

Daryl Winslow
8 Ballymanagin Lane
Clondalkin
D22EH95

25th June 2021

The Secretary,
Planning Department,
South Dublin County Council,
County Hall,
Tallaght.

Planning Application Reference Number: SD21A/0149

Applicant: EMO Oil Limited

Location: David Nestor Freight Services, Crag Avenue Business Park, Dublin 22

Dear Sir/Madam,

I wish to make the following submission/objection in relation to the above planning retention application on behalf of the residents of Ballymanagin Lane, Crag Avenue and Station Road.

We wish to object to the proposed development based on the points outlined below:

1. Environmental impact.
2. Essential infrastructure relating to the development is installed in unauthorised locations.
3. Public safety.
4. Noise impact on nearby residential areas.
5. Details of lighting not submitted.
6. Anti-social behaviour.
7. Cumulative impact of unauthorised developments on landholding.

The €20 fee in respect of this observation has been paid and receipt is attached. Receipt No. : T4/0/680118

Objection 1 - Environmental Impact

This submitted Appropriate Assessment Screening Report must be called into question. It concludes that the unauthorised development has no potential for significant effects on the environment when clearly it does.

1.1 Site History

The Appropriate Assessment Screening Report fails to identify and consider the history of the site and the potential of soil contamination.

Permission was granted (SA1049) in 1979 for 2 warehousing/manufacturing blocks on the site. Hazardous materials may have been used and stored on the site during this time and any leaks/spillages may have contaminated the area.

The site was more recently used as a stores and depot facility. Permission was granted on application 91A/0958 for use of the site as “stores and depot facilities for storing of building plant and minor servicing (stated).” These activities also have the potential to cause contamination. Aerial and street view imagery of the subject site prior to the unauthorised development show that the area was used to store random machinery, building materials and even oil/fuel:



Historical aerial image of site. Note oil tanks circled in red



Street view of site in October 2010. Note oil tanks circled in red

There is a high probability that the historical activities on this site have led to soil and groundwater contamination. There is no evidence in the Appropriate Assessment Screening Report that any appropriate soil analysis was performed nor do they explain why an analysis would not be necessary. This site is in the immediate proximity of the Gallanstown Stream and the Grand Canal pNHA. Soil remediation works may be needed to protect these areas from contamination.

1.2 Gallanstown Stream

The Appropriate Assessment Screening Report refers to the Gallanstown Stream, perhaps disingenuously, as a “drainage ditch” and an “unnamed watercourse” and that it is “unclear if the un-named watercourse connects to the Grand Canal or the River Comac (*sic*)”. The competency of the team that compiled this report must be questioned when any amount of basic research would show that this watercourse is in fact the Gallanstown Stream which is a feeder to the Camac River.

The submitted Drainage Network Drawings indicate that there are two drainage points discharging into the Stream. The Camac supports freshwater crayfish, a species listed in the Habitats Directive. The Local Authority has an obligation to protect the conditions for crayfish. It is also important to note that the Gallanstown Stream flows into the Camac River which is prone to flooding further downstream in the city. The river is subject to a flood alleviation scheme that seeks to install a series of flood defences along the river’s path. It is considered that the unauthorised discharge pipes draining into the Gallanstown Stream will further exacerbate the situation.

It is also noted that a retention application (SD21A/0060) on 12 Crag Avenue was recently refused for numerous reasons. Reason 5 is particularly relevant to the environmental impact arising from this unauthorised development:

5. *Having regard to the absence of an Ecological Assessment, a Bat Survey and mitigating proposals, submitted with the planning application, and having regard to the encroachment of the development upon the Gallanstown Stream, which is a feeder to the Camac River, that supports freshwater cray fish, a species listed in the Habitats Directive, for which the Local Authority has an obligation to protect, it cannot be determined that there will be no likelihood of significant effects on the environment arising from the proposed development to be retained and if granted could result in a detrimental impact on the receiving environment and would therefore be contrary to the proper planning and sustainable development of the area.*

It is noted that, under the previous retention application for this development (SD19A/0356), the Water Services Department and Irish Water stated that insufficient information regarding surface water/wastewater was provided. The following statements are of particular interest:

Water Services has requested:

“1.1 The applicant has not submitted surface water drainage plans or a report showing how potential contaminated surface water run-off is drained from the site and/or how storage of petrol/oil on site is managed in order to prevent any polluting material from entering the drainage system or any water courses.

1.2 The applicant is required to submit a surface water drainage layout drawing up to and including the point of connection to the public sewer and a report which clearly shows how potential contaminated surface water run-off is drained from the site and how storage of petrol/oil on site is managed in order to prevent any polluting material from entering the drainage system or any water courses. The drawing shall include the location of all Aj’s, manholes, pipe size, material type and direction of flow. In areas where there is a risk of pollution by petrol, oil, silt or other suspended materials appropriate petrol/oil interceptors must be installed prior to discharging to the public foul drainage network”.

Irish Water has requested:

“2.1 The applicant is required to submit a drainage layout drawing up to and including the point of connection to the public foul sewer and a report which clearly shows how potential contaminated surface water run-off is drained from the site. The drawing shall include the location of all Aj’s,

Both departments requested information about the point of connections to “the public sewer”. The submitted Drainage Network Design Drawings for this application clearly show that all surface water/wastewater is discharging into the Gallanstown Stream. This stream is not a “public sewer” and retention should be refused based on the fact that wastewater is being discharged into a sensitive watercourse.

It is clear that this report is not comprehensive enough to determine whether an Environmental Impact Assessment is required. If the Council were to accept the conclusions of this report it would be contrary to the objectives of the South Dublin County Development Plan 2016-2022. The following objectives being particularly relevant:

ET3 Objective 5 *To ensure that all business parks and industrial areas are*

designed to the highest architectural and landscaping standards and that natural site features, such as watercourses, trees and hedgerows are retained and enhanced as an integral part of the scheme.

G3 Objective 5

To restrict the encroachment of development on watercourses, and provide for protection measures to watercourses and their banks, including but not limited to: the prevention of pollution of the watercourse, the protection of the river bank from erosion, the retention and/or provision of wildlife corridors and the protection from light spill in sensitive locations, including during construction of permitted development.

1.3 Retention for Sites Requiring EIA Screening

It is also noted that any permission granted for retention planning permission in respect of development requiring EIA would be in breach of the EIA Directive as per the below point from page 13 of *A Guide to Planning Enforcement in Ireland* published by the Department of the Environment:

10. Can unauthorised development ever be regularised/brought within the planning system?

Depending on the scale, nature and circumstances, it may still be possible to bring a particular unauthorised development within the planning code or to regularise it retrospectively. Where a development has been carried out without first obtaining the necessary planning permission, the developer may apply to their planning authority for retention permission. The circumstances under which retention permission is available are tightly circumscribed however. A planning authority cannot accept an application for retention permission for any development which would have required

- environmental impact assessment (EIA);
- a determination as to whether EIA was required (i.e. screening for EIA); or
- an appropriate assessment under the Habitats Directive (since such an assessment is also required prior to permission for a proposed development).

Only in cases where none of these were required can a planning authority accept an application for retention permission. It is also important to note that lodging an application for planning retention for a development that is the subject of enforcement action does not diminish any offence committed.

Any screening exercise and full assessment must be carried out prior to the commencement of development works. This application for retention should therefore be refused because it is generally not permissible to grant development consent for projects requiring EIA or screening for EIA retrospectively.

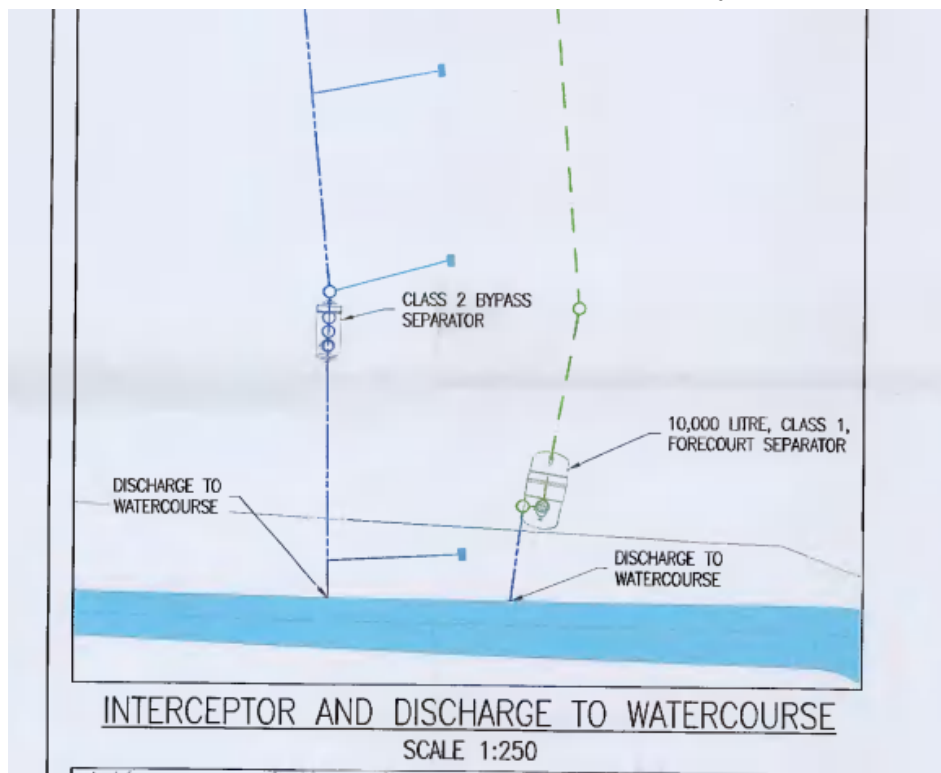
Objection 2 - Infrastructure in Unauthorised Location

The “10,000 Litre, Class1, Forecourt Separator” that is specified in the submitted Drainage Network Drawing has been installed in an unauthorised location.

In the summer of 2019, David Nestor Freight Services, without the benefit of planning permission, removed an existing fence and cleared the riparian strip of all vegetation that ran along the southern and western boundary of the site and the Gallanstown Stream. They then extended the hard surface area right up to the bank of the stream and installed a new fence. This development was subject to a planning enforcement investigation and enforcement notices were issued (ENF S8268 & ENF S8190). A subsequent retention application (SD21A/0060) was refused for 5 reasons. Reason 3 is relevant to this retention application:

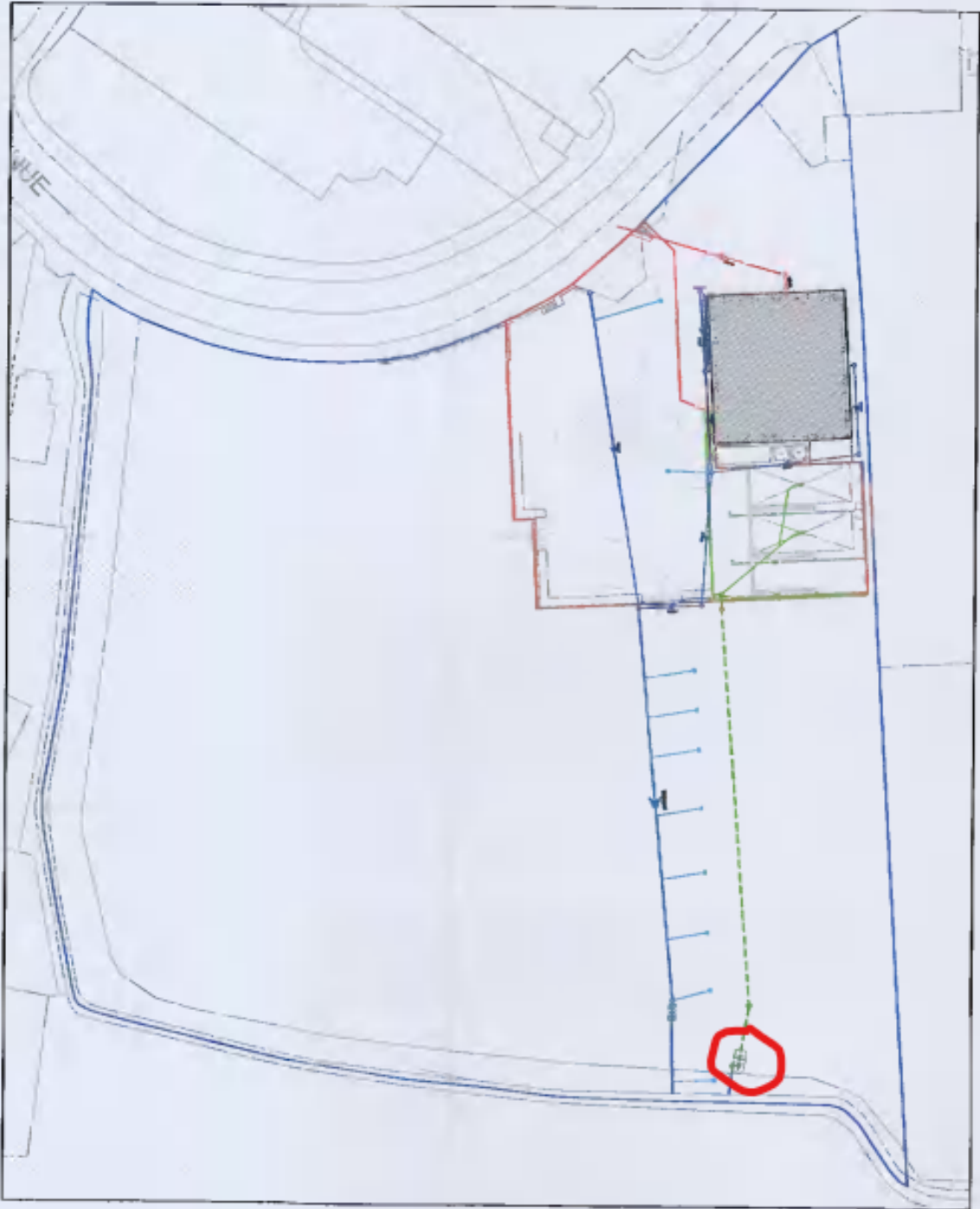
3. *The proposed development to be retained, having regard to its encroachment on the banks of the Gallanstown Stream, where a biodiversity protection zone of not less than 10 meters from the top of the bank has not been proposed, would be contrary policy objectives G3 Objective 2, 3 and 5 of the County Development Plan 2016-2022 and if granted, would be contrary to the proper planning and sustainable development of the area.*

The Forecourt Separator is located in the area that was unlawfully encroached upon.



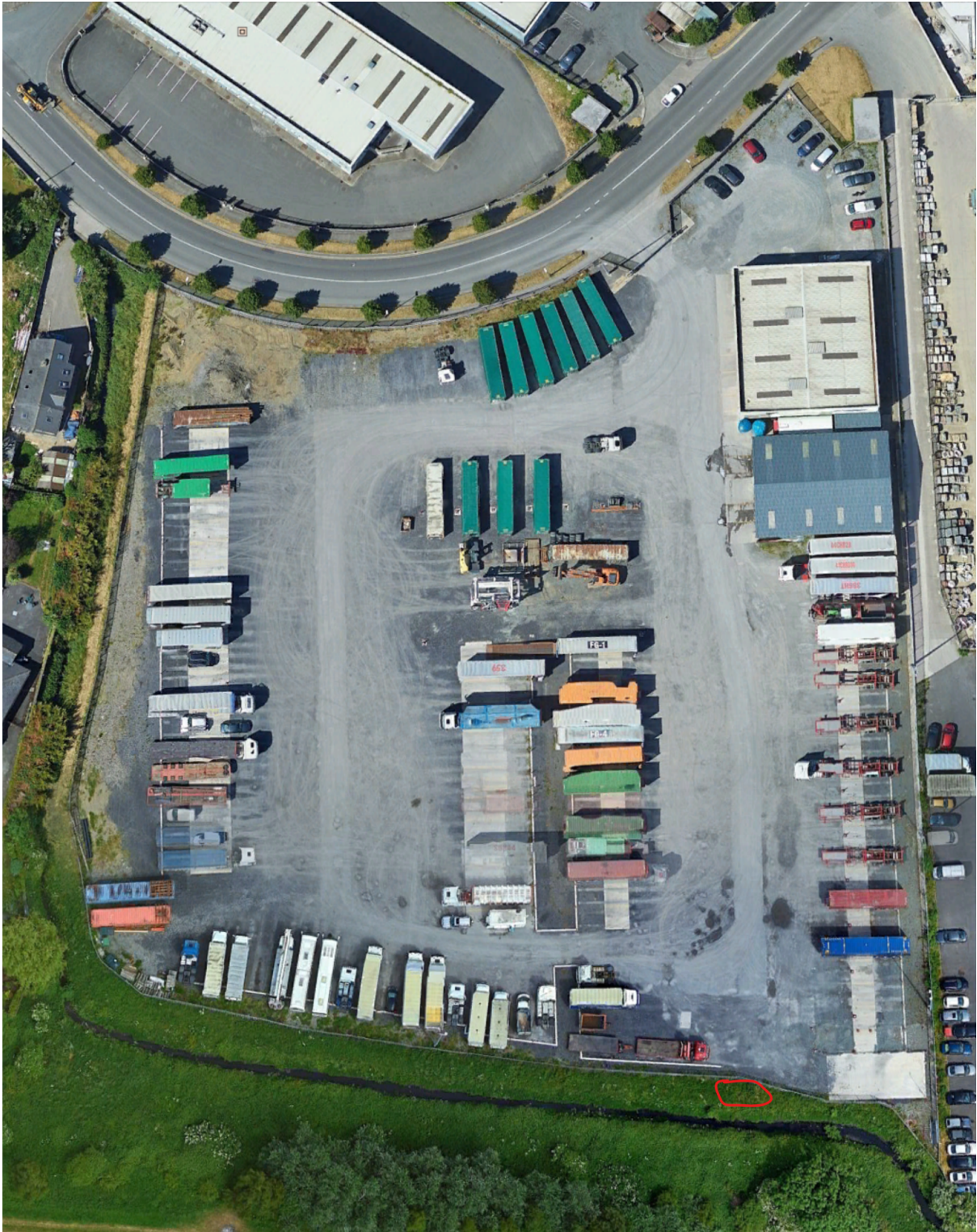
Forecourt Separator location in submitted Drainage Network Drawing. Note proximity to stream

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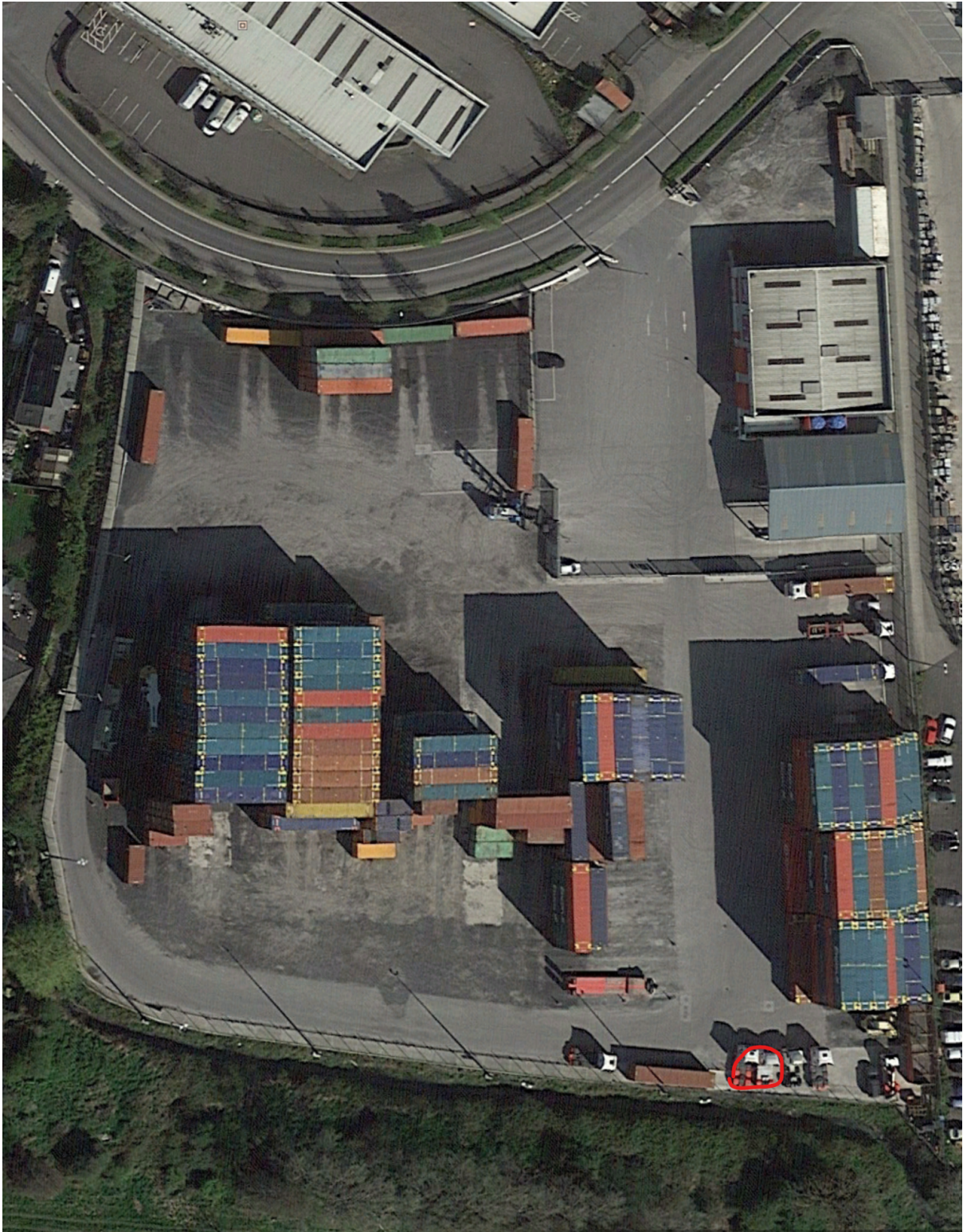


KEY PLAN
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Forecourt Separator location in submitted Drainage Network Drawing. Note proximity to stream



Google Maps view of site in May 2018 with approximate future location of Forecourt Separator circled in red



Google Maps view of site in June 2021 with approximate location of Forecourt Separator circled in red. Note encroachment on Gallanstown Stream

It is clear that this Forecourt Separator has been installed in an unsuitable area only a few meters from the Gallanstown Stream. The encroachment on the banks of the Gallanstown Stream is already subject to an enforcement notice and this separator would also have to be removed in order to protect the biodiversity of the stream. The area in which it is currently installed should be set aside as a biodiversity protection zone and planted with native trees/hedges/plants. It would also be impossible to service the separator in its current location without harming the biodiversity of the area. The Chief Executives Order on retention application SD21A/0060 states:

*The development plan also states that 'all development proposals should seek to enhance biodiversity and avoid or minimise loss of existing local habitats and wildlife corridors' and 'shall maintain a biodiversity protection zone of **not less than 10 meters** from the top of the bank of all watercourses in the County.'*

In addition, Policy Objective G2 Objective 1: seeks 'To reduce fragmentation of the Green Infrastructure network and strengthen ecological links between urban areas, Natura 2000 sites, proposed Natural Heritage Areas, parks and open spaces and the wider regional Green Infrastructure network.'

The proposed development to be retained does not comply with Section 11.5.5 or Policy Objective G2 Objective 1 of the County Development and should therefore be refused.

This retention application must be refused due to the fact that the separator is installed in an area that was developed without the benefit of planning permission, which is subject to an enforcement notice and for which retention is not sought in this application.

Objection 3 - Public Safety

Retention permission for the development on this site must be refused for the reason of public safety. The position of the pumps are completely unsuitable for members of the public to use. See below picture of “Car & Van Pump”:



Van parked in front of Car & Van Pump. Note the two warehouse/loading/vehicle maintenance bays at rear of van and HGV Bays to the front of the van

Directly in front and behind the pump intended for public use are bays used by heavy goods vehicles. The layout of these bays necessitate that the HGVs reverse into position. This is a highly dangerous layout for public use. It becomes even more dangerous when it is considered that there are also two entrances/exits in the area to the truck/storage yard operated by David Nestor Freight Services at 12 Crag Avenue and dozens of HGVs pass through the gates every day:



The above picture shows potential HGV movements (red arrows) around the location of a car (circled in blue) parked at the "Car & Van Pump". The arrows to the bottom and to the left of the picture show the entrances/exits to David Nestor Freight Services yard which caters to dozens of container truck arrivals/departures a day. The red arrows directly above and below

the car show the movements HGVs would have to make to enter/leave the HGV pumps (below) and the warehouse/truck maintenance building (above). These trucks are required to reverse into position which would mean they are maneuvering with reduced visibility. It should also be noted that there are containers being stored on the site (in the top right of the picture). These containers are stacked by a huge specialised forklift that would also be operating near the pump open to the public.

It is clear to see that a member of the public using the “car & van pump” could quickly find themselves surrounded by HGVs and other heavy machinery. This could easily end in a tragedy. For example, if a young child were to exit a car and wander into the path of a reversing HGV. This application for retention must be refused on the basis that the layout of the site is extremely hazardous and a danger to public safety.

It should also be noted that the owner of this site is Mr David Nestor who is registered as blind. His business, which operates on the same site at 12 Crag Avenue, recently put in an application for retention (SD21A/0060) of a concrete footpath that was developed without the benefit of planning permission on the western and southern boundaries of the site. In the cover letter they say the reasoning for the footpath was for health and safety purposes:

This concrete footpath was erected as a replacement to the previous grass path that was located within the subject site. This internal footpath is situated along the western and southern boundaries of the subject site and was carried out for safety and security purposes. By providing a designated walkway separated from the vehicles and mitigating unforeseen risks, this footpath contributes to the Health and Safety Authority codes to accomplish a safe working environment. Moreover, Mr. Nestor, as the owner of the business, is a registered blind person who is actively engaged in coordinating and managing the business. Thus, it is imperative to create an inclusive working environment enabling everyone to perform their duties in the business regardless their level of abilities. This safe access way around the site helps creating a more accessible working environment.

It must be noted that there are no “designated walkways” on this development. The hectic nature of the layout and HGV movements on this development is very dangerous for anyone, let alone a person who is registered as blind. This application should be refused to protect the safety of Mr Nestor and his staff as well as the members of the public.

Objection 4 - Noise Impact

The activities on this site are causing nuisance to the residents of Crag Avenue, Station Road and Ballymaggin Lane. The filling station has been in operation without the benefit of planning permission for a number of years already and has resulted in an increase in HGV traffic, particularly late at night. Also the fact that the layout of the station requires HGVs to reverse into position means that the piercing and impulsive noise of beeping has disrupted sleep patterns and affected the reasonable enjoyment of our properties.

The conclusion of the submitted Application Cover Letter states that “there are no impacts arising from the change of use”. The neighbouring residents would dispute that assertion.

There is no indication of the intended hours of operation in any of the submitted documents.

Objection 5 - Lighting

The previous “Declared Withdrawn” application for retention (SD19A/0356) had a request for “additional information” on a number of topics. One of these requests was for details of lighting. It does not appear that these details have been provided in any of the available documents. There is an enforcement notice relating to 7 floodlights that were installed on the southern and western boundaries of 12 Crag Avenue without the benefit of planning permission. Retention permission was refused for these floodlights on the basis that “no mitigation measures have been proposed to lessen the impact on residential, visual and biodiversity amenity, would be contrary to Policy Objective IE7 Objective 5 which seeks “to ensure external lighting schemes minimise light spillage or pollution in the immediate surrounding environment and do not adversely impact on residential or visual amenity and biodiversity in the surrounding areas.””

The unauthorised lighting on this site has the potential to have an impact on the local bat population. In a Planning Application submitted for development 400m east of the subject site under Reg. Ref. SD20A/0242, a bat survey was included as part of the application. The report found the following:

*A dusk mobile detector survey was carried out on the 05th of June 2018 with two surveyors positioned to the South East and the South west of the site in order to examine the approach of bats entering the site. A Song Meter SM3BAT (Wildlife Acoustics, Inc; Massachusetts, USA) 16-bit full spectrum time-expansion recording bat detector was placed within the study area(Grid Ref. N707715 /E732228) on the evening of the 5th of June to dawn of the 14th of June 2018. This static detector was installed according to the guidelines as set out in Bat Conservation Ireland’s ‘Bat Survey Guidelines.’ During the survey, three bat species were identified to species level; Common Pipistrelle (*Pipistrellus pipistrellus*), Soprano Pipistrelle (*Pipistrellus pygmaeus*), and Leisler’s Bat (*Nyctalus leisleri*). No bats were observed using the site however bats were observed flying c.100m west of the site hunting over the Grand Canal. The second observer noted bats flying south along the treelined M50 at 22:31 before hunting over the eastern section of the Grand Canal. Several bats were observed at this location including a visual of two Leisler’s bats hunting over the canal and a small patch of grassland / scrub near the M50. Most activity was recorded from 22:51 to 23:19 particularly along the canal however it is the surveyor’s opinion activity levels were not high. Registrations became sporadic after this time with a single unseen and brief Leisler’s bat called to the north-east of the site. No bat passes were made between 23:32 and 24:05 when laps of the entire site were conducted. Over the course of seven nights a total of 574 registrations were recorded. Several recordings showed multiple bat species in the one recording thus were separated per species. The 5th/6th of June showed highest activity with 94 recordings. Lowest activity occurred on the last night of recording; the 13th/14th of June with 14 registrations recorded. The most common species recorded was the Soprano Pipistrelle with 253 registrations over the survey period (44%). Leisler’s Bat at 231 registrations or 40.2% was the next most common. Finally, Common Pipistrelle was recorded 88 times (15.3%). Two social calls likely from Leisler’s bat were also recorded.*

The report concluded that the development would not pose a threat to the bats, stating:

Impacts on bats have been assessed and due to the proposed creation of species rich grassland to the south of the site and the absence of lighting proposed in this area no negative impacts on the local bat population are expected.

The development on the subject site differs from the development 400-m east for two reasons. First, the subject site has installed floodlights across the site which are illuminating the area and causing light pollution. Given the unauthorised nature of the lights, it can be assumed that they have not been designed to protect bat habitats and are therefore negatively impacting on the bat habitat located along the Grand Canal.

Retention permission (SD21A/0060) was also refused for unauthorised development at 12 Crag Avenue. One of the reasons for refusal was a lack of a Bat Survey:

Having regard to the absence of an Ecological Assessment, a Bat Survey and mitigating proposals, submitted with the planning application, and having regard to the encroachment of the development upon the Gallanstown Stream, which is a feeder to the Camac River, that supports freshwater cray fish, a species listed in the Habitats Directive, for which the Local Authority has an obligation to protect, it cannot be determined that there will be no likelihood of significant effects on the environment arising from the proposed development to be retained and if granted could result in a detrimental impact on the receiving environment and would therefore be contrary to the proper planning and sustainable development of the area.

There are a number of floodlights installed on the development currently seeking retention. There are also two further floodlights on the eastern boundary of 12 Crag Avenue for which planning permission was never sought. Retention should also be refused for this application for the same reasons as above.

Objection 6 - Anti-Social Behaviour

The Application Letter does not mention if this will be a manned or unmanned station but it has been operating as an unmanned station for a number of years now without the benefit of planning permission.

Crag Avenue becomes a very quiet area in the evenings and on weekends and it is not uncommon to find anti-social behaviour in the area. It can get particularly bad in the weeks before Halloween when people are raiding the area for bonfire wood and setting off fireworks. This type of behaviour around an unmanned fuel station is of particular concern to the residents. A fire may go unnoticed due to the fact the station is unmanned resulting in hazardous fumes and smoke being released and entering the nearby residential area.

Objection 7 - Cumulative Impact of Unauthorised Development on Landholding

The lands at 12 Crag Avenue have been subject to multiple enforcement notices. The unauthorised development for which retention is sought in this application is intrinsically linked to the other unauthorised developments at 12 Crag Avenue. The following section from the Chief Executive's Order on retention application SD21A/0060 is relevant here:

Unauthorised Development

The overall site is being used for a public filling station and the collection/storing of shipping containers. Illuminated and non-illuminated signage has been erected. It appears that all of which requires planning permission and where none exists. Retention permission sought for some of these items was deemed to be withdrawn, Reg. Ref. SD19A/0356. The Planning Authority considers that any attempt to regularise the unauthorised development should be through the submission of one application for the landholding to ensure the cumulative impacts are addressed.

The current location of the footpath and fence, the subject of the current application, encroaches upon lands that are required to provide a buffer strip between the site and Gallanstown Stream. The development of these lands appears to contravene Conditions 8 and 10 attached to planning permission Reg. Ref. 91A/0958. The buffer strip has been developed upon.

It is clear that the Council must reject this application and demand a "submission of one application for the landholding to ensure the cumulative impacts are addressed."

Conclusion

It is clear that this application for retention has to be refused. The submitted design is fundamentally flawed and there are no amount of conditions that could be applied that would protect the surrounding environment, residents, safety of the public or to make the site compliant with the County Policies and Objectives.

The applicant and the owner of the site at 12 Crag Avenue have displayed nothing but contempt for proper planning processes. The Council should enforce the notices served on this site and exercise its right as per the enforcement notices to:

"...enter on the land and take such steps including the removal, demolition and alteration of a structure and the restoration of the land and recover any expenses reasonably incurred by them in that behalf..."

The residents of Ballymanaggin Lane and Crag Avenue hope the Council will consider the points made in this submission and refuse permission for this application.

Sincerely,

Daryl Winslow on behalf of the residents of Ballymanaggin Lane, Crag Avenue and Station Rd