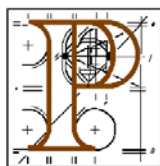


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL 09.245788

Development: Extension of Esso Service Station and Spar shop to include single storey extension to coffee area.
Clane Road, Celbridge, Co. Kildare.

Planning Application

Planning Authority: Kildare County Council

Planning Authority Reg. Ref.: 15/35

Applicant: Sofa Properties Ltd.

Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant(s): Sofa Properties Ltd.

Type of Appeal: First v Refusal

Observers: None on file

Date of Site Inspection: 9th March 2016

Inspector: Sarah Moran

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The development site is an existing service station located on the southern side of Celbridge, Co. Kildare, c. 700m south west of the town centre. The station is within the built up area of the town, i.e. the 50 kph zone, and is accessed off the R403 Celbridge to Clane road. The site has a total stated area 0.4ha and there is a large surface car park to the side and rear of the station forecourt. The surroundings are generally residential developments. The 'Abbey Park' residential estate is situated to the west and the Celbridge Abbey Nurseries to the immediate east. The River Liffey runs nearby to the east of the site.
- 1.2 The existing petrol station is operated under the Esso brand and there is a Spar convenience store on the premises. The convenience store has a stated area of 354 sq.m. and includes a deli, a café and an Apache Pizza outlet as well as the convenience element. There is a large surface car park, which includes a car wash area.

2.0 PROPOSED DEVELOPMENT

- 2.1 The proposed development as originally submitted to the PA on 23rd January 2015 involves internal changes and a 73 sq.m. extension to the northern side of the existing service station structure. The extension would contain a café seating area. The applicant submitted a revised proposal to the PA on 16th September 2015, in response to a further information request, to include retention of 32.8 sq.m. of additional net retail floorspace and alterations to a store room area from that permitted under 08/835. The revised proposal was advertised as significant further information.

3.0 PLANNING HISTORY

- 3.1 **01/958** Permission granted for a local shop and petrol service station with staff accommodation over. This is the existing service station, which was originally constructed in 2001.
- 3.2 **05/1601** Permission sought to retain signage comprising 2 no. canopy signs (illuminated); 1 no. illuminated flag sign; 2 no. postal box signs (illuminated); 2 no. shop front signs. Permission was refused on grounds relating to conflict with section 4.18 of the Celbridge Development Plan 2002.
- 3.3 **06/1334** Permission granted for retention of (a) 2 storey canopy signs; (b) 1 no. flag sign; (c) 2 no. poster signs; (d) 1 no. shop front sign.
- 3.4 **08/835** Permission granted for extension to the existing shop to provide additional sales area, a seating area for food consumption and a new storeroom to the rear. Condition no. 2 stated:

The sales space of the overall shop shall not exceed 100 sq.m. The seating area, as indicated on the floor plans received by the Planning Authority on 06.05.2008, shall be restricted to use as described and shall not be used as a sales area.

Reason: To comply with the policies of the County Development Plan 2005 and in the interests of proper planning and sustainable development.

- 3.5 **08/1063** Permission granted for change of use from retail to retail and off-licence. Condition no. 2 stated:

The sales space of the overall shop shall not exceed 100 sq.m.

Reason: To comply with the policies of the County Development Plan 2005 and in the interests of proper planning and sustainable development.

- 3.6 **UD5807** Enforcement relating to an unauthorised pizza delivery and take away. File now closed.

- 3.7 **ED398** Section 5 declaration issued on 31st January 2012 stating that “*the partial use of the Spar shop for pizza preparation sales and home delivery*” does not result in a material change of use of the shop and is therefore not development.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports

- 4.1.1 PA Environmental Health Officer comment 4th February 2015. No objection subject to requirements.

- 4.1.2 Maynooth Area Office comment 4th February 2015. Requires conditions.

- 4.1.3 PA Water Services comment 2nd February 2015. Requires conditions.

- 4.1.4 Irish Water Comment 12th February 2015. No objection.

- 4.1.5 Kildare County Fire Service comment 25th February 2015. No objection subject to requirements.

- 4.1.6 PA Environment Section comment 6th March 2015. No objection subject to requirements.

- 4.1.7 PA Transportation Department comment 18th March 2015. No objection.

- 4.1.8 Planning report 19th March 2015. Notes that the development is acceptable in principle with regard to the Celbridge LAP. Recommends a request for additional information for issues relating to compliance with the Retail Planning Guidelines (RPG) requirement that the ancillary shop element of

service stations shall not exceed 100 sq.m. net; concerns that the café seating area would be excessive in the context of the primary service station use of the site and its proximity to Celbridge town centre; non-compliance with the permission previously granted under 08/835 for an additional sales area and seating area for food consumption. Second planning report dated 21st October 2015 in response to the further information submission. Recommends refusal on grounds relating to non-compliance with County Development Plan retail policy; non-compliance with condition no. 2 of 08/1063; non-compliance with the RPG; existing unauthorised development at the site.

4.2 Planning Authority Decision

4.2.1 The PA issued a further information request on 18th March 2015 in accordance with the recommendations of the planning report on file dated 19th March 2015, as outlined above.

4.2.2 On 23rd October 2015, the PA issued a notification of a decision to refuse permission for 3 no. reasons relating to:

1. Contravention of conditions of permissions nos. 08/835 and 08/1063 and County Development Plan retail policy due to retail floor space in excess of 100 sq.m.
2. Contravention of policies in the County Development Plan and the RPG regarding the secondary role for service station shops that is ancillary to the primary fuel sales use. Proposed café area considered excessive.
3. It is considered that (a) the entirety of the extension constructed on foot of permission reg. 08/835, inclusive of an additional stated area of 32.8 sq.m. and (b) the existing stated net retail floorspace of 230.4 sq.m. both constitute unauthorised development. It is therefore considered that the PA is precluded from granting permission for the proposed development, which would represent an extension to an unauthorised development.

5.0 GROUNDS OF FIRST PARTY APPEAL

5.1 The first party appeal has been submitted by Cunnane Stratton Reynolds Land Planning & Design on behalf of the applicant Sofa Properties. The main points made may be summarised as follows:

- The proposal complies with national retail planning policy. The RPG of 2005 and 2012 do not place an actual prohibition on net retail floor areas > 100 sq.m. but allow for the sequential test to be applied in such cases, i.e. no absolute limits are applied. The applicant submitted a sequential test and a retail impact assessment of the development, which were ignored by the PA. The analysis did not reveal any negative impacts on any other shopping facility or designated shopping centre / area including Celbridge Town Centre. The stated retail policy of County Development Plan section

19.10.5 mistakenly refers to the out of date RPGs of 2000, which were significantly more restrictive with an absolute prohibition on units over 100 sq.m. This is a discrepancy and the PA has applied the 2000 guidance in error. The RSGDA recognises that the nature of petrol stations is changing, ref. section 4.50, the development provides a valuable service to the local community and complies with regional planning policy. The development complies with the Celbridge LAP. The draft Kildare County Retail Strategy 2010 recognises that the RPGs do not prevent shops > 100 sq.m. associated with petrol stations, subject to proper assessment, this is another disparity.

- It is submitted that the breach of conditions attached to reg. ref. 08/835 and 08/1063 does not prevent a grant of planning permission on this occasion. The appeal states that the definition of 'net retail floorspace' in the current RPGs is much more prescriptive than that of the 2005 RPGs, which were in force when the work in question was carried out in 2008. The existing development only marginally exceeds the threshold set out in the 2005 RPGs. The current proposal could supersede the restrictions placed by these conditions as it would comply with national planning policy set out in the RPGs. Each application should be considered on its own merits in the circumstances of the planning policy in place at the time of the application / appeal.
- The proposed café is not considered excessive. While the total extension is 73 sq.m., the net café area would be 52 sq.m. with the remaining area for a new disabled customer toilet required under Building Regulations Part M. the existing café area of 33.5 sq.m. is approved under 08/835. Therefore there is only an increase of c. 20 sq.m. of café area. There are no net standards at national, regional or local level for an appropriate scale for any food outlet specifically associated with a petrol station. The appeal provides the following examples of permissions for food outlets associated with a petrol station and retail element, all granted since the adoption of the current RPGs:

Planning Ref. and Details	Location	Description	Size of Unit (sq.m.)	Net Retail Area (sq.m.)	Area of Café / Restaurant (sq.m.)
12/796 PL09.241829 Granted by ABP 02/08/2013	Monread, Naas, Co. Kildare 2km from town centre	Construction of a single storey petrol station comprising retail shop, toilets, stores, delicatessen with seating, forecourt area.	470	100	80
F12A/0274 PL06F.241299 Granted by ABP	Corballis Rd., North Corballis, Co. Dublin	Redevelopment and extension of existing service station.	495	100	70

30/04/2013	3km from town centre				
F13A/0221 Granted by Fingal Council	Stockhole Lane, Clonshaugh Co. Dublin 3km from town centre	Construction of a service station.	584	100	164
2014/0514 PL26.243865 Granted by ABP 20/02/2015	Ramstown Lower, Gorey, Co. Wexford 0.5km from town centre	Development of an island service station and drive through facilities for restaurant and shop.	565	100	423

- The appeal disputes that the café and retail elements are no longer ancillary to the petrol filling station function. Currently only 10% of net sales are for the café or deli and 30% for the shop. The increase in net retail floorspace from existing 230.4 sq.m. to proposed 274.8 sq.m. and the café from 33 sq.m. to 53 sq.m. is not so great as to render either element disproportionate to the service station nor increase the sales receipts to the point that they would exceed those for petrol and change their ancillary nature. The Board is requested to consider issuing a split decision permitting the retention element of the appeal and refusing the café extension.
- The appealed planning permission has been amended to enable the local authority to consider this application in the context of previously deemed unauthorised development. The applicant now proposes to amend the subject development again such that permission is sought to retain 230.4 sq.m. net retail area at the existing unit, in order to regularise the overall development site. The application is therefore for:

An extension to the Esso service station and Spar shop to include a single storey extension to the existing coffee area, area 73 sq.m. and associated site works. Retention of 230.4 sq.m. of net retail floor space and alterations to the store room area from that which was granted planning permission under Reg. Ref. 08/835.

- There is no demonstrable harm to any interest of acknowledged importance and the proposed development is consistent with the proper planning and sustainable development of the area. The appeal notes that, aside from the Planning Department, no other department of the PA raised concerns in relation to the proposed development. In addition, no third party submissions were received. The sequential test and retail impact assessment identify no adverse impacts on the health or viability of other retail outlets in Celbridge. The existing development has been in operation

since 2008 with no identified negative impacts on the town centre and no cause for complaint. The development would not set an undesirable precedent as any similar developments would need to carry out a sequential test and demonstrate compliance with planning policy and the proper planning and development of the area.

6.0 RESPONSE OF PLANNING AUTHORITY TO FIRST PARTY APPEAL

6.1 The PA wishes to reiterate the following:

- Sales space of shop restricted to 100 sq.m. under reg. ref. 08/1063.
- In-combination impacts of sizeable café area and existing and proposed sales space would result in shop no longer being ancillary element of petrol station.
- It would appear that the extension constructed under reg. ref. 08/835 and existing net retail floorspace constitute unauthorised development.

7.0 POLICY CONTEXT

7.1 Retail Planning Guidelines for Planning Authorities 2005 and 2012

7.1.1 2005 Retail Planning Guidelines

The section 28 Retail Planning Guidelines (RPG) 2005 came into effect on 1st February 2005. The Guidelines stress the importance of retaining retailing as a core function of town centres. Section 58 states that the preferred location for new retail development where practicable and viable, is within a town centre (or district or major village centre). Where it is not possible to provide the form and scale of development that is required on a site within the town centre then consideration can be given to a site on the edge of the town centre, within an easy and convenient walking distance from the primary shopping core of a town centre, generally likely to be c.300-400m from the edge of the prime shopping area and less in smaller settlements. Alternative out of centre sites are only to be considered where it can be demonstrated that there are no town centre or edge of centre sites which are suitable, viable and available, i.e. the sequential approach.

Section 96 deals with petrol filling stations. It notes that such facilities can function as the local shop or small supermarket in rural areas but advises that this role should generally remain secondary to the use as a petrol filling station. Section 97 states:

“Notwithstanding the sequential approach, a shop of up to 100 square metres of net retail sales area may be allowed when associated with a petrol filling station. Where retail space in excess of 100 square metres of net retail sales area associated with petrol filling facilities is sought the sequential approach to retail development will apply ...”

Annex I defines net retail sales area as:

“The area of a shop or store which is devoted to the sales of retail goods (including the area devoted to checkouts).”

7.1.2 2012 Retail Planning Guidelines

These guidelines update and replace the 2005 RPG. They state an overarching objective to enhance the vitality and viability of city and town centres in all their functions through sequential development. They include a range of caps on the size of convenience and retail warehouse stores with the aims of ensuring both competitiveness in the retail sector and strong city and town centres. The following key policy objectives are identified:

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

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

Section 2.4.3 of the RPG identifies a floorspace cap for petrol filling station shops of 100 sq.m. net ‘irrespective of location’. Section 4.11.9 deals with retailing and motor fuel stations. It states:

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

The floorspace of the shop should not exceed 100 M2 net; where permission is sought for a floorspace in excess of 100 M2, the sequential approach to retail development shall apply, i.e. the retail element of the proposal shall be assessed by the planning authority in the same way as would an application for retail development (without petrol/diesel filling facilities) in the same location.”

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

“The area within the shop or store which is visible to the public and to which the public has access including fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer service areas, and internal lobbies in which goods are displayed, but excluding storage areas, circulation space to which the public does not have access to, cafes, and customer toilets.”

It also defines ‘forecourt retailing’ as a *“mini-supermarket linked to petrol filling stations”*.

7.2 Regional Retail Strategy for the Greater Dublin Area 2008-2016

7.2.1 The Regional Retail Strategy for the Greater Dublin Area 2008-2016 (RSGDA) set out a retail hierarchy for the GDA. The RSGDA reviews changes in expenditure, economic growth and retail markets since the previous retail strategy in 2001. Celbridge is identified as within the group ‘*Level 3 Town and/or district centres and sub-county town centres*’.

Section 4.49 of the RSGDA notes the evolution of petrol stations over the past number of decades to the current situation where petrol station shops have deli counters and sell a range of convenience goods including hot food and wine. It notes the RPG recommendations regarding the secondary nature of such shops and the recommended maximum floorspace of 100 sq.m. net retail sales area. Section 4.50 states:

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

Section 6 of the RSGDA seeks to provide quality opportunities for comparison and convenience retail shopping in the North East Kildare area, specifically in the towns of Leixlip, Maynooth, Kilcock and Celbridge.

7.3 Kildare County Development Plan 2011-2017 (Incorporating Co. Kildare Retail Strategy)

7.3.1 The Core Strategy set out in Chapter 2 of the plan identifies Celbridge as a ‘*Moderate Sustainable Growth Town*’. Such towns are at sub-county town level, with lesser levels of economic activity beyond that required to service the local population. Most of these towns are envisaged as having an interacting and supporting role as part of Dublin City within the Metropolitan

area of Co. Kildare. Table 2.2 of the plan identifies the role of Celbridge as a strong edge of Metropolitan area district service centre with HQ linkages and increased densities at nodes on public transport corridors. The development strategy focuses on achieving 'critical mass' in Metropolitan urban areas such as Celbridge.

- 7.3.2 Chapter 9 of the plan sets out retail policy, based on a review of the 2008–2016 Kildare County Retail Strategy. At a strategic level, Celbridge is noted as a centre that is continuing to underperform in respect of its retail role and function, with no substantial improvement in the quality and amount of retail floorspace. The County Retail Hierarchy identifies Celbridge as a 'Level 3 Town Centre' in the Metropolitan Area of the county. Policy R16 states:

"To promote and progress the delivery of the integrated expansion of Celbridge Town Centre while taking account of its Georgian streetscape and historic setting and to facilitate town centre consolidation through the re-use and regeneration of backlands and other key lands and buildings around the town centre."

- 7.3.3 Chapter 19 sets out development management standards. Section 19.10.5 deals with service stations and states:

"Petrol filling stations must be located on the outskirts of the town but inside the 50km or 60km speed limits. The preferred location is on the near side of the roadway on the way out of town ...

Any associated shop shall remain secondary to the use as a petrol filling station and any application must clearly demonstrate that the retail element would not adversely affect the existing retail development in the town centre; and

Small convenience type shops associated with the petrol station shall not exceed 100 sq. metres of sales space. Planning applications for the provision of such shops however shall be specifically applied for. The layout of the station forecourt should be arranged to allow dedicated parking for those shopping at the shop. Where an associated shop is proposed, the application shall be considered in accordance with the Retail Planning Guidelines published by the Department of the Environment, Heritage and Local Government, December 2000 including potential impact on any village or local centre."

7.4 Celbridge Local Area Plan 2010

- 7.4.1 The site is located on land zoned 'K: Residential / Commercial' with the stated zoning objective 'To encourage a mix of residential and commercial uses'. The LAP further states that:

“This zoning reflects the established mix of residential and commercial uses in a number of areas of the town. The council will favour developments of a residential or commercial nature provided they compliment the existing uses of the area.”

The uses ‘convenience shop’ and ‘petrol station’ are both open for consideration on lands zoned K. Section 2.2.2 defines ‘Open for Consideration’ as follows:

“Land uses shown as ‘Open for Consideration’ are uses that are not considered acceptable in principle in all parts of the relevant use zone. However, such uses may be acceptable in circumstances where the Council is satisfied that the proposed use would not conflict with the general objectives for the zone and the permitted or existing uses as well as being in the interests of the proper planning and sustainable development of the area.”

8.0 ASSESSMENT

8.1 The following are the issues considered relevant in this case:

- Principle of development with regard to Celbridge LAP
- Clarification of nature and extent of proposed development
- Retail impact
- Appropriate Assessment
- Conclusion

Each of these issues may be considered separately as follows:

8.2 Principle of Development

8.2.1 The development is located on lands zoned ‘K’ under the Celbridge LAP 2010. This zoning objective provides for a mix of residential and commercial uses. The land uses ‘petrol station’ and ‘convenience shop’ are both open for consideration. Having regard to the above definition of ‘Open for Consideration’ as provided in the LAP, I consider that the proposed development should be deemed acceptable in principle and considered on its merits.

8.3 Clarification of Nature and Extent of Proposed Development

8.3.1 Permission was originally granted for a service station, including a shop, at this location in 2001 under 01/958. The floor areas proposed under that application were:

Internal gross floor area	328 sq.m.
Shop and kiosk	231 sq.m.
Residential at first floor level	97.125 sq.m.

The total 'shop and kiosk' included all retail floor area and other non-retail uses such as store rooms, toilets, etc. The application appears to have been granted generally as proposed, i.e. the further information submitted and the conditions of permission did not involve any significant changes to the above floor areas.

- 8.3.2 Under 08/835, permission was granted for an extension to the shop element, to provide an additional sales area, a seating area for food consumption and a new storeroom. I note the following information regarding floor areas from the application form and drawings on file 08/835 (see enclosed copy of same):

Stated total original floor area	245.4 sq.m.
Total extension	108.5 sq.m.
New total floor area (original + extension)	353.9 sq.m.
Total stated permitted 'shop sales area' (original + extension)	91.75 sq.m.
Total permitted 'seating area'	33.5 sq.m.
Permitted 'seating area' + total 'shop sales area'	125.5 sq.m.

I note the following definition of 'net retail sales area' as per Annex I of the 2005 RPG, which were in force when 08/835 was granted:

"The area of a shop or store which is devoted to the sales of retail goods (including the area devoted to checkouts)"

I note that the floor plan of 08/835 includes a large food preparation area, offices, etc. Presumably these were excluded from the net retail floor area with regard to the above definition, resulting in a net permitted retail area of 91.75 sq.m. Therefore, the permitted 'retail area' at 91.75 sq.m. was under the RPG threshold of 100 sq.m. and the associated 'seating area' was considered separately as it did not come within the above definition. As noted above, condition no. 2 of 08/835 limited the total sales space of the shop to 100 sq.m.

- 8.3.3 The development permitted under 08/1063 involved the change of use of part of the permitted shop to an off-licence. However, there was no change to the total floor areas as set out above. Condition no. 2 of 08/1036 repeated the requirement that the total sales space of the shop was not to exceed 100 sq.m.
- 8.3.4 The current proposal involves a new extension to the northern side of the existing structure, stated total area 73 sq.m., containing a 'café seating area', customer disabled WC and circulation area. In the course of its consideration of the subject proposal, the PA noted that an internal area on the western side of the existing shop, identified as offices on the floor plan of 08/835, had been incorporated into the retail area of the shop. On foot of the PA further information request, the applicant submitted a layout drawing no. A-03, indicating existing and proposed floor areas and a document by Cunnane Stratton Reynolds Landscape & Design. I note several discrepancies between

the floor areas stated in the drawing and those stated in the CSR document. The following proposed / permitted floor areas have been extracted from both:

Total existing floor area (as permitted under 08/835)	354 sq.m.
Total proposed extension (including café seating area, customer disabled W.C. and circulation area)	73 sq.m.
'Café seating area' element of extension	52 sq.m.
Retained 'net retail area', not permitted under 08/835	32.8 sq.m.
Stated current 'net retail floorspace', i.e. permitted area + area to be retained	230.4 sq.m.
Note discrepancy with total stated 'net floor area' in drawing no. A-03	242 sq.m.
Proposed total 'net retail floorspace' CSR submission section 3.3.3	278.8 sq.m.
Proposed 'net retail area' as stated in CSR submission section 6.1.1	274.8 sq.m.

8.3.5 I note the following definition of net retail floorspace as per Annex I of the 2012 RPG, which currently apply:

"The area within the shop or store which is visible to the public and to which the public has access including fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer service areas, and internal lobbies in which goods are displayed, but excluding storage areas, circulation space to which the public does not have access to, cafes, and customer toilets."

I note that the existing 'net retail floorspace' now includes food preparation areas, circulation areas, etc., with regard to the above, more expansive definition. The 'seating area' permitted under 08/835 is now located on the northern side of the building but has the same stated floor area of 33.5 sq.m. Notwithstanding the above discrepancies, I note that the existing retail floor area is now much greater than the 100 sq.m. as specified in condition no. 2 of 08/835 and 08/1063. While the applicant's point regarding the revised definition of retail floorspace under the 2012 RPG is noted, I consider that this retained area of 32.8 sq.m. would have brought the retail floorspace above the 100 sq.m. limit under either definition. I therefore agree with the PA that the retention of this additional floorspace contravenes condition no. 2 of 08/835 and condition no. 2 of 08/1063.

8.3.6 I note in this regard that the grounds of appeal include a proposal to amend the overall application such that retention is sought for the overall total 230.4 sq.m. net retail area at the existing unit and for works to the store room, described as follows:

“An extension to the Esso service station and Spar shop to include a single storey extension to the existing coffee area, area 73 sq.m. and associated site works. Retention of 230.4 sq.m. of net retail floor space and alterations to the store room area from that which was granted planning permission under Reg. Ref. 08/835.”

This would enable the applicant to regularise the existing situation. I note that the proposed development would actually result in a total stated ‘net retail area’ in the order of 278 sq.m., as part of the existing seating area would become additional retail floorspace, as indicated in drawing A-03. In any case, as noted above, the additional retail floorspace would contravene materially a condition attached to an existing permission for development, i.e. condition no. 2 of reg. Ref. 08/835, which specifies that the sales space of the overall shop shall not exceed 100 sq.m.

8.4 Retail Impact

8.4.1 Notwithstanding the above conclusion, I now propose to consider the development (including the element to be retained) with regard to the guidance provided in current retail policies, in order to provide as full an assessment as possible.

8.4.2 The overriding retail policy guidance provided at national level is the current Retail Planning Guidelines for Planning Authorities 2012. Section 2.4.3 of the RPG identifies a floorspace cap for petrol filling station shops of 100 sq.m. irrespective of location. Section 4.11.9 of the RPG does allow for a sequential consideration of shops > 100 sq.m. but also states that such shops should remain at a scale appropriate to the location and:

“their development should only be permitted where the shopping element of the station would not seriously undermine the approach to retail development in the development plan”

The recommendations of the RSGDA and the Co. Kildare retail strategy as set out in the County Development Plan emphasise the importance of petrol stations as a local retail service but state that the retail element of petrol station shops should be secondary to their primary function. They also state that proposals should be considered in terms of retail impacts on the wider area, particularly town centres. I note the stated policy to consolidate Celbridge town centre in Chapter 9 of the Kildare County Development Plan. It is also a stated goal of Celbridge LAP 2010 to protect and further develop the role of the town centre as the focal point for economic, cultural and social activity. LAP Chapter 10 ‘Town Centre’ sets out a series of objectives to achieve this goal, including proposals to develop the Donaghcumper lands adjacent to Celbridge Main Street.

- 8.4.3 As per the requirements of section 2.4.3 of the 2012 RPG for developments > 100 sq.m., the applicant submitted a retail impact analysis (not a full Retail Impact Assessment) and sequential test of the proposed development dated 14th September 2015, in response to the PA further information request. The analysis is based on the stated total retail floor area of 230.4 sq.m. As noted above, the proposed development would actually result in a 'net retail floorspace' of c. 278 sq.m. as part of the existing café would become additional retail floorspace. The sequential test and retail analysis may be considered separately as follows.
- 8.4.4 The sequential test of the development is based on research of existing and available retail units in Celbridge, also a review of zoned lands. The only available retail units found were several units at St. Wolstan's Shopping Centre located on the western approach to Celbridge (R403). The available units are not considered suitable for the proposed use on the grounds that the shopping centre already contains a large supermarket and has an ancillary petrol station with a small convenience store. The area is therefore adequately served with convenience outlets. While there was a small number of vacant units at Celbridge town centre, these were of a small scale, unsuited to the proposed development. The only available zoned lands were at St Wolstan's Secondary School Complex, it is submitted that these lands could be developed irrespective of this application. The only other commercially zoned land is to the north and east of the town, where there is already a concentration of convenience shops and petrol stations. The sequential analysis concludes that the subject site is the only suitable location for a convenience shop to serve the southern and western areas of Celbridge.
- 8.4.5 The following points of the retail impact analysis are noted:
- The site is located in a residential area and accessible to pedestrians and cyclists. The existing operation is a convenience store selling basic groceries and functioning as a local shop for the southern and western areas of Celbridge. It is the only petrol station or convenience store serving these areas. It is not a facility for a weekly shop. The shop operates longer opening hours and therefore offers a service to local people when larger outlets are closed. Such shops tend to have local or reduced catchments. Potential retail impacts are likely to be on other local shops rather than on the town centre. The parking on site allows for a convenience use that could not be provided in the town centre.
 - It is submitted that the provision of retail and a relatively small coffee area is consistent with recent developments in petrol filling stations around the country, also that the petrol and retail elements are intrinsically linked.
 - The analysis includes a map showing the locations of other petrol stations and small convenience shops in Celbridge, each with a catchment of 800m or 10 minutes walking distance. There are a total of 4 such facilities on the southern side of Celbridge, including the subject site. Its 800m radius overlaps with those of 3 of those premises, however they are all

located some distance to the east of the subject site. The alternative to using the subject site would be to drive to a similar facility nearly 1km away.

- The existing store (including the element to be retained) has been in operation since 2008 and a retail element has been part of the petrol station since 2001. It is submitted that the business has operated successfully with no known negative impacts on any of the convenience shops in Celbridge, either associated with petrol stations or otherwise. The research carried out found a generally low level of vacancies and none for convenience. A site visit of all convenience premises was carried out on 27th July 2015 (a Monday) from 10.00 am to 1.00 pm. All the shops appeared active, viable and vibrant. The 2 no. shops visited in the town centre had a high footfall. There was no indication that any of the shops were struggling. No other outlets have objected to the proposed development.
- Celbridge town centre appears to be vibrant, healthy and viable with a low level of vacancy. The town centre has very little opportunity to expand due to the non-availability of sites, existing development and physical constraints such as the river and protected demesne lands. The town centre is compact and historic and does not need petrol stations or late night retail such as provided at the subject site. It is submitted that the town centre is unsuitable for this type of development, also that the development would encourage linked trips and remove traffic congestion from the town centre. The preferred location for petrol stations as per section 19.10.5 of the County Development Plan is on the outskirts of town and within the 50 kph zone.
- It is submitted that the proposed / retained café and convenience store would have a secondary role to the petrol station. The sales receipts for petrol currently far exceed those for the existing convenience or café elements. Only 10% of net sales are for the café or deli and 30% for the shop. It is submitted that the proposed increased floorspace is not so great that the sales receipts for the café or shop would exceed those for petrol and change their ancillary nature.

8.4.6 The applicant has submitted that the proposed café seating area should be considered separately from the retail element and has noted several examples of cases where the Board granted café / restaurant areas at service stations, in addition to the retail floorspace. I accept this point and note that the definition of net retail floorspace as provided in Annex I of the RPG specifically excludes cafés. I note that all of the examples cited by the applicant included a retail element of 100 sq.m., i.e. the RPG floorspace cap was complied with. However, given that the proposed café and seating area would be acceptable in principle at this location in its own right, I have no concerns relating to this element of the development.

8.4.7 With regard to the retail element, I note the guidance on the sequential approach as provided in section 4.4.1 of the 2012 RPG. The applicant has considered potential town centre sites with regard to suitability, availability and viability. Having inspected the existing premises, I accept that the proposal involves a relatively small scale convenience retail outlet at an out-of-centre location, which is more suitable for a petrol station and convenience store than a town centre site. The retail offering is not of a type that could be construed as a destination 'mini supermarket' with a wider retail draw. The goods currently on sale generally comply with the definition of 'convenience' goods provided in Annex I of the RPG, i.e. food, alcoholic and non-alcoholic beverages, tobacco and non-durable household goods. While the petrol station element would exclusively serve car borne customers, I accept that the shop operates as a convenience store for the surrounding residential areas given its accessibility by foot and the lack of other shops in the immediate surroundings. I also accept that the retail and café elements are ancillary to the petrol station function with regard to the sales figures provided by the applicants. The proposed combination of retail and café at a petrol station is an increasing trend and is generally acceptable with regard to the permissions cited by the applicant. Given the convenience emphasis of the offering at this location, I do not consider that it would seriously damage the vitality or viability of retail development in Celbridge town centre or mitigate against development plan objectives to improve same

8.5 Appropriate Assessment

8.5.1 Having regard to the nature and scale of the development within a fully serviced suburban location, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.6 Conclusion

8.6.1 I note that the proposed development would contravene condition no. 2 of 08/835 and condition no. 2 of 08/1063. However, the development is acceptable in principle at this location under the Celbridge Local Area Plan 2010. I am satisfied that it would not have any significant adverse impact on residential or visual amenities or on traffic circulation in the area given the well-established use as a service station and the lack of third party comments on file. With regard to the retail analysis and to my site inspection, I am satisfied that the development would not seriously damage the vitality or viability of retail development in Celbridge town centre or mitigate against development plan objectives to improve same. Accordingly, I consider that permission can be granted in this case notwithstanding the previous condition of permission limiting the retail outlet to 100 sq.m.

9.0 RECOMMENDATION

- 9.1 Having regard to the foregoing, I recommend that permission be granted for this development for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Having regard to the zoning for the site, to the quantum of development proposed, to the pattern of development in the area, to the planning history of the site and to the location and accessibility of the site, the Board considered that, subject to compliance with the conditions set out below, the proposal would be acceptable in terms of traffic safety and convenience, would not detract from the vitality of the town centre, would not seriously injure the visual amenity of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by the planning authority on the 16th day of September, 2015 and as lodged with the appeal to the Board on 19th November 2015, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. 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.

3. The use of the restaurant shall be restricted between the hours of 07.00 and 23.00 hours.

Reason: To protect the amenities of the adjoining properties.

4. No additional signs, symbols, nameplates or advertisements shall be erected on the proposed site without a prior approval of the planning authority whether or not such development would otherwise constitute exempted development.

Reason: In the interest of visual amenity.

5. The developer shall pay to the planning authority a financial contribution 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, as amended. 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Sarah Moran,
Senior Planning Inspector
10th March 2016