



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311621-21

#### Development

Petrol Filling Station to include:  
A forecourt area with 3 fuel pump islands, illuminated forecourt canopy over, underground fuel storage tanks, associated pipework and over-ground fill points and vents, electric car charging points and associated infrastructure.

#### Location

Site at Holywell Distributor Road,  
Mountgorry, Swords, Co. Dublin.

#### Planning Authority

Fingal County Council.

#### Planning Authority Reg. Ref.

F20A/0535.

#### Applicant(s)

Christy Dowler.

#### Type of Application

Planning Permission.

#### Planning Authority Decision

Grant with conditions.

#### Type of Appeal

Third Party.

#### Appellant(s)

1. Francis and Helen Langton.
2. Martin Grogan.

**Observer(s)**

Annette McGuckin & Others.

**Date of Site Inspection**

28<sup>th</sup> day of March, 2022.

**Inspector**

Patricia-Marie Young.

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## 1.0 Site Location and Description

1.1. Having inspected the 0.23ha appeal site which is located in the Townland of 'Mountgorry', in Sword, Co. Dublin, I consider that the Site Location Description provided by the Boards Inspector for appeal case ABP-301445-18 despite the expanded site area is still applicable. It reads as follows:

*"1.1 ... The site, which is triangular in shape, is located on the northern side of the Holywell Distributor Road, a local road which links the R125 at Airside to the R106 Malahide Road in Swords. A roundabout immediately to the east of the appeal site connects the Distributor Road with Feltrim Road via an overpass over the M1 Motorway, while an entrance on the southern side of the Distributor Road, opposite the appeal site, serves a residential estate known as Melrose Park.*

*1.2 The appeal site is currently undeveloped and comprises a grassed area, with a significant downward slope from south east to north west. A grass verge with street trees, crash barrier and footpath is located between the appeal site and the Distributor Road to the south.*

*1.3. Feltrim Business Park is located to the north of the appeal site and a large pharmaceutical plant is located to the west. Melrose Park and another large residential development known as Holywell are located to the south of the appeal site. An Applegreen petrol filling station, which includes a number of food offerings, is located c. 700m to the north of the appeal site."*

## 2.0 Proposed Development

2.1. Planning permission is sought for a petrol filling station which is described as consisting of:

- A forecourt area with 3 no. fuel pump islands, illuminated forecourt canopy over, underground fuel storage tanks, associated pipework and over-ground fill points and vents, electric car charging points and associated infrastructure;
- An amenity building of 291m<sup>2</sup> gross floor area comprising a convenience shop (100m<sup>2</sup> net retail area), restaurant/cafe area with 1 no. food offering with hot and cold meals and refreshments for sale for consumption on and off the premises, associated

customer seating, customer WCs, Back of House area with food preparation areas, ancillary office, staff welfare facilities, storage and plant areas;

- New vehicular entrance and exit, associated traffic signage, internal and external traffic calming measures;
- On-site facilities including air/water services, car and bicycle parking;
- Illuminated and non-illuminated operator signage including main ID Totem sign, canopy and facade signage; and,
- All associated site works and services including site drainage, lighting, landscaping and boundary treatments.

2.2. The initial application is accompanied by the following documentation:

- Planning Report.
- Engineering Report.

2.3. On the 24<sup>th</sup> day of August, 2021, the applicant submitted their **further information response**. This submission included revised drawings which mainly related to drainage, landscaping, revised layout, additional fire safety features, reduction in height of the main freestanding sign to a maximum height of 5m. This response is also accompanied by the following documentation:

- Planning Statement.
- Acoustic Report.
- Air and Odour Emissions Management Plan.
- Construction Environmental Waste Management Plan.
- Groundwater Levels Report.
- Photomontages.

The Planning Authority considered that the revisions were not significant in their nature, scale, and extent. As such they did not seek the applicant provide new public notices.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. By order dated the 16<sup>th</sup> day of December, 2021, planning permission was **granted** for the proposed development subject to 17 no. conditions. Including:

- Condition No. 2: Restricts the retail floor area to 100m<sup>2</sup> net.
- Condition No. 3: Sets out that external storage of goods for sale is not permitted.
- Condition No. 4: Restricts take-away sales of food to be ancillary to the main petrol station use.
- Condition No. 5: Restricts opening hours.
- Condition No. 6: Restricts signage, illumination and the placement of security shutters.
- Condition No. 7: Requires compliance with the requirements of 'Design, Construction, Modification, Maintenance and Decommissioning of Petrol Filling Stations' (Blue Book), APEA/EI.
- Condition No. 8: Deals with the matter of light spill.
- Condition No. 9: Requires compliance with the Transportation Section recommendations.
- Condition No. 10: Requires verification of maximum ground water level; soil testing; adherence with the standards and codes set out in agreement with Irish Water; restricts surface/rainwater from entering the foul water system; and, compliance with the 'Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0', 2006.
- Condition No. 11: Requires compliance with the Environmental Health Officer Air & Noise Unit recommendations.
- Condition No. 12: Deals with the matter of Litter.

- Condition No. 13: Restricts music and other amplified sound.
- Condition No. 14: Requires compliance with the requirements of the Parks & Green Infrastructure Division.
- Condition No. 15: Deals with the matter of spillage on and damage to adjoining public roads arising from construction works.
- Condition No. 16: Restricts the hours of construction works.
- Condition No. 17: Section 48 financial contribution.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The **final Planning Officer's report**, undated, is the basis of the Planning Authority's decision. This report notes the issues raised by third parties and the Planning Authority's Departmental Reports relating to the applicant's further information response. It also includes the following comments in relation to their examination of the applicant's further information response:

- The retailing element be capped at 100m<sup>2</sup>.
- The improvement pedestrian and entrance arrangements are deemed acceptable.
- Reference is made to the interdepartmental reports.
- The planting of mature trees and shrubbery to screen the retaining wall is welcomed by the Planning Authority.
- No adverse visual amenity of the area would arise from the proposed development.
- Reference is made to the Dublin Fire Officer's recommendations.
- The Construction Environmental & Waste Management Plan is acceptable.
- The reduction in height of the free-standing sign is acceptable.
- Concludes with a recommendation to grant permission subject to conditions.

The **initial Planning Officers report**, dated the 17<sup>th</sup> day of December, 2020, concluded with a request for the following additional information:

- Item No. 1: Sought that the applicant demonstrate how the proposed development would serve the local working population only and would not become a destination in its own right undermining the role and function of nearby Local Centres and Swords town centre.
- Item No. 2(a): Required a revised layout to minimise the crossover of the public footpath and the relocation of the car service area.
- Item No. 2(b): Requested the exploration of the installation of a safe pedestrian crossing from the south to access the subject site.
- Item No. 3: Sets out the additional information sought by the Planning Authority's Environmental Health Officer.
- Item No. 4: Sets out the additional information sought by the Planning Authority's Water Services Section.
- Item No. 5: Requires a Landscaping Plan including improved planting and boundary treatments.
- Item No. 6: Required details of the proposed retaining wall structure and clarification on its associated landscaping.
- Item No. 7: Sets out the additional information sought by the Fire Officer from Dublin Fire Brigade.
- Item No. 8: Requires the applicant to provide details of any proposed exportation/importation of soil and stone material to the site.
- Item No. 9: Requires revised drawings showing a revised freestanding sign at the entrance of the site and restricts its height to 5m.

### 3.2.2. Other Technical Reports

**Environment Section (Waste Enforcement & Regulation):** Final Report. No objection.



**Transportation Planning Section:** Final Report raises no objection subject to safeguards.

**Water Services Department:** Final Report concludes with a request for **clarification of additional information.**

**Parks Division:** Final Report concludes with no objection subject to safeguards.

### 3.3. Prescribed Bodies

- 3.3.1. **Irish Water:** No objection, subject to safeguards.
- 3.3.2. **National Transport Authority:** No comments.
- 3.3.3. **Irish Aviation Authority:** No observations.
- 3.3.4. **Transport Infrastructure Ireland:** No observations.
- 3.3.5. **Dublin Fire Brigade:** Additional information requested.

### 3.4. Third Party Observations

- 3.4.1. Several Third-Party observations were received by the Planning Authority during the course of their determination of this application. Though several of the substantive issues raised by the two appellants in their separate appeal submissions to the Board are overarching concerns contained within these submissions I note also the following concern:

- The potential of the development to compromise the boundary and the security of the adjoining MSD Biotech property.

## 4.0 Planning History

### 4.1. Site

**ABP-301445 (P.A. Ref. No. F17A/0708):** On appeal to the Board planning permission was **refused** for a development that was amended on foot of further information to consist of the construction of a petrol filling station comprising of:

- (i) A two-storey amenity building (452m<sup>2</sup>) comprising retail area (100m<sup>2</sup>), 2 No. hot food deli offers, internal seating area, ancillary food preparation area, customer WC area, storage staff and plant areas;
- (ii) Forecourt canopy, 4 No. fuel dispensing islands, 4 No. underground fuel storage tanks and associated pipework and overground fill points;
- (iii) 15 No. on-site car parking spaces, 3 No. bicycle parking spaces and services area;
- (iv) 1 No. main identification totem sign;
- (v) Company signage to building facades, canopy and site;
- (vi) Vehicular entrance, exit and associated internal and external traffic calming measures;
- (vii) Boundary treatment;
- (viii) All associated site, drainage, boundary, landscaping and development works.

For the following stated reasons and considerations:

- “1. *The subject site is situated on land zoned for General Employment in the Fingal County Development Plan 2017-2023. Such zoning permits, in principle, petrol stations and restaurant/cafes to serve the local working population. Having regard to the scale and form of the proposed development, which includes the provision of a restaurant/café with food offerings and communal dining, and offices uses, it is considered that these proposed uses would be the primary use, with the petrol filling station representing a subsidiary use, and in particular would provide a restaurant/café which would extend beyond the local working population. The proposed development, would, therefore, contravene materially the land use zoning objective for the site and would be contrary to the proper planning and sustainable development of the area.*
2. *The proposed development is situated on a site at a prominent location at the entrance to Swords town from Kinsealy, Feltrim and parts of Malahide, and immediately adjoining an important distributor road serving a wide catchment to the east. Having regard to its scale and form which includes food offerings, communal seating and office uses, it is considered that the proposed development would undermine the role and function of the nearby Local*

*Centres and detract from the role and function of Swords Town as the primary retail centre. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

3. *Having regard to its location in close proximity to the Holywell Distributor road/Feltrim road roundabout junction, the alignment of the distributor road and the restricted nature of the proposed access and egress arrangements, combined with the likely level of traffic that would be generated by the envisaged non-motor fuel sales uses, it is considered that the proposed development would endanger public safety by reason of traffic hazard through obstruction of road users and the potential for conflicts between vehicular and pedestrian movements along the site frontage and in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
4. *It is an objective of the planning authority, as set out in the Fingal Development Plan under Objective Z04, to have regard to development in adjoining zones in particular more environmentally sensitive zones, in assessing development proposals in the vicinity of zoning boundaries. The scale and nature of the development proposed, including the significant level of food offering would result in a significant intensity of development on site, which when coupled with the hours of operation of the facility would give rise to significant levels of disamenity for nearby residential development. The proposed development would, therefore, seriously injure the residential amenities of the area and would be contrary to the proper planning and sustainable development of the area.”*

## **5.0 Policy & Context**

### **5.1. National Planning Context**

#### **5.1.1. Retail Planning Guidelines for Planning Authorities, 2012.**

These guidelines set out an overarching objective to enhance the vitality and viability of city and town centres in all their functions through sequential development. They include a range of caps on the size of convenience and retail warehouse stores with

the aims of ensuring both competitiveness in the retail sector and strong city and town centres.

These guidelines set out the following key policy objectives:

- Ensuring that retail development is plan-led;
- Promoting city/town centre vitality through a sequential approach to development;
- Securing competitiveness in the retail sector by actively enabling good quality development proposals to come forward in suitable locations;
- Facilitating a shift towards increased access to retailing by public transport, cycling and walking in accordance with the Smarter Travel strategy; and
- Delivering quality urban design outcomes.

They set out a general presumption against large out-of-town retail centres, in particular those located adjacent or close to existing, new, or planned national roads/motorways.

Section 2.4.3 of the Guidelines states that there is a floorspace cap for petrol filling station shops of 100m<sup>2</sup>, irrespective of location.

Section 4.11.9 deals with retailing and motor fuel stations. It states: *“convenience shops are part of the normal ancillary services provided within motor fuel stations. In rural areas, they can have a very important function as the local shop or small supermarket. However, such shops should remain on a scale appropriate to the location, and their development should only be permitted where the shopping element of the station would not seriously undermine the approach to retail development in the development plan. 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.”*

Annex I of the guidelines defines net retail floorspace as follows:

Annex 1 sets out a glossary of terms, and defines ‘net retail floorspace’ as: *“the area within the shop or store which is visible to the public and to which the public has access including fitting rooms, checkouts, the area in front of checkouts, serving counters and*

*the area behind used by serving staff, areas occupied by retail concessionaires, customer service areas, and internal lobbies in which goods are displayed, but excluding storage areas, circulation space to which the public does not have access to, cafes, and customer toilets”.*

These guidelines also define: “forecourt retailing” as a “mini-supermarket linked to petrol filling stations”.

#### **5.1.2. Project Ireland 2040 - Building Ireland’s Future National Planning Framework.**

A planning framework to guide development and investment over the coming years. It includes shared goals of ‘sustainable mobility’ and ‘transition to a low carbon and climate resilient society’, including the need to progressively electrify our mobility systems and move away from polluting and carbon intensive propulsion systems, and the need for a shift from predominantly fossil fuels to predominantly renewable energy sources.

#### **5.1.3. National Development Plan, 2018 - 2027.**

The companion to the National Planning Framework, this is a ten-year strategy for public capital investment, which includes under the heading ‘transport’ that there will be at least 500,000 electric vehicles on the road by 2030 with additional charging infrastructure to cater for planned growth; and that no new non-zero emission vehicles to be sold in Ireland post 2030.

### **5.2. Regional Planning Context**

#### **5.2.1. Regional Retail Strategy for the Greater Dublin Area 2008-2016**

The Regional Retail Strategy for the Greater Dublin Area 2008-2016 (RSGDA) set out a retail hierarchy for the GDA. The RSGDA reviews changes in expenditure, economic growth and retail markets since the previous retail strategy in 2001.

Table 6.1 lists Swords as a Level 2 – Major Town Centre & County Town Centre under the retail hierarchy for the Greater Dublin Area (GDA).

Section 4.49 notes the evolution of petrol stations over the past number of decades to the current situation where petrol station shops have deli counters and sell a range of convenience goods including hot food and wine.

They also note the Retail Planning Guidelines recommendations regarding the secondary nature of such shops and the recommended maximum floorspace of 100 sq.m. net retail sales area.

Section 4.50 states: *“petrol station shops provide an essential local retail service as in many locations they may be the only shop or in some instances the only shop opening outside of regular hours. In addressing the changing nature of petrol station shops it is important to take into account both the primary role of the shop as fuel sales, the traffic implications of expansion of retail; the impact of any expansion on other shops and the need locally for such expansion; as well as the impact on adjoining properties and the local environment in general.”*

### 5.3. Local Planning Context

5.3.1. The **Fingal Development Plan, 2017-2023**, is the operative plan.

Under the said Development Plan the appeal site and the adjacent areas to the north and west are zoned ‘GE’, General Employment. This zoning objective seeks to provide opportunities for general enterprise and employment. The lands on the southern side of the Holywell Distributor Road are zoned a mix of Residential (‘RS’) and Open Space (‘OS’).

Under the said Development Plan ‘Petrol station’ is listed as being permitted in principle on land zoned ‘GE’. In addition, ‘Restaurant/Café’ and ‘Retail – Local < 150 sqm nfa’ are also listed as being permitted in principle, with a footnote stating that these are to serve the local working population only.

The Development Plan states that: *“petrol stations, while necessary, have the potential to cause disturbance, nuisance and detract from the amenities of an area and as such, proposals for new or extended outlets will be carefully considered. Motor fuel stations will not generally be encouraged within the core retail area of urban centres or in rural areas”*.

Objective DMS109 of the Development Plan is of relevance to the development sought under this application. It indicates that development proposals for petrol stations shall address the following:

- Development proposals will be required to demonstrate that noise, traffic, visual obtrusion, fumes and smells will not detract unduly from the amenities of the area and in particular from sensitive land uses such as residential development.
- Motor fuel stations should be of high-quality design and integrate with the surrounding built environment. In urban centres, where the development would be likely to have a significant impact on the historic or architectural character of the area, the use of standard corporate designs and signage may not be acceptable.
- Forecourt lighting, including canopy lighting, should be contained within the site and should not interfere with the amenities of the area.
- Forecourt shop should be designed so as to be accessible by foot and bicycle, with proper access for delivery vehicles. The safety aspects of circulation and parking within the station forecourt should be fully considered. Retailing activities should be confined to the shop floor area, except in the case of sales of domestic fuel, where some external storage may be permissible.
- The sale of retail goods from petrol stations should be restricted to convenience goods and only permitted as an ancillary small-scale facility. The net floorspace of a fuel station shop shall not exceed 100m<sup>2</sup>. Where permission is sought for a retail floorspace in excess of 100m<sup>2</sup>, the sequential approach to retail development shall apply.
- Workshops for minor servicing (e.g., tyre changing, puncture repairs, oil changing) may be permitted in circumstances where they would not adversely impact the operation of the primary petrol station use and local amenities, particularly with regard to proximity to dwellings or adjoining residential areas.
- Motor fuel stations and service areas in proximity to the National Road network will be assessed with regard to the Spatial Planning and National Roads Guidelines for Planning Authorities DoECLG, 2012.

Objective ED93 of the Development Plan is of relevance. It indicates that high quality sustainable design, permeability and/or cyclist friendly environments will be encouraged by the Council on land zoned 'GE'.

Objective DMS111 of the Development Plan is of relevance. It indicates that signage will be evaluated in relation to the surroundings and features of the building and

structures on which it is to be displayed, the number and size of signs and the potential for the creation of undesirable visual clutter.

Table 12.8 of the Development Plan sets out the car parking standards.

#### **5.4. Natural Heritage Designations**

- 5.4.1. The appeal site is not located within or immediately adjacent to any site with a natural heritage designation. The closest such sites are the Malahide Estuary SAC and SPA (Site Codes 000205 and 004025, respectively), which are circa 1.8km to the north east. Malahide Estuary is also a pNHA.

#### **5.5. EIA Screening**

- 5.5.1. The proposed development is not of a class specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended) and in accordance with the Schedule 7 of the Regulations the proposed development does not require sub threshold EIA. Having regard to the nature and scale of the proposed development comprising a new petrol filling station, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

- 6.1.1. The Board received the following separate Third Party Appeals in relation to the Planning Authority's decision to grant permission for the proposed development set out in Section 2.1 of this report above and as revised by the applicant's further information response received by the Planning Authority on the 24<sup>th</sup> day of August, 2021:

1. Francis & Helen Langton, on the 11<sup>th</sup> day of October, 2021.
2. Martin & Hazel Grogan on the 13<sup>th</sup> day of October, 2021.

These are summarised separately below.



6.1.2. The Third-Party appeal submission of Francis & Helen Langton can be summarised as follows:

- The site is zoned 'GE' and whilst this zoning permits in principle petrol stations and restaurants/café land uses it is considered that when regard is had to the scale and form of the proposed development that the food offerings and the communal dining would be the primary use with the petrol station representing a subsidiary use. It is also considered that the food offering would extend beyond the local working population. Therefore, the proposed development would contravene the land use zoning objective for the site.
- While the scale of the development has been reduced it is considered that this reduction is not sufficient to overcome the Boards reasons for refusal for the previous petrol filling station sought at this site.
- This area is well serviced with local amenities.
- This development would undermine the role and function of the nearby Local Centres and would detract from the role as well as function of Swords Town.
- The proposed development if permitted, would endanger public safety by reason of a traffic hazard by way of the potential obstruction of road users and the potential for conflict to arise between vehicular movements and vulnerable road users along the frontage of the site.
- The existing road is not fit for purpose to accommodate the additional entry/exit points proposed.
- The proposed development is located in an area of transitional land use zoning and where the proposed development, if permitted, would give rise to significant injury to residential amenities by way of the various nuisances that would arise from it.
- Reference is made to Climate Action Plan, 2019, and climate change. Continuing to approve petrol stations is contradictory to government policy.
- This area is well served by petrol stations and this additional station is not required.
- A 5m sign is not required at such an elevated position and it would give rise to visual as well as residential amenity diminishment.

- The Acoustic Report is disingenuous in its findings due to it being conducted during the height of Covid 19 restrictions.
- The Gaybrook Stream features prominently in the history of Yellow Walls and it flows to the Broadmeadow estuary at Cave's Marsh. No environmental assessment referencing this watercourse in the documents provided.
- Multiple third-party objections were received by the Planning Authority to the proposed development.
- The Board is sought to overturn the Planning Authority's decision.

6.1.3. The Third-Party appeal submission of Martin & Hazel Grogan can be summarised as follows:

- This development threatens the safety of children in this area.
- It is disingenuous for the applicant to resubmit this application again for a petrol station despite its reduced size at an already dangerous junction and roadway.
- This development is located opposite to the entrance serving Melrose Park estate with the estate entrance contended to be in chaos each day in terms of getting in to and out of the estate as cars sling shot the roundabout at speed.
- Many serious crashes have occurred here with a serious accident in recent days.
- Since the previous application was rejected another two Educate Together schools have been constructed within 150m of this dangerous section of road.
- The bus stop serving these schools is located in close proximity to the site.
- The site is located off an elevated road and this development would give rise to serious security and privacy issues for them and their neighbours.
- There is a 24-hour garage within less than a kilometre of the site. This garage has brought about many anti-social and loud noises. There are also another three garages within a few kilometres of the site.
- The lights from the proposed development are high up and would shine downwards on the appellants home and neighbouring homes.
- The elevated nature of the proposed development would give rise to overlooking of their property and other residential properties in its vicinity.

- If this application is permitted, it would have a long-lasting negative effect on the area.
- This application is not too different to the previous proposal refused on appeal to the Board.

## 6.2. Applicant Response

6.2.1. The Applicants Response consists of two separate responses separately addressing each of appeal submissions received by the Board.

6.2.2. The applicant's response to Martin & Hazel Grogan's appeal submission is summarised as follows:

- This appeal submission is without substance and does not raise any significant objection to the proposed development that was not already comprehensively considered and dismissed by the Planning Authority in their assessment of this application.
- The comprehensive information submitted with the application and with the applicant's further information response demonstrates that the proposed new petrol station is entirely compliant and is an appropriate form of development for this site as well as its setting. It is in keeping with the proper planning and sustainable development of the area.
- The site is located within a heavily developed and urbanised area with large scale commercial and industrial buildings immediately to the north, north-west and east.
- The residential estates making up the Holywell and Melrose Park neighbourhoods are separated from the appeal site by the Holywell Distributor Road to the south and the M1 motorway and Feltrim Road to the south-east. This road is wide, well illuminated and tree lined comprising of a two-lane road with bus stops, footpaths and cycle lanes on either side. It is a clear physical, visual and functional barrier between the site and the adjoining industrial/commercial buildings to the north and these residential areas.
- The appeal site does not sit on top of the Gaybrook Stream, and the proposed development would not give rise to any direct or indirect impact on it or any Natura 2000 sites.

- The proposed development would serve its passing traffic.
- The Planning Authority made their decision with full cognisance of the presence of schools in its vicinity.
- Between 2005 and 2016 there was no recorded accidents in the vicinity of the appeal site. This contradicts the appellants contention that this is a dangerous stretch of road.
- The proposed development potential impact upon the surrounding road network has been assessed by the Planning Authority and they are satisfied that it will not significantly increase the volume of traffic already on the surrounding network.
- The appellant fails to clarify what security risks the proposed development would give rise to.
- This is not a 24-hour petrol station, and it is not an unmanned petrol station. It is therefore not accepted that it would give rise to anti-social behaviour.
- The proposed development, if permitted, would not give rise to any undue noise, odour or other nuisance that would be detrimental to residential amenities.
- The accompanying Construction Environmental & Waste Programme sets out key environmental obligations and waste management procedures to be applied during construction and operation.
- The appellant's property is located next to two major roads within a heavily urbanised edge of town location. Their amenities are therefore defined by their proximity to these existing features and influences.
- The extent of existing boundary walls, trees, buildings and other features in the rear gardens of adjoining residences will obscure the proposed development and screen any detrimental impact from this new light source.
- There is sufficient justification to dismiss this appeal and for the Board to uphold the Planning Authority's decision to grant permission for the proposed development.

6.2.3. The applicant's response to Francis & Helen Langton appeal submission is summarised as follows:

- This appeal submission is without substance and does not raise any significant objection to the proposed development that was not already comprehensively

considered and dismissed by the Planning Authority in their assessment of this application.

- Petrol stations are markedly different in comparison to years passed not only in terms of retail function but also in terms of scope and quality of services provided to customers.
- The proposed developments layout and scope is not an excessive or inappropriate scale to its location and will not directly compete with the very different retail functions of local centres and Swords town centre.
- The Retail Planning Guidelines clearly state that the planning system should not be used to inhibit competition, preserve existing commercial interests, or prevent innovation.
- The appellants exaggerate the food offer proposed. The proposed food offer is an integral component of any modern petrol filling station template. It is not the primary function, nor is it the principal revenue generator of the proposed development sought under this application.
- The Planning Authority were satisfied with the limited scale and scope of the proposals food offer having had regard to relevant planning policy provisions.
- The Board's concerns in relation to traffic under the previous application sought related to the excessive level of food offer proposed and they considered it overshadowed the proposed petrol station use.
- The additional information response has reduced the entrance and exit widths to minimise pedestrian crossings. This reduced width allows safe access and egress by fuel tanker.
- The Planning Authority was satisfied that the proposed development would not endanger road users, cyclists, or pedestrians.
- The design allows for future transformation for the easy adaptation to an e-charging station.
- The goals and objectives of the Climate Action Plan and Interim Climate Actions documents are laudable but do not constitute reasonable or robust justification to refuse permission

- The Gaybrook Stream does not flow into European sites as is suggested.
- The Gaybrook Stream is piped/culverted for a considerable length as it traverses the adjoining MSD Biotech factory site to the west, the Feltrim Business Park to the north, the M1 motorway and Swords Enterprise Park to the east before opening up between Aspen Park and Gainsborough Green residential developments further eastwards.

### **6.3. Planning Authority Response**

6.3.1. The Planning Authority's response can be summarised as follows:

- The Board is requested to have regard to their Planning Officer's and Internal Departmental Reports.
- The Gaybrook Stream in this location is culverted and its exact location is unknown, and it is possible that it has been encompassed within the general surface water drainage network of the area.
- The Water Services Section does not think that there is any reason to believe that this stream is culverted through this site and there is no evidence to prove that this is the case. Therefore, the burden of proof is with the appellant to demonstrate this contention.
- In the event of the Planning Authority's decision is upheld it is requested that Condition No. 17 be included in the Boards determination.

### **6.4. Observations**

6.4.1. The observation received by the Board can be summarised as follows:

- There is no justification for the development on the grounds cited by the applicant.
- The site sits on top of the old Gaybrook Stream that flows 2km into Malahide Estuary (SAC: 000205) at Caves Marsh which is a Natura 2000 site. The Planning Authority has failed to assess and consider if locating a petrol station directly on top of the Gaybrook Stream would give rise to any significant adverse direct or indirect impact on the integrity of Malahide and the Swords/Broadmeadow Estuary's habitat

and wildlife having regard to the nature of the development and the separation distance to the Natura 2000 site.

- The proposed development materially contravenes the 'GE' zoning objective. This zoning limits retail, restaurant and deli use to the local working population only.
- The site is a corner site and is physically separated from adjoining 'GE' zoned areas by road and direct pedestrian links.
- The net retail floor area exceeds 100m<sup>2</sup> when you factor in the dimensions of the ATM retail room.
- The Planning Statement submitted on behalf of the applicant shows that the catchment is within 400m from the site including the surrounding residential areas. Within this catchment is also the Portmarnock/Malahide Educate Together Secondary School and Holywell Educate Together Primary School.
- The applicant is not merely targeting this 400m catchment area.
- The applicant has not supported that they would be able to support the refuelling of all vehicles relied upon by industry and land uses within the 'GE' zoned land.
- The applicant has failed to demonstrate that there is an identified need and demand by employees in the 'GE' zoned area for an additional petrol station and food offering within a short distance from the Malahide/Mountgorry Roundabout.
- It is incorrect of the applicant to suggest that there are limited fuel services available in the area.
- The MSD facility adjoining the site has a subsidised food facility.
- There are numerous food outlets within the surrounding area.
- The number of car parking spaces has increased to 16 under this application from 14 in the refused previous application on this site for a petrol filling station. The expectation to be drawn from this is a higher parking demand and contradicts that it is expected that much less traffic would be generated by this proposal in comparison with the previous proposal that was refused.
- There is an in-ordinate amount of back of house facilities in this application as well as WC facilities.

- The seating area has not been significantly reduced.
- It is not accepted that the commercial retail and food components of this development would be ancillary.
- The proposed development is designed to catch passing motor trade from the M1 and Swords area; the population in local residential estates and school going children; users of public transport routes and not employees of the GE zoned land.
- Other industry reports in relation to the evolution of petrol filling stations contradicts the arguments put forward by the applicant in relation to retail and food offerings being subsidiary.
- The proposed development would give rise to poor disamenity for pedestrians.
- The four signs on the canopy, the facades of the amenity buildings and structures together with other signage would result in a proliferation of signage at a prominent location and have a negative impact on the visual amenity of the area.
- This development is at variance with the requirement to prevent an oversupply or dominance of fast-food outlets, takeaways, off licences and betting offices in the main streets of towns, villages, shopping centres and local urban centres.
- This development contravenes Objective DMS108 of the Development Plan in that no consideration was given to the location of the quick service/fast casual food providers relative to both primary and secondary schools in this area.
- The Acoustic Noise Report does not accurately represent the day-to-day existing noise levels in the areas surveyed. These surveys were conducted during a time when public health restrictive measures associated with a Level 5 lockdown
- The proposed development represents overdevelopment at a prominent location which would appear cramped and would be visually incongruous diminishing the amenities of the surrounding area.
- This development would give rise to direct overlooking of residential properties in its vicinity.
- The sightlines are restricted due to the road alignment.
- The site is located on a dangerous bend.



- This development would result in the generation of conflicting traffic movements and would endanger pedestrians and cyclists.
- The Board should have regard to the proximity of schools to the proposed development.
- It is already extremely difficult to exit from Melrose Park residential estate.
- The Boards previous assessment in relation to traffic safety is concurred with and is still applicable to this development sought.
- The applicant has not identified an area on the site for personnel associated with the construction phase.
- A grant of permission would be at variance with Fingal County Councils Climate Action Plan, 2019 – 2024 which seeks to encourage modal shift away from private cars to more sustainable alternatives.
- The Planning Authority in granting permission for this development gave no regard to late night nuisances that would arise from it, if permitted.

## 7.0 Assessment

### 7.1. Preliminary Comment

- 7.1.1. This appeal case relates to an application for a petrol filling station comprising of a forecourt area with 3 fuel pump islands, illuminated forecourt canopy over, underground fuel storage tanks, associated pipework and over-ground fill points and vents, electric car charging points and all associated infrastructure including signage, drainage, landscaping and boundary treatments at a site with roadside frontage onto Holywell Distributor Road, immediately to the south-west of its roundabout junction with Feltrim Road in the Townland of ‘Mountgorry’, Swords, County Dublin.
- 7.1.2. Having inspected the site, had regard to the information presented by all parties to this appeal and in the course of the planning application, I consider that substantive planning issues relating to the assessment of this appeal case can be considered under the following broad headings:
- Principle of the Proposed Development and the Planning History of the Site
  - Access

- Residential Amenity Impacts
- Other Matters Arising
- Appropriate Assessment

7.1.3. For clarity my assessment is based on the proposed development as revised by the applicant's further information response, which was received by the Planning Authority on the 24<sup>th</sup> day of August, 2021.

7.1.4. This is due to the fact that this response included more robust detailed information in relation to the proposed development sought.

7.1.5. It also included qualitative improvements to the design and layout, including minor revisions to the layout in order to reduce potential for conflict to arise between vulnerable road users at the proposed access and exit points onto Holywell Distributor Road, clarification and landscaping improvements relating to the retaining wall feature, improved boundary treatments through to reduction in height of the proposed free-standing sign.

7.1.6. As such I consider that the applicants further information response puts forward qualitative improvements to the initial proposal submitted alongside improves the information in relation to the various components of the proposed development that allows for a more informed assessment of the proposed development to be carried out.

7.1.7. Before I commence my assessment, I consider it appropriate to address the applicant's contention that the appellants appeals are without substance and should be dismissed. On this particular concern I consider that both appellants in their appeal submissions to the Board raise valid planning issues and I consider that this appeal before the Board is valid, with foundation, and with substance. I therefore do not consider either Third Party Appeal should be dismissed, and I advise the Board to assess this application *de novo*.

## 7.2. **Principle of the Proposed Development and the Planning History of the Site**

7.2.1. The applicant is seeking permission for a petrol station at an appeal site with a stated 0.23ha area. The subject site consists of a vacant and overgrown parcel of land that occupies an elevated position between the Feltrim Business Park, which I note bounds the site to the north, and MSD Biotech Dublin site, which I note bounds the site to the

west. It's curving in alignment southern boundary fronts onto Holywell Distributor Road to the south west of its roundabout junction with Mountgorry Way and the Feltrim Road in close proximity to the M1 corridor which lies to the east. The Holywell Distributor Road and the aforementioned roundabout is one of the key entry points to Swords and its surrounding Dublin city suburban areas of Feltrim and Kinsealy. In addition, the roundabout provides connection to Malahide via Feltrim Road/R106.

- 7.2.2. The proposed development as set out previously consists of a forecourt area with 3 fuel pump islands, illuminated forecourt canopy over, underground fuel storage tanks, associated pipework and over-ground fill points and vents, electric car charging points and all associated infrastructure including signage, drainage, landscaping and boundary treatments at a site with roadside frontage onto Holywell Distributor Road which the applicant also proposes two separate entrances to.
- 7.2.3. The appeal site forms part of a larger parcel of land zoned 'GE', General Employment, under the Development Plan and it is located on the south easternmost corner of this parcel of general employment zoned land.
- 7.2.4. The land use objective of 'GE' zoned land as provided for under the Development is to provide opportunities for general enterprise and employment.
- 7.2.5. In addition, the Development Plan sets out that the vision for such land is to facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment. It also states that these areas should be highly accessible, well designed, permeable, and legible.
- 7.2.6. The proposed petrol station according to the documentation provided with this application is given as having a 291m<sup>2</sup> gross floor area within which there is a convenience retail area of 100m<sup>2</sup>. In addition to this there is one deli counter of 7.214m in length. This is accessed via a separate security access with an equipment area together with access to a corridor of which is a chiller and freezer rooms with a combined 7.2m<sup>2</sup> floor area and a storage area (13.58m<sup>2</sup>). To the east of the indicated retail floor area and the deli serving counter the submitted plans show a 30m<sup>2</sup> seating area comprising of 12 seats and 6 booths (Note: potentially of a width that could accommodate two persons seated). This seating area is separated from the retail area by a 1.2m access route for customers to the access separate female, male and

unisex accessible WCs; a separate ATM room which 3.24m<sup>2</sup>; Office; Staff Room; and, Sluice Room. No outdoor seating is proposed.

- 7.2.7. According to the Development Plan the general principal of petrol stations on 'GE' zoned land are deemed to be permissible with retail (local < 150m<sup>2</sup> net floor area) and restaurant/café also listed as permitted in principle land uses, subject to safeguards.
- 7.2.8. Of note in terms of retail and restaurant/café land uses it is indicated in the Development Plan that such uses were deemed permissible are required to 'serve the local working population only'.
- 7.2.9. The term 'local working population' is not defined under the Development Plan but the site is one of the remaining areas of land within this parcel of 'GE' zoned land that is undeveloped with the site being bound by Feltrim Business Park on its northern boundary. Which I observed during my inspection did not contain an independent retail and/or food offer. In addition, to the south there are the residential estate of Melrose Park, Avenue, Drive and Villa as well as the Holywell residential estate to the south west.
- 7.2.10. Further to this bounding the site to the west is MSD Biotech Dublin.
- 7.2.11. The appellant contends that this contains a subsidised canteen for its employees. To the north east of the site and on the opposite side of the M1 Corridor there is Swords Enterprise Park. This Enterprise Park is however located in closer to Eurospar Feltrim, convenience store with a deli and also the Ploughman Bar and Grill. In addition, there is improved pedestrian connectivity to these from this enterprise park in comparison to existing pedestrian connectivity between it and the subject site.
- 7.2.12. From examination of the surrounding area, I accept that there does appear to be a significant working and residential population within this area. Notwithstanding, there are also a number of retail and food related offers including within the 400m catchment indicated by the applicant in their response to the appeal and observation submissions: Spar Holywell to the south west and as previously noted Eurospar Feltrim Road; and, The Ploughman Bar and Grill.
- 7.2.13. In relation to the presence of a canteen in the MSD Biotech Dublin facility the planning history drawings associated with it would appear to support that there was provision

for this, and it is not uncommon for businesses to provide small to large canteen facility through to kitchen/break room spaces for its employees.

- 7.2.14. In addition to this, within less than 1km there is an Apple Green Petrol Station. I note that this petrol station is of a larger scale to that proposed under this application and that it includes a larger retail as well as food offer. Which includes but is not limited to a large retail area, a Costa Coffee and Chopstix. It also contains a larger indoor and outdoor seating area; larger parking facility; and, also provides an ATM cash point.
- 7.2.15. The pedestrian connectivity within the 'GE' zoned land, which as said is fully developed, is not designed in such a manner that there is high quality connectivity and accessibility for vulnerable road users within it and in particular to the site which is located at its south easternmost corner in an area of transitional zoning character.
- 7.2.16. Of further note at over 1.5km away is the Pavilion Shopping Centre which contains a large retail and food offer provided by multiple providers and at just over 1.8km is the Airside Retail Park which also contains within it a number of food offers. With both of these facilities served by public transport connectivity as well as large car parking areas.
- 7.2.17. At just over 2km there is a Circle K at Milton Fields, Swords, and within 3km there is a Texaco Filling Station at Nevinstown, Swords.
- 7.2.18. In relation to the planning history of the site, its recent planning history in my view of relevance. In particular, ABP-301445-18 (P.A. Ref. No.17A/0708) which I note is the recent planning application relating to this site and there appears to be no other recent planning applications.
- 7.2.19. This application also sought planning permission for a petrol station at this location. This proposed development, as revised by way of the applicant's further information response, was granted planning permission by the Planning Authority.
- 7.2.20. This grant of permission was subject to a Third-Party Appeal and on foot of which the Board refused planning permission for the proposed development as revised subject to four substantive reasons and considerations on the 28<sup>th</sup> day of January, 2019.
- 7.2.21. In relation to this previous application, I note that the site area has increased from the 0.168ha to 0.23ha under this application and that the floor area of the petrol station

previously sought was given as 452m<sup>2</sup> gross floor area. Whereas the floor area of the petrol station sought under this application is given as 291m<sup>2</sup> gross floor area.

7.2.22. Further, the previous petrol station consisted of a two-storey building whereas a single storey building. In addition, the previous application included 4 No. fuel dispensing islands, 4 No. underground fuel storage tanks and associated pipework and overground fill points. Whereas this application includes a minor reduction of fuel pumps to 3 no. pump islands together with associated pipework and overground fill points.

7.2.23. Like the previous application this current proposal also seeks permission within the proposed petrol filling station building for a retail area of 100m<sup>2</sup> net floor area. Unlike this current application, the previous petrol station configuration contained 2 No. food serveries located directly off the proposed retail floor area with a separate circa 35m<sup>2</sup> seating area with 28 seats within the ground floor area also proposed. The floor area over as previously consisted of store room, toilets, board room and offices. As such it contained limited spaces that were dedicated to customer use. Like the current proposal this previous application included no outdoor seating area and unlike the current application where the ATM is provided within a separate room the ATM cash point was included within the retail area of the convenience store proposed in terms of access by those seeking to use this facility. In addition, 15 car parking spaces were proposed to serve the petrol station previously proposed with one additional space proposed under this current application.

7.2.24. In relation to the proposed convenience store if one includes the ATM being provided which is located within a separate room there is 103.24m<sup>2</sup> of net floor area of retail proposed. I note that Objective DMS109 requires all retailing activity to be restricted to the retail floor area of 100m<sup>2</sup>. Except in the case of sales of domestic fuel where some external storage may be permissible. The provision of an ATM is part of the retail service provided within this proposal and is a revenue generator for the operator of the petrol station. As such I consider it is reasonable to consider that in this case there is a marginal increase in actual retail net floor area proposed in comparison to the previous application.

- 7.2.25. In relation to the food offer this application does include a reduction in counter area associated with the food offer proposed. Notwithstanding, this counter area is supported by a much larger associated back of counter area ancillary to it.
- 7.2.26. Further, if one factors in the capacity for internal seating the booths proposed could accommodate two persons due to their width. As such the drawings show a capacity of 24 seating spaces for potential customers which is a reduction in 4 spaces when compared with the previous application.
- 7.2.27. Moreover, as said 16 car parking spaces are proposed to serve customers outside of the petrol refuelling area. Two of which are proposed to contain E-Car Charging Points. This is a modest increase in car parking provision for a much smaller in floor area petrol station though I note that e-car charging tends to generate longer stay times for customers of petrol stations.
- 7.2.28. The provision of two E-Charging Points could in some way lessen the loss of one of the fuel pump islands proposed under this application as well as add more sustainable mix of offer at the petrol station in terms of fuelling of cars.
- 7.2.29. Against these considerations when one compares the retail and food offer under the previous and current application in my view the main difference is the loss of one serving counter and a marginal increase in net floor area.
- 7.2.30. The marginal increase in retail net floor area is a concern having regard to the provisions of the Development Plan which require applications for petrol stations to address a number of factors that are set out under Objective DMS109. Including, this Development Plan objective states: *“the sale of retail goods from petrol stations should be restricted to convenience goods and permitted as an ancillary small-scale facility. The net floorspace of a fuel station shop shall not exceed 100 sqm”*. It also sets out that: *“where permission is sought for a retail floorspace in excess of 100 sqm, the sequential approach to retail development shall apply”*.
- 7.2.31. This application contains a net floor space of a fuel station shop that in my view exceeds the 100 sqm threshold and though it only marginally exceeds this threshold it is not accompanied by any sequential retail assessment. This element of the proposal is therefore largely unchanged from the previous application with the ATM being moved to a separate space freeing up convenience retail space around it. Thus, giving rise to an increase in actual retail floor area under this proposal.

- 7.2.32. With this being the case, I consider that in the absence of such an assessment that the Board should it favourably consider the development sought under this application restrict the retail floor area to 100m<sup>2</sup> net in a manner similar to Condition No. 2 of the Planning Authority's notification order to grant permission but that it should also set out in this restriction that this net floor area include any ATM provision within the fuel station shop for clarity. I consider that in the absence of the same that the proposed development would conflict of the requirements set out under Objective DMS109 of the Development Plan for this type of development.
- 7.2.33. I also note to the Board that the RPG under Section 2.4.3 also sets out a cap for petrol filling station shops at 100m<sup>2</sup> net irrespective of location.
- 7.2.34. As such restricting the net floor area is consistent with local through to national planning provisions and guidance in relation to the matter of retail floor area associated with petrol filling station shops. To permit, albeit a modest increase, would be contrary to the proper planning as well as sustainable development particularly where no retail sequential test examination has been carried out.
- 7.2.35. In terms of the fuel station shops capacity to accommodate seated patrons under this application who may have decided to fill up their cars and also consume food/beverages on the premises either within the seating area provided or in their cars. Or of patrons who have journeyed to the petrol station for the consumption of food/beverages alone. It is my opinion that under this application there has not been a significant change in terms of actual reduction of space associated with the food offer when one factors in back of house areas, other ancillary areas including seating associated with the purchase of food and/or beverages.
- 7.2.36. The reduction of one counter is likely to simply result in less variety of food and beverage on offer to patrons of the proposed petrol station by loss of one independent food offer but does give capacity for this counter and its associated space to provide a robust food offer in its own right.
- 7.2.37. In terms of potential future patrons of the petrol station and its retail and food offer it is located in an area that is not devoid of petrol stations containing retail convenience and with retail convenience including deli and/or other food offers.
- 7.2.38. In addition, this area also contains a range of food offers and the pedestrian environment due to the heavy volumes of traffic this immediate road network serves



does not make an attractive environment for walking or cycling for any great distance. This I observed during my site inspection.

- 7.2.39. I am cognisant that Section 2.5.3 of the RPG states that: *“the third national policy objective is to ensure that the planning system continues to play its part in ensuring an effective range of choice for the consumer, thereby promoting a competitive market place”*.
- 7.2.40. It further states that: *“the planning systems should not be used to inhibit competition, preserve existing commercial interests or prevent innovation. In interpreting and implementing these Guidelines, planning authorities and An Bord Pleanála should avoid taking actions which would adversely affect competition in the retail market. In particular, when the issue of trade diversion is being considered in the assessment of a proposed retail development, planning authorities and An Bord Pleanála should assess the likelihood of any adverse impacts on the vitality and viability of the city or town centre as a whole, and not on existing traders”*.
- 7.2.41. From a planning perspective what is of concern is the suitability of the location and the connectivity of the location, particularly in terms of the retail and restaurant/café food element being uses that would serve the local working population.
- 7.2.42. In this regard I note that Objective ED93 of the Development Plan states that the Council will seek to: *“encourage high quality sustainable design, permeability and pedestrian and/or cyclist friendly environments within General Employment zoned areas”*.
- 7.2.43. This I consider ties in with the vision given for land zoned ‘GE’ which I note again sets out that these areas should be highly accessible, well designed, permeable, and legible. From a planning perspective it is therefore an important consideration how the proposed development is compliant and/or in keeping with this objective and vision.
- 7.2.44. Of concern I observed vulnerable road users using the public domain upon which the proposed site would be dependent upon with difficulty. At the time of my inspection this appeared to coincide with many pupils of schools using this public domain as well as other users.
- 7.2.45. In addition, I observed the level of traffic and speed along the public road, in particular Holywell Distributor Road and Mountgorry Way was extremely heavy.

- 7.2.46. I also observed traffic entering onto the roundabout adjoining this site at speed from the Feltrim Road. As well as I observed the speed of traffic upon approach of the roundabout via Holywell Distributor Road and Mountgorry Way appeared to increase in proximity to the roundabout.
- 7.2.47. In general, I did not find that this was a low-speed environment and one where traffic adhered to the posted speed limit of 50kmph. This resulted in unsafe crossing of these roads in the vicinity of the site by vulnerable road users through to patience for traffic entering onto the road from Melrose residential estate opposite.
- 7.2.48. Overall, the public domain from which access for the local working population would be dependent upon to gain access and egress from the proposed site I found not a friendly or highly permeable environment for the corresponding 'GE' zoned land. Nor was it for the neighbouring more sensitive to change zoned land including that which is residentially zoned.
- 7.2.49. These observations are relevant in relation to the Board determination of the previous application as there has been no significant improvement to the environment upon which access to the site from the 'GE' zoned land is dependent upon and in relation to this parcel of land the site is at the south easternmost fringe with no improvements having being made or that the applicant is able to provide due to the modest area of land in which they appear to have a legal interest.
- 7.2.50. I therefore consider the findings of the Board in its Direction for the previous application are still applicable. In a note included at the end of the reasons and considerations for refusal it states: *"there are no direct pedestrian links to nearby employment areas, and, having regard to the extent of floorspace proposed which is not related to motor fuel sales, was of the view that the development would be likely to become a destination in its own right, with deleterious impacts on local centres in the vicinity and on the residential amenities of nearby established residential areas."*
- 7.2.51. Further, whilst I am cognisant that this application does not include the same extent of ancillary office spaces and the like I note that the Board in its first given reasons and considerations stated: *"having had regard to the scale and form of the proposed development which included the provision of a restaurant/café with food offerings and communal dining, and office uses, it is considered that these proposed uses would be the primary use, with the petrol filling station representing a subsidiary use, and in*

*particular would provide a restaurant/café which would extend beyond the local working population. The proposed development, would, therefore, contravene materially the land use zoning objective for the site and would be contrary to the proper planning and sustainable development of the area”.*

7.2.52. In this regard I consider that the location of the site at one of the key entry points into Swords on the heavily trafficked Holywell Distributor Road, in proximity to the heavily trafficked roundabout of Holywell Distributor Road/Feltrim Road and Mountgorry Way alongside the sites elevated position which arguably is a location that is easily accessible from the M1 corridor is indicative of this petrol station seeking to be located where it can service and reach beyond the local working population and indeed the local residential catchment.

7.2.53. This concern in my view is reflected in the Boards second reason and consideration for refusal for the previous petrol station sought. It states: *“the proposed development is situated on a site at a prominent location at the entrance to Swords town from Kinsealy, Feltrim and parts of Malahide, and immediately adjoining an important distributor road serving a wide catchment to the east. Having regard to its scale and form which includes food offerings communal seating and office uses, it is considered that the proposed development would undermine the role and function of Swords Town as the primary retail centre”.*

7.2.54. Based on the above considerations while I consider that the elimination of the office use and the reduction in associated counter space for the food offer proposed under this application in comparison to the previous application are positive improvements to the petrol station now proposed. I also consider that whilst an element of retail and food offer is normally provided for in petrol filling stations; notwithstanding, the difference between that proposed under this application and the previous application refused by the Board is modest in terms of the nature and scale of the restaurant/café elements. There is an elimination of office type spaces but there is a marginal increase in retail floor area. On balance I do not consider that the proposed development sought under this application has not satisfactorily resolved the first and second reasons and considerations given for appeal case ABP-301445-18 (P.A. Ref. No.17A/0708) and the concerns noted above in the Boards Direction in relation to direct permeability links for pedestrians to nearby employment areas. As such I consider that the proposed

development should be similarly refused in the interests of proper planning and sustainable development of the area.

### **7.3. Access**

- 7.3.1. In relation to the site's location with road frontage onto the Holywell Distributor Road, which I note this application proposes a separate access and exit onto whose widths have been reduced as part of the applicant's further information response. Together with the sites proximity to the junction roundabout of the Holywell Distributor Road, Feltrim Road and Mountgorry Way. Which I again note is one of the primary points of entry to the centre of Swords which is located in close proximity to the west and Malahide to the east. Alongside having regard to the nature, scale, variety of land uses and the pattern of development in this heavily developed urban area lying to the north of Dublin's city centre with proximity to the Airport and a number of important national routes including the M1 and M50.
- 7.3.2. When this is considered against the concerns raised in the previous section of this assessment on the matters of traffic environment and permeability of the site in terms of connectivity for the local working population which the proposed development argues would be their primary customer base.
- 7.3.3. I am not convinced based on the information provided; having inspected the site and having had regard to the quantum of development permitted in the area since the Boards consideration of appeal case ABP-301445-18, that the proposed development would give rise to any substantial diminishment in traffic generation to that previously sought at this location.
- 7.3.4. Further, I am not convinced that the curving alignment of the road frontage, the height of the roadside boundaries to the south and north being such that they obstruct views of traffic movements at a location where in general the posted speed limit of 50kmph is very apparently being exceeded, the presence of an access point serving a relatively large residential development on the opposite side of Holywell Distributor Road through to the design of the public domain for vulnerable user friendly permeability is one that can safely be accommodated two additional entrances without giving rise to the potential for additional conflicts despite the improvements and road safety traffic measures proposed by way of the revised design. I also do not consider that the provision of a pedestrian crossing on Holywell Distributor Road to the south by the

applicant would be sufficient to overcome these concerns arising from the additional traffic and the additional traffic manoeuvres associated with the proposed development at this location.

- 7.3.5. Based on these considerations I consider that the Boards third reason for refusal has not been significantly overcome by the design, layout, nature and scale of the development sought under this application together with the likely volume of traffic such a petrol station would generate at this substandard location for such a development. This reason for refusal is set out verbatim in Section 4.1 of this report above. With this reason indicating that the Board considered in part that the alignment of the distributor road, the restricted nature of the proposed access and egress arrangements combined with the level of traffic that would be generated by the envisaged non-motor fuel sales would endanger public safety by reason of a traffic hazard as well as obstruction of road users. With the latter being by way of potential for conflicts between vehicular and pedestrian movements along the site frontage and in the vicinity.

#### **7.4. Residential Amenity Impacts**

- 7.4.1. The Third-Party Appellants and Observers in this appeal case raise concerns that the proposed development, if permitted, would give rise to adverse impacts on their residential amenity, particularly in terms of the relationship of the proposed development with the residential development of Melrose Park opposite. Alongside they argue that it would result in the addition of an inappropriate development having regard to the juxtaposition of this site and the two recently constructed Educate Together schools that serve residential development in the surrounding area.
- 7.4.2. In addition, they raise concern that the proposed development together with the fill that would be required for the creation of homogenous ground levels upon which to site the petrol filling station shop, the associated external outdoor areas including the forecourt and car parking area together with the lighting and signage associated with the proposed development would give rise to visual overbearance, overlooking and due to the limited separation distance a variety of nuisances such as light overspill, odours, noise and the like. Further concern is given to the potential for the proposed development to give rise to further anti-social behaviour in this area.

- 7.4.3. The Melrose residential estate opposite is a mature estate of two storey semi-detached and terrace dwellings siting on lower ground levels and accessing onto the public domain via an entrance onto Holywell Distributor Road directly opposite the site. The linear green strip of land immediately running alongside the opposite side of the Holywell Road directly opposite the site and running along either side of the entrance serving the Melrose residential estate is zoned open space. The main estate land directly behind is zoned 'RS'.
- 7.4.4. The land use zoning objective for 'RS' zoned land under the Development Plan is to provide for residential development and protect and improve residential amenity. I therefore consider it is reasonable given the transitional zonal character of land immediately adjoining the site to have regard to Section 11.4 and Objective Z04 of the Development Plan.
- 7.4.5. In this regard I note that Section 11.4 of the Development Plan states that: "*while the zoning objectives and control standards indicate the different uses permitted in each zone, it is important to avoid abrupt transitions in scale and use in the boundary areas of adjoining land use zones*". It also sets out that: "*in dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zone*". It provides the following example: "*in zones abutting residential areas or abutting residential development within predominantly mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of residential property*".
- 7.4.6. I further note that Objective Z04 states: "*having regard to development in adjoining zones, in particular more environmentally sensitive zones, in assessing development proposals for lands in the vicinity of zoning boundaries*".
- 7.4.7. While I consider that the introduction of any development on this unkempt and vacant site which has the appearance of a left-over pocket of land from either and/or the development of the business park adjoining it to the north or the MSD Biotech Dublin facility to the north and north west would inevitably give rise to a significant change in residential and visual context of the area. Particularly given that the land within the site proximate to the southern and south easternmost corner has higher ground levels and with the land falling significantly away from this point of the site. Therefore, requiring

for extensive fill being required to achieve more useable ground levels relative to the Holywell Distributor Road and the roundabout junction of this road, the Feltrim Road and Mountgorry Way. Together with the type of use proposed, i.e., a filling station with retail and a food offer with opening hours given as 7am to 11pm at night.

- 7.4.8. The applicant in support of demonstrating that the proposed development would not give rise to any undue nuisance has as part of their further information response provided an acoustic report, air and odour emissions management plan, construction environmental waste management plan, photomontages, a reduced in height free standing sign at the roadside frontage and a planning statement which seeks to set out the reasons as to why it is considered in their view that no adverse residential amenity impact would arise.
- 7.4.9. In relation to the acoustic report provided I share the concerns of the third parties in this appeal case that this assessment does not reflect more normal noise environments and factors little into the assessment to overcome that it was conducted during a period where the country was in the middle of Level 5 Covid Restrictions. Which significantly impacted the movements of all persons including working patterns throughout the country.
- 7.4.10. I do share the Planning Authority's conclusions that potential nuisances relating to air, odour, noise, waste management, construction, and operations nuisances through to lighting could be mitigated against by way of conditions.
- 7.4.11. Notwithstanding, I do not consider that the single storey building proposed despite its general design being akin to standard petrol station structures through to the provision of one free standing totem style sign along the roadside boundary would be significantly overbearing, visually obtrusive or would the use of this site give rise to a level of overlooking that would be out of the ordinary in an urban environment like this despite the site's higher ground levels when compared to properties in its vicinity.
- 7.4.12. In relation to the planning history of the site I note that the Board in its fourth reason and consideration for refusal of the previous development sought under ABP-301445-18 considered that having had regard to the Development Plan, 2017-2023. In particular, Objective Z04 in the assessment of development proposals in the vicinity of more environmentally sensitive zones that: *"the scale and nature of the development proposed, including the significant level of food offering would result in a*

*significant intensity of development on site, which when coupled with the hours of operation of the facility would give rise to significant levels of disamenity for nearby residential development. The proposed development would, therefore, seriously injure the residential amenities of the area and would be contrary to the proper planning and sustainable development of the area”.*

7.4.13. As discussed in my assessment above it is my view that whilst there is a loss of office space the retail and food offering through to the level of associated car parking has remained relatively similar to one another. Against the lack of significant difference in the scale and nature of these argued to be subsidiary elements I am not satisfied that this proposal has overcome this given reason for refusal under this application currently for consideration by the Board.

7.4.14. In my view whilst condition could be imposed to abate many of the nuisances that could arise from this proposal, I am not convinced that this transitional in land use zoning location is one that can accommodate the nature, scale and extent of development sought under this application without giving rise to a diminishment of the residential amenity of properties in its close proximity due to the abrupt transition of the development proposed relative to nearby established residential properties. Particularly for the residential properties of Melrose Park – The Drive.

7.4.15. Based on the above considerations I am of the view that the fourth reason and consideration given by the Board in appeal case ABP-301445-18 is still applicable.

## **7.5. Other Matters Arising**

7.5.1. **Drainage:** The site is located in a serviced area and there is no evidence to suggest that the Gaybrook Stream is culverted through the lands associated with this appeal site. In addition, I note that the first party has submitted significant detail with regard to the construction methodology and design of the development incorporating best practice measures including monitoring of levels of fuels and double insulation / bunding of storage areas with this information addressing the potential for any hydrological connection to any Natura 2000 site. Based on best scientific evidence no hydrological link was found and it was considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.



Notwithstanding, whilst I note that Irish Water raised no objection to the proposed development subject to safeguards, the Planning Authority's Water Services Department were not satisfied that the applicant's further information had addressed all of the items relating to drainage matters in the Planning Authority's further information request.

Their final report concludes with a request for clarification of additional information as they consider that the applicant had failed to address two items contained within the request for additional information. Namely: Item No. 4(a) which I note related to verification of maximum ground water level and that it should be demonstrated that the proposed long-term storage volume will not be compromised; and, Item No. 4(b) which relates to verification of soil type and SPR value used in the Qbar calculation through on-site testing.

The Planning Officer considered that these issues could be satisfactorily addressed by way of condition (Note: Conditions No. 10(a) and (b) of the Planning Authority's notification to grant permission).

In addition, Condition No. 10(c) of the Planning Authority's notification to grant permission required the applicant to sign a connection agreement with Irish Water prior to the commencement of development and adhere to the standards and conditions set out in that agreement. Further, Condition No. 10(b) of the Planning Authority's notification to grant permission sets out that: "*no surface water/rainwater shall discharge into the foul water system under any circumstances. The surface water drainage shall be in compliance with the 'Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0, FCC, April 2006'*". The reasons given for Condition No. 10 is in the interest of public health.

Moreover, I note that Condition No. 7 also provides for compliance with the requirements of the 'Design, Construction, Modification, Maintenance and Decommissioning of Petrol Filling Stations' (Blue Book), published by the APEA/EI. With the reasons given for this condition as in the interests of public safety.

With regard to surface water management, drainage, and water supply, I consider that all outstanding issues can be addressed by way of condition requiring compliance with the requirements of the Planning Authority and Irish Water on such matters.

7.5.2. **Climate Resilience:** I consider that whilst this petrol station includes the provision of two EV-Charging Points, which is appropriate given the shift in that climate action measures seeks to reduce consumption of petrol and diesel by vehicles alongside given the increase in electric vehicles or hybrid vehicles in private ownership and requiring services such as recharging points during journeys. Incorporating energy efficiency into design and construction and where possible alternative energy technologies is encouraged by planning provisions and guidance at both a local through to national level so that there is reduction on our reliance on fossil fuels in new build through to minimising their carbon footprint through emissions of carbon dioxide and other greenhouse gases that contribute to global warming and climate change. Of concern this development includes no evident measures as part of the design, construction through to operations of this proposed development to reduce its carbon footprint through to passive design features or on-site space heating or electric generation. I therefore consider the concerns raised in relation to Climate Change and Climate Resilience given the times we are our living in and our focus on limiting global warming by the Third Parties is not without foundation.

7.5.3. **Anti-social Behaviour:** I am not convinced that the appellants or observer have demonstrated how the proposed development, if permitted, would give rise to additional anti-social behaviour over and above the existing circumstance.

7.5.4. **Advertising:** I concur with the Planning Authority in that the signage proposed, is not excessive for the type of development sought and the provision of a reduced in height totem sign is also a type of signage that is not out of character with such a land use. I also concur with the Planning Authority that any further signage above that indicated in the submitted drawings should be subject to prior approval in terms of safeguarding the visual amenities of the area and to reduce visual clutter on a prominent as well as heavily trafficked entry point into Swords.

## 7.6. **Appropriate Assessment -Screening**

7.6.1. Having regard to the nature, scale and extend of the development on a fully serviced site together with the lateral separation distance between the site and the nearest European site it is considered that 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.

## 8.0 Recommendation

- 8.1. I recommend that planning permission be **refused** for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. The subject site is situated on land zoned for General Employment in the Fingal County Development Plan 2017-2023. Such zoning permits, in principle, petrol stations and restaurant/cafes to serve the local working population. Having regard to the scale and form of the proposed development, which includes the provision of a restaurant/café with food offerings and communal dining, it is considered that these proposed uses would be the primary use, with the petrol filling station representing a subsidiary use, and in particular would provide a restaurant/café which would extend beyond the local working population. The proposed development, would, therefore, contravene materially the land use zoning objective for the site and would be contrary to the proper planning and sustainable development of the area.
2. The proposed development is situated on a site at a prominent location at the entrance to Swords town from Kinsealy, Feltrim and parts of Malahide, and immediately adjoining an important distributor road serving a wide catchment to the east. Having regard to its scale and form which includes food offerings, communal seating and office uses, it is considered that the proposed development would undermine the role and function of the nearby Local Centres and detract from the role and function of Swords Town as the primary retail centre. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to its location in close proximity to the Holywell Distributor road/Feltrim road roundabout junction, the alignment of the distributor road and the restricted nature of the proposed access and egress arrangements, combined with the likely level of traffic that would be generated by the

envisaged non-motor fuel sales uses, it is considered that the proposed development would endanger public safety by reason of traffic hazard through obstruction of road users and the potential for conflicts between vehicular and pedestrian movements along the site frontage and in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

4. It is an objective of the planning authority, as set out in the Fingal Development Plan under Objective Z04, to have regard to development in adjoining zones in particular more environmentally sensitive zones, in assessing development proposals in the vicinity of zoning boundaries. The scale and nature of the development proposed, including the significant level of food offering would result in a significant intensity of development on site, which when coupled with the hours of operation of the facility would give rise to significant levels of disamenity for nearby residential development. The proposed development would, therefore, seriously injure the residential amenities of the area and would be contrary to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector

14<sup>th</sup> day of April, 2022.