at the furthest point from no. 1 Laburnum Square. This is also at a remove from compressors / pumps operating on the site. No details of the equipment employed on the site are provided or what equipment was in operation during measurements. While one measurement is taken at the boundary of the house to the north, it is not stated whether washing operations were underway when this measurement was taken. Given the survey location, it is likely that the primary baseline noise measurements (Mem 3,4,5) were heavily influenced by traffic on North Road and are not necessarily reflective of the ambient noise environment for no. 1 Laburnum Square. Based on my observations on site, there would be a significant difference in noise levels at these locations. I

note also that the facility is stated to operate until 10pm at night when ambient noise levels will be lower.

- 7.3.5. Based on my observations of activities at the site, I conclude that noise from the operation of equipment gives rise to disturbance and nuisance impacts and would be detrimental to adjacent residential amenities. The emissions were clearly audible above background noise from traffic. The activity would therefore be contrary to the objective to protect and enhance the amenity of developed residential communities.
- 7.3.6. With regard to spray from washing activities, I did not observe particular escape of spray or water from the site during operations. While submissions refer to netting on the boundary fence, I observed that this appears to comprise signage rather than netting. While such features do appear to reduce spray escape from the site, it does not contribute to the visual amenities of the area.
- 7.3.7. Flood lighting on the site comprises four lights which are either wall / fence mounted or on 3.5m high poles. No light spill assessment has been undertaken and it is difficult to review the impact of such lighting on residential amenity. In the event of a decision to grant permission, the design of such lighting could be subject to condition to address impacts on adjoining properties.

7.4. Visual Impact

- 7.4.1. The site has been in commercial use for many years, particularly associated with the storage / parking of cars. In terms of visual impacts, the proposed use does not differ significantly from that use. The primary impact arises from the extent and form of signage (11 no.) erected around the site, which is generally inward facing. As part of the appeal, the first party propose the removal of all signage except for two signs to be erected on the back wall of the site. In the event of a decision to grant permission for the proposed retention, I consider that signage on the site could be subject to appropriate conditions.
- 7.4.2. The planning authority decision also refers to the portacabin on the site, however, this is not a prominent feature on the site and in the context of adjacent uses and structure, it would not in itself warrant a refusal of permission.

7.5. **Traffic**

The appeal site is located within the built-up inner urban area, within the 50kph zone. North Road is a busy corridor with frequent HGV movements. Development along this road is predominantly residential in nature, with a significant number of houses having individual vehicular access. On-street parking was otherwise observed to take place.

The subject site has been in commercial use for a considerable time although the proposed use is likely to generate greater volumes of traffic turning movements than previous car storage uses. The development is stated to process 40 no. cars per day on average, presumably more on weekends. During my inspection, however, the adjoining commercial retail and warehouse use generated significantly more turning movements than the car wash.

Having regard to the character of the adjoining road and the availability of adequate sightlines for this zone at the existing entrance to the site. I do not consider that the proposed use would be unacceptable in terms of traffic safety and convenience.

7.6. **Drainage**

The planning authority have raised concerns with regard to the management and disposal of wastewater from the site. The operation has not been operating under a discharge license to date and there are shortcomings in the current management of run-off from operations. The appellants have therefore submitted proposals for the installation of an additional petrol interceptor with silt settlement to supplement the existing drainage system on the site. There is no comment from the planning authority on these proposals, however, subject to the developers obtaining and adhering to the terms of a trade discharge license, I consider that an adequate standard of development could be achieved on the site.

7.7. **Material Contravention**

- 7.7.1. Reason no. 1 of the planning authority decision to refuse permission states that the development would materially contravene the zoning objective of the site. S.37(2)(a) of the 2000 Act, as amended, states that the Board may in determining an appeal

under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

- 7.7.2. S.37(2)(b) states that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—
- (i) The proposed development is of strategic or national importance,
 - (ii) There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
 - (iii) Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under [section 28](#), policy directives under [section 29](#), the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
 - (iv) Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

7.7.3. With regard to these matters, I would comment as follows:

- (i) The development is not of strategic or national importance
- (ii) The zoning objective is clear that its purpose is to protect and enhance the residential amenities of developed communities. There is no conflicting objective relating to the use proposed for retention in this case. Section 2.7 of the development plan provides for uses other than the primary use for which an area is zoned provided that they are not in conflict with the primary use zoning objectives.

Having regard to the conclusions under Section 7.3 above, I conclude that the development would be contrary to the protection and enhancement of residential amenities and would therefore materially contravene this objective.

- (iii) There is no basis to conclude that permission should be granted having regard to national or regional policy guidance or directives, government policy or other obligations of the local authority.
- (iv) The relevant development plan remains the 2011 Drogheda development plan. I am not aware of any planning precedent or pattern of development in this area since its adoption which would indicate that permission should necessarily be granted in this case.

The appeal refers to a recent decision on the Dublin Road on the southern side of the town for a change of use contrary to the residential zoning of the site (19/409 /ABP-305090-19). I have reviewed that case and do not consider that it constitutes a precedent for the granting of permission in this instance. In this regard, I have particular regard to the proximity of the subject development to adjoining residential properties (no. 1 Laburnum Square).

8.0 Appropriate Assessment Screening

- 8.1. The proposed development is located within the urban area and currently discharges to the foul sewer network. The appeal site is not within or adjacent to any European Natura sites. The closest site is the River Boyne and River Blackwater SAC, approx. 400m south and southwest of the appeal site. There is no direct connection to any Natura Site.
- 8.1.1. Having regard to the nature and scale of the development, its location within the built up urban area and lack of connection to any European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

9.1. That permission be refused for the proposed development.

10.0 Reasons and Considerations

1. The site is located in an area zoned objective (RE) Residential Existing in the current development plan for the area. The Board considers that the proposed development would materially contravene the zoning objective, as set out in this plan. The Board pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed car wash use to be retained on the site would result in the intensification of commercial activity on this site and the Board considers that the retention of such use would give rise to noise and disturbance impacts on adjoining residential properties. The development would therefore fail to accord with the land use zoning objectives of the current development plan for the area, which are to protect and enhance those residential amenities. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Conor McGrath

Senior Planning Inspector

06/11/2019