



An
Bord
Pleanála

Inspector's Report ABP-305938-19

Development

Proposed petrol filling station and an ancillary retail and food sales building and an office/business and community hub at the mezzanine level.

The proposed development also includes a fuel area for HGV's/delivery tankers, outdoor seating and play area, parking, car brush wash, air/water services area, signage, landscaping, a new access off the R639 (Cork Road) and a right hand turning lane within it, and the provision of a signalised pedestrian crossing and a pedestrian footpath.

Location

Mitchellsfort, Watergrasshill, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

19/6108

Applicant(s)

Peigi O'Mahony

Type of Application

Permission

Planning Authority Decision

Refusal

Type of Appeal	First Party -v- Decision
Appellant(s)	Peigi O'Mahony
Observer(s)	JR Oronco Ltd Leonard O'Sullivan Circle K Ireland Ltd
Date of Site Inspection	January 2020
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located to the south of Watergrasshill and in a position adjacent to Junction 17 on the M8. This Junction is 13.3km to the north of Junction 13, the Dunkettle Interchange between the M8/Jack Lynch Tunnel/N40 and the N8/N25, and, variously, 13.1km and 18.9km south of Junctions 15 and 14, Fermoy South and Fermoy North. It also serves the local road network on either side of the motorway, which on the western side connects, via the L3012 and the L90800, to the R639 (Cork Road), which passes through Watergrasshill on a roughly north/south axis parallel to the M8.
- 1.2. The site itself lies on the southern side of the local road, which links Junction 13 to the R639 and is in effect continuous with this regional road. The main body of this site is triangular, and it coincides with a field, which is elevated above the exit slip road from the M8. The remainder of the site encompasses portions of the L-3012-0 and the L90800-0, which would be the subject of works in conjunction with the proposal. The overall area of the site would be 2.322 hectares.
- 1.3. Opposite the site, to the north, is a new housing estate, Priory Court, and to the north east lies the new Watergrasshill National School. To the west and south west of the site lies farmland and small pockets of woodland.

2.0 Proposed Development

- 2.1. The proposal would entail the construction of a petrol filling station and an ancillary retail and food sales building with a total GFA of 1165.2 sqm.
 - The petrol filling station would comprise a forecourt with 6 pump islands (12 fuel pumps) underneath an overhead canopy. This station would be sited in a position adjacent to the site entrance/exit, which in turn would be sited towards the north western corner of the site.
 - The ancillary retail and food sales building would have a ground floor and a mezzanine level. The former floor would comprise a shop/retail sales area and off-licence (97.7 sqm), deli and hot food offers, service areas, back of house areas, storage, seating and toilets), while the latter floor (170 sqm) would comprise an office/business and community hub. Outdoor seating and

an outdoor play area would accompany this building, which would be sited centrally with the site and to the south of the petrol filling station. It would be accompanied by a car park (135 spaces, including 7 mobility impaired and 14 electric vehicle charging points) in the north eastern corner of the site and bicycle (5 spaces) and motor bike spaces (10 spaces) on its south western side. A car brush wash and accompanying plant room would be laid out beyond an external yard and loading area on its south eastern side.

- 2.2. The proposal would also entail the construction of a fuel area for HGV's/delivery tankers (2 pumps) with a canopy over and a coach and HGV parking area (6 and 23 spaces respectively) that would be laid out across the south western portion of the site.
- 2.3. Underground fuel storage tanks would be installed underneath the forecourt and the fuel area and air/water services would accompany this forecourt and this area.
- 2.4. Signage would be installed on the proposed building and the forecourt canopy. Nine-metre-high totem signs would be erected at the entrance to the site and at its north eastern and southern tips, i.e. adjacent to the western roundabout at Junction 17 and adjacent to the exit slip road from the M8 to this Junction.
- 2.5. Existing roadside landscaping would be augmented within the site beside its south eastern boundary.
- 2.6. Site development works would require the installation of water and foul connections to the public networks, variously, in the housing estate opposite and in the R639 to the west. The new access from the L-3012-0 would be accompanied by a right hand turn lane and a new footpath would be constructed on the northern side of this road to connect the site, via a signalised pedestrian crossing, to effectively the existing footpath beside the local road, which serves Watergrasshill National School and the village centre beyond.

3.0 Planning Authority Decision

3.1. Decision

The proposal was refused for the following reasons:

1. Under the LAP, the site is zoned for business use and, under Objective ZU 3-6 of the CDP, such use excludes general retail development. The proposed retail convenience and service uses would thus materially contravene this Objective.
2. The proposal would be a Motorway Services Area (MSA) and, given its scale and location beside the Key Village of Watergrasshill, it would attract local custom and thereby be contrary to the Spatial Planning and National Roads Guidelines. It would also draw trade from the village core and so compromise its vitality and viability in contravention of the Retail Planning Guidelines and Objective TCR 4-9 of the CDP.
3. The site is elevated and prominent from the M8. Given the likely operating hours and proposed signage, the proposal has the potential to create visual clutter and to distract drivers, thereby causing a hazard that would jeopardise road safety and the operating efficiency of the motorway.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See planning decision.

3.2.2. Other Technical Reports

- Irish Water: No objection + standard advice.
- TII: A summary of the commentary submitted is as follows:

Generally,

- The proposal is for an off-line Motorway Service Area (MSA).
- The TII considers off-line MSAs on their merits in the light of the following policy context:
 - The M8 is part of the EU TEN-T Core Network,
 - Project Ireland 2040/NDP/NPF all seek to safeguard investment in the national motorway network by ensuring its operating efficiency and safety,
 - Section 2.8 of the Spatial Planning and National Roads (SPNR) Guidelines is of particular relevance: Thus, the attraction of local

custom should be avoided, as it undermines the strategic role of the network, and can undermine the retail role of town centres, and

- The SPNR Guidelines both counsel against a proliferation of MSAs and advocate that they be the subject of forward planning. The subject site has not featured in any forward planning exercise re. MSAs.

Specifically,

- The submitted TTA proposes, by way of mitigation, works to the western roundabout at Junction 17: these should be the subject of a RSA.
- Likewise, the proposed access and pedestrian crossing should be the subject of a RSA.
- Signage would potentially “read” as visual clutter and distract drivers. The proposal would set a precedence for proliferation, too. Section 2.8 of the SPNR Guidelines would thereby be contravened.
- Lighting should avoid spillage onto and glare that would affect the M8.
- Drainage from the site should not connect with the drainage system serving the M8.
- Section 3.8 of the SPNR Guidelines are relevant with respect to advance signage.
- The Traffic Signs Approval Procedure would be required to be followed with respect to any advance signage.
- Cork County Council:
 - Water Services: Pre-connection enquiry submitted to Irish Water: No objection.
 - Public Lighting: Further information requested.
 - Area Engineer: Further information requested with respect to the following points:

- Concern is expressed that traffic attracted to the proposal could use the R639 as a means of avoiding the toll on the M8 and thereby cause congestion in Fermoy, Rathcormac, and Watergrasshill.
- The proposed pedestrian crossing should be a zebra one and it should be illuminated.
- The proposed northern footpath shall be, likewise, illuminated, and a parallel southern footpath shall accompany the other side of the road. A secondary pedestrian crossing should connect these two footpaths to the east, prior to the roundabout. The northern footpath should also be extended to the west in advance of anticipated housing.
- The TII has yet to approve signage for the proposal.
- Motorway noise has not been addressed with respect to the proposed first floor meeting room.
- Drawing no. 190087-DBFL-DR-C-3001 refers to “connection to existing SW Drainage Network”. The TII has not agreed to any such connection to the M8 drainage system.
- Environment: Further information requested with respect to the following points:
 - A Noise Impact Assessment should be submitted.
 - An Air Quality Assessment should explore the impact of traffic fumes on the adjacent Prior Court housing estate and Watergrasshill National School.
 - A Light Impact Assessment should likewise explore the risk of spillage, glare or trespass to the said housing estate.
 - A Bat Impact Assessment should be submitted.

4.0 Planning History

Pre-application consultation occurred on 29th May 2019.

5.0 Policy and Context

5.1. Development Plan

Under the Fermoy Municipal District Local Area Plan 2017 (LAP), Watergrasshill is identified as a Key Village. The site is shown as forming the north east portion of lands (7.1 hectares) that are zoned for business (B-01) and the accompanying Objective states the following:

Business Uses. The design of any structures on the site is of critical importance, due to the elevated and exposed nature of the site. Any structures should be situated at the south/south westerly portion of the site. At the outset, proposals for the site will include a comprehensive layout and landscaping scheme that will ensure that any buildings or other structures erected on it will not be visible from the M8. Proposals shall include measures to guard against any adverse impact (including noise impacts) from the adjoining M8 and make provision for possible lands required on this site for future road improvements.

Under Objective ZU 3-6 of the CDP the following commentary is given on business uses:

Promote the development of New Business Areas as the primary locations for the development of employment uses such as light-industry, wholesale and non-retail trading uses, car-showrooms, and small/medium scale manufacturing/repairs/warehousing/distribution uses.

Other uses that could be included in certain specific circumstances could include retail warehousing and office development not suited to town centre or edge of centre locations. Uses specifically excluded from the business category would include waste management activities and general retail development. Retail warehousing would be accommodated where the specific zoning objective allows.

Under Policy Objective TCR 4-9 of the CDP, the Planning Authority undertakes “To support, promote and protect neighbourhood centres and large villages, which play an important role in local shopping for residents and provide a range of essential day to day services and facilities.”

5.2. Natural Heritage Designations

- Blackwater River SAC (002170)
- Great Island Channel SAC (001058)
- Cork Harbour SPA (004030)

5.3. EIA Screening

Under Items 10(b)(iv) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019, where 10 hectare-urban sites would be developed, the need for a mandatory EIA arises. The proposal is for the development of a 2.322-hectare site. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant threshold, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant summarises the policy context of her proposal and the proposal itself. She then proceeds to respond to commentaries on this proposal that were made by consultees at the application stage.

With respect to the Case Planner's report:

- The concern over the exposure of school children to fast-food is misplaced as the school nearby is Watergrasshill National School and so it can be assumed that pupils remain on the school premises during the lunch hour. Furthermore, neither the CDP nor the LAP have policies with respect to schools and fast-food outlets.

With respect to the Area Engineer's report:

- Local traffic already uses the R639 and the proposal would not provide any greater incentive to use this road than exists at present, i.e. the distance to

Fermoy on it and the M8 are comparable. The distance between Junction 15 to the north of Fermoy and Junction 17 beside Watergrasshill is 1.6 km shorter by the M8 and 9 minutes quicker: Hence the prospect of strategic decanting to the regional road needs to be seen in this light.

- The re-specification of the proposed signal-controlled pedestrian crossing to a zebra one would contravene the advice of the Traffic Signals Manual, which states that such a crossing is not suitable for road speeds above 50 kmph, i.e. the R639 as it passes the site has a speed limit of 80 kmph. Clearly, if this speed limit were to be reduced to 50 kmph, as anticipated under a review due in 2022, then a zebra crossing would be appropriate.
- The request that a secondary pedestrian crossing be provided was the subject of a RSA, which concluded that this would not be advisable, due to the existing speed limit and the availability of only limited sightlines. Consequently, the need for a footpath on the southern side of the road would be negated. In order to avoid the risk of overspill parking on the hard shoulder, an upright kerb line should be introduced between the roundabout and the proposed site access.
- The requested extension of the northern footpath westwards could be undertaken should the Board consider this to be necessary.
- The TII's concerns over the visibility of the proposal are addressed by the applicant's Landscape and Visual Impact Assessment, which was submitted at the appeal stage. Concerns over noise could be addressed by means of an inward noise assessment and a noise barrier installed, as necessary.
- The surface water discharge point is understood to be to local field drains/ wider natural drainage system. Such discharge would be appropriate based on the SuDS proposals for the site. A condition is invited with respect to the non-use of the motorway drainage system.

With respect to the Environment report:

- A Noise Impact Assessment has been submitted at the appeal stage. The increase in noise at nearby noise sensitive receptors would be imperceptible. Recommended mitigation measures would entail ensuring that noise from

externally mounted plant is no greater than 65dB(A) at a distance of 10m and deliveries occur in the daytime only.

- An Air Quality Assessment has been submitted at the appeal stage. The modelling exercise thus undertaken illustrates that compliance with relevant indicators would be achieved.
- A Lighting Report has been submitted at the appeal stage.
- The applicant's ecologist expresses the view that the site is of negligible suitability as a roosting habitat for bats and of low to moderate suitability as a foraging/commuting habitat for them.

The applicant cites the following grounds of appeal:

First reason for refusal: Compatibility with zoning:

- Based on the following considerations, the proposal would be in line with appropriate uses for the business zone:
 - With respect to structure, it would resemble a car showroom, i.e. a small building surrounded by parking,
 - With respect to impact, it would be comparable or of lower environmental impact than other uses that are expressly sanctioned for the zone,
 - With respect to use, the primary item for sale would be fuel and so retail goods would be secondary, i.e. ancillary and so not "general retail development", and
 - With respect to suitability, it would be analogous to a retail warehouse in its scale.
- Material contravention is cited and so the provisions of Section 37(2)(b) of the Planning and Development Act, 2000 – 2019, apply.
 - Under Objective ZU 3-6 of the CDP, service stations are not expressly excluded and offices are a possibility. The business aspects of the proposal would accord with this Objective, its role in supporting distribution, e.g. HGV fuel and parking, and the inclusion of meeting rooms. Likewise, the LAP does not restrict the proposed mixed-use and,

as a town centre location would be inappropriate, its edge of town location would be welcome.

- The employment potential at c. 70 would be comparable with that which would be likely to be created by other uses on the site.
- The non-applicability of the category “general retail development” is evidenced by the inappropriateness of the proposal to a town centre location and the curtailment of net retail floorspace to less than 100 sqm, a level at which it is deemed to have no impact on town centres.

The view is thus expressed that material contravention would not occur

Second reason for refusal: Compliance of the proposal with SPNR Guidelines and retail hierarchy:

- The designation of the business zone beside Junction 17 of the M8 is an acknowledgement of the importance of good accessibility. Traffic generated by development elsewhere in this zone and by Watergrasshill requires to be serviced. In the absence of the proposal, such traffic would be likely to use existing service stations at Junctions 14 and 18, resulting in local trips on the motorway contrary to the advice in the Guidelines.
- The TTA concludes that additional traffic generated by the proposal in the design year 2036 would not result in a strategic classified link (junction arm) operating at or over capacity. The proposal would thus be compatible with upholding the operating efficiency of the M8.
- Watergrasshill is underserved by convenience shops and eateries resulting in unsustainable trips elsewhere.
- The Planning Authority has erroneously included the proposed concessionary spaces as net retail floorspace, when they would be used for food offer purposes. Nevertheless, even if this inflated figure is used, the applicant’s retail assessment concludes that the village centre would not be adversely affected and so Policy Objective TCR 4-9 of the CDP would not be contravened.

Third reason for refusal: No impact on visual amenity or driver distraction:

- The applicant's Landscape and Visual Impact Assessment (LVIA) examines 5 representative view-points of the site/proposal. Impacts are tracked over the short-term and the medium/long-term. While the level of visibility would fluctuate, no adverse impacts are identified, a tribute to the design and layout of the proposal.
- No significant long-distance or designated scenic views would be affected.
- Due to the proposed landscaping adjacent to the boundary with the M8, the potential for driver distraction would be negligible. If the Board considers it to be necessary, a 2m high fence could be erected until the said landscaping is established.

6.2. Planning Authority Response

None

6.3. Observations

(a) JR Oronco Ltd of The Orchard, Kilworth, Co. Cork

The observer owns the off-line MSA at Junction 14 on the M8. It supports the Planning Authority's reasons for refusal but considers that these should also have included one with respect to non-compliance with the NRA's Service Area Policy (August 2014), the Trans-European Transport Networks (TEN-T) Regulations, and the NRA's Technical Guidance TA 70/14 requirements. The following observations are made in this respect:

Non-compliance with the NRA's Service Area Policy (August 2014):

- The applicant's emphasis on meeting a local need is contested. The proposal would be a Type 1 MSA, as defined by the NRA's Service Area Policy (August 2014), and, as such, it would draw custom primarily from the M8 via Junction 17. And yet under this Policy, the site's identified for MSAs in Cork have either been developed, i.e. Junction 14 (east), or remain to be developed, i.e. Ringaskiddy.

- An MSA for Junction 13 was refused (14/6405 & PL04.244445) on the grounds of non-compliance with the said Policy, i.e. Junction 14 was stated as being the appropriate location.
- Previously refusals for off-line MSAs at Junctions 13 and 14 (west), under PL04.242586 and PL04.242495, were refused on the grounds of their failure to exhibit a co-ordinated approach to the provision of such facilities and hence their proliferation, which should be avoided.
- Given that an MSA at Junction 14 (east) has now occurred the provision of further one as proposed at Junction 17, 18 km away, would constitute proliferation.

Non-compliance with TEN-T Regulations:

- These Regulations require that MSAs be provided at c. 100 km intervals, whereas the observer's one would be only 18 km away.
- These Regulations would also be infringed as the HGV park would not be physically removed from other aspects of the proposal, with adverse implications for safety and security and the opportunity for drivers to rest.

Non-compliance with the NRA's Technical Guidance TA 70/14:

- Under Section 4.19 of this Guidance, HGV and coach parking is required to be segregated, and coaching parking is required to be capable of being accessed/egressed in forward gear. Under the proposal, these requirements would not be met.
- Under Section 3.30, one HGV parking space is required to be allocated for use by an ADR vehicle. Such space should be isolated and subject to a barrier. Under the proposal, these requirements would not be met.
- Under Section 4.17, parking is required to be laid out for the use of staff only. Under the proposal, this requirement would not be met.
- Under Section 3.7, requires that 2m wide footpaths be laid to reflect pedestrian desire lines through the site, e.g. from the N and E boundaries to the building. Under the proposal, this requirement would not be met.

Destination development:

- Under Section 2.8 of the SPNR Guidelines, local custom should be avoided. Nevertheless, the proposal would, especially insofar as it would entail a business and community hub, attract such custom and so the village centre of Watergrasshill would be adversely affected.
- The proposal in its totality would be out of character with the area and so it would materially contravene the CDP and the LAP.

(b) Leonard O’Sullivan on behalf of residents of Priory Court, Watergrasshill, Co. Cork

- Under the business zone, the CDP excludes “general retail development”. MSAs, such as the one proposed, would constitute a retail outlet and it would serve the M8 rather than the local community. Unlike industry, it would be likely to operate on a 24/7 basis and, unlike a car showrooms, it would generate significant traffic.
- If the zoned land were to be developed as a business park, then comparable levels of employment could be anticipated without night-time working.
- Local residents would be likely to charge electric cars at their homes and so the applicant’s emphasis in this respect is misplaced.
- Local residents tend to commute to either Fermoy or Cork and so the absence of the proposal would not necessarily generate additional trips along the M8.
- Shops, one of which has recently expanded, and eateries in the village centre serve Watergrassmill well. The proposal would only detract from them.
- The proximity of the local school to the site and the branding of fast-food outlet(s) in the proposal would inevitably promote unhealthy eating choices.
- The proposed layout would contravene the LAP, which envisages building on the south/south west portion of the business zoned lands only. The proposed building in the north east portion would inevitably be visible from the M8. Site access and parking would be close to the Priory Court housing estate and so traffic noise and noise from refrigerated units would adversely affect residential amenity.
- The observer supports the Planning Authority’s three reasons for refusal.

(c) Circle K Ireland Ltd of Circle K House, Beech Hill, Clonskeagh, Dublin 4

The applicant's contention that the proposal would not materially contravene the business zone, as service stations are not explicitly cited is challenged on the following basis:

- Unlike other DPs the CDP does not employ a zoning matrix to define permissible and non-permissible uses. Instead the approach adopted is to identify examples of appropriate uses under the heading of zoning objectives. Sometimes examples of uses that would not normally be encouraged are cited so that, in exceptional circumstances, they can be considered. Under the business zone only examples of the former as distinct from the latter are given. Furthermore, under the business zone, general retail development is specifically excluded.
- The proposal is for a retail use: Hence it is the subject of a retail impact statement and it is addressed under the Retail Planning Guidelines. (The inclusion of a business hub does not overturn the fact that this proposal would be essentially a retail one). As such, it would materially contravene the CDP.
- As the proposal would be a material contravention of the CDP, Section 37(2)(b) of the Planning and Development Act, 2000 – 2019, is relevant. None of the items contained therein are relevant and so the Board is precluded from granting permission.

Other reasons for refusal also pertain:

- The proposal would, due to its scale and location, function as a destination development and so businesses in the neighbouring village centre would be adversely affected.
- The Area Engineer identified a range of issues with the proposal, which have yet to be resolved.
- Environmental impacts would adversely affect the residential amenities of the area.
- The proposal is mis-leading described on the public notices as a mixed-use one when it is manifestly a MSA.

- To grant permission to this proposal would risk the establishment of an adverse precedent for the location of MSAs.

6.4. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of national planning guidelines, the CDP and the LAP, relevant planning history, the submissions of the parties and the observers, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Description of the proposal,
- (ii) Planning policy,
- (iii) Land use,
- (iv) Retail impact,
- (v) Traffic, access, and parking,
- (vi) Visual amenity,
- (vii) Residential amenity,
- (viii) Ecology,
- (ix) Water, and
- (x) Screening for Stage 1 AA.

(i) Description of the proposal

7.2. The site is located to the south of Watergrasshill in a position adjacent to Junction 17 of the M8.

7.3. The applicant has described her proposal as a mixed-use development, which would include a petrol filling station, an ancillary retail and food sales building, and an HGV/coach park with a refuelling area. By contrast, the Planning Authority, the appellant, and observers (a) and (c) describe the proposal as an off-line Motorway Services Area (MSA).

- 7.4. Under the TII's Service Area Policy (August 2014), types of on-line service areas are described. A distinction in this respect is made between Type 1 and Type 2 service areas, with the former providing a full service area and the latter a rest area. Off-line facilities are also discussed.
- 7.5. I note that Type 1 service areas are stated as being "a large scale service area providing an amenity building (including a convenience shop, restaurant, washrooms and tourist information), fuel facilities, parking and picnic area." I note, too, while the proposal would be off-line rather than on-line, it would provide/be capable of providing the above cited services.
- 7.6. Clearly, where a service area would be on-line, it would be self-evidently a *motorway* service area. Where it would be off-line, there may be some scope for discussion depending on the site-specific circumstances of proposals.
- 7.7. I consider that the siting of the current proposal adjacent to Junction 17 of the M8 and its nature, i.e. the type and range of services that it would provide, and its scale are such that it would be a MSA rather than a facility intended to serve only the customer base represented by the surrounding locality.
- 7.8. Observer (c) states that the description of the current proposal is misleading as it did not state that a MSA was envisaged. This objection was raised at the application stage and the Planning Authority took the view that, while such a statement in the description would have been "more accurate", the wording used was not "in accurate", as all the proposed uses and structures were listed. The Authority also observed from the submissions received that the public was clearly aware that a MSA was in prospect and so the matter was not taken any further.
- 7.9. I note the view taken by the Planning Authority. I note, too, that the nature and scale of the proposal are addressed by the description of the proposal and that the effect of the omission of any reference to it being a MSA means that its intended customer base is not explicitly signalled.
- 7.10. I conclude that the description of the proposal is adequate.

(ii) Planning policy

- 7.11. Under Section 2.8 of the Spatial Planning and National Roads (SPNR) Guidelines, off-line motorway service areas (MSAs) at national road junctions are discussed. These Guidelines state that planning authorities should consider policies for the provision of such MSAs in their development plans. They counsel that a proliferation of them at national road junctions should be avoided and they should avoid the attraction of local customer, which would generate short trips on the motorway network and threaten the viability of businesses in local centres.
- 7.12. Under Objective TM 3-1(g), the Planning Authority undertakes to co-operate with the TII in identifying the need for service areas on the national road network. Under the TII's Service Area Policy (August 2014), the need for off-line facilities is identified as existing on the M8 at Junction 13 to 14, i.e. Mitchelstown to Fermoy. (A further need is identified for one on the N28 at Ringaskiddy). In September 2019, the TII published a review of its Service Area Policy in the form of a Consultation Paper. Maps contained in this Paper show that there are presently 4 off-line service areas on the M7/M8 route between Dublin and Cork, including one, which has recently opened on the eastern side of Junction 14, Fermoy North.
- 7.13. Observer (a) draws attention to the aforementioned off-line service area at Junction 14 and to its proximity to the subject site, i.e. it is c. 18 km away. As the M8 forms part of the Trans-European Transport Network (TEN-T), Regulations pertaining to this Network recommend that service areas be located at 100 km intervals.
- 7.14. The TII's Consultation Paper indicates that existing provision along the M8 is at an average interval of 45 km and so the aforementioned recommendation of the TEN-T Regulations has already been exceeded. The TII, as consultee at the application stage, advised that the site of the proposal has not been the subject of any forward planning exercise that it has been party to with the Planning Authority. In these circumstances, the proposal would represent a proliferation of such service areas on the M8, which would be contrary to the SPNR Guidelines and Objective TM 3-1(g) of the CDP.
- 7.15. I will discuss the questions of local custom in relation to short trips and the threat to viability under the fourth and fifth headings of my assessment.
- 7.16. I conclude that the proposal would lead to a proliferation of service areas on the M8.

(iii) Land use

- 7.17. Under the LAP, the site is part of a wider area of land (7.1 hectares) that is zoned for business. The accompanying commentary on this zoning expresses concern that structures on the said land, which is elevated in relation to the M8, should not be visible from this motorway. In this respect, they should be sited in the south/south western portion of this land and so it should be the subject of a comprehensive layout and landscaping scheme.
- 7.18. The subject site extends over the north eastern portion of the aforementioned land. Thus, the portion envisaged as being developed to provide new structures would lie beyond its south western boundary. Likewise, the proposal is a stand-alone one and so it does not form part of a comprehensive layout for all of the said land.
- 7.19. Turning to the question of land use within the business zone, Objective ZU 3-6 of the CDP sets out the type of uses that are and are not envisaged for the new business areas that are in prospect for this zone. The proposal would comprise a range of uses that would essentially involve retailing. (The proposed office/business/ community hub on the mezzanine floor would be very much a minor use in comparison with the retail sale of fuel, convenience goods, and hot and cold food for consumption on and off the premises). Thus, what this Objective states about retailing is of the essence. Positively, it endorses car showrooms and, where explicitly stated in LAPs, retail warehousing. Negatively, general retail development is excluded.
- 7.20. As the proposal would not entail car sales, and the relevant LAP does not refer to retail warehousing, which in any event is not proposed, the types of retailing positively endorsed would not arise. That leaves the question as to whether or not the proposal should be considered to come within the category of general retail development. The Planning Authority's first reason for its draft refusal takes the view that it would do and so it would result in a material contravention of Objective ZU 3-6. The applicant dissents.
- 7.21. The applicant contends that, as petrol stations are normally not appropriate for village centre locations, they should be considered as being appropriate for an out of centre site such as the subject one. She also contends that, in retail terms, the sale of fuel would be primary and so other items would be simply ancillary.

- 7.22. I note the validity of the applicant's observation with respect to the location of petrol stations. However, this in itself would not justify the siting of the proposed petrol station on the subject site. I note, too, her comments on the question of what is ancillary. However, these are not self-evident at a time when it is common knowledge that profit margins on fuel are tight and petrol stations are therefore widening their offer to ensure their on-going profitability.
- 7.23. The CDP does not define "general retail development". I consider that this phrase could reasonably be understood to encompass those uses that are comprised in the definition of "shop" set out in Article 5(1) of the Planning and Development Regulations, 2001 – 2019. This definition is not however exhaustive with respect to retail usage. Thus, for example, it specifically excludes restaurants, public houses, and hot food takeaways, which entail retailing and are typically comprised in town/village centres. Furthermore, under Article 10(2)(b)(ii) of the aforementioned Regulations, motor service stations are cited as a *sui generis* use and yet they entail retail usage, too. The range of retail uses comprised in the proposal would encompass the retail sale of convenience goods, food and drink, and fuel and so it would draw upon all of the above expressions of retailing.
- 7.24. Given the range of retail uses that would be comprised in the proposal and given, too, the virtual blanket exclusion of retail uses under the zoning of the site, this proposal would *prima facie* entail a material contravention of the relevant CDP Objective.
- 7.25. The applicant has challenged the foregoing conclusion of material contravention, which the Planning Authority cites in its first reason for refusal. She thus highlights aspects of the proposal which could be considered supportive of business uses, for example the proposed HGV refuelling and parking facilities and the proposed meeting room, or equivalent in their effect, the provision of employment.
- 7.26. I consider that the aspects cited are not sufficient to set aside the usage concern generated by the proposal and the knock-on effect that it would have on the remainder of the land zoned for business use. Thus, the opportunity to development the zoned land in a comprehensive manner as set out in the LAP would be forfeited.
- 7.27. Under Section 37(2)(b) of the Planning and Development Act, 2000 – 2019, the Board has the discretion on specified grounds to set aside a reason for refusal that is

based on the material contravention of the CDP. I have reviewed these grounds and I consider that none of them are applicable in this case.

- 7.28. I conclude that the proposal would in essence entail retailing and so it would constitute a material contravention of the business zone, wherein retail uses are excluded except for that of a car sales showroom.

(iv) Retail impact

- 7.29. Section 4.11.10 of the Retail Planning Guidelines 2012 states that they do not consider MSAs and advice on these facilities is set out in the SPNR Guidelines. Accordingly, under Section 2.8 of these Guidelines, the following advice is stated:

...to permit a service area to become a destination for local customers would be contrary to Government policy on retail and town centres as set out in Retail Planning Guidelines 2005. The consequence of this would be to threaten the viability of businesses in cities, towns or other local centres.

The Retail Planning Guidelines thus cited have been superseded. Nevertheless, I consider that the quest of the 2005 Guidelines to safeguard the vitality and viability of town/village centres has been continued in to the 2012 ones.

- 7.30. The subject site lies on the southern side of Watergrasshill, which is identified as a key village in the LAP. The centre of this village is not explicitly defined in this Plan. However, during my site visit, I observed that it occurs along the route of the R639 at some remove to the north of the site. The applicant's report entitled "Watergrasshill: Assessing the Impact of Retail Provision on Town Vitality and Viability" advises that there are 2 existing convenience shops and 3 eateries in this centre, in addition to several other shops, for example hairdressers, a pharmacy, and a post office. The LAP identifies a 3.6-hectare opportunity site (X-01) to the east of the functioning village centre upon which a mixed-use development comprising retail, residential, and community uses is envisaged.
- 7.31. Under the proposal, the shop would have a net retail floorspace of 97.7 sqm and 2 concessionary areas for eateries with a combined publicly visible floorspace of 54.4 sqm. Accompanying internal seating areas would have a total floorspace of 245.2 sqm. The applicant's aforementioned report analyses both the population of Watergrasshill and the population within a 10-minute drivetime of the village. This report concludes that there is a shortfall in retail provision and that the proposal

would assist in this respect. It emphasises the opportunity for shorter journeys that would arise as a result of the proposal being in-situ.

- 7.32. I note the identified shortfall in retail provision and the longer journeys that result from the same. I note, too, the presence of 2 existing convenience shops in the village centre and 1 hot food takeaway. I am concerned that the non-fuel retail offer of the proposal would largely overlap, rather than appreciably extend, that which is already available in this centre and so I do not envisage that it would result in shorter journeys for local residents and workers. Instead, it would be likely to impact upon the said businesses in the village centre, especially as the site is near to the majority of new housing in the village, which is on the southern side of its centre. Thus, I envisage a situation wherein, for example, commuters returning home on the M8 would be likely to use the proposal for top-up shopping rather than the businesses in the village centre.
- 7.33. I conclude that the proposal would tend to duplicate rather than extend the non-fuel retail offer that already exists within Watergrassmill and so it would not result in shorter shopping journeys and, due to the site's location beside Junction 17 of the M8, it would tend to attract local custom. An adverse impact upon the vitality and viability of the village centre would thus be likely to ensue.

(v) Traffic, access, and parking

- 7.34. The applicant has submitted a Traffic and Transport Assessment (TTA) Report. This Report quantifies the traffic that would likely to be generated by the proposal and it analyses the resulting impact on the performance of 4 nearby junctions, i.e. both the eastern and the western roundabouts at Junction 17 of the M8, the junction between the R639 and the L3012 to the west of the site, and the junction between the R639 and the L90800 in the village centre. For 2036, i.e. it is assumed that the proposal would open in 2021 + 15 years, the impact upon am and pm peaks is traced. In the case of the western roundabout, an increase in traffic of over 5% would occur during the am and pm peaks and, in the case of the R639/L3012, an increase of over 5% would occur during the am peak and an increase of over 10% would occur in the pm peak.
- 7.35. The applicant proposes to mitigate the foregoing impacts by means of the following measures:

- With respect to the western roundabout, the applicant identifies that the L3012 arm of this roundabout would operate at overcapacity during the am peak. By way of mitigation, she proposes that the capacity of the western roundabout itself be increased by the contraction of the central island to allow for the addition of an extra circular lane (cf. drawing no. 190087-DBFL-XX-XX-DR-C-1005 revision P03).
- With respect to the R639/L3012, the applicant proposes that it become a priority-controlled junction.

7.36. The TTA also analyses the proposed access/egress to the site. This access would be accompanied by a right-hand turning lane. Again, using a 2036 horizon, the envisaged junction would perform satisfactorily during am and pm peaks. Likewise, the requisite sightlines for what is at present an 80 kmph stretch of road would be available. (The submitted design for the reorganisation of the L3012 shows in addition to the said right-hand turning lane a further such lane to the west, which would serve a planned housing site on the northern side of this local road).

7.37. The applicant proposes to install a signalised pedestrian crossing to the east of the proposed access/egress on the L3012. A public footpath would link the site to this crossing on the nearside of the road and, on the far side, a public footpath would extend eastwards to the western roundabout. (The applicant has indicated that if the Board considers it to be necessary, this footpath could be extended westwards to the proposed access/egress to the aforementioned housing site). At the roundabout an uncontrolled pedestrian crossing would be formed, utilising the existing road island at the foot of the L90800. The existing public footpath on the far side of this local road does not adjoin the carriageway and so a link piece would need to be constructed to ensure connectivity.

7.38. On-site, a circulatory road system would be laid out in which there would be no dedicated route to the proposed car park. Instead, the northern side of the forecourt would be utilised to access the same. I am thus concerned that, during busy periods, vehicles queuing for the pumps may obstruct vehicles seeking to proceed to the car park, resulting in tailbacks, which, due to the shortness of the initial on-site access road, could conceivably tailback onto the L3012. Obstruction could also arise from vehicles manoeuvring to and from car parking spaces in the immediate vicinity of the

entrance to the forecourt and the siting of the water/services area on the northern side of this forecourt.

- 7.39. The proposed car park, cycle park, and motorbike park would provide 135 spaces, 5 spaces, and 10 spaces, respectively. Amongst the 135 spaces there would be 7 mobility impaired ones, which would be laid out adjacent to the north eastern elevation of the proposed building, and 14 electric vehicle charging spaces. The proposed HGV and coach park would provide 23 and 6 spaces, respectively. These figures reflect the guidance in parking provision at MSAs set out in the TII's "The Location and Layout of On-line Service Areas" (DN-GEO-03028).
- 7.40. Observer (a) has critiqued the proposed layout of the site in the light of TEN-T Regulations and the aforementioned TII guidance document.
- 7.41. The former Regulations refer to the need for HGV parks to be physically removed from other aspects of the proposal. In this respect, I note that the proposed HGV park would be laid out over the south western portion of the site and so it would be capable of being self-contained.
- 7.42. The latter guidance document refers in the first instance to on-line MSAs rather than off-line ones, such as the proposal. Assuming their applicability, the need to segregate HGV and coach parking, the absence of provision for an ADR, and the omission of dedicated car parking spaces for staff are all cited. *Prima facie*, the first of these requirements may be the more difficult to retrofit into the site layout.
- 7.43. I conclude that, subject to interventions to the junctions at either end of the L3012, traffic generated by the proposal would be capable of being accommodated on the public road network. On-site parking provision would be to an appropriate level of provision. The layout of the site would raise several issues with respect to traffic management and road safety, which, if the Board is minded to grant, would need to be the subject of a request for further information.

(vi) Visual amenity,

- 7.44. The site rises at a gentle gradient from its southern corner to its north eastern one. The proposed building would be sited towards the centre of the main body of the site and it would have a FFL that would reflect the higher of the existing contours under its footprint, i.e. 175.5m. This building would have a cubic form. Its roofscape would comprise a shallow double pitched roof behind parapets and stubby flat roofed

raised features. Parapet and flat roof heights would be 8.37m and 9.91m. High level signage is proposed for each elevation and freestanding 9m high totem signs would be sited in each of the three corners of the main body of the site.

- 7.45. The site is elevated above the M8, which passes through a cutting in the vicinity of Junction 17. Existing vegetation accompanies the nearside motorway embankment and under the proposed landscaping scheme, this vegetation would be augmented by planting along the adjoining eastern boundary to the site. Gaps in the existing hedgerow along the south western boundary would, likewise, be filled out with new planting.
- 7.46. The applicant has submitted photomontages of the proposal by means of a Landscape and Visual Impact Assessment. These photomontages illustrate that the proposal would be highly visible from the 2 elevated roundabouts comprised in Junction 17 and from the northbound side of the M8. Notwithstanding the retention of roadside hedgerows along the nearside of the L3012, it would also be visible from this local road, too.
- 7.47. The siting and design of the proposed building complete with its signage and the siting of the totem signs would ensure that the proposal is visible to northbound traffic on the M8 and as such a potential distraction. Under the (iii) heading of my assessment, I discuss how the LAP in zoning the site and the adjoining lands to the south west explicitly seeks to ensure that structures are omitted from the site in favour of the adjoining lower level lands so as to prevent the scenario of visibility/driver distraction that the proposal would open up. The aforementioned natural screening would have only a limited mitigating role in this respect.
- 7.48. The proposal would contravene the LAP by being visible from the M8 and as such it be would unduly prominent and a potential distraction to drivers.

(vii) Residential amenity

- 7.49. Priory Court housing estate is located on the opposite (northern) side of the L3012 from the site. Observer (b) expresses concern that, as the proposal would operate on a 24/7 basis, its impact upon the residential amenities of this estate would be greater than would be expected from the day time business uses envisaged under the site's zoning. Particular concern is expressed over the noise that would emanate from traffic and refrigerated units.

- 7.50. At the appeal stage the applicant has submitted 3 additional assessments that address, amongst other things, noise. The Noise Emission Assessment (NEA) drew upon noise level records undertaken at 2 noise sensitive locations, i.e. adjacent to the nearest dwelling house on Priory Court and adjacent to Watergrasshill National School, and, for comparative purposes, noise readings undertaken at an existing MSA beside the M7 near Birdhill, Co. Tipperary. Recommended indoor noise levels for dwelling houses and schools was identified and the noise levels from the full range of noise emitters in the proposal were likewise identified, along with that which would arise from increased traffic movements on the adjoining local road network. The resulting cumulative noise level from all these emitters was calculated and found to be below the said recommended indoor noise levels.
- 7.51. The NEA makes two recommendations. Firstly, deliveries should be restricted to day time periods only and, secondly, the noise from plant mounted on the proposed building should not exceed 65dB(A) at 10m from its façade.
- 7.52. The applicant has submitted an Air Impact Assessment (AIA). An air dispersal model was devised to trace the impact of pollutants emanating from HGVs idling on the site and at the site entrance. (HGVs were selected as they would be the worst polluters). Sensitive receptors were identified, as under the NEA, and the EPA's Zone D background concentrations of pollutants was utilised.
- 7.53. Once run, the results of the air dispersal model indicated that, while ground level concentrations of pollutants would rise as a result of the proposal, they would still be well within the relevant Air Quality Standards set by the Clean Air for Europe (CAFÉ) Directive (EU 2008/50/EC).
- 7.54. The applicant has also submitted an Outdoor Lighting Report, which illustrates how the proposed methods of illumination on-site and along the proposed public footpath on the northern side of the L3012 would be designed optimally to avoid light spillage.
- 7.55. In the view of the foregoing assessments, I conclude that the proposal would be compatible with the residential amenities of the area.

(viii) Ecology

- 7.56. At the appeal stage the applicant has submitted a letter of commentary on the suitability of the site for bats. This commentary observes that this site is composed of improved grasslands surrounded by scrub and hedging. It also observes that there

are no trees or structures nearby that would lend themselves to roosting and that the presence of the M8 to the east would reduce the attractiveness of the site as a habitat. The commentary concludes that the site is of negligible suitability as a roosting habitat for bats and it is of low to moderate suitability as a foraging or commuting habitat.

(ix) Water

- 7.57. The applicant has submitted an Infrastructure Design Report, which addresses water supply, foul and surface water drainage, and flood risk.
- 7.58. With respect to water supply, the applicant proposes to lay a connection to the public water main in Priory Court housing estate to the north of the site. Irish water has raised no objection to the principle of such a connection.
- 7.59. With respect to foul water drainage, the applicant proposes to lay a connection to a new pumping station, which would be sited in conjunction with a new housing site to the west of the site. Such a connection would entail laying a 400m length of foul sewer under the L3012. Irish Water has raised no objection to the principle of such a connection.
- 7.60. With respect to surface water drainage, the applicant proposes an on-site network, which would incorporate SuDS methodologies and which would afford protection against a 1 in 30 year flood event. Above this level of flooding, the site layout would be designed to ensure that flows are away from the building and attenuation tanks would be designed to cope with a 1 in 100 year flood event + a 10% allowance for climate change and to ensure that the ultimate off-site discharge is at the greenfield rate. Petrol interceptors would be sited in conjunction with the forecourt and the HGV refuelling area and at the discharge point from the site in its southern corner.
- 7.61. The Area Engineer expressed concern that the aforementioned discharge point would be adjacent to the M8 and that the intention may be to connect to the motorway surface water drainage system. The applicant has responded to this concern by stating that the intention is rather to connect to local field drains/wider natural drainage system and she invites a condition with respect to the non-use of the said motorway system. I consider that further elucidation of this matter is needed to ensure the feasibility of what it is that the applicant is proposing.

- 7.62. With respect to flood risk, the applicant confirms that the site is not the subject of any identified flood risk. On-site flooding during 1 in 100 year storm events would be capable of being handled as outlined above under the commentary on surface water.
- 7.63. The proposal would raise no water issues, subject to the confirmation of the adequacy of off site surface water drainage arrangements to receive the discharge in this respect from the proposal.

(x) Screening for Stage 1 AA

- 7.64. The applicant has submitted a Stage 1 Screening for Appropriate Assessment. I will draw upon this Screening, the NPWS's website and my own site visit in carrying out a Stage 1 Screening for Appropriate Assessment below.
- 7.65. The site does not lie in or near to a Natura 2000 site. The nearest such site is the Blackwater SAC. The nearest water course is that of the Meenane River, which runs to the east of the site and thus on the far side of the M8. This River flows into Cork Harbour, which is the subject of a SPA (004030). However, there is no hydrological, hydrogeological or habitat connectivity between the site and it.
- 7.66. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposal, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 004030, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.
- 7.67. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects on the projects on any European sites.

8.0 Recommendation

- 8.1. That permission be refused.

9.0 Reasons and Considerations

1. Having regard to Section 2.8 of the Spatial Planning and National Roads Guidelines, the TII's Service Area Policy (August 2014) and the Consultation Paper reviewing this Policy (September 2019), and Objective TM 3-1(g) of the Cork County Development Plan 2014 – 2020, it is considered that, in the presence of existing Motorway Service Areas on the M8, the proposal would add to the provision of such Service Areas at a Junction where the need for such has not been identified and so it would represent a proliferation of them, thereby contravening national and local planning objectives in this respect. The proposal would thus be contrary to the proper planning and sustainable development of the area.
2. Having regard to the business zoning of the site in the Fermoy Municipal District Local Area Plan 2017 and to Objective ZU 3-6 of the Cork County Development Plan 2014 – 2020, the proposal, which would be essentially a retail use, would materially contravene the said Objective, which specifically excludes general retail development from sites zoned for business use. The proposal would thus be contrary to the proper planning and sustainable development of the area.
3. Having regard to Section 2.8 of the Spatial Planning and National Roads Guidelines, the Retail Planning Guidelines, and the Fermoy Municipal District Local Area Plan 2017, it is considered that the non-fuel retail offer of the proposal would tend to overlap with that which is available in the neighbouring Watergrasshill village centre. Furthermore, due to the highly accessible location of the site with respect to both Junction 17 of the M8 and new housing in Watergrasshill, the proposal would attract local commuters. Accordingly, it would adversely affect the vitality and viability of the village centre and it would attract local custom, thereby contravening national and local planning objectives in this respect. The proposal would thus be contrary to the proper planning and sustainable development of the area.

4. Having regard to the Fermoy Municipal District Local Area Plan 2017, the site is shown as forming the north eastern portion of lands denoted as B-01 and zoned for business use. The accompanying commentary states that proposals for structures on these lands should be situated in the south/south westerly portion to ensure that they are not visible from the M8 and, to this end, they should be the subject of a comprehensive layout and landscaping scheme. By contrast, the current proposal would be sited on the most elevated portion of the said lands thus ensuring its prominence and visibility from the M8. The commentary would thus be contravened and a cause of driver distraction on this motorway would be created with adverse implications for its safety and operating efficiency. The proposal would thus be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

19th February 2020