



An
Bord
Pleanála

Inspector's Report PL.09.247000

Development

Demolish metal clad shed to rear of existing service station shop building and construction of a new single storey shop extension to include increase in retail area from 100sq.m. to 271sq.m., a food preparation area of 50sq.m., seating area of 30sq.m. and an administration area of 142sq.m. located within the existing building roof space. The development will include the installation of an external passive grease trap, the installation of stormwater attenuation and associated site works.

Location

Horan's Service Station, Main Street, Castledermot, Co. Kildare

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

16/482

Applicant(s)

Evan Horan

Type of Application

Permission

Planning Authority Decision

Grant permission

Type of Appeal	First Party
Appellant(s)	Evan Horan
Observer(s)	None
Date of Site Inspection	28 th October 2016
Inspector	Joanna Kelly

1.0 Site Location and Description

The appeal site is located on the southern entry to Castledermot, a designated village in south county Kildare. There is an existing service station on the site with a shop, petrol pumps, canopy and ancillary services such as car-wash. The site is bounded by a local road L-6095 to the south which immediately abuts the River Lerr, a tributary of the River Barrow/Nore SAC. There is an existing metal clad shed to the east which it is proposed to demolish as part of this application so as to accommodate the extension. The R-488 bounds the western boundary of the site. The Franciscan Friary, a national monument is located on the opposite side (slightly north of the site) of the R-488.

2.0 Proposed Development

The applicant is seeking to demolish a metal clad shed, construct new single storey shop extension to include increase in retail area to include food preparation areas, seating area and administration area.

The proposed extension is designed as a single storey extension with staff toilets and offices in the first floor. The extension is confined to the eastern portion of the site.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission for the subject development subject to 37 no. conditions. It is condition no.6 that the applicant has appealed cited as follows:

“The hot food preparation area including food take away element shall be closed between the hours of 12.00 midnight and 8.00am.

Reason: *In the interests of protecting the residential amenities of adjoining residential properties.”*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planner noted the previous refusal from ABP which was based on design grounds. The revised proposal has been significantly amended, accommodating the proposed extension under a relatively uniform/simplified roof profile.
- The proposal represents an improvement in terms of overall streetscape.
- It was recommended that permission be granted

3.2.2. Other Technical Reports

Heritage Officer

It is considered proposal will not have a significant effect on the qualifying interests of the site.

Roads and Transportation Section

No objections subject to conditions

Athy District – Roads Department

No objection subject to conditions

Environment Section 2463922

No objections subject to conditions

Conservation Officer

Refer to National Monuments Services as proposal impacts negatively on the setting of the adjacent Abbey.

Chief Fire Officer

No objection subject to Fire Safety Certificate being sought

Environmental Health Officer

No objection

Water Services

No objection subject to conditions

3.3. Prescribed Bodies

Irish Water

No objection

Development Applications Unit

The location of the proposed development is situated in a location likely to impact on the Natura 2000 site River Barrow/Nore SAC. It is considered that the information submitted does not allay concerns in relation to the potential impact on Salmonids, otter, white-clawed crayfish, kingfisher and bat species. It is not possible to adequately assess the impact of the proposal. It is recommended that the applicant be requested to provide additional information in the form of an AA screening to address the concerns outlined.

A Section 131 notice issued to An Chomhairle Ealaíon, Fáilte Ireland, The Heritage Council, Development Applications Unit, An Taisce.

A response was received from the Development Applications Unit, sets out that archaeological monitoring of groundworks should take place on site as per Condition 34 of the notification of the grant of permission.

3.4. Third Party Observations

No objections/submissions received in respect of the application.

4.0 Planning History

File Ref. No. 90/472 Permission granted for erection of canopy on site

File Ref. No. 01/1713/PL.131277 Permission granted on appeal for the demolition of existing shop, workshop and canopy and removal of existing underground tanks and pipework and erection of new shop with storage space in the

attic. Outline planning permission was refused for erection of new workshop in place of existing to rear of site, as the proposed workshop is not permitted on the town centre zoning.

File Ref. No. 05/772 Permission granted for demolition of existing shop and developing a new single storey convenience shop, gross building area of 213sq.m., net retail floorspace of 97sq.m. with offices, stores and ancillary accommodation, 3 underground fuel tanks, vehicle wash.

File Ref. No. 14/360/PL.09.244104 Permission refused on appeal for demolition of existing metal shed to the rear of the existing service station shop building and construction of a new single storey shop extension to include an increase of the retail area from 100sq.m. to 271sq.m., a food preparation area of 50sq.m., seating area of 30sq.m. and an administration area of 142sq.m.

The one reason for refusal cited *“having regard to the sensitive setting of the proposed development which is located in close proximity to the Franciscan Friary, a national monument, to the design of the proposed development and to the appearance of the existing petrol station/retail building and the associated canopy and totem sign on site, it is considered that the proposed development would be out of character with the site’s sensitive heritage setting, would seriously injure the visual amenities of property in the vicinity....”*

5.0 Policy Context

Development Plan

Kildare County Development Plan 2011-2017 is the statutory plan for the area. Section 19.10.5 refers to service stations and sets out that new petrol stations and refurbished existing stations will be required to have a high standard of overall design and architectural layout to ensure an attractive development that integrates with and complements or enhances its surroundings.

Castledermot Local Area Plan 2009 (which the planner indicates has been adopted as part of the Kildare 2011 County Development Plan) indicates that the site has a land-use zoning objective “town centre” to provide for the development and

improvement of appropriate town centre uses including residential, commercial, office and civic use.

6.0 The Appeal

6.1. Grounds of Appeal

- The grounds of appeal pertain to condition no. 6 regarding the opening hours for hot food sale.
- The reasons for the application stem from the need to address commercial challenges in the retail environment.
- Following the opening of the M9 motorway in 2009 the business has changed from a convenience store picking up passing traffic to more of a local neighbourhood store. The trade in 'hot food to go' has increased significantly.
- The central consideration to the determination of a decision in this instance is that of a potential conflict between providing for and supporting the commercial viability of the permitted use and the interest residential amenity in the surrounding area. The planning authority has been excessively cautious in curtailing the hours of operation of business.
- It is submitted that the protection of local amenity could be met by restricting noise levels rather than hours of operation.
- It is set out that 8.00am is too late to start preparation of food and baking of bread. The deli currently opens at 6am to prepare food. These current opening hours have clearly not affected residential amenity given the lack of any objection to the subject proposal. It is, therefore, considered that the proposed limited opening hours represents an unreasonable and unnecessary constrain on the operation of the existing business.
- The proposed servery and seating area form an integral part of the existing and proposed business. It will be fully contained within the service station. There is no drive thru element. There is no fast food take-away. Hence

potential for impacts on residential amenity are not the same as that for a take-away.

- The proposal does not lead to an excessive concentration of restaurants or take away use in the area. The intensity of the proposed use is in keeping with both the scale and pattern of development in the area.
- The appeal site is zoned town centre.
- It is submitted that there would not be a significant adverse impact on amenities arising from noise, nuisance or litter.
- The restriction imposed by condition no. 6 is particularly onerous given that the business is already open at 6am.
- It is requested that the requirements of condition no. 6 be deleted or amended.

6.2. **Planning Authority Response**

No response is noted on file

7.0 **Assessment**

Having examined the file, relevant history files, considered local and national policies, inspected the site and immediate environs, assessed the proposal and all of the submissions on file, I consider the key issues to be:

- Nature of proposed amendments
- Appropriateness of Condition 6

7.1. **Nature of proposed Amendments**

- 7.1.1. The proposed development relates to an extension and alterations to an existing retail service station in a town centre location in Castledermot, a designated small village. It is proposed to extend the retail area from 97sq.m. to 271sq.m. It is considered that the previous refusal pertaining to design for a similar development has been addressed through the re-design of the proposed extension which is

located to the eastern portion of the site. The proposed roof profile has been simplified from that previously refused and the general appearance of the structure is considered more aesthetically pleasing.

7.1.2. The applicant submitted a screening statement for appropriate assessment, identifying three Natura 2000 sites within a 10km catchment of the appeal site: River Barrow/Nore SAC, Slaney River Valley SAC and Holdenstown Bog SAC. I note the submission from the Development Applications Units setting out that it is considered that there is insufficient information on file to make a determination and AA should be requested from the applicant. Design mitigation measures are proposed to minimise any potential impact on the SAC such as upgrading of the existing storm water drainage system and submission of an environmental management plan as part of the construction management plan. Given the nature of the proposed development, i.e. extension to existing retail development on a serviced site, notwithstanding the location of the River Lerr immediately adjacent the appeal site, no Appropriate Assessment issues arise and it is not considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.1.3. Having considered the appeal submission, reviewed all of the documentation and plans submitted, the proposed development is considered to generally accord with the provisions of the local area plan, addresses the previous reason for refusal by ABP and accords with the proper planning and sustainable development of the area. Having regard to the nature of the condition appealed I consider that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted. Therefore, the appeal should be decided in accordance with section 139 of the Planning and Development Acts as amended. As provided for under section 139 (2), apart from considering the condition to which the relevant appeal relates, the Board shall be restricted to considering-

- (a) the matters set out in section 34 (2) (a), and
- (b) the terms of any previous permission considered by the Board to be relevant.

7.2. Condition 6

7.2.1. The applicant has specifically appealed the condition that limits the opening hours of the hot food take-away preparation area. The applicant has submitted that 8.00am is too late to begin preparing take-away food. Having regard to the location of the station within a town centre and within a general commuter belt of the M9, I agree that 8.00am is considered late to begin preparing food. The planning authority has indicated that reason for the condition is to protect the residential amenity of the area. There are residential properties located adjacent and opposite the appeal site and as such there is a need to ensure that the amenities of these properties are protected. The applicant is proposing to construct a 2.45m high acoustic timber fence along the eastern boundary behind the existing garden wall. There was also no objection to the proposed development. A condition limiting the noise levels as suggested by the applicant would not address the issue of noise from people should they congregate at night. In general, the noise output associated with food preparation or hot food service areas within service station tend not to a major source of noise. On balance, it is considered that given the proximity of adjoining residential properties there is a need to ensure that the proposal does not injure existing residential amenities. I, therefore consider that a condition limiting the hours of hot food take-away which is associated with the service station and not a stand-alone facility, is appropriate in this instance between the hours of 10.00pm until 6.00am.

8.0 Recommendation

I recommend that the Planning Authority are directed to amend condition 6 as follows:

The café facility shall be operated as part of the existing service station and shall not be let, sub-let or leased as an independent area. This area including the provision of hot food/deli area shall not be operational between 2200 and 600 hours Monday to Sunday inclusive.

Reason: In the interests of residential amenities of property in the vicinity.

9.0 Reasons and Considerations

It is considered that condition number 6 should be amended on the basis it is reasonable to facilitate the operation of a hot food service whilst also protecting the residential amenities of adjoining properties. It is also considered that the café area should not be operated in a manner that is independent from the main service station.

Joanna Kelly
Planning Inspector

1st November 2016