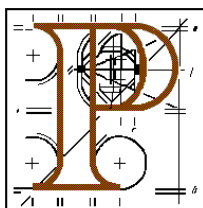


An Bord Pleanála



Inspector's Report

Development: Demolition of existing petrol station and construction of new petrol station and all ancillary site and development works at Dromhale, Killarney, County Kerry.

Planning Application

Planning Authority: Kerry County Council
Planning Authority Reg. Ref.: 15/454
Applicant: Harvest Trustees Limited
Type of Application: Permission
Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): Aisling Sheahan
William Murphy
Type of Appeal: Third Parties V Grant
Observers: Dromhall Hotel
Date of Site Inspection: 3rd May 2016

Inspector: Kenneth Moloney

1.0 SITE DESCRIPTION

The appeal site adjoins the Kenmare Road (N71) and is situated approximately 1km from Killarney town centre. There is a disused filling station on the appeal site.

The disused filling station comprises of two petrol pumps, a separate diesel pump, and a small convenience shop. The site also includes a large tank, a small recycling facility and roadside signage.

The neighbouring use to the north of the appeal site is an established hotel. There is a single storey house and a separate apartment unit located to the rear of the appeal site. I note that at the time of my site inspection that these residential units were vacant. It is notable that there is a steep embankment to the rear of the appeal site. The gradient of the appeal site rises gently from the public road and to the rear of the site the gradient rises steeply, due to the embankment.

There is a mix of uses in the immediate vicinity of the appeal site including car sales, residential, a petrol filling station, hotels and B&B's. The detached houses situated on the opposite side of the public road are two-storey with high pitch roofs.

The filling station on the appeal site has two vehicular entrances onto the public road (N71) and the existing sightline provision in both directions is generally good. There is a signalised junction adjacent to one of the vehicular entrances.

2.0 PROPOSED DEVELOPMENT

The proposed development includes the demolition of the following;

- Shop building
- Forecourt, pumps and canopy
- Decommissioning and removal of existing fuel storage tanks and pipe work.

The proposed development includes the following;

- New layout, pumps and canopy
- 3 no. 40,000L underground fuel storage tanks and over ground fill points
- Retail building –
 - 215 sq. m (net retail 100 sq. m.)
 - Off licence (3 sq. m.)
 - Deli/ Sandwich bar (21 sq. m.)
 - Seating area (26 sq. m.)

The proposal includes 7 no. car parking spaces and capacity for 8 no. vehicles at the filling station. (The car parking is revised due to the appellant's response to the additional information request).

Additional information sought for the following (a) cross sections through the site, (b) Stage 1/2 Road Safety Audit and Traffic Impact report, (c) indicate staff numbers and dedicated parking spaces, (d) details of car parking provision, (e) Stage 3 Flood Risk Assessment, (f) waste management plan, (g) retail impact assessment, (h) surface water proposals and (i) plans to demonstrate compliance with European Union Regulations, 2011.

3.0 PLANNING AUTHORITY'S DECISION

The Planning Authority decided to **grant** planning permission subject to 19 conditions.

Internal Reports: There are three internal reports on the file:

- Executive Planner; - Applicant requested to submit a Stage 3 Flood Risk Assessment.
- Environment Section; - Additional information sought in relation to surface water disposal.
- Engineer; - Additional information requested for a Stage 1/2 Road Safety Audit and Traffic Impact Assessment.

Objections: There are five third party objections on the planning file and the issues raised have been noted and considered.

Submissions: There is a submission from the NRA who request that the Local Authority abide by the official policy. There is a submission from Fisheries Ireland which recommends a number of conditions.

4.0 PLANNING HISTORY

- Appeal Ref. 229891 – Planning permission granted for the demolition of existing fuel station canopy roof, shop and fuel storage tanks and the construction of 20 no. apartments. L.A. Ref. 08/4878 granted by the local authority.
- Appeal ref. 224079 – Permission refused for demolition of fuel station and construction of two retail units and 14 no. apartments due to (a) overdevelopment of the site and (b) inadequate car parking provision. The Local Authority (L.A. Ref. 07/4716) also refused permission.

5.0 TOWN DEVELOPMENT PLAN

The operational Development Plan is the Killarney Town Plan, 2009 – 2015.

The appeal site is zoned 'Residential'. Section 12.3 outlines the Land Use Zoning Objectives and uses permitted and open for consideration for zoning objectives.

The following guidance is relevant;

- Section 12.5.2 – guidance for car parking
- Section 12.5.6 - guidance for petrol stations
- Appendix 2 refers to car parking standards
- Appendix 3 refers to petrol filling stations.

6.0 KERRY COUNTY DEVELOPMENT PLAN

Section 13.6.8 sets out guidance for signage at petrol stations.

7.0 NATIONAL GUIDELINES

Spatial Planning and National Roads, Guidelines for Planning Authorities, 2012

These guidelines have been designed to ensure that development is guided to the most appropriate locations by ensuring that transport and land-use planning considerations are taken into account at development plan stage.

Retail Planning Guidelines, 2012

Section 2.4.3 outlines that 100m² is the retail floor for service stations space cap irrespective of location.

Section 4.11.9 outlines that in rural areas service stations can have a very important retail function and it is required that the retail element shall be assessed having regard to the sequential approach to retail development. It is also outlines that in considering applications for development attention should be given to the safety aspects of circulation and parking.

8.0 GROUNDS OF APPEAL

Frank Coffey, Engineering Consultants, lodged an appeal on behalf of his client **Aisling Sheahan**. The main grounds of appeal are summarised as relating to the following; -

Site Location

- The site is situated adjoining a uniquely busy road (Flesk Road) due to tourism.
- Woodlawn junction is located adjacent to the appeal site and access from the appeal site is onto a left filter lane for this junction. Traffic exiting from the development site will be influenced by traffic lights.

Site Layout

- The proposal is inconsistent with car parking provisions of the County Development Plan.
- The applicants appear to use Killarney Town Development Plan, 2009 – 2015, or the Kerry County Development Plan, 2009 – 2015, whereas the appropriate statutory plan is the Kerry County Development Plan, 2015 – 2021.
- The proposed plans show car parking provision for 21 vehicles however the standards have been relaxed.
- The proposed shop will be constructed less than 4.5m from the southern boundary contrary to Section 13.12 of the Kerry County Development Plan, 2009 – 2015, and Section 13.10 of the 2015 – 2021 Kerry County Development Plan. This relaxation promotes over development of the site.
- Using the Kerry County Development Plan or the Killarney Town Development Plan, 2009 – 2015, the required car parking provision for the proposed development is either 20 or 21 parking spaces.
- However there is no provision in the development plans to allow the spaces adjacent to the petrol pumps to count as parking spaces.
- If the pump side spaces are discounted then the proposed development only provides 13 spaces. This falls well short of the required car parking spaces.
- Should the provisions of the Kerry County Development Plan, 2015 – 2021, be used then the proposal falls short of the required standard by 4 spaces.
- It is submitted that adequate staff car parking provision should be available.
- It is submitted that a single badly parked car in the proposed disabled car parking space would adversely impact on the circulatory system of internal traffic management. The traffic management on the site is unclear.
- Spaces 9 – 16 are located on the forecourt and should not be reckoned in the overall car parking requirement.
- It is submitted that vehicles entering via the northern entrance cannot access spaces 17, 18 or 19 when there is a vehicle waiting to exit the forecourt.
- It is difficult to establish how spaces 17, 18 and 19 will be retained for staff parking. The careless use of these spaces will result in blockages.
- There is no provision for loading bays and clearly delivery trucks will need to use proposed car spaces or the very limited circulation space around the forecourt.

Traffic Impact Assessment

- It would be of benefit if the TIA in addition to the impact on the N71 considered the traffic impact of the proposed development on signalised junction, and the impact of the added traffic (from the development) on the signalised junction.
- Should the appeal site become congested this may arise from queuing on the N71 with adverse impacts on the capacity of the signalised junction.

- It is stated that if junction capacity is adversely affected then both the inward and outward flow of traffic, on the N71, (Flesk Road), would be slowed. The brief of the TIA was too confined.
- It is submitted that the traffic survey count at the appeal site was undertaken in October at a time well outside the high tourist season.
- The traffic count for LA. Ref. 14/618 (a site diagonally opposite the appeal site) was taken in August 2014 and this illustrates the significant difference in traffic counts between peak and off-peak seasons.
- As the traffic generation will impact on a filter lane, which is not addressed in the TIA, and in addition as the TIA does not account for summertime congestion then it is submitted that the TIA should have had a wider remit.

Planning Process

- It is submitted that it would have been better for the third parties had the applicant's response to the additional information allowed for third party consultation.

The following is the summary of an appeal submitted by Noonan, Consulting Engineers, on behalf of **Mr. William Murphy**.

Scale

- The scale of the proposal is disproportionately excessive in relation to the size of the site.
- The retail area is almost 4 times larger than the existing retail use.
- The size of the site is inadequate to cater for the proposed development.
- The rear of the site is approximately 6m above the level of the forecourt.
- The development of this area would require significant structural excavations which will affect the neighbouring residential property.
- The height of the existing shop building is 3.2m above ground level and is located almost 20m from the neighbouring residential property.
- The proposed new shop / deli has a roof height of 5m above ground floor and is located within 5m of the neighbouring residential property.
- It is contended that this will devalue the neighbouring residential property.
- The increase in the number of fuel pumps will more than double the amount of traffic entering and leaving the site.
- The proposed shop will cater for 3.5 times more customers. This intensification will have huge increases in noise, traffic and nuisance levels and this is in contravention of the Killarney Development Plan.

Parking

- It is contended that the applicant has deleted 20 spaces from the restaurant without modifying the floor plan.
- The level of the car parking proposed is inadequate.

- It is submitted that the spaces beside the pump cannot be realistically considered car parking spaces as customers will not park beside the pump while using the dining area.
- It is submitted that given the location of the air and water unit in the middle of the car park that there will be no room for any parking for customers using the shop/food store.
- This will result in chaotic parking on the access road.
- The disabled parking space is located where there is insufficient turning area.
- It is submitted that the three staff parking spaces to the front will be inevitably be used up by patrons using the shop / deli.
- It is contended that staff car parking should be parked away from public spaces however it is proposed to excavate the rear of the site.
- It is submitted that the loading bay is located to the rear of parking bays 2 to 8. This means that patrons will not be able to use these parking spaces while deliveries are taking place.
- It is submitted that the location of a box junction directly outside of the filling station will mean cars will be unable to exit the forecourt. Traffic will built up in the forecourt and result in congestion. The few car parking spaces available in the forecourt will become available.
- The attached photographs show the congestion that was present with the existing use.
- It is clear that parking and traffic movements within the proposed development are totally out of proportion with the small site.

Traffic

- The appeal site is located on a major junction on the Muckcross Road.
- There is a box junction at the southern entrance/ exit to the development.
- With the built up of traffic the box junction will be ignored leading to greater traffic congestion.
- The additional fuel pumps will result in additional traffic.
- Due to the present of the box junction car exiting the proposed development will be in conflict with traffic on the Muckcross Road.
- Traffic will built-up in the forecourt due to inability to exit the proposed development site.
- It is submitted that cars exiting the forecourt through the box junction and wanting to turn right towards the town centre will constitute a traffic hazard with a high risk of accidents.
- It is submitted that the Traffic Safety Audit is not representative of summer peak traffic.

Effect on Adjoining Property

- The owner of the adjoining residential property has difficulties with accessing his property.
- It is submitted that motorists ignore signage warning not to park on the existing right of way.
- It is considered that additional signage will have no benefit.

- Patrons will park on the access road as there are insufficient car parking spaces available.
- The right of way is not shown accurately on the site map.
- The extent of the right of way extends a further 1.5m into the forecourt than that illustrated on the submitted plans. The width of the right of way is 5m.
- The appellant has a right of way to reverse into the forecourt while reversing down the right of way. This has not been accounted for in the proposed development.
- The location of the food preparation area will have an adverse impact on established amenities.
- The scale of the proposed food area / shop is in contravention of Section 12.56.2 of the Killarney Development Plan.
- It is contended that serious structural damage will be done to the appellant's property.
- The existing shop is located 20m from the appellant's property and the roof height of the canopy is 3.2m above ground level. The proposed shop is located within 5m of the house and the height of the canopy is almost 5m above ground level. This is an excessive scale.
- The proposed signage with increased height will have a detrimental impact on the overall appearance of the area.

9.0 OBSERVERS

The following is the summary of an observation submitted by **Dromhall Hotel**.

- The proposed canopy is too large and will cause visual obtrusiveness when approaching and exiting Killarney.
- The proposed canopy will break the building line.
- The proposed canopy will seriously injure the amenity value and the attractive streetscape on the approach/exit to/from Killarney.
- The proposed signage along the front boundary, with a height of 5.7m, contravenes Appendix 3 Section 8 of the Killarney Town Development Plan. The Development Plan states that signage shall be a maximum height of 4.6m.
- The proposed signage and the new canopy will detrimentally impact on the streetscape.
- Eight of the proposed car parking spaces will be located beside proposed petrol pumps therefore only allowing 13 spaces for retail.
- Inadequate car parking provision is available.
- The required car parking for a restaurant / café is 10 spaces per 100 sq. m. of public space.
- The seating plan has been reduced from 32 persons to 12 persons however the same floor area still exists. The floor area of the overall development should be reduced to reflect the reduction in seating capacity.
- The proposal has no loading bay facilities.
- The proposed shop is an increase of 335% compared with the existing shop.

- The details submitted do not include stage 2/3 road safety audit and does not address problems caused by internal traffic movement and conflicting traffic movements.
- There is inadequate space for cars to queue for petrol as they enter the side of either of the two entrances. This will impact on traffic using the N71 and cause a traffic hazard.
- It is submitted that the two entrances do not meet the requirements set out in Appendix 3 of the Killarney Town Development Plan under Section 2 whereby the maximum width of an access shall be 9.1m.
- The width of the entrance on the south / Kenmare side of the development which is 13.4m in width is not compliant.
- The vehicular entrance due to the intensification of development will create a traffic hazard to both pedestrians and vehicle users. This is due to the width of the entrance along the unsatisfactory layout of the entrance when the location of the 'right of way' into the existing house along with 3 no. public footpaths is considered.
- The radii of curves at the entrances and exits to the site do not meet the minimum 10m required in Appendix 3 Section 3 of the Killarney Town Development Plan.
- The size of the proposal should be reduced to accommodate internal car movements and pedestrian movements.
- An old stone wall to the rear of the site will be affected by proposed excavations.
- It is submitted that inadequate details have been submitted to demonstrate that the excavations can be carried out without adversely impacting on the existing stone walls and retaining walls.
- The excavation will involve the removal of trees and vegetation from the site and there are no proposals to address this loss of screening.

10.0 RESPONSES

David Mulcahy Planning Consultants Ltd. submitted a response on behalf of the **applicant**. The response submission includes reference to site location / description, planning history, details of the proposed development, development plan provisions and grounds of appeal. The following is a summary of the grounds of appeal.

Scale

- It is submitted that the current proposal should be considered in the context of the significantly sized apartment development granted permission on the site.
- The appellant claims that the fuel pumps will be doubled in size however this is incorrect as there are currently three fuel pumps and fourth pump will be provided.
- The current retail floor area is 103 sq. m. and the proposed retail floor area is 215 sq. m. The floor area of such retail buildings is normally between 200 and 450 sq. m.

- The proposed floor area is considered critical to provide the offer that customers expect at filling stations and allow the operator compete effectively.
- The proposed building will be a modern design with a high end external finish and will replace a dated appearance.

Excavations

- The appellant has not substantiated the view that the proposed development will have an adverse impact on the structural integrity of his property.
- The applicant engaged JA Gorman Consulting Engineers to design the proposed development. The engineers concluded that there are no engineering difficulties arising from the proposed development.
- The report from JA Gorman Consulting Engineers confirms the intension to construct a CFA pile with capping beam to retain the difference in ground levels.
- The CFA pile differs from a precast pile as it is a cast in situ rather than driven pile. The noise and vibrations emanating from a CFA piling rig is negligible compared with a pre-cast pile driving rig.
- It is also proposed to use vibration monitors for the duration of the piling process.
- A 'U' shaped channel can be formed to accommodate a layer of soil and some screen planting provided.
- The applicant is amenable to a condition requesting details of the channel and planting.

Noise and Nuisance from Traffic

- It is unsure whether the apartment is unoccupied.
- There is no reason to expect that the additional trade will result in a material impact on the established residential amenity.
- The existing dwelling is located at a higher level than the shop building and there is no risk of overlooking, overshadowing or overbearing impact.
- The retaining wall to the rear of the shop building will act as a noise barrier.
- The rear service door will face the embankment area north of the dwelling.
- The proposed refuse area is located north of the dwelling.
- There are approximately 2 no. non-fuel deliveries per week.
- The deliveries are on the opposite side of the shop to the appellants dwelling.
- The increased size of the shop will act as a barrier to noise from traffic.
- The only difference is the provision of two car parking spaces at the boundary of the dwelling but these are a considerable distance from the boundary itself.
- The applicant is open to the provision of screen planting on top of the retaining wall with capping beam. This will soften visual impact and will reduce the visual impact on the neighbour.

Parking

- The applicant is satisfied to accept a condition that the seating area is limited to 12.
- It is submitted that customers will not park at the pump side spaces while using the café / restaurant.
- There is adequate car parking provision over and above the single space allocated for air and water.
- The TIA has addressed issues in relation to insufficient turning area for disabled space, the three staff car parking spaces, loading bay, shop deliveries and the box junction.

Traffic

- The TIA has addressed this issue.
- The RSA drawing no. P2245-C003 illustrates the advertising signs at the two entrances to have been permanently removed.

Effect on Adjoining Property

- The right of way is fully respected.
- The applicant is open to a condition for signage warning customers not to park on the 'right of way'.
- The applicant is prepared to paint cross-hatching along the entirety of the 'right of way' to warn customers parking in this area is prohibited.
- The applicant's legal advisers have advised the applicant that there is sufficient available space to respect the right of way. The width of the right of way is 12 ft which equates to 3.657m and this has been met.
- It is not the role of the Board to engage in legal disputes.
- The food offer will be sandwiches so no odours are expected.
- In the event that the food offer ends up being a hot food offer than the applicant has prepared a odour control measures in Appendix A.
- The extractor ducting located in the North West corner will ensure a greater than 20m separation from the nearest sensitive receptor.
- There is no way of knowing the level of increase in customers due to the additional floor area.
- Sufficient car parking provision is available.
- Condition no. 18 will address concerns in relation to vibration.
- The appellant has not fully addressed how the increase in canopy and moving the shop closer to the residential unit will adversely impact on residential amenities.
- Condition no. 9 restricts the height of the signage to that of the proposed canopy.
- It is unknown how the height of this sign could adversely impact value of the appellant's property as it is located a distance of 42.6m from the appellant's property.
- There will be no impact on the appellant's access.
- The expansion of the existing filling station is required to make commercial sense.

Sheahan Appeal

- This appellant resides approximately 2km from the appeal site.

- The impacts of the proposed development on her property are unclear however it is considered that the appellant has a connection with the filling station across the public road and therefore is commercially motivated.
- It is submitted that S. 13.10 of the Kerry County Development Plan, 2015 – 2021, which relates to distance of development from boundary wall is not relevant as the operational development plan is the Killarney Town Plan, 2009 – 2015.
- The relevant car parking spaces are within in the Killarney Town Plan, 2009 – 2015.
- There is no specific requirement for car parking as Section 12.53.4 states that the Planning Authority will decide.
- In relation to car parking provision the standards for shop and restaurant where used. Shop and restaurant both require 10 spaces per 100 sq. m and this would amount to 15 spaces. 3 no. additional spaces are provided for staff and one for the air/water station.
- In relation to pump parking spaces it is normal for customers to park and purchase some convenience items in the shop as such there is no reason why these spaces cannot form part of the allocation. The Board (in appeal ref. 244004) previously accepted pump spaces as part of the overall car parking provision.
- In relation to parking layout and traffic refer to the submission in the ILTP report.
- Fuel deliveries will not take place during normal trading hours, however because there is only two a week the potential for material impact is limited.
- It is submitted that the decision to allow an extension and not seek new public notices is not an issue for the Board.

11.0 RESPONSES to FIRST PARTY RESPONSE

Dromhall Hotel submitted a response to the first party response which included additional comments to their original appeal. The following is a summary of a response submitted by Dromhall Hotel;

- The proposed new canopy and signage will seriously affect the visual attractiveness of the Dromhall Hotel and Randles Hotel as you approach the town centre and will obscure the established discreet signage.
- There are insufficient details of the illumination of signage.
- The proposed identification signage will obstruct sightlines.
- The proposed 3 no. car parking spaces along the front boundary will create a visual obstruction which will constitute a traffic hazard.
- Car parking spaces no. 17, 18 and 19 are inappropriately located from a visual attractiveness point of view.
- It is submitted that the proposed odour ventilation will be placed on the North East corner of the shop building and this is contrary to the applicant's assertion. Clarification is sought on its location.

- It is submitted that the location of the odour ventilation ducting, which the applicant refers to on the northern elevation will be less than 20m from its nearest receptor (Kayne's Bar and Bistro) and located approximately 8m from the neighbouring outdoor dining area.
- The impact of the proposed ducting will be a high risk rather than low / medium risk.
- Odour omissions will cause harm to established amenities.
- The location of the outdoor service area does not take account of the established amenities of the Dromhall Hotel, in particular the commercial and amenity value of the outdoor dining area.

Conclusion

- In conclusion it is contended that the proposed development should be refused permission on the grounds of visual obtrusiveness, over intensification of the site, inadequate car parking provisions, creation of dangerous and conflicting traffic movements on the site, devaluation of adjoining property and inadequate sightline distances.

Frank Coffey, Consulting Engineer, on behalf of **Aisling Sheahan** submitted a response to the first party response which included additional comments to their original appeal. The following is a summary of a response submitted by Frank Coffey.

- It is accepted that the scale and bulk of the permitted development will be less than the previous permission on the site.
- However the planned activity will be more intensive with a far greater amount of vehicular movement.
- In addition the apartment proposal only included one vehicular entrance in a different location to the two existing entrances and pulled back further from the existing Woodlawn junction.
- The proposal therefore represents an intensification of the existing use and the previously permitted use.
- The apartment development would be in keeping with the established uses in the area.
- The proposed development must be consistent with Section 12.56.1 and Section 12.56.2 of the Killarney Town Development Plan.
- The area covered by the TIA is limited and did not cover the impact on the adjacent Woodlawn Road junction with Flesk Road.
- It is submitted that in the absence of this assessment of the Woodlawn / Flesk Road junction there are many questions unanswered.
- The Woodlawn Road experiences large traffic volumes.
- The impact on the current traffic lights system and the geometric layout is unknown.
- It is questioned whether the junction approach lanes configuration require modification to allow smooth entry / exit from the proposed development.
- The proposed development provides for no cycle lane provision to the front of the proposed development.
- The TIA does not reflect the strategic thinking for the wider area.

- The RSA was confined to a short stretch of road and did not consider the adjacent junction.
- It is contended that the TIA should have predicted traffic behaviour during the various red/green phases of the adjacent lights.
- The TIA has not indicated how the Woodlawn / Flesk Junction would cope with peak season traffic.

Noonan, Consulting Engineers Ltd, on behalf of **Mr. William Murphy**, submitted a response to the first party response submission which included additional comments to their original appeal. The following is a summary of a response submitted by Noonan, Consulting Engineers Ltd.

Scale

- It is accepted that the number of pumps is 3 and not 2.
- It is submitted that the floor area of the existing building is 62 sq. m. and this will increase the floor area by 340%.
- It is submitted that the scale of the floor area should be reduced in line with the reduction in no. of seats in the dining area.
- The modern design will have an adverse impact on the local area.

Site Excavations

- It is nonsensical to suggest that concrete piling over 7m deep within 1.5m of the appellant's house will not affect his property.
- The proposal will impact on the appellant's existing boundary stone wall and the hedge.
- The effect of the proposed development will require the applicant to move the proposed retaining wall at least 1m closer to the proposed retail building which is less than 1m from the face of the proposed wall.
- It is likely that the entire retail space will be moved forward and therefore reducing the amount of available space for car parking.

Detrimental Impact on Adjoining Property

- The opening hours of the proposed development will attract anti-social behaviour.
- The traffic impact within the site and the nearby junction of the Flesk Road and Woodlawn Rd will hinder the appellant's access to the site.
- It is submitted that the retaining wall situated to the rear will not act as a noise barrier as this wall will extend only 0.5m above the existing ground level of the appellant's side.
- There is a service door located approximately 11m from the appellant's house. During busy periods and warm weather this service door will be open resulting in an adverse impact on the appellant's amenities.
- These impacts will devalue the appellant's property.

Parking

- Car parking provision is inadequate.
- Problems will arise (a) at the disability parking space where vehicles will require reversing, (b) the loading area will block 5 further car

parking spaces, (c) the restriction of deliveries to two per week is an underestimation, (d) spaces 4 or 5 should not be allocated as parking as will be required for air/water.

- Accordingly spaces 1 – 7 are unworkable and without any alternative room on site for parking the proposal should be refused.
- Submitted photographs illustrate poor experience of car parking on the site.

Traffic

- The traffic assessment is flawed as it did not include an assessment of the adjacent junction or jaunting cars which form a sizable component of the traffic on the Flesk Road.
- It is submitted that measuring the width of exit points is meaningless if there is no clearway on the road due to traffic queuing at the junction.

Effect on Adjoining Property

- The previous owners / occupiers use of the site resulted in serious congestion and this will be exacerbated by the proposed intensification of development.
- Vehicles will park on the access road as there will be nowhere else for them to park.
- The proposal would devalue the appellant's property.

Appellant's Property

- It is submitted that the applicant is the sole owner of the neighbouring property and whether he resides there or not is irrelevant.
- The right of way is 5m wide at the eastern end of the right of way and extends a further 1.5m northwards close to the site exit.
- There is no difficulty with the planning status of the appellant's property.

12.0 ASSESSMENT

The main issues to be considered in this case are: -

- Principle of Development
- Traffic
- Car Parking Provision
- Impact on Adjoining Residential Amenities
- Scale
- Visual Impact
- Flood Risk
- Appropriate Assessment

Principle of Development

In accordance with the provisions of the Killarney Town Development Plan, 2009 – 2015, the appeal site is zoned 'residential'. I would note from paragraph 12.3.21 of the Town Development Plan that petrol filling

stations are not-permitted uses within this zoning objective. As such the existing filling station on the appeal site is a non-conforming use Accordingly Section 12.3.16 of the Town Development Plan is relevant.

It is stated in Section 12.3.16 of the Town Development Plan, 2009 – 2015, that *'extensions to and improvement of premises accommodating these uses may be permitted where the proposed development would not seriously injure the amenities of the area or prejudice the proper planning and sustainable development of the area'*. Therefore I would consider there is provision in principle for the proposed development provided that established amenities in the immediate area are protected.

The existing pattern of development in the local area is mixed and primarily comprises of commercial, tourist accommodation and residential and this is an important consideration.

Section 2.4.3 of the Retail Planning Guidelines, 2012, outlines that 100m² is the net retail floor space cap for service stations irrespective of location. The proposed retail floor space is 100 sq. metres. The appellants agent argues that a Retail Impact Assessment is not necessary on the basis of the scale and I would concur with this view.

Accordingly I would consider having regard to the zoning objective of the appeal site, the established use on the appeal site and the pattern of development in the area that the principle of the proposed development is acceptable provided that the amenities of the local area are protected.

Traffic

The submissions on the file outline that the public road adjoining the appeal site, i.e. N71 (Flesk Road), from which the proposed development will be accessed is a very busy road given the demand for local tourist attractions. The appeal site is also located in close proximity to a signalised junction and the submissions on the file argue that the proposed development will impact on the traffic flow using the signalised junction. In particular the appellants argue that when queuing occurs on the N71 due to the signalised junction this will prevent vehicles from exiting the proposed development. The appellants are also concerned that the submitted TIA did not take appropriate assessment of the impact that the proposed development will have on the adjacent signalised junction.

In considering the traffic implications of the proposed development I would have regard to the conclusions of the submitted Traffic Impact Assessment. The TIA outlines that a traffic count was undertaken in October 2015 and this count established the AM and PM peak flows on the N71 (Flesk Road). The TIA estimates that traffic generation from the proposed development would amount to approximately an additional 5% of the AM and PM traffic flows on the N71. Notably the TIA refers to a computer modelling assessment (TRICS) which was used by a recently permitted filling station (L.A Ref. 14/618) on the Flesk Road. However the

current TIA before the Board which estimates an additional 5% traffic generation of existing AM and PM peak levels is a higher volume than that estimated in the TRICS for a previously permitted filling station. The TIA, in my view, therefore represents the worse-case scenario.

The estimated traffic generation was tested against a capacity assessment (PICADY) for the adjacent signalised junction and this has indicated that there is adequate capacity on the adjacent public road / junction to cater for the traffic generation of the proposed development.

I would note that a report prepared by the Area Engineer from Operations Killarney Municipal District has reviewed the submitted TIA and has no objections on traffic grounds or impacts that the proposed development would have on road capacity.

In considering the merits of the proposed development I would note that there is an established filling station on the appeal site, although currently not in operation. I would also note that the established uses in the local area which are generally commercial and furthermore I would have regard to the conclusions in the submitted TIA that there is sufficient capacity to accommodate the proposed development. In favour of considering the proposed development I would note that there are currently two filling stations on the opposite side of the N71 (Flesk Road) and the proposed filling station is the sole filling station on the eastern side of the public road and this would contribute, in my view, to preventing right hand turns across the public road and thus avoiding potential traffic hazards. I would anticipate based on the intensification proposed that the proposed development would generate additional traffic to the current filling station on the appeal site however I would consider, on the basis of the information on the file, that the arguments in favour of the proposed development as demonstrated in the TIA adequately addresses concerns in relation to traffic.

In relation to the Right of Way that runs through the appeal site I note that it is demarcated on the submitted plans. It is argued by the appellant that the ROW is larger than that illustrated on the submitted drawings. I would consider that this is a legal issue that must be resolved outside of the planning system. In relation to ownership issues it is important to note Section 34(13) of the Planning and Development Act 2006, which states '*A person shall not be entitled solely by reason of permission under this section to carry out any development*'. Therefore, if planning permission were obtained, the applicant would have to demonstrate legal title to proceed with the development as proposed.

Car Parking Provision

I note from Appendix 2 'Car Parking' of the Town Development Plan, 2009 – 2015, that there are no car parking standards for filling stations. The applicant's agent uses the individual uses proposed within the proposed development to determine the required car parking provision.

In this regard the retail (shop) floor area is 100 sq. metres and in accordance with the Town Development Plan, 2009 – 2015, this retail area would require 10 spaces per sq. m. In addition the restaurant / café would require 10 spaces per 100 sq. metres. The size of the proposed restaurant / café would require approximately 5 spaces given the size of the seating area and the sandwich bar area. The proposal also includes 3 no. car parking spaces for staff and 3 no. additional car parking spaces. I note that the applicant's agent states that the applicant would be willing to accept a condition that ensures that the 12 no. seats proposed in the restaurant / café remains as 12. I would recommend such a condition to the Board, should they favour granting permission that would restrict the size of the restaurant area, as in some cases the restaurant / café within filling stations may operate as a fast food outlets which, in my view, would result in a greater demand for car parking spaces.

I acknowledge the difficulties with some of the car parking spaces such as the disability space and the spaces in front of the air / water station. However there are no guidelines to restrict car parking as proposed in forecourt filling stations and in general terms parking bays in front of water / air stations are common practice and are generally used to account for parking provision.

However in conclusion and in absence of any specific parking standards for filling stations I would concur with the rationale used by the agent of the applicant and separately I note that the Area Engineer has no objections on the grounds of car parking provision. Overall I would consider that the car parking provision for the proposed development is adequate.

Impact on Adjoining Residential Amenities

In considering the impact of the proposed development on established residential amenities I would have regard to the established context.

The appellant's residential properties are both situated to the rear of the appeal site, and are elevated in relation to the existing filling station forecourt and shop. The appellant's properties consist of a detached single storey house and a detached single storey apartment.

I would note that the existing rear elevation of the established shop is located approximately 18 metres from the front elevation of the single storey house. The rear elevation of the proposed shop is situated approximately 7 metres from the front elevation of the single storey house.

In addition the height of the proposed shop will be higher than the existing shop. Furthermore the scale of the proposed shop is larger than the existing shop. The floor area of the existing shop building is in the region of 65 sq. metres. The existing site also includes a portacabin with an internal floor area of approximately 24 sq. metres. The footprint of the proposed building is 215 sq. metres and this results overall in

approximately 242% increase in floor area which is significant. The appellants also submit that the height of the proposed canopy will be higher than the existing canopy. The height of the proposed canopy is a maximum height of 5.6m above ground level.

Overall, in my judgement, I would consider that the proposed development will have a greater impact on the neighbouring residential amenities in comparison with the existing development, given its closer proximity and the scale of the proposed development. The impact of the proposed development on the existing single storey apartment will be less, owing to its location which is more removed from the proposed development.

Notwithstanding the above it is my view that the existing residential amenities of the two residential properties are presently limited owing to the restricted nature of their site and also due to the close proximity of both properties to an established commercial use. Furthermore their residential amenity is limited due to the close proximity of both properties to one another and therefore potential for mutual overlooking. I would consider that the main impacts on the established residential amenities from the proposed development would arise from noise and artificial lighting. However should the Board favour granting permission, I would recommend a condition limiting the opening hours which will reduce impacts of noise and lighting and therefore offers protection to established residential amenities.

I would acknowledge the location of the proposed service door to the rear of the shop and its potential to impact on established residential amenities. However this issue, in my view, can be largely addressed by condition should the Board favour granting permission.

Scale

In considering the scale of the proposed filling station I would have regard to Appendix 3 of the Town Development Plan, 2009 – 2015. As referred to above the footprint of the proposed commercial building is 215 sq. metres and this therefore results in approximately 242% increase in floor area of the existing commercial use which is significant. The response to the additional information request has submitted a revised seating area in the restaurant which has been reduced from 32 seats to 12 seats. This in my view is a low scale use that will cater for the sandwich bar and is essentially an ancillary use.

The size of the appeal site is 0.195 ha (0.47 acres) i.e. 2024 sq. m. and, in my view, there is scope to accommodate a floor plate as proposed given the size of the site and the pattern of development in the local area.

The width of the existing canopy (front elevation) is approximately 12 metres. The depth of the existing canopy, i.e. the north and south elevation, is approximately 11 metres. The width of the proposed canopy is approximately 16.5 metres and the depth of the proposed canopy is

approximately 15 metres. The proposed canopy is therefore a larger scale than that already in existence on the site.

I noted from a visual observation of the area that there is an established Identification Sign on the appeal site serving the existing filling station. It is proposed that this will be replaced by an Identification Sign advertising the proposed operators. I will consider the visual impact of the proposed Identification Sign below.

In general I would consider that the proposed filling station would largely comply with the standard set out in Appendix 3 of the Town Development Plan. Overall I would consider that having regard to the established use on the appeal site, the size of the site and the pattern of development in the immediate area that the scale of the proposed development is acceptable.

Visual Impact

The increased scale of the proposed canopy is likely to have a greater visual impact than that of the existing development. The existing development has limited artificial lighting and as such I would be concerned with any additional illumination and its potential to adversely impact on visual amenities.

In considering the visual impact of the proposed development I would note that neither the appeal site nor its immediate area is designated as an ACA or as a designated Scenic Route within the provisions of the Town Development Plan. The proposed development is more intensive in scale than the established use on the appeal site, however there is an established use on the appeal site which includes canopy, main Identification Sign and car parking provision and therefore there is an established visual impact. In relation to the Identification Sign I would note that paragraph 8 of Appendix 3 of the Town Development Plan recommends that Identification Signs shall be a maximum height of 4.6m. I would acknowledge that there is an established Identification Sign on the appeal site which in my estimation has a height of approximately 6 – 7.5m. However it is interesting to note that on the opposite side of the public road, towards the town, there is a Maxol filling station and the identification sign is consistent with the canopy height of the filling station. In a response to an additional information request the applicant submitted a revised height for the Identification Sign of 5.8m reduced from 7.5m. This in my view would address concerns raised in the submission in relation to visual amenities. I therefore would consider that the proposed signage is acceptable.

The local context is a relevant consideration as there is a wide mix of uses including hotel, residential, car showrooms and petrol filling station. The proposed development, in my view, would sit within the established built environment without compromising the visual amenities of the area.

Flood Risk

In considering the flood risk of the proposed development I have had regard to the submitted Flood Risk Assessment. I would note that a report on the file from the Executive Planner outlines that the site is at risk of partial flooding in 1 in 1000 event.

Section 3 of the submitted Flood Risk Assessment outlines the flood history in the local area and the level of predictive flooding. It is demonstrated that there is no record to indicate that the appeal site was affected by previous flood events. However in 1980 the River Flesk, which is situated approximately 500 metres south of the proposed development, rose significantly due to prolonged rain. In terms of predictive flooding CFRAM indicates that the majority of the site is located within Flood Zone C which is low risk however approximately 13% of the site is located within Flood Zone B which has a moderate risk of flooding.

I note the recommendations contained in the Ministerial Guidelines – ‘The Planning System and Flood Risk Management’, 2009. These guidelines advocate a precautionary approach, and recommend that the appropriate land uses be assigned to distinct areas of differing flood risk.

The ministerial guidelines advocate a sequential approach which attempts to guide development away from areas at risk of flooding. The guidelines identify 3 zones of flooding;

- Zone A – High Probability of Flooding
- Zone B – Moderate Probability of Flooding
- Zone C – Low Probability of Flooding

I would note that in accordance with Table 3.1 of the Guidelines that the proposed development, i.e. filling station, would be a ‘less vulnerable development’. Having regard to Section 2.23 of the Guidelines, which sets out the indicative flood zones I would note from the documentation on the file that the subject site is predominantly located within an area designated Flood Zone C and partially located within Flood Zone B. Therefore on the basis of Table 3.2 of the Guidelines the proposed development would be acceptable.

I would note that the subsequent report from the Executive Planner, in relation to flood risk, considers that the mitigation measures proposed are acceptable. The mitigation measures include raising the height of the proposed floor levels.

I would conclude that having regard to the established use on the site, the scale of the proposed development, the national guidelines, the OPW ‘National Flood Hazard Mapping’, and the submitted flood risk assessment that any concerns of flood risk with the proposed development has been adequately addressed.

Appropriate Assessment

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an inner suburban and fully serviced location, no appropriate assessment issues arise.

13.0 RECOMMENDATION

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

REASONS AND CONSIDERATIONS

Having regard to the established use on the appeal site and the pattern of development in the area and the extent of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of the property in the vicinity, would not result in a traffic hazard 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 drawings received by the planning authority on the 20th January 2016, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. There shall be no intensification of the scale or nature of the activities proposed unless otherwise authorised by a prior grant of planning permission. The seating capacity in the proposed dining area shall be restricted to 12 no. seats.

Reason: In the interest of traffic safety, protecting adjoining amenities and orderly development.

3. Details including samples of the materials, colours and textures of all the external finishes to the proposed building / structures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

4. The opening hours of the hereby permitted filling station shall be from 7:30 hours to 21:00 hours Monday to Saturday and 09:00 hours to

20:00 hours on Sundays and Bank Holidays. No operations shall take place outside these times.

Reason: In the interest of protecting adjoining residential amenities.

5. The site shall be landscaped in accordance with a scheme of landscaping, details of which shall be submitted to the planning authority for agreement before development commences.

Reason: In the interest of visual amenity.

6. Details of site boundary treatment shall be submitted for the written agreement of the planning authority prior to the commencement of development.

Reason: In the interest of the amenities of adjoining properties.

7. The vehicular access arrangements, internal road network, car parking layout, to service the proposed development shall comply with the requirements of the planning authority.

Reason: To ensure a satisfactory standard of development.

8. Lighting shall be in accordance with a scheme, which shall be designed to minimize glare and light pollution, and which shall be submitted for the written agreement of the planning authority prior to commencement of development.

Reason: In the interest of amenity and public safety.

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

Reason: To ensure adequate servicing of the development, and to prevent pollution.

10. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

11. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing

them, no advertisement signs other than those hereby permitted, advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

12. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and residential amenity.

13. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of the upgrading of footpath network on Muckcross Road. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

14. 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. 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 the Board to determine the proper application of the terms of the Scheme.

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.

Kenneth Moloney
Planning Inspector
15th June 2016