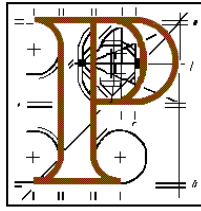


# An Bord Pleanála



## Inspector's Report

**PL15.244852**

**DEVELOPMENT: -**

Demolition and part conversion and extension to existing buildings to provide café/deli/shop and separate office, relocation of existing diesel pump and the provision of 2 underground fuel tanks and all associated works.

**Location:**

Junction 20, Dromad, Carrickcarnon, County Louth.

### PLANNING APPLICATION

**Planning Authority:**

Louth County Council

**Planning Authority Reg. No:**

14/483

**Applicant:**

Kieran Byrne

**Application Type:**

Permission

**Planning Authority Decision:**

Grant

### APPEAL

**Appellant:**

- (i) Morgan Fuels Ireland Limited
- (ii) Campus Oil Limited

**Types of Appeal:**

3<sup>rd</sup> Parties -v- Grant

**Observer:**

Alice Brennan

**DATE OF SITE INSPECTION:**

10/7/2015

**INSPECTOR:**

**Paul Caprani**

## **1.0 INTRODUCTION**

PL15.244852 relates to two third party appeals against the decision of Louth County Council to issue notification to grant planning permission for the demolition of buildings on site and the extension of existing commercial uses together with the relocation and provision of additional petrol pumps and the provision of two 40,000 litre underground fuel storage tanks at a site off the Old Dundalk/Newry Road in close proximity to the border with Northern Ireland. The grounds of appeal argue that the proposed development represents a piecemeal approach to development on the site which would result in a disproportionate intensification of use which would be in conflict with the Board's previous decision relating to the site and other Board decisions in relation to petrol stations in the vicinity.

## **2.0 SITE LOCATION AND DESCRIPTION.**

The 0.24 hectare site is an irregularly shaped site located at Junction 20 on the N1 National Primary Route in the small settlement of Dromad in close proximity to the Armagh/Louth border. The site is located approximately 500 metres to the south of the Carrickdale Hotel. It is accessed from the Old Dundalk/Newry Road and it fronts onto the slip road onto the southern bound carriageway of the N1. The N1 runs along the western (rear) boundary of the site. The Flurry River runs along the northern boundary of the site thus the site is wedged between the Old N1 (Dundalk/Newry Road now the R132) which forms a slip road off the N1 along the eastern boundary of the site, the N1 which runs along the western boundary of the site and the Flurry River which runs along the northern boundary of the site. A 2 metre high brick wall separates the site from the N1 to the rear while c.1.8 metres post and wire fence separates the site from the river to the north. There is a steep embankment between the northern boundary of the site and the River.

The site accommodates a variety of buildings including a two storey five-bay windowed former Garda barracks which is located in the southern portion of the site and faces eastwards directly onto the Old Dundalk/Newry Road. This building dates from the late 19<sup>th</sup> / early 20<sup>th</sup> Century. Situated to the immediate north of this building is a single storey structure accommodating the "half door" café and restaurant, this building is a much more recent construction probably dating from the 1970's/80's. Off-street perpendicular parking is provided to the front of both of these buildings. An L-shaped building located to the rear in the

northern portion of the site, it accommodates a motor servicing/repair and type sales outlet. A large concreted hardstanding area is located to the front of this building. Within this hard standing/forecourt area a single diesel pump is located with two dispensers on either side of the pump.

### **3.0 PROPOSED DEVELOPMENT**

The original drawings were submitted on 31<sup>st</sup> October, 2014. The nature and extent of the proposed development is set out below.

- The demolition of that single storey “half door” restaurant and café.
- The partial demolition of the existing two-storey former Garda barracks at the southern end of the site. It is proposed to demolish the southern part of this building which accounts for approximately 60% of the total structure. The demolition of the southern portion of the building is to accommodate a new vehicular exit from the site.
- Demolition of a small office area adjacent to the motor vehicle servicing and repair area.
- It is proposed to extend the remainder of the former Garda barracks to form a new deli/café/shop at ground floor level with toilets to the rear and a storage area at second floor level. The new extension will amount to 86 square metres.
- The proposal also seeks planning permission for a change of use part of the motor service/repair shop to use as a fuel payment office.
- Two new fuel dispensing areas are proposed to be located to the rear of the proposed café/deli. One of the fuel dispensing pumps will involve the relocation of an existing pump. The other pump comprises of a single sided pump located contiguous to the western (rear) boundary.
- Two new underground 40,000 litre tanks are to be located in the forecourt area adjacent to the new fuel dispensers.
- In terms of vehicular circulation, a new egress is to be provided in the south-eastern corner of the site where the former Garda barracks currently stands.

- New paving and landscaping is to be provided throughout the site.

#### **4.0 PLANNING AUTHORITY'S DECISION**

##### **4.1 Documentation Submitted**

The applicant submitted the following documentation on 31<sup>st</sup> October, 2014.

- A copy of the newspaper notice, site notice, application form and drawings.
- An EU Habitats Assessment Stage 1 Screening Report. The report identified existing and potential contamination issues which may arise from site operation and highlighted local sensitive receptors in the vicinity. The nearest European sites are identified none of which are located adjacent to the site. The Stage 1 Screening Assessment concluded a finding of no significant effects to any European sites within the sphere of influence of the project.
- The planning application form indicates that the proposed water supply to the development is to be taken from an existing connection to group water scheme.
- The site is to be served by an on-site wastewater treatment system. Partial details of the wastewater treatment system were submitted with the application.

##### **4.2 Planning Authority's Initial Assessment**

A report from the Environmental Section of Louth County Council requested further information regarding details of the interceptor serving the fuel dispensing area, further details in relation to the wastewater treatment plant and further details in relation to the location of the grease trap.

A letter from the NRA considers the proposed development to be at variance with national policy in relation to the control of frontage of development on national roads as outlined in the Guidelines for Planning Authorities. It is also recommended that a Road Safety Audit be carried out.

A report from the Inland Fisheries Ireland notes the lack of detail in relation to the wastewater treatment plant in the documents submitted.

A report from the Road Engineer Department of Louth County Council stated that there was no objection subject to further details in relation to a Road Safety Audit and surface water discharge.

#### **4.3 Additional Information Request**

On 18<sup>th</sup> December, 2014 the Planning Authority requested additional information in relation to the following issues:

- Compliance with National Road Guidelines for Planning Authorities.
- A submission of a Road Safety Audit.
- Further details in relation to the type, class and capacities of the interceptor serving the fuel dispensing areas.
- Further details in relation to wastewater treatment.
- Further details in relation to the location of grease traps and the capacity of such traps.
- Comments in relation to whether or not the proposed development would be in accordance with the previous Board's decision under PL15 240286.
- Further details in relation to landscaping.
- Further details in relation to proposed surface water discharge.
- Revised newspaper notice.

#### **4.4 Further Information Submission**

Further information was submitted on 27<sup>th</sup> March, 2015.

A Road Safety Audit was submitted as part of the additional information.

Details of the proposed public lighting arrangements are also set out in the response.

A separate report from McArdle and Doyle Limited sets out details of the proposed interceptors serving the fuel dispensing area and other paved areas within the site.

The McArdle Doyle's report also details the proposed wastewater treatment and details of the location of grease traps.

With regard to the previous Board's decision it is stated that the works to be undertaken are largely a conversion/replacement of an already extant commercial development on site and the proposals therefore cannot be considered a significant intensification of use. The proposal merely seeks to regularise and address congestion associated with traffic utilising the existing fuel pump on site.

Details of landscaping proposals were set out in Drawing 1424-PA-004. With regard to proposed surface water discharge matters, it is stated that, prior to the commencement of the development the applicant shall submit to the Planning Authority for its written agreement construction details in respect of the head wall of the proposed surface water discharge for assessment.

Revised newspaper notices were also submitted.

It is not proposed in this section of the report to summarise the technical details submitted in the separate report prepared by McArdle Doyle Limited. Any information contained therein that is relevant or pertinent to the evaluation of the proposal will be referred to in my assessment further below.

#### **4.5 Further Assessment of Proposal by Planning Authority**

A report from Inland Fisheries Ireland states that it is important to ensure that the treated wastewater from this development does not have a negative impact on the receiving waters of the River Flurry and the proposals should comply with the requirements set out in the Surface Water Regulations (S.I. 272 of 2009).

Letters of objection from the current third party appellants have been submitted the contents of which have read and noted.

##### **4.5.1 Planners Report**

The planner's report notes the additional information submitted by the applicant and makes reference to the Board's previous decision on the site under PL15.240286 and the conclusions set out in the said report, that the proposed development would not be a destination in its own

right but would largely serve passing traffic and would be ancillary to the existing uses on site. It is also considered that the new configuration of the site would improve the traffic circulation on the site. Overall therefore it is considered that the proposal is acceptable and thus it was recommended that planning permission be granted.

Condition 2(a) of the grant of planning permission required the developer to submit a revised site layout drawing for written agreement showing that the single sided fuel dispensing pump located in the western boundary of the site is omitted.

## **5.0 PLANNING HISTORY**

### **5.1 PL 15 240286**

One history file is attached and is relevant to the Board's deliberation on the current application and appeal. Under Reg. Ref. 11/592 Louth County Council issued notification to:

- (a) grant planning permission for the retention of the extension of the existing yard, the relocation of an existing fence, the relocation of car parking spaces and building signage subject to eight conditions and
- (b) Refuse planning permission for the retention of the installation of diesel supply tank, drainage and diesel interceptor trap and completion of the installation of diesel pumps in order to reinstate diesel fuel sales on site of a previously operating filling station.

The latter development was refused for five reasons relating to:

- Contravention of the objectives set out in the Development Plan.
- Traffic issues.
- Inadequate sight lines.
- The absence of a Natura Screening Report.

This decision was subject to a first party appeal. The Board granted planning permission for the entire development including the installation of the diesel supply and the completion of the installation of diesel pumps. In granting permission the Board considered that while the proposed development would constitute a material contravention of the development plan, having regard to the pattern of development and permissions granted in the area since the making of the development plan, the Board considered that by virtue of Section 37(2)(b)(iv) of the

Planning and Development Act, it was not constrained in granting planning permission for the proposed development.

## **5.2 Other Planning Decisions on the Site**

Both the Local Authority Planner's Report and one of the grounds of appeal set out other planning applications associated with the site. Under 09/583 (details are attached in a pouch to the rear of the file) planning permission was refused for the demolition of three commercial/retail units and the reinstatement of a previous petrol/diesel filling station units. Planning permission was refused for seven reasons relating to the contravention of policies contained in the Louth Development Plan 2009-2015, the environmental risks associated with the development which will be located adjacent to the Flurry River and inadequate visibility standards.

Under Reg. Ref. 91/725 planning permission was granted to remove an old shed and replace it with a new structure for use as a craft shop.

Under Reg. Ref. 87/42 planning permission was granted for the retention of a Bureau de Change.

Under Reg. Ref. 84/433 planning permission was refused for a dwellinghouse on site.

## **6.0 GROUNDS OF APPEAL**

The decision of Louth County Council was the subject of 2 no. third party appeals. Both appeals were submitted on behalf of the petrol station operators located in the vicinity of the site. The issues raised in the grounds of appeal are set out below.

### **6.1 Submission on behalf of Campus Oil**

The grounds of appeal set out the planning history in relation to the proposed development before expressing concerns in relation to the issue of car parking/traffic on the subject site. It is suggested the plans are vague in relation to the crossover path between pedestrian and vehicular movements within the site. The development should not have been granted in the absence of a Traffic Impact Assessment and Road Safety Audit.



Concern is expressed that discharge treated effluent will affect the assimilative capacity of the Flurry River and there has not been a proper analysis of the impact of the proposed development both locally and further downstream. The proposed wastewater treatment plant is deemed to be insufficient to cater for the wastewater generated by the development. There is a significant potential for contamination of the adjacent river in the case of an emergency spillage.

No Waste Management Plan has been put in place and no effort has been made to deal with the risk of litter from the site and the surrounding area.

The applicant has failed to demonstrate that any flow restriction from the site can cater for extreme rainfall events. It is suggested that the actual discharge will exceed the allowable discharge rates for the return period storms. This could result in significant flooding downstream of the site.

Concern is also expressed that the rainfall data for the Dundalk area has been underestimated and this too could have an adverse effect on the Flurry River.

Finally it is noted that the site location map is obsolete as the motorway which was opened c.7 years ago is not indicated on the map. Concerns are expressed that the use of obsolete maps could be misleading to persons viewing the plans to the development.

## **6.2 Appeal by Morgan Fuels**

An appeal was submitted on behalf of Morgan Fuels by Declan Brassil and Co. Planning Consultants. The grounds of appeal are outlined below.

The grounds of appeal set out the proposed development, site context, planning history related to the site. The grounds of appeal go on to quote extensively from the An Bord Pleanála planning inspector's report in the case of PL15.240286.

### *Precedent Decisions by the Board*

Reference is also made to other planning appeals which it is argued sets a precedent for the decision in this instance and should inform, and indeed should form the basis of the Board's decision in relation to the current application and appeal. In particular reference is made to ABP

Ref. PL15.236542 where the Board refused planning permission for a service station building, foodcourt building, four units and 139 car parking spaces at a site at Dromin Road, Castebellingham, and County Louth. Planning permission was refused for two reasons. Reference is also made to the fact that the Board granted planning permission under HA0011 and HA0012 for an online motorway service station at Dromiskeen (Louth County Council) and Jordanstown (Fingal County Council) to serve both northbound and southbound traffic.

Under Reg. Ref. PL239307 An Bord Pleanála refused permission for development comprising of a commercial driver's truck stop an overnight rest facility at Carrickcarnon, Dundalk, and County Louth for two reasons.

### *Planning Policy for Service Stations*

The grounds of appeal go on to outline the relevant planning policy framework and in particular reference is made to:

- Policy statements on the '*Provision of Service Areas and Rest Areas and Motorways and High Quality Dual Carriageways*' (January, 2006). It is noted that such service areas should be provided at intervals of approximately 50 to 60 kilometres where feasible/practical. Such facilities should be located at or close to interchanges along motorways/high quality dual carriageway uses.
- Reference is also made to policy for the '*Provision of Service Areas and Motorways and High Quality Dual Carriageways*' (October, 2007). This document was prepared by the NRA on foot of a detailed review of the requirement for service areas. The document policy incorporated a map identifying indicative locations for online service areas.
- Updated guidance and reviews were carried out in February, 2010 and January, 2011. These reviews reaffirmed the NRA's policy in relation to the provision of online service areas.
- Reference is made to the NRA published Advice Note TA/7008 which relates to the location and layout of service areas as part of its Design Manual for Roads and Bridges. Reference is made to the fact that Type 2 Service Areas (such as that proposed in the current development, according to the appellant) should benefit the commercial business and private drivers while, where possible,

blending in and complementing with the existing environment. Again they should be provided at 50 to 60 kilometre intervals on motorways and Type 1 dual carriageways.

- Reference is made to ‘*Spatial Planning and National Roads – Guidelines for Planning Authorities*’ (January, 2012). It notes that the guidelines state that a proliferation of private off-line service areas facilities at national road junctions should be avoided and stresses the importance of a co-ordinated approach between planning authorities in consultation with the NRA. Likewise the proliferation of service area facilities along rural sections of national roads and/or associated junctions where the maximum speed limit applies, would create significant safety risks and affect the level of service available to road users as well as the impact on the viability and vitality of existing urban settlements.
- Reference is made to the Louth County Development Plan and it is argued that the proposed development (which is located within the Development Zone 2) is contrary to many development plan policies set out in the written statement.

#### *Creeping Intensification of Use*

Section 4 of the submission specifically sets out the grounds of appeal. Concern is expressed that there is a process of “creeping intensification of the use of the site”. It is noted that permission was refused for a substantial service station under Reg. Ref. 09/583. In particular reference is made to Policies RD34 and RD35 as set out in the Louth Development Plan and it is argued that the proposal contravenes these policy statements.

It is noted that the historic use of the site as a filling station was unauthorised and this use was abandoned. The previous permitted diesel pump onsite was supported by An Bord Pleanála on the basis that it was considered to constitute an ancillary use incidental to the authorised car repair/tyre centre. It is suggested that the previous ABP inspector’s report held the opinion that the petrol station element would ‘*not become a destination in its own right but would largely serve passing traffic*’.

It is noted that the development lies within Development Zone 2 for rural areas which only allow for essential resource and infrastructure based developments necessary to sustain the existing local community. It also seeks to preclude largescale commercial developments. Reference is

also made to policies in the development plan that supports the implementation of NRA policy regarding the development/provision of online and offline services. Thus it is argued that the proposed development materially contravenes the land use zoning objective and various development objective/policies as set out in the development plan.

The provision of an additional dispensing pump to that previously permitted by the Board and the provision of largescale underground storage tanks with a cumulative storage capacity of 80,000 litres cannot be considered ancillary or of a scale to meet primarily local needs. The provision of a shop/deli/café use as typically provided at service stations supports the position that the service station is intended to provide for traffic on the N1/A1 dual carriageway which is contrary to national policy.

#### *Contrary to Policy Provisions*

It is contended that the proposed development constitutes a small scale “service area” and it could be accurately described as an “offline service area”. The proposal therefore does not meet the policy test of being an essential resource-based development that is necessary to sustain an existing rural community. The size and scale of the proposal is beyond that level associated with passing trade and will generate trips from outside the immediate locality. The proposal is therefore contrary to Policy RD34 and RD35 and EDE6 of the Development Plan. The proposal is also contrary to the intent and purpose of Policy TC7 which seeks to resist new development within 100 metres of the fence line of the M1 motorway and the Newry to Dundalk Link Road (N1/A1).

The proposal is also inconsistent with NRA policy for a development of service stations/areas. Reference is again made to the fact that Louth County Council refused planning permission for a similar development under Reg. Ref. 09/583.

Reference is made to the inspector’s report under ABP Ref. PL15.239307 and the subsequent Board’s refusal of planning permission for a similar type development a short distance north of the appeal site and the Board’s decision relating to same which refused planning permission for the construction of a commercial private truck stop and overnight rest facility (motel style accommodation and a vehicle maintenance building). An Bord Pleanála refused planning permission on the grounds that it is not considered that the proposed

development comes within the scope of the type of development which would be facilitated within the zoning objective for the site. It is submitted that the underlying principles between the subject proposal and the above refusal by the Board are similar in that there has been no subsequent change in policy or other circumstances that would justify a departure from the above decision. It is also noted that online service areas have already been constructed along the M1 at Jordanstown and Drumiskin at approximately 75 and 20 kilometres to the south of the site respectively. An Bord Pleanála therefore is respectfully requested to overturn the decision of the Planning Authority and refuse planning permission for the proposed development.

## **7.0 APPEAL RESPONSES**

### **7.1 Applicant's Response to the Grounds of both Third Party Appeals**

The response suggests that both appeal submissions are purely commercial motivated rather than based on a genuine concern for proper planning and sustainable development.

The validity of the appeal is also challenged on the grounds that the objections received by the Planning Authority were not fully in accordance with the provisions of Article 35(a)(v) of the Planning and Development Regulations 2006 in that they dealt with the generality of the proposed development as opposed to the specific information submitted on foot of the additional information request by the Planning Authority. It is therefore suggested that the objector's letters are not valid. It is suggested that the letters of objection and the current appeals in this instance merely seek to restrict competition.

The appellants fail to acknowledge that the application submitted, merely seeks to reconfigure the site layout in order to improve traffic regulation and operations within the site. Significant health and safety concerns exist in relation the current site's configuration. The proposal constitutes a reduction in the floorspace granted on site and involves replacing works to existing commercial structures on site for which planning permission has already been granted.

It is also noted that the original permission was considered acceptable under the development plan policy EDE6 by An Bord Pleanála.

The grounds of appeal do not refer to the fact that there is an existing and established land use activities on site and this has been subject to development consent.

With regard to the issue of precedent, the response to the grounds of appeal argued that it is fundamental tenet of the planning process that each planning application for planning permission and consequently each appeal are objectively assessed planning merits. The assessment of other proposals on lands separate from and unrelated to the appeal should have no material bearing on the objective assessment of any application. The cases as referenced by the appellants have no material similarity to the current proposal.

With regard to NRA Guidance, it is stated that these guidelines principally focus on the delivery of online service areas with direct access to motorway networks which does not apply to the appeal site or the current proposal. The proposed development is not of a scale or a type that would be likely to become a destination in its own right. The applicant's assertion that the appeal site was akin to an offline service area is both arbitrary and incorrect. The proposal is more akin to a roadside service facility.

Thus the appellant's reference to the proposal being contrary to RD34 fails to recognise the following:

- The site's established history and existing use.
- The site is not located at a motorway junction but at a local road.
- The scale of the existing building and the proposal do not conform to the NRA's definition of an online or offline service area.
- The appeal site is not at a location where the maximum speed limit applies.

It is noted that the NRA submission to Louth County Council did not express any concerns that the scheme is contrary to the policy framework set out in the various guidance documents.

With regard to environmental issues and flooding, the response states that the site is subject to a comprehensive appropriate assessment screening report and the wastewater treatment plant has more than sufficient surplus capacity to accommodate any normal or extraordinary loads generated by the proposal. The onsite attenuation capacity is capable of effectively handling surface water run-off from either normal or extraordinary precipitation levels. Should any persistent or accidental

impact arise from the operation, Louth County Council can issue enforcement proceedings.

## **7.2 Planning Authority's Response**

In relation to the issue of car parking and traffic, the applicant carried out a road safety audit.

In relation to arguments that the proposed development is contrary to the policy statements contained in the development plan, it is stated that the current application is required to reconfigure the layout and operation of the site and the works to create a café, deli and shop are largely a conversion/replacement of an already extant commercial development on site. The Planning Authority welcomes a separate entry and exit system to minimise any reversing movements in the interest of pedestrian safety. The applicant has also omitted the additional single sided dispensing pump located on the western boundary of the site.

The Planning Authority is satisfied that the applicant has reconfigured the existing operations on site and carried out a road safety audit to ensure that the proposal is more acceptable from a traffic safety point of view. The proposal cannot constitute an online or offline motorway service station as it is not conveniently located to provide easy access on and off the motorway. The proposal is therefore a local facility which acts as a local service as opposed to an online service station in its own right. No signage is proposed to the motorway.

## **7.3 Further Submission on behalf of Morgan Fuels**

Further submission from Declan Brassil supports the grounds highlighted in the third party appeal by Campus Oil.

## **7.4 Further Submission by Campus Oil**

The submission agrees with the statements contained in the other 3<sup>rd</sup> party appeal that the proposal represents small-scale intensification of the existing development. The existing fuel pump was to be ancillary to the car service and repairs shop. The proposal in this instance will give rise to increased trip generation than the use already permitted on site. Any future development should be 'plan-led' and in accordance with relevant Guidelines. No HGV parking has been provided on site. Finally it is stated that the proposal contravenes the zoning and the specific

policy statements Policy RD 34 and RD 35 as set out in the development plan.

## **8.0 OBSERVATIONS**

An observation was submitted by Alice Brennan of Dunleer, County Louth objecting to the proposed development on the following grounds.

This submission again makes reference to previous decisions made by the Board in relation to applications for service stations adjacent to motorways and national primary routes. In particular reference is made to PL15.239307, PL15.228139 and PL15.236542 all of which were refused by the Board.

The notices refer to part of the workshop being demolished but the drawings refer to “existing office to be demolished”. The Board are asked to note the contradiction here. The observation goes on to analyse the Council’s decision and the rationale behind the Council issuing a notification to grant planning permission in this instance.

Section 2 of the observation set out planning guidelines and policies relating to service stations. It is argued that the proposal is contrary to the policies set out in the Spatial Planning and National Road Guidelines for Planning Authorities January, 2012. It is also suggested that, as service station is joining the N1, and fronting onto a slip lane which forms part of junction 20 that it is an offline service facility that would be used for motorists on the N1. The NRA Guidelines seek to avoid the proliferation of service areas at such areas.

The observation goes on to highlight various policy provisions contained in the Louth County Development Plan and how the proposal may be in breach of such policies.

It is argued that the proposal without doubt, is a form of offline service area and will attract motorists from the national route. It will be wholly naive to think that the applicant is going to significantly invest in the site and not look to attract custom from the national road. The proposal will seriously undermine public investment in the existing M1 motorway service areas. The policy of the Planning Authority should be to avoid the creation of any additional access point from a new development or the generation of increased traffic from existing access to national roads in areas where the speed limits of greater than 60 kilometres apply.



If the Board come to the view that the proposal does not form part of the national road network, reference is also made to the section of the Guidelines dealing with “Roadside Service Facilities at Non-Motorway National Roads and Junctions”. The guidelines again note that the proliferation of service area facilities would create significant safety risks and affect the level of service available to road users. It is argued that the proposal in this instance would undermine this strategy.

While it is accepted that the Board did not consider the previous development for a diesel tank to constitute a material contravention of the zoning, it is suggested that the proposal in this instance is an entirely different entity in what amounts to a service area complete with fuel facilities, retail and food offerings. The proposal results in a material intensification.

Notwithstanding what is suggested by the Planning Authority, it is considered that the proposal is fully accessible and convenient to motorists using the N1.

It is argued that the proposal requires a full Traffic Impact Assessment and that in the absence of such an assessment, it is impossible to undertake a proper assessment of the impact of the proposed development. It is a notable feature that no allowance has been made for HGV parking as part of the proposal.

Concern is expressed that the proposal could adversely impact on Natura 2000 sites as the Flurry River has limited assimilative capacity and is a tributary of Dundalk Bay SPA and SAC. There is a need therefore to carry out a full appropriate assessment.

Demolition of a traditional two storey dwelling which appears to constitute an example of local vernacular architecture is questionable. No assessment was carried out in this regard. Commercial interests of the applicant should not override the removal of the vernacular architecture. The proposed new building is a pastiche mock version of the remaining building and is very crude in terms of its design.

The variety of use as proposed on site will give rise to a conflict of movements within the site. No dedicated internal circulation is provided. It is also suggested that there is an adequate amount of car parking provided for ordinary cars but also vans and trailers.

There is a lack of detail regarding exact size of the shop to be provided on site. There is a requirement to adhere to the 100 sq. m. threshold for service stations as set out under the Retail Planning Guidelines. The large storage area above the deli is deemed to be very unorthodox and could be used for the future expansion and growth of the retail part of the development.

The fact that planning permission was granted for a crèche facility in a retail unit does not justify grounds for granting planning permission for the proposal in this instance. A combination of the fuel element and the deli/café shop will result in a motorway service area.

## **9.0 PLANNING POLICY CONTEXT**

### **9.1 Development Plan Provision**

The site is governed by the policies and provisions contained in the Louth County Development Plan 2009-2015.

The site is located within Development Zone 2, the strategic objective for which is to 'protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community'. The following policies apply:

RD34 – To permit only essential resource and infrastructure based development and developments necessary to sustain the existing local community. Such development would include limited one-off housing, farming developments, extensions to existing authority uses, tourism related projects (excluding holiday homes) and renewable energy schemes.

RD35 – Multi unit residential, large scale intensive industrial, agricultural and commercial development and other developments of a similar scale or nature would not be considered appropriate within this zone.

In terms of development at motorway interchanges the following policies apply.

EDE6 – To resist development at rural related motorway interchanges. The Carrickcannon junction is identified as such a rural motorway interchange.

TC7 – To prohibit all developments within 100 metres of the fence line of the M1 motorway and the Newry to Dundalk Link Road (N1/A1) outside of any zoned land.

Table 8.4 sets out the minimum visibility standards, with 75 metres measured from a setback of 4.5 metres from the edge of the carriageway are required.

## **9.2 NRA Guidelines – Spatial Planning and National Roads**

Section 2.7 of the above guidelines relate to development at national road interchanges or junctions. It notes that interchanges/junctions are especially important elements of the national road infrastructure and that development plans and local area plans must take account and carefully manage development at such interchanges and junctions. Planning Authorities must exercise particular care in their assessment of development/local area plan proposals relating to the development objectives or the zoning of locations at, or close to, interchanges where such development could generate significant additional traffic with the potential to impact on the national road.

Section 2.8 relates to service areas. In relation to offline motorway service areas at national road junctions, the Guidelines state that in the preparation of their plans, Planning Authorities may consider policies with the provision of offline motorway service area facilities with reference to the requirements and advice included in the most up to date NRA Guidelines on the layout and location of service areas. A proliferation of private offline service area facilities at national road junctions should be avoided. It is therefore important that a co-ordinated approach between Planning Authorities should be undertaken in consultation with the NRA as part of the drafting of the development plans. Facilities proposed for the inclusion of service areas should be of a type that avoids the attraction of shop local trips a class of traffic that is inconsistent with the primary intended role for motorways and other national roads and associated junctions in catering for the strategic long distance inter-urban and inter-regional traffic. Furthermore to permit a service area to become a destination for local customers would be contrary to Government Planning Policy on retail and town centres as set out in the Retail Planning Guidelines.

With regard to roadside service facilities at non-motorway national roads and junctions, it is stated that a proliferation of service areas facilities along rural sections of national roads and/or associated junctions where

the maximum speed limit applies, would create a safety risk and effect the level of service available to road users as well as impact on the viability and vitality of existing urban settlements.

### **9.3 The NRA Service Area Policy (August 2014).**

This document sets out the policy basis on which service areas will be provided to meet the needs of road users on the national road network of Ireland. It states that to permit a service area to become a destination for local customers would be contrary to government planning policy on retail and town centres as set out in the Rural Planning Guidelines. The Guidelines advise that the local authorities in the preparation of their plans may consider policies for the provision of offline service area with reference to the requirements and advice included in the most up to date NRA Guidance on the location and layout of service areas. In terms of facilities, the Guidelines identify two types of online service areas. The Type 2 service areas include a small scale service area providing parking, picnic and toilet facilities but without the amenity buildings or fuel facilities. Type 1 service area will be a large scale service area providing an amenity building, fuel facilities, parking and a picnic area.

In relation to existing offline facilities, the Guidance states that a number of offline facilities already exist or are advanced in construction or planning stage, located in close proximity to the dual carriageway network. The Authority considers that the policy should recognise these offline facilities that provide extensive services and fulfil certain criteria, namely to include an appropriate level of provision of parking for cars and heavy goods vehicles located within a few hundred metres off the dual carriageway, remain open for 24 hours and permit commercial vehicles to park for longer periods including overnight, thus allowing drivers to take breaks and rest periods.

In relation to service area need along individual routes, it is noted that the Dublin to Belfast route is well served by two no. Type 1 service areas. No additional service areas are proposed for this route.

## **10.0 PLANNING ASSESSMENT**

### **10.1 Preliminary Matters**

#### *10.1.1 Motivation for the Appeal*

The applicant in his response to the grounds of appeal suggests that the third party appeals purely motivated on economic considerations in order to stifle competition amongst service stations in the area. I note that in the case of both third party appeals, the issues raised are all planning and environmental related matters, including compliance with national guidelines, local development plan and specific site related matters. As such they constitute valid planning considerations and warrant detailed considerations in order to evaluate whether or not the proposed development is in accordance with the proper planning and sustainable development of the area.

#### *10.1.2 Validity of Application*

The appellant in response to the grounds of appeal also questions the validity of the planning application, arguing that the objections to Louth County Council took place on foot of a further information request from the Planning Authority. However the issues raised in the objections do not merely relate to issues pertaining to the additional information but rather raise more fundamental questions regarding the principle of the overall development as opposed to merely restricting comments to the issues raised in the further information request by the Planning Authority.

There is nothing in the Planning and Development legislation which permits or restricts observers to comment only on topics raised by way of a further information request. Observers are perfectly entitled to comment on all aspects of a proposed development within the statutory time limits set out in the Regulations. The applicant in this instance was required to readvertise the fact that significant additional information had been submitted to the Planning Authority under the provisions of Article 35 of the Regulations. The public notices relating to same clearly states that a submission or an observation in relation to the further information may be made in writing to the Planning Authority within the statutory time limit. Nothing in either the public notices or the legislation states that any such comment must be restricted to only the issues raised in the further information request. I therefore conclude that both third party

appeals in this instance are valid and should be treated as such by the Board in its deliberations on the application and appeal.

## **10.2 Substantial Matters**

### *10.3 Precedent Decisions*

Both the appeal submitted on behalf of Morgan Fuels and the observation contained on file both highlight previous decisions made by An Bord Pleanála in relation to service stations in the Louth area and argue that developments previously determined by the Board set a precedent which the Board should have regard to in determining the current application and appeal. The precedent decisions referred to are briefly set out below.

PL15.239307 – This application which is located in the townland of Carrickcannon approximately 1 kilometre north of the subject site. Planning permission was sought for a commercial driver's truck stop with an overnight motel style accommodation, vehicular maintenance and all associated works. The Board refused planning permission for two reasons.

It is argued that the Board's refusal of this decision sets a relevant precedent in terms of the subject application before the Board. I consider that the Board should have regard to the fact that there are a number of material differences between the current proposal and that refused by the Board under PL15.239307. Firstly and in my view critically important in the case of the previous Board decision, is that the site in question relates to a greenfield site which is currently undeveloped. This is obviously not the case in the current application and appeal where there is already an established and authorised development on site including the provision of diesel dispensing facilities.

It is also worth noting that the subject site was located on lands governed by a different zoning objective (Zone 5) which seeks to 'protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based activities and specific developments of significant regional and national importance'. The development refused under PL15.239307 is materially different in terms of size and scale than that which is currently sought and the planning inspector correctly in my view highlighted the fact that the proposal was not in accordance with the zoning objective.

Under PL15.228139 An Bord Pleanála refused planning permission for a service station with a budget hotel and retail units at Castlebellingham, County Louth. This decision which was made by the Board in 2008 also related to a site which was in agricultural use and therefore constituted a greenfield type development at the junction between the then N33 and a local county road. Furthermore the size and scale of the development with a stated floor area of 563 square metres would be larger than that currently before the Board. Forecourt area would comprise a total of 12 pumps, 2 HGV pumps and car wash facilities etc. In addition to the petrol service station and retail station it was proposed to provide a two storey and part six storey foodcourt with a budget hotel building with a stated area of 4,650 square metres. This building was to include a restaurant, a fastfood restaurant, six franchise food locations together with a meeting room, truckers lounge and a 51 bedroom hotel. Again this development is of a significantly larger scale than that currently proposed. Again in relation to zoning, it is noted that the site was located in an area identified as Rural Area 5 in the Louth County Development Plan in 2003 which again seek to protect and provide the development of agriculture and sustainable rural uses.

Therefore in my view there are quite significant and material circumstances surrounding the Board's refusal of this previous application. I note that the Board subsequently refused a revised version under PL15.236542 on the same site. The revised version was nevertheless a considerably sized development comprising of a two storey service station building (553 square metres), a two and part three storey food court building (2,640 metres) consisting of a restaurant, a fastfood restaurant, four franchise units and a tourist information internet point together with a children's play area, a truckers lounge and ancillary facilities. Fourteen petrol pumps were proposed in the forecourt. Again this development was located on an undeveloped greenfield site under agricultural use and the lands in question were located on agricultural zoned lands.

In conclusion therefore I do not consider either the grounds of appeal or the observation have adequately demonstrated that the Board's decision in this instance should be predicated, influenced or informed by the precedents cited for other petrol stations referred to on file. It is clear that the cases referred to which were refused by the Board related to development on a substantially larger size and scale than that proposed in this instance. Furthermore they related to greenfield sites governed by different zoning objectives than the application currently before the

Board. In relying on such these previous decisions the appellants are not comparing like with like.

#### 10.2.2 *Creeping Intensification*

The grounds of appeal submitted on behalf of Morgan Fuels argue that the development in question should be refused on the grounds that it constitutes a type of creeping intensification which would result in a disproportionate and materially different development than that which was permitted under Reg. Ref. PL15.240826. The grounds of appeal argue that the petrol pump facility in the case of the previous application on-site fulfilled a purely ancillary and complementary role to other lands uses permitted on site. It is clear from my site inspection that a total of two pumps were to be provided at a single pump island in the hardstanding area adjacent to the vehicle maintenance and repair facility. Under the current application it is proposed relocate this Island within the site and provide a single sided separate pump to the rear of the site. Condition No. 2(a) of the Planning Authority's decision required the developer to submit revised site layout drawings for the written agreement of the Planning Authority showing that the single sided fuel dispensing pump located in the western boundary of the site be omitted. This condition was not challenged by way of a first party appeal. As a result I would consider it difficult to accept an argument that the proposal represents significant intensification of use. The diesel dispensing element of the proposed development, for all intents and purposes involves the relocation of an existing pump island from one part of the site to the other. The proposal will still involve dispensing of fuel from 2 diesel pumps which will not enable or facilitate any material intensification on site. While the proposal will also involve the construction of larger fuel storage tanks (80,000 litres as opposed to 25,000 litres under the previous application), this aspect of the proposal if anything will result in a less intense use as it will necessitate less fuel deliveries to and from the site.

This is a very important consideration in my view, for if the Board accept that the proposal essentially involves a reconfiguration of the existing site as opposed to a large scale, or indeed modest scale extension to the existing proposals, many of the arguments put forward by the appellants and observers with regard to contravention of development plan policy and NRA policy are significantly undermined in my opinion. Issues in relation to the policy context are dealt with separately in a section below.



Likewise when the Board consider the other commercial aspects of the development, the Board will note that the current application involves substantial demolition of existing buildings on site. This includes the demolition of part of the former Garda barracks which amounts to some 190 sq.m. The existing restaurant on site is estimated to be in the region of 107 sq.m. Its replacement with the extension to the existing commercial building is stated as being 71 sq.m, with an additional 28.1 sq.m ancillary space at ground floor level and 64.5 sq.m of storage space at first floor level. The actual deli/café/shop area is therefore less than 70% of the floor area of the previous restaurant located on site. The observer expresses concerns that proposed first floor area could at some stage in the future be used as an extension to the café area. However the applicant is required to carry out the development in accordance with the plans and particulars lodged and therefore any commercial extension to the upper floor of the building would not presently have the benefit of planning permission would therefore if developed as such, would constitute unauthorised development.

Having assessed the plans currently before the Board, I would therefore agree with the applicant that the proposal in this instance essentially involves a reconfiguration/alteration/change of use of existing and established uses on site as opposed to a large scale redevelopment/extension of uses on site. I therefore reject the contention that the proposal results in a creeping intensification of development on site.

### *10.2.3 Compliance with NRA Guidance*

Reference is made in the grounds of appeal submitted on behalf of Morgan Fuels and the observation contained on file that the proposal is contrary to many of the statements and policies contained in the various NRA Guidelines including the (i)NRA Service Area Policy, (ii) the NRA Spatial Planning and National Road Guidelines and (iii) The Design Guidelines for Service Stations. The latter in my opinion are not particularly relevant or pertinent to the current application before the Board. These latter Guidelines essentially relate to the provision of new service areas at, or close to, existing motorways or interchanges along motorways and high quality dual carriageway routes. A point which I will continually come back to for the purposes of this assessment is that the current application before the Board essentially seeks a reconfiguration of the existing services to be provided on site, it does involve a large scale expansion of existing facilities nor does it seek to provide services

over and beyond that currently provided on the site. I would submit therefore the same situation would arise, as that previously determined by the Board (under PL15. 240286) i.e. that the facility would not be a destination in its own right and will continue to largely serve passing traffic. I do not consider that the proposal would constitute a new online or offline service station as envisaged under the NRA Guidelines. While it is located off a slip road, it is an existing established small scale service station and will continue to be so in the case of planning permission being granted in this instance. I further note that there are no signs on the M1/N1 national primary route advertising directing traffic to the service station. It is not on the size or scale of either the Tier 1 or Tier 2 service stations envisaged to be provided along strategic national routes as per the NRA Guidance. Thus I consider that many of the policy provisions contained in the NRA Guidance are not relevant to the current application before the Board.

#### 10.2.4 *Development Plan Policy*

There are a number of policies and provisions contained in the Development Plan which are of relevance to the proposal in question and comments in relation to same are set out below.

##### *Zoning*

The lands in question are not covered by a specific designated land use zoning objective. The application site however is located in an area designated as Development Zone 2, the policy of which is to “*protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community*”.

In relation to this objective if the Board accept my argument that the development in question does not constitute a material intensification of use on site, either in terms of commercial development or diesel dispensing capabilities, it is difficult in my view to come to any other conclusion that the proposal represents a continuity of existing development on site which is required to sustain the existing rural community.

##### *Policy Statements in the Development Plan*

Likewise in relation to Policy RD34 which seeks to permit only ‘essential resource and infrastructure based developments’ and developments ‘necessary to sustain the existing local rural community’, it cannot be

reasonably argued in my view that the reconfiguration of existing established authorised services on site would constitute a material contravention of the above policy.

Policy RD35 states that multi-unit residential, large scale intensive, industrial, agricultural and commercial development or other developments of a similar scale or nature would not be considered appropriate within this zone. I would again reiterate that the relocation of two petrol pumps from one part of the site to the other and the demolition of an existing authorised commercial use and its replacement with a development incorporating a smaller footprint cannot be seen in my view to contravene the intent of Policy RD35.

In terms of development at motorway interchanges, Policy EDE6 seeks to '*resist development at rural-related motorway interchanges*'. The Carrickcannon junction is identified in the Development Plan as a motorway interchange to be kept free from development. Again I reiterate the site in question is already developed and the changes proposed in this instance are negligible in terms of adding to the quantum of development on site. To resist development of the nature proposed which seeks to improve traffic circulation and safety within and around the site would not in my view contravene the above objective.

Policy TC7 seeks to prohibit all developments within 100 metres of the fence line of the M1 motorway and the Newry to Dundalk Link Road outside of any zoned land. It would be inappropriate in my view to sterilise all existing developed lands within 100 metres of the M1 motorway where existing lands have already been the subject of development. It would seem logical and appropriate that any planning applications would be adjudicated on their merits, particularly where such planning applications will not result in increased development or intensification on the lands in question.

#### *10.2.5 Additional Access*

The proposed development as part of the internal circulation system within the site will involve the construction of a new access onto the R132. The NRA submission on file dated 2<sup>nd</sup> December, 2014 expresses concerns that the proposed development by itself or by the precedent which the grant of planning permission for it would set, would adversely affect the operation and safety of the national road network and would be at variance with policy in relation to the control of frontage development on national roads. While the proposed development would

result in an additional access onto the R132, this is a designated regional route as opposed to a national route, furthermore this additional access must be assessed in the context in improving overall traffic safety and circulation associated with the existing petrol facilities on site. It is clear from the information on file that a lack of a circulatory system within the site currently results in traffic being backed up on entering and exiting the site.

Problems associated with internal traffic circulation and movement has resulted in traffic overspilling onto the public carriageway which in itself gives rise to significant traffic congestion and safety issues.

#### 10.2.6 *Environmental Concerns*

The submission from Campus expressed concerns in relation to the environmental impact arising from the proposed development. Particular reference was made to (a) the issue of flooding and (b) the ability of the receiving waters to of the River Flurry to accommodate the additional discharge arising from the wastewater treatment system proposed on site.

##### *Flooding*

In relation to the potential for exacerbating flooding, the Board will note that the proposal does not involve the significant extension of any hardstanding areas associated with the proposed development. Therefore the hydrological regime associated with the site will not be significantly altered as a result of the proposed development. That is to say that the proposal will not in any way exacerbate surface water run-off from the site. Furthermore the proposal involves a 56 cubic metre attenuation tank suitable to accommodate a 1:100 year storm event. The attenuation tank will be fitted with a hydrobrake flow control chamber to ensure that discharge from the site be maximised at a flow of just under 5.9 litres per second. Furthermore the channel of the River Flurry has more than sufficient capacity to cater for surface water and stormwater discharge from the site. There is a steep embankment along the northern boundary of the site, thus the river can accommodate significant fluctuations in flow without over-topping the embankment. I am therefore satisfied that the proposed development will not give rise or exacerbate the potential for flooding either in the vicinity of the site or downstream.

Finally in relation to flooding I have consulted the OPW National Flood Hazard Mapping website and I note that there are no recorded incidences of flooding in the vicinity or immediately downstream of the site. The nearest recorded flooding event is located approximately 8 kilometres downstream. Having regard to the nature and extent of the proposed development together with the attenuation measures to be put in place, I do not consider that the proposed development represents any credible flooding risk either in the vicinity of the site or downstream of the site.

*Assimilative Capacity of the Receiving Waters to Receive Wastewater Treatment from the Proposed Development*

Very little information is provided in relation to the assimilative capacities of the receiving waters. Water in the River Flurry immediately upstream of the site has been designated by the EPA as Q3 to Q4 – moderate status. The monitoring point approximately 3 kilometres downstream likewise designates the waters as Q3 to Q4. It is noted that the Planning Authority, primarily on foot of concerns expressed by Inland Fisheries Ireland, requested that the applicant submit further information in relation to the proposed wastewater treatment system. Currently the site operates as a café/restaurant and there is no grease trap in place or foul treatment on site. Information contained on file states that all foul discharge is via a non-functioning septic tank to the River Flurry. Part of the proposed development it is proposed to incorporate a new treatment unit details of which are contained on file (A Klaro XXL 25 EW treatment unit) which will achieve discharged effluent concentrations of 6 mg/l BOD and 7 mg/l suspended solids. BOD levels will be reduced by 98%. It would appear therefore, based on the information contained on file, that the proposal would represent planning and environmental gain in terms of improving the quality of the effluent being discharged into the River Flurry.

Furthermore it is acknowledged in the application documentation that the applicant will be required to submit an application for a trade effluent discharge licence prior to the commencement of any works on site. A proper detailed evaluation of the potential impact of the proposed wastewater treatment system and the quality and assimilative capacity of the River Flurry will be assessed and determined under a separate licensing regime to the current application before the Board. It may be sufficient to state at this preliminary stage, however that the proposal constitutes a significant improvement over and above current

wastewater treatment operations on site and therefore this issue would not constitute reasonable grounds for refusal in my view.

#### 10.2.6 *Car Parking*

An observation on file suggested that there is insufficient car parking to serve the proposed development. It is reiterated again that the proposed uses on site appear to be less intensive than those currently operating on site. It is proposed to provide 16 car parking spaces adjacent to the northern boundary of the site. Having regard to the Development Plan provisions in relation to car parking as set out in Table 8.3 of the Plan, I estimated that the following car parking spaces could be provided in accordance with the existing uses. Retail/restaurant 9-10 spaces (based on 71 square metres of restaurant/café/deli uses based on a rate of one space per 10 square metres for retail activity and one space per 5 square metres of restaurant activity).

In terms of office space, approximately 40 square metres is to be provided which would amount to an additional requirement of 1 to 2 spaces. The remaining use on site could generally be described as an industrial use according to the various land use classes set out in Table 8.6 of the Development Plan. Under such a use class, one parking space per 50 square metres would be required. It is estimated that an additional two to three car parking spaces would be required in order to comply with parking standards for industrial uses. Therefore under a worst case scenario in applying the development plan standards, a total of 15 spaces would be required to serve the development. The applicant has indicated in the drawings that a total of 16 spaces are being provided. While no designated HGV parking is set out. I consider that there are informal areas within the overall layout to accommodate HGV parking off site. I therefore consider the car parking to be adequate in this instance.

### 10.3. Other Issues

#### *Design*

The observation submitted objecting to the proposed development raised concerns in relation to the overall design of the development. I would have no such concerns having regard to the layout, configuration and design of the existing buildings on site. The proposal does involve the demolition of part of a former Garda barracks which possibly dates from the late 19<sup>th</sup> century. The structure in question however is not listed

in the Record of Protected Structures contained in the Development Plan nor is it listed in the National Inventory of Architectural Heritage. This suggests that the building is not of such vernacular architectural importance as suggested in the observation submitted to the Board.

With regard to the proposed new extension to accommodate the café/deli/shop I consider this extension to be generally in keeping with the design parameters associated with that part of the building to be retained on site. The proposed extension respects and reflects the height, design and overall scale associated with the adjoining building to be retained. I therefore do not consider that the proposed development should be refused on design and visual amenity grounds.

Finally in relation to design issues I consider that any details regarding fascia boards/advertising hoardings to be applied to the external elevations to the new building can be determined by way of a new planning application in accordance with the requirements of the Planning Acts and Regulations or if the Board deemed it appropriate can be agreed between the Planning Authority and the applicant by way of condition.

#### *Vehicular Pedestrian Conflict*

Concern is also expressed that the proposed development incorporates an inappropriate layout which could result in vehicle/pedestrian conflict within the site. I consider the proposed development significantly improves vehicular circulation within the site providing a dedicated entrance and egress for vehicular traffic. There was also a clear demarcation between paved pathways and vehicular carriageways ensuring adequate pedestrian/vehicular segregation for road safety purposes.

#### *Lack of a Traffic Impact Assessment*

The observation submitted argues that a new traffic impact assessment should have been submitted assessing the potential impact of the proposal in terms of existing or anticipated traffic volumes on the R132. I would again reiterate that the proposed development essentially involves a reconfiguration of the existing site incorporating the same land uses, and by extension giving rise to the same or very similar traffic generation. The previous application before the Board (PL15.240286) included a traffic impact assessment and the Board in issuing a decision came to the conclusion that “the proposed development would be

acceptable in terms of traffic safety and convenience”. As the current development before the Board would not materially alter trip generation or trip assignment patterns, I consider that the same conclusion can be reached in the context of the current application and appeal before the Board.

#### *Obsolete Maps*

The Planning Authority accepted and validated the application together with the drawings and maps submitted with same. I do not consider that the use of site location maps which may be out of date in any way prejudices the content of the application. The site location is clearly indicated on the maps submitted and the address is adequately described in the public notices. Any use of out of date maps cannot be considered fatal to the application before the Board.

### **11. Appropriate Assessment**

The applicant submitted an Appropriate Assessment Screening Report with the original documentation submitted to the Planning Authority. This screening report identified the main European sites located within a 10 kilometre radius of the project. A total of six sites were identified (see Section 3.2 on page 7 of report). The report goes on to correctly identify in my opinion that the European sites most likely to be affected by the proposed development are the Dundalk Bay cSAC (Site Code: 000455) and the Dundalk Bay SPA (Site Code: 004026) as the River Flurry which runs along the northern boundary of the site and receives wastewater discharge from the current operations on site is hydrologically connected with Dundalk cSAC and SPA (located approximately 10 kilometres to the south of the appeal site). The qualifying interests associated with the site include estuaries, mudflats and sandflats not covered by sea water at low tide, perennial vegetation of stony banks, salicornia and other annuals colonising mud and sand, Atlantic salt meadows and Mediterranean salt meadows. In terms of the Dundalk Bay SPA a total of 21 bird species are listed.

It is clear from the information on file and in particular the report submitted in response to the additional information request from the Planning Authority from McArdle Doyle Limited, that currently all foul discharge arising from the site including the café/restaurant is discharged into a “non-functioning septic tank” which further discharges into the River Flurry. It is also stated that the current development before the Board represents a reduction in site intensification which in



turn will reduce hydraulic and organic loadings from the waste water treatment plant from the River Flurry. The River Flurry has been designated in the north-east River Basin Management Plan as being of poor status.

The new proposed wastewater treatment unit will according to the information contained on file significantly increase the level of treatment associated with the discharge. It is stated that there will be an almost 98% reduction in BOD levels and the treatment works will achieve discharge effluent values of 6 mg/l for BOD and 7 mg/l for suspended solids. The incorporation of secondary treatment in the treatment process will significantly improve the water quality parameters in the discharge to the River Flurry. Therefore having regard to the reduction in hydraulic loading together with the significant reduction in organic loading being discharged into the River Flurry, the proposed development will assist in improving the water quality in the river downstream and as such will not present a threat or have any significant effect on the qualifying interests associated with the Natura 2000 sites contained in Dundalk Bay. Contrary to what is stated in the observation submitted to the Board, I do not consider that any reasonable scientific doubt remains as to whether or not the proposal will represent a threat to the water quality or the qualifying interests associated with any Natura 2000 sites downstream. Accordingly it is reasonable to conclude that on the basis of the information contained on file, which I consider adequate in order to assess a screening determination, the proposed development, individually or in combination with other plans and projects would not be likely to have a significant effect on Dundalk Bay SAC (Site Code: 004555) or Dundalk Bay SPA (Site Code: 004026) or any other European site, in view of the site's conservation objectives, and a Stage 2 Appropriate Assessment (and a submission of an NIS) is not therefore required.

## **11.0 CONCLUSION AND RECOMMENDATION**

Arising from my assessment above I would conclude the following:

- The proposed development essentially represents a reconfiguration of existing services and land uses on site in order to improve traffic safety and circulation both within the site of the adjoining road network.

- The proposed development does not represent a significant or material intensification of the services or uses provided on site and as such I anticipate that commensurate levels of traffic with that which already exists on site will be generated by the proposed development.
- Having regard to the fact that there is an existing established use on site including diesel dispensing pumps which will not expand to any material degree under the current application, particularly having regard to Condition 2(a) of the Planning Authority's grant of planning permission, I do not consider that the proposal could or indeed should be assessed in the context of the NRA Guidelines for service stations.
- I also consider that the proposed development generally accords with the policies and provisions contained in the development plan. I further note that the same development plan informed the decision of An Bord Pleanála in relation to the previous application PL240286.
- I further consider that the precedent decision cited by the third party appeal and the observer in relation to other service stations in County Louth are not applicable or pertinent to the planning issues associated with current application and appeal.
- Finally I consider that the proposed development represents planning gain in terms of traffic safety and circulation within and around the site and also in terms of improved wastewater treatment provision.

Arising from my assessment above therefore I consider the proposed development to be in accordance with the proper planning and sustainable development of the area and I therefore recommend that planning permission be granted.

## **12.0 DECISION**

Grant planning permission for the proposed development in accordance with the plans and particulars lodged and based on the reasons and considerations set out below.

## REASONS AND CONSIDERATIONS

Having regard to the nature and extent of the development which primarily seeks to reconfigure existing land uses and operations on site together with the pattern of existing and permitted development both on site and the immediately adjoining lands together with the policies and provisions contained in the current Louth County Development Plan 2009-2015, it is considered that, subject to compliance with conditions set out below, the proposed development would not be prejudicial to public health, would not seriously injure the amenities of the area or property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by further plans and particulars submitted on the 27<sup>th</sup> day of March 2015, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The single-sided fuel dispensing pump located on the western boundary of the site shall be omitted. A single pump island with 2 dispensers shall be constructed on site. The applicant shall submit revised site layout drawings for the written agreement of the planning authority prior to the commencement of development.

**Reason:** To ensure no intensification of use takes place on site.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

4. Prior to the commencement of development the developer shall apply for and obtain a trade effluent discharge licence to discharge wastewater into the River Flurry under the provision of the Water Pollution Acts 1977 (as amended).

**Reason:** In the interest of orderly development.

5. All above ground oil storage tanks shall be bunded to 110% capacity.

**Reason:** In the interest of public health.

6. Details of the installation of all grease traps and oil/petrol interceptors to be provided on site shall be agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of public health.

7. All road markings, dropped kerbs, tactile paving and other paving within the site and the immediate vicinity of the site shall be agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interests of traffic safety

8. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interest of amenity and traffic safety.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interests of visual and residential amenity.

10. Prior to the commencement of development, the applicant shall make all necessary arrangements and shall apply for and obtain a road opening licence from the planning authority.

**Reason:** In the interest of traffic safety.

11. The applicant shall be responsible for the full cost of repair in respect of any damaged cost to the adjoining public road/footpath arising from the construction work and shall either make good any such damage to the satisfaction of the local authority or pay the local authority the cost of making good any such damage.

**Reason:** In the interest of orderly development.

12. The developer shall undertake all necessary measures to prevent the spillage or deposit of clay, rubble or other debris on the adjoining public roads and shall ensure that all vehicles leaving the development are free from any material that would be likely to be deposited on the road or in the event that any such deposition is made immediate steps shall be taken to remove the material from the road surface. The developer shall be responsible for the full cost of carrying out any such public road/footpath cleaning work.

**Reason:** In the interest of visual amenity.

13. All onsite construction work shall be limited to between the hours of 0800 to 2000 hours Monday to Friday and 0800 hours to 1600 hours on Saturday, and shall exclude Sundays and Bank Holidays.

**Reason:** In the interest of residential amenity.

14. The applicant shall, if directed by the planning authority monitor and record total dust emissions arising from all onsite operation associated with the proposed development during the construction phase. Details of all monitoring arrangements shall be agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interests of Orderly Development

15. All planting/landscaping required to comply with the specification of the landscaping scheme submitted to the planning authority on 27<sup>th</sup> March, 2015 shall be maintained, and if any tree or plant dies or is otherwise lost within a period of five years it shall be replaced by a plant of the same species, variety and size within the planting season following such a loss.

**Reason:** In the interest of visual amenity.

16. Details of the location of all proposed/retained signage shall be submitted for written agreement of the planning authority prior to the commencement of development on site.

**Reason:** In the interest of visual amenity.

17. The developer shall pay to the planning authority a financial contribution of €1,731 (one thousand seven hundred and thirty one euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Paul Caprani,  
Senior Planning Inspector.**

20th July, 2015.

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