



An
Bord
Pleanála

Inspector's Report PL27.247384

Development	Retention of petrol station, forecourt shop, canopy, underground fuel storage tanks, entrance, car parking, permission for car wash, off licence in shop, signage.
Location	Mount Kennedy Demesne, Newtownmountkennedy, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	16/822
Applicant(s)	Harvieston Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third-v-Grant
Appellant(s)	(1) Michael & Pamela O'Loughlin. (2) Philip & Evelyn Hughes.
Observer(s)	
Date of Site Inspection	09 th December 2016

Inspector

Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 1.52 hectares, is located to the north of Newtownmountkennedy. The appeal site is located just south of the junction of the R722 and the N11. The site is located on the eastern side of the R772 with the N11 located further west. The site is occupied by a petrol filling station in the latter stages of construction. To the north of the filling station (within the site) is an undeveloped section of land with a small structure associated with a weighbridge and west of the site are undeveloped lands under the applicants' ownership, which look to have been excavated or altered as a result of works carried out on site. To the south of the site and at a higher level than appeal site is a number of existing detached dwellings.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of a petrol filling station including forecourt shop with toilet facilities, storage facilities, café and seating area. The proposal also entails retention of a forecourt canopy underground storage tanks, storm water drainage and attenuation, foul sewer discharge watermain connection, site entrance, car parking and all associated site works.
- 2.2. Retention is also sought for a 2.8m high wall along the southern boundary of the site. Permission is sought for a car wash facility, an off-licence in the shop, permission for a new sewage pumping station and rising main in the public road to out fall at junction of R772 and Church Road/Season Park Road, permission for associated signage and permission for a landscaped picnic area to the western boundary of the site and a secure yard to the rear.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 17 conditions. The conditions are standard in nature.

3.2. Local Authority and External reports

- 3.2.1. Irish Water (22/08/16): No objection.
- 3.2.2. Environmental Services (23/08/16): Further information required including details of specification of fuel storage tank and soil characteristics.
- 3.2.3. Area Engineer (24/08/16): Further information required including details of waste to be stored in the secure yard.
- 3.2.4. Transport & Road Infrastructure (01/09/16): No objection subject to a condition requiring a stage 3 safety audit.
- 3.2.5. Planning Report (01/09/16): Based on Development Plan policy and previously permitted development at this location the principle of the proposed development was considered acceptable. The proposal was considered acceptable in regards to amenity, traffic safety and drainage services. A grant of permission was recommended subject to the conditions outlined above.

4.0 Planning History

- 4.1 16/78: Extension of permissions granted under 10/2205 and 10/3056 refused due to expiry of one of the permission (10/2205).
- 4.2 15/1286: Permission granted for extension of duration of 10/2205.
- 4.3 10/3056: Permission granted for revisions to petrol station granted under 10/2205.
- 4.4 10/2205: Permission granted for petrol station and associated site works.
- 4.5 05/2564: Permission granted for alterations to car parking and truck parking approved under 01/5089, 3-storey hotel, alterations to services permitted under 01/5089 and all ancillary works.

4.6 01/5089: Permission granted for revisions of car sales room, roadhouse, petrol filling station % shop, car storage and ancillary works.

4.7: 97/7295: Permission granted for 100 bedroom hotel, petrol filling station, roadhouse, public bar, restaurant and tourist office.

5.0 Policy Context

5.1. Development Plan

5.1.1 The relevant Development Plan is the Newtownmountkennedy Local Area Plan 2008. The site is zoned 'Employment' with a stated objective 'to provide for economic development, enterprise, industry, distribution, warehousing and employment'.

6.0 The Appeal

6.1 Grounds of Appeal

6.1.1 A third party appeal has been lodged by Michael & Pamela O'Loughlin, Ard Na Gaoithe, Newtownmountkennedy, Co. Wicklow. The grounds of appeal are as follows...

- The appellant own a dwelling adjoining the site. The original permission granted on site only required removal of trees necessary to facilitate the development. The current proposal has resulted in loss of a significant level of trees to the south the appellants' property and other dwellings.
- The proposal has had an adverse impact on a woodland and pond area that accommodated wildlife and has significantly altered character of the entrance to the village.

- The manner in which the development has been carried out is an abuse of the planning process.
- The appellants object to the provision of a café with seating, the extent of the forecourt canopy, the location of the car wash due to proximity to adjoining properties. The appellants also note that an off-licence is unnecessary in a small village that is well served by existing ones.
- The appellants object to the retention of services that have not yet been completed and query the description of the proposed development.

6.1.2 A third party appeal has been lodged by Philip & Evelyn Hughes, Ashdale, Dublin Road, Newtownmountkennedy, Co. Wicklow.

- The traffic plan in regards to ref no. 10/2205 should be considered out of date. The appellant questions the development in the context of traffic generated by planned and future development within the village. The appellants question how the proposed traffic arrangement fits in with the development of the remainder of the lands at this location and phase 2 development as well as existing use of lands at this location of customs and excise purposes as well as an existing right of way for Wicklow County Council.
- The appellants note that works are ongoing at this site. The appellants note concerns regarding the level of services required to be constructed outside the site (drainage). The appellants raise concern regarding the level of disruption such works may cause.
- The appellants note that in the event of grant of permission pre-matured planting should be implemented along the northern boundary to offset the impact of the loss of trees to the south of the existing dwellings adjoining the site.
- The appellants raise concerns about the filling in of the pond on site. It is noted that no flood risk assessment was submitted and the loss of the pond may impact adversely on drainage in the area. It is noted that flooding of Ballyronan interchange occurred in November 2015.

- The appellants raise concerns with the manner in which development has been carried out without regard to previous permissions and conditions and without permission.

6.2 Responses

6.2.1 Response by Deane Turner Associates on behalf of the applicant, Harvieston Ltd.

- It is noted that the lands are zoned for employment and the applicant owns 8 acres at this location with the site consisting of 2 acres of this. The weighbridge and Council storage depot at this location are closed and part of the lands in the applicants' ownership. The 2.8m boundary wall was constructed on foot of an agreement between the adjoining landowners and the previous owners of the site.
- It is noted that the café and seating was already part of the permission granted under 10/3056, the canopy is marginally bigger than that previously granted, the wording of the description is a minor issue, the car wash is further away from adjoining properties than previously approved. The sewerage pumping station and rising main is a more suitable way of serving the development and is acceptable to the Council. All conditions of 10/3056 have been generally adhered to.
- It is noted that the pond area was a flooded area on site as a result of a blocked culvert (installed as part of N11 construction works). It is noted the site was originally part of the old Dublin Road and was overgrown with scrub and vegetation and no felling licence was required in respects of the works carried out. It is noted that an agreement has been made between the applicant and the Gardai in respect of use of the weighbridge.
- There is no impact on the Newbawn River, which is 350m from the development.
- The site is served by the R772 and is suitable to cater for the level of traffic likely to be generated by the proposed development.

- The piped main has been installed following agreements with the Council and such works were carried out on Council lands.
- The site is to be landscaped as per condition no.s 14 and 15.

7.0 **Assessment**

7.1 Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Principle of the proposed development.

Adjoining amenity

Traffic impact

Tree removal/flooding

Other issues

7.2 **Principle of the proposed development:**

7.2.1 Permission is sought for retention of a petrol filling station as built including the shop unit, forecourt, pumps, underground storage, vehicular entrance parking and boundary treatment along the southern boundary. The development description also seeks permission for a car wash facility, off-licence within the shop unit, signage, a sewage pumping station and rising main and a landscaped picnic area. The relevant Development Plan is the Newtownmountkennedy Local Area Plan 2008. The site is zoned 'Employment' with a stated objective 'to provide for economic development, enterprise, industry, distribution, warehousing and employment'. Petrol station is noted as being a use 'permitted in principle' within this zoning.

7.2.2 The site is part of an area that is subject to Action Area 4 under the Local Area Plan. This plan identified the site as being a petrol filling station with permission in place at

the time and the remainder of the lands to the north and east being a business park use. I would consider the development as proposed is consistent with development plan policy in regards to land use and zoning.

7.3 **Adjoining amenity:**

7.3.1 The appeal site is located on the northern side of Newtownmountkennedy and located on the eastern side of the R772. The site is triangular in shape and is defined by the existing public road along its eastern boundary, existing undeveloped lands to the north and west (under the applicant's ownership). To the south of the site are two detached dwellings that adjoin the southern boundary of the site. The finished floor/ground level of the development is significantly lower than the floor level of the existing dwellings to the south. Boundary treatment along the southern boundary consists of existing wooden fencing and trees immediately along the northern boundary of the existing dwellings and then a 2.8m high block wall inside the site and an embankment and lower retaining wall with a significant difference in levels between the appeal site and the existing properties to the south.

7.3.2 As noted above the proposed use is consistent with the zoning objective with the lands to the north of existing dwelling being zoned for development for a significant period of time. There have been previous permissions for a petrol station granted on the appeal site. Given the difference in ground levels between the appeal site and the adjoining dwellings to the south, the overall scale of structures on site relative to existing dwelling is satisfactory and would not have an overbearing impact. The boundary treatment as built on site is of a good standard and provides a significant degree of separation between the appeal site/proposed and the existing dwellings. The appeal submission appears to concentrate on the loss of trees to the north as being a significant adverse impact on amenity. In this regard I would note that the boundary treatment as proposed and built on site has adequate regard to the amenities of existing properties, with the 2.8m wall set well inside the boundary of the site away from the wooden fence and line of trees along the northern boundary of the site. Taken in conjunction with difference in levels and fact the site is on zoned

urban lands, I am satisfied that the proposal would have an acceptable impact in regards to the residential amenities of the existing residential properties to the south.

7.4 Traffic Impact:

7.4.1 The petrol station for retention has a vehicular entrance off the R772. The site is within the speed limit zone of the village and is located along a stretch of road that is off a good standard in terms of width, alignment and the provision footpaths. It is notable that permission has been granted previously for a petrol station at this location and that the Local Area Plan including the Action Area Plan for the site and adjoining lands identifies the petrol station use as being an appropriate use. One of the third party appeal submissions raises concerns that the traffic plan associated ref no. 10/2205 should be considered out of date and that the proposal should be assessed in the context of traffic generated by planned and future development within the village. Based on its merits I would note that the use proposed for retention is in accordance with the planning policy (Local Area Plan and Action Area Plan) and is at a location where the road network is of a good standard and capacity to cater for traffic likely to be generated by the proposed development. In addition I would note that the layout and width of the vehicular access taken in conjunction with visibility available in each direction along the R772 is of sufficient standard to cater for the turning movement likely to be generated. I would consider that the development proposed for retention would be satisfactory in the context of traffic safety.

7.4.2 The development of the remainder of the lands in the applicants' ownership to the north and east of the site would be subject to future applications and I am satisfied that the current proposal can be considered on its merits. Notwithstanding such I would note that the level of access provided to the site and the quality of the road network at this location would be of sufficient standard to cater for additional development adjoining the appeal site.

7.5 Tree removal, flooding.

7.5.1 The appeal submission notes that the proposal has resulted in the removal of a significant level of trees in an area that was an attractive wooded area as well as being host to a significant level of wildlife. The application is for retention of the petrol station and it would appear that the proposal has resulted in the removal of some trees that were on the appeal site and that trees have also been removed from the adjoining lands that are also in the applicant's ownership. I would note that the appeal site is zoned for development and has been subject to a number of previous applications, which have been granted for development including proposals for a petrol station on the appeal site. In this regard it is reasonable to conclude that there is an expectation that the appeal site would be developed at some point. In addition, I would note that the appeal site and adjoining lands are not subject to any tree preservation orders under the Development Plan or Local Area Plan and is not identified as a protected habitat or subject to any ecological, landscape character or amenity designations. In this regard I do not consider that the removal of trees is unacceptable in the context of the development subject to retention. The appeal submission raises concern regarding the lack of a tree felling licence. In this regard I would note that this issue is not under the remit of the Board and should be dealt with by the appropriate licensing body including any punishment for deviation from such.

7.5.2 One of the appeal submissions raises concern regarding flooding and the need for a flood risk assessment. This is based on the filling in of pond area by the applicants. The pond area is not within the appeal site and is located on lands to the east of the appeal site under the applicant's ownership. Having examined the OPW flood maps, there is one incidence of flooding indicated but such is not related to the appeal site or adjoining lands and concerns a location to the south of the village. I am satisfied based on the information available that the site and intervening area is not historically at risk of flooding and in this regard I do not consider that a flood risk assessment is justified.

7.6 Other Issues:

- 7.6.1 The proposal entails provision of an of a retail unit with an off-licence. Under the publication Retail Planning: Guidelines for Planning Authorities and under Section 4.11.9 Retailing and Motor Fuel Stations it is noted that “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”. In this case the net retail floorspace (99sqm) does not exceed 100sqm and is compliant with national guidance.
- 7.6.2 In regards to the off-licence element, such is only accounts for 7.5sqm of the net retail floorspace. Having regard to the modest scale and ancillary nature of such, I am satisfied that it would be acceptable and have no adverse impact. The café and seating area is also modest in size and is ancillary to main use as a petrol filling station. In this regard I am satisfied that such would not be detrimental to the vitality of the existing village centre due to its modest size and ancillary nature.
- 7.6.3 One of the appeal submissions notes that the description of the development and question how retention can be sought for such elements that are not in place. An examination of the public notices indicates that retention is sought for certain elements and permission for others. In this case the public notices indicate that permission is sought for the retention of a petrol filling station including forecourt shop with toilet facilities, storage facilities, café and seating area. The proposal also entails retention of a forecourt canopy underground storage tanks, storm water drainage and attenuation, foul sewer discharge watermain connection, site entrance, car parking and all associated site works. Retention is also sought for the 2.8m high wall along the southern boundary. The public notices indicate that permission is sought for a car wash facility, an off-licence in the shop, permission for a new sewage pumping station and rising main in the public road to out fall at junction of R772 and Church Road/Season Park Road, permission for associated signage and permission for a landscaped picnic area to the western boundary of the site and a secure yard to the rear.

7.6.4 At the time of the site inspection work is ongoing on site and it would appear that items identified as seeking permission are under construction or completed (the landscaped picnic area was at an advanced stage of construction and the drainage infrastructure for the proposal appears to be in place). The appellant in addition to issues to do with the development description raise concern about the manner in which the proposal was carried out without permission and how work is continuing on site with one of the appellants noting that the Board should stop work on site. I would first note that there is provision for seeking retention under the Planning and Development Act, 2000 (as amended) as well as noting that the Board has no remit or powers in regards to enforcement or unauthorised development. I would note that it is the Planning Authority's function to investigate such issues and deal with breaches of planning legislation.

7.6.5 In relation to appropriate assessment the site is not located within any designated Natura 2000 sites. The nearest such sites include

Wicklow Mountains SAC (site code 002122) 3km west of the site.

Glen of the Downs SAC (site code 000719) 5km north of the site.

Murrrough Wetlands SAC (site code 002249) 6km east of the site.

The appeal site and proposed development has no direct or indirect linkages to any of the designated Natura 2000 sites. Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, 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.

8.0 Recommendation

8.1 I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

9.1 Having regard to the land use zoning designation for the site, as set out in the Newtownmountkennedy Local Area Plan 2008, to the planning history of the site and to the pattern of development in the vicinity, 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 property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

3. Design and construction details of the underground fuel storage tanks shall be submitted to the planning authority for written agreement prior to commencement of development. This shall include measures to ensure there is no pollution of groundwaters from leakages or spillages.

Reason: In the interest of public health and to ensure a proper standard of development.

4. All lighting used within the forecourt shall be directed and cowled so as not to interfere with passing traffic or the residential property adjacent to the site.

Reason: In the interest of visual and residential amenity, and of traffic safety.

5. Prior to the commencement of the development, details of the materials, colours and textures of all the external finishes to the proposed development, including boundary railings and all other boundary treatment, shall be submitted to the planning authority for written agreement.

Reason: In the interest of visual amenity.

6. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the canopy, on the forecourt building or anywhere within the curtilage of the site or adjoining lands under the control of the applicant, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

7. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

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

8. 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 and a construction stage traffic management plan.

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

9. 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.

Colin McBride
Planning Inspector

19th January 2017