



An  
Bord  
Pleanála

## Inspector's Report PL03.247394

### Development

The development of an unmanned petrol filling station to operate 24 hours a day 7 days a week and including 4 no. pump islands, canopy and signage.

### Location

No.1 The Hawthorns, Limerick Road, Ennis, Co. Clare.

### Planning Authority

Clare County Council

### Planning Authority Reg. Ref.

P16/601

### Applicant(s)

Emo Oil t/a Great Gas

### Type of Application

Permission

### Planning Authority Decision

Refuse permission

### Type of Appeal

First Party

### Appellant(s)

Emo Oil t/a Great Gas

### Observers

Helen Scales

Peter Duffy

Neil and Triona Acheson

James and Maureen Langan

Eugene Moylan and Gavin Barry  
Mary Rockett  
Paddy Conroy  
Philomena Keane  
Andrew Carr (residents of 11 The  
Hawthorns)  
The Residents c/o Celia Montague  
Anne Burns  
Brendan Rainsford  
M Daniels  
P and B O'Halloran  
Michael Conlon  
Pat Hynes  
Lisa Carr  
Brendan Wall and Collette Meaney  
Tony Byrne

**Date of Site Inspection**

3<sup>rd</sup> January 2017

**Inspector**

Stephen Kay

## 1.0 Site Location and Description

- 1.1. The appeal site is located c. 1.5km to the south of Ennis town centre on a site that has frontage onto the R458 Ennis Road and also frontage onto a residential road, the Hawthorns which also serves as an access road to further residential development to the west and north west. The site is currently undeveloped and the address, No.1 The Hawthorns, indicates that it was originally intended to form part of the residential development called The Hawthorns located immediately to the south west of the appeal site. This existing development comprises 10 no. semi detached two storey dwellings on the southern side of the estate road with additional dwellings to the north west and west.
- 1.2. The appeal site is bounded to the south west by the gable of No.2 The Hawthorns, to the north west by the road accessing the Hawthorns and other residential development, to the north east by the R.458 and to the south and south east by undeveloped residentially zoned lands. To the north, on the opposite corner of the junction between the R.458 and the estate road, is locate a three storey mixed use development with retail units at ground floor level and residential accommodation above. This development is served by a car parking area located to the west and there is additional parking to the rear (north) of this building.
- 1.3. Residential development in the area to the west and north west of the site comprises two storey predominately semi detached dwellings, and there is a significant extent of residential development that is accessed via the junction adjoining the appeal site. This junction between the Hawthorns estate road and the R458 comprises a roundabout and the R458 at this location has a cycle path.
- 1.4. The stated area of the appeal site is 0.01ha.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a petrol filling station with a total of two pump islands giving a layout that can accommodate three cars refuelling at any one time. The site is proposed to be unmanned and there are no buildings proposed on the site or any other retail element. The site is proposed to operate 24 hours a day, 7 days a week.

- 2.2. The fuel dispensing area is proposed to be covered by a canopy which would have an overall height of c. 5.4 metres and cover an area of approximately 11 metres by 9 metres. The canopy is proposed to have a depth of c.900mm which is indicated as being used for advertising signage. A free standing sign is also proposed for the north western site frontage and this sign is indicated as being a monolith sign of 6 metres in height and 1.9 metres in depth.
- 2.3. Access to the site is proposed to be on the north west frontage and access is therefore proposed to be from the estate road rather than directly from the R.458. Separate entrance and exit locations are proposed and the layout indicates the exit route running along the north west boundary of the site and along the boundary with the gable of No.2 The Hawthorns.
- 2.4. Site Boundaries are indicated as being 750mm high block wall with the exception of the boundary to the hawthorns which is a 1800mm high block wall.
- 2.5. Underground fuel storage tanks are proposed and there would be on site lighting to facilitate the 24-hour operation of the facility. From the development description, and the submitted drawings there does not appear to be any ancillary facilities proposed such as air / cleaning area or car washing.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority issued a Notification of Decision to Refuse Permission for three reasons that can be summarised as follows:

- That the proposed development by virtue of its nature and 24-hour operation would seriously injure the residential amenities of the area and be out of character with the prevailing pattern of development in the area.
- That the access to the proposed development is via an existing roundabout off the R458 which serves the existing residential development. Considered that the proposed development by reason of the additional traffic turning

movements generated at this location would endanger public safety by reason of the creation of a traffic hazard.

- That the proposed signage and canopy to the development would seriously injure the visual amenities of the area.

### 3.2. **Planning Authority Reports**

#### 3.2.1. **Planning Reports**

The report of the Planning Officer notes the location of the site, the site zoning, proximity of residential properties, internal reports and the content of the objections received. A decision consistent with the Notification of Decision to Grant Permission issued is recommended.

#### 3.2.2. **Other Technical Reports**

Fire Officer – No objection subject to conditions.

Conservation Officer – Initial report recommends further information on the basis of the limited scope of information that is provided with regard to the method for the proposed demolition and also the clarification of the scope of the removal of original fabric and the reduction / minimisation of the impact of the proposed services on the existing structure. Detailed design of the proposed café and the shopfront are also required. Following the receipt of further information, a grant of permission subject to conditions is recommended.

Road Design Office – Notes that the residential location of the site, proximity to roundabout and issues regarding the capacity of the site / layout to cater for the traffic type proposed. Refusal of permission is recommended.

Transport Infrastructure Ireland – No comment to make on application.

Irish Water – No objections.

### 3.3. **Third Party Observations**

A significant number of third party observations were made to the Planning Authority and the issues raised in these submissions can be summarised as follows:

- Contrary to the Other Settlement land use zoning of the site.
- Traffic safety issues. Conflict with cycle path on the R458.
- Negative visual impact
- Impact on residential amenity due to traffic and noise and general disturbance.
- Lack of need. There are a number of other filling stations in close proximity.
- Negative health impacts and safety concerns.
- Lack of lighting and landscaping details.
- Potential flooding and groundwater issues.
- Contrary to the policies set out in the Ennis and Environs Development Plan 2008-2014.

## 4.0 Planning History

The following planning history is of relevance to the assessment of this appeal:

Clare County Council Ref. 03/2374 – Permission granted by the planning authority for the construction of 19 no. residential units comprising semi detached dwellings, apartments and 6 no. community based commercial units.

Clare County Council Ref. 15/898 – Permission granted by the planning authority for development on lands to the west of the current appeal site comprising the construction of 51 no. two storey houses and associated site development works.

## 5.0 Policy Context

### 5.1. Development Plan

It is noted that the application the subject of this appeal was assessed by the Planning Authority under the provisions of the Ennis and Environs Development Plan, 2008-2014. This plan was not renewed. Since the decision of the Planning

Authority the new Clare County Development Plan, 2017-2023 has come into effect (as from 25<sup>th</sup> January, 2017).

Volume 3 of the Clare County Development Plan, 2017-2023 includes written statements and land use zonings for the four municipal districts located in the county. One of these districts is the Ennis municipal district

It is noted that the 2017-2023 county Development Plan contains an objective that local area plans would be prepared for the Ennis and Shannon town settlements within the county over the lifetime of the plan (Objective CDP 19.1). In the interim, the applicable policy relating to Ennis is that in Volume 3 of the plan and in the main written text of Volume 1.

The appeal site is located on lands that are zoned Residential under the provisions of the Clare County Development Plan, 2017-2023. The zoning matrix at page 347 of the Plan indicates that a petrol station is a use that will not normally be acceptable on lands that are zoned residential.

The land use zoning and objectives map for the area indicates that the appeal site forms part of a larger area of lands encompassing the area to the south and to the south of nos. 2-11 The hawthorns that is zoned residential. Indicative access points from both the Hawthorns estate road and from the R458 are indicated as potential access points to these lands.

**Objectives CDP7.21** states that it is an objective to consider development proposals for petrol filling stations and that such applications will be considered on their individual merits having regard to the traffic impact considerations and the location, health and scale of existing retail services in the area.

The application was assessed by the Planning Authority under the provisions of the Ennis and Environs Development Plan, 2008-2014 and the appeal submissions and observations make reference to this plan. Under this plan the site was zoned 'Other Settlement Land' and the zoning matrix indicates that the use is open for consideration.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party appeal submitted:

- That there is precedent for a similar form of development in a similar residential setting granted by An Bord Pleanála. This development was in Midleton Cork and was granted under Ref. PL04.246467.
- That the planning authority have not had regard to the established mixed use / residential pattern of development in this location. Specifically, there is a large mixed use development opposite the appeal site.
- That the existing mixed use development opposite dwarfs the proposed development.
- That other service stations on the R458 are located immediately adjacent to residential development.
- That the site is located on the edge of the residential development and would generate a fraction of the traffic of the existing commercial / residential development opposite.
- The proposed development avoids a direct access onto the R458.
- That the signage proposed is standard in nature and smaller than that at other filling stations in the vicinity on the R458 or at the adjacent commercial premises and hotel.
- The canopy signage is set back from the Clare Road (R458) and is of a scale that would be exempted development. The proposed signage is an essential part of the development and already exists locally with the pizza take away premises in the development opposite the appeal site.
- That the scale of the development is small and does not seem to be appreciated in the decision issued.



- The appeal is accompanied by photographs of the site, a swept path analysis of the access to and from the site, elevations of the development in context, and night view of a similar development.

## 6.2. Observations on the First Party Appeal

The following is a summary of the main points raised in the 19 no. third party observations received:

- That the comparison of the development with the development on the opposite side of the road is erroneous in that the units opposite do not operate 24 hours a day and are manned / staffed.
- That there are already an excessive number of filling stations within c. 2.4km of the site.
- Other filling stations on the R458 may be close to residential development however they are not located in similar residential contexts where the main frontage and access is from a residential estate rather than from a main road.
- That the comparison with the permitted development in Middleton is not appropriate as the context of that site was mainly commercial.
- That the existing commercial development in the immediate vicinity have been designed as part of the overall development and blend in with the residential development.
- That the unmanned nature of the development would result in noise and potential anti-social behaviour.
- That there would be a loss of residential amenity for residential properties in the vicinity and reduction in property values.
- The proposal would result in increased traffic causing conflicts with pedestrians, cyclists and also creating a traffic hazard. The access is not suitable for heavy vehicles that would make deliveries to the site.
- Visibility at the site access is restricted.

- That there would be queuing of delivery vehicles.
- That there is a river running under this area and the field to the south floods.
- That there has been a recent grant of permission for the upgrading of cycling and walking facilities on the R458 (Ref. P16/8003) and the proposed development would conflict with these works.
- That the proposal is contrary to the land use zoning (Other Development land) which seeks to conserve and enhance the quality and character of the area and to protect residential amenity.
- That the proposed development would be contrary to Core Objectives 12, 13, 15 and 18 of the Ennis and Environs Development Plan, 2008-2014.
- That the comparison with the permitted development in Middleton is not appropriate as this site was on lands that were zoned town centre and the site was separated from residential development by a road.

### **6.3 Planning Authority Response to Grounds of Appeal**

The following is a summary of the issues raised in the response submission received from the Planning Authority:

- That the site is not specifically zoned for commercial development. The proposed use is open for consideration on the site however the main purpose of the 'Other Settlement Land' zoning is primarily to protect residential amenity.
- That the proposed development would injure residential amenity for the reasons set out in the decision of the planning authority, notably the 24-hour nature of the development, commercial nature of the development and noise / disturbance.
- The board is advised that the site is zoned residential in the Draft Clare County Development Plan, 2017-2023.

- That the proposal would impact negatively on visual amenity and traffic safety as set out in the planning authority assessment of the application.
- That the planning authority has recently received applications for the redevelopment of the Maxol service station c. 400 metres to the south of the appeal site. An application has also been received for a motorway service area close to junction 12 of the M18.
- That there are four other service stations located within a c. 800 metre radius of the site. Given this number the planning authority is concerned regarding the proliferation of such uses in the area.

#### **6.4 Other Referrals**

The Board received a submission from Inland Fisheries Ireland. This submission notes the proximity of the site to the R. Fergus which is an important river for salmon and lamprey and as a zone of recreational fishing. The area in the general vicinity of the site is characterised by limestone and there is therefore concern regarding the proposed underground storage tanks and the potential implications of spillage. In view of this IFI is of the view that it is appropriate that the precautionary principle would be applied. In the event that the Board is disposed to grant permission then it is recommended that conditions are attached requiring, inter alia, an assessment of bedrock and overburden conditions and measures to ensure protection of tanks and lines.

#### **6.4 Responses to the Submission received from IFI**

The submission received from IFI was circulated to the Planning Authority and the first party for comment. The following is a summary of the main issues raised in the response submissions received:

##### ***Planning Authority***

- It is agreed that the precautionary principle is an appropriate response.
- It is agreed that the area of the appeal site is known to have a karst geology.

##### ***First Party***

- That the proposed unmanned service stations being developed are to the highest international design and best practice. These include double containment and continual monitoring.
- That the concerns of IFI while recognised are generalised and not specific to the risk from this development.
- That given the design and construction standards the risk of any event is very minimal.

## 7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of Development
- Impact on Amenity
- Traffic Safety
- Other Issues

### 7.2. Principle of Development

7.2.1. The appeal site is located on lands that are zoned Residential under the provisions of the recently adopted *Clare County Development Plan, 2017-2023*. A petrol station is identified as a use that is not normally permitted on lands that are zoned residential and paragraph 19.5.3 of the Plan states that such developments would only be permitted in exceptional circumstances and that in such cases a material contravention of the development plan may be required.

7.2.2. The outline of the function of the residential zone given in 19.4 of the plan states that residential use shall be taken to primarily include the use of lands for domestic dwellings and may also provide for a range of other uses particularly those that have the potential to foster the development of new residential communities. The development of a filling station would not in my opinion be consistent with this vision for the Residential zoning objective. In my opinion therefore, the proposed use is

clearly contrary to the land use zoning objective and permission should be refused on this basis.

7.2.3. The first party appellant makes reference to a precedent case in their appeal submission, specifically the decision of An Bord Pleanála to grant permission for an unmanned 24 hour filling station in Midleton Co. Cork, (ABP ref. PL04.246467). As set out by the third party observers however the circumstances of that case would appear to be different from the subject appeal in that the site was zoned town centre and the surrounding development, while being partially residential in use, contained a significant commercial element. The appeal site was separated from the closest residential development by a road. This differs from the subject case where the site directly abuts the gable of a house and where the proposed use is contrary to the land use zoning objective. The Midleton site was also located within a town centre location with associated noise and was accessed via a busy regional road, the R.907. In contrast, the current appeal site is located in an area that is in my opinion clearly predominately residential in character, being located in an out of town centre location and accessed via a residential estate road rather than a regional route.

7.2.4. It is accepted that the decision of the Planning Authority and the basis for the first party appeal related to the assessment of the development under the provisions of the 2008-2014 Ennis and Environs Development Plan. Under this plan the proposed filling station use was open for consideration on lands zoned for 'Other Settlement Land'. As will be set out in the following sections however, notwithstanding the change in land use zoning, there are in my opinion significant issues with the proposed development relating to residential and visual amenity and traffic safety and access.

### 7.3. **Impact on Amenity**

7.3.1. The main issue of concern raised by the observers to the appeal concerns the impact of the development on residential amenity. I note the fact that the first party contends that the relationship of the site to residential properties is similar to other existing filling stations in the vicinity and specifically on the R458. In my opinion however the big difference in the case of the proposed development is the location of the site fronting onto and accessed via what is a residential road. I accept the point

made by the first party regarding the retail element to the three storey building on the opposite side of the road at the junction of the R458 and The Hawthorns, however, this is a mixed use development with residential in the upper levels and three retail units at ground floor. As highlighted by the observers, these retail uses (a hairdresser, a take away and a bicycle shop) relate to and are compatible with the surrounding residential development in a way that a filling station does not. The proposed development would essentially result in a filling station being located on the end of a row of semi detached houses within a residential estate setting and is not in my opinion an appropriate form of development for such a location.

7.3.2. The design of the proposed canopy and the free standing signage to the road frontage of the Hawthorns would in my opinion be completely contrary to the residential setting and context of the area and I cannot agree with the first party that the scale of advertising proposed would be in any way comparable with that at the three retail units opposite. The form of the development in this residential setting, the advertising and the lighting required for the site would be such that in my opinion it would constitute a visually injurious development in this location and would have a significant negative impact on the residential amenity of properties in the vicinity and on the overall character and setting of the residential estate of the Hawthorns.

7.3.3. In terms of noise and other disturbance, I note the fact that the layout of the site is such that the exit route from the forecourt runs parallel to the western site boundary and the gable of No.2 The Hawthorns. This layout would be exacerbated by the 24-hour nature of the operation and the proposed development would in my opinion have a very significant negative impact on the residential amenity of properties in close proximity to the site by virtue of noise, general disturbance and light overspill.

#### **7.4. Traffic Safety**

7.4.1. The Planning Authority refused permission on the basis that the proposed development would result in an increase in traffic movements and that these additional movements would conflict with pedestrian, vehicular traffic and cyclists. There is no traffic impact assessment submitted with the application and there is limited information presented regarding the likely traffic volumes or breakdown of vehicular type. I note that the report of the Road Design section of the council

makes reference to a total of 20-250 vehicles accessing the site over a 24-hour period.

- 7.4.2. The access to the Hawthorns from the R.458 via the existing roundabout is a relatively narrow access and as highlighted by the observers, the junction has recently had the addition of a cycle lane. Notwithstanding the limited traffic information available it is my opinion that the proposed development would have the potential to generate traffic volumes in this residential area and at the junction with the R458 that would potentially conflict with pedestrians and cyclists and which could lead to the creation of a traffic hazard.
- 7.4.3. Regarding internal circulation within the site and site access I note that the first party submitted a swept path analysis showing the ability to manoeuvre larger vehicles. The location of the proposed vehicular exit on the western side of the site where it would adjoin a 1.8 metre high wall that extends all the way to the footpath would appear to me to present issues regarding sightlines to the west when accessing the site. I would also share the concerns of the Planning Authority regarding the potential for queuing at the access, either by cars accessing the pumps or delivery vehicles, impacting on the roundabout with the R458, given the fact that the access to the site is within approximately 15 metres of the junction with the R.458.

## 7.5. **Other Issues**

- 7.5.1. A number of other issues have been raised in the submissions on file. Specifically, the submission from Inland Fisheries Ireland and their concerns regarding the potential for spillages of fuel to impact on the River Fergus and groundwater given the karst limestone nature of the bedrock. The site identified in the IFI submission is not designated as a SAC however the species potentially impacted, including lamprey and salmon, are species identified for protection. The first party has submitted significant detail with regard to the construction methodology and design of the development incorporating best practice measures including monitoring of levels of fuels and double insulation / bunding of storage areas. I consider that these best practice measures identified are appropriate however given the known ground conditions in the area it is considered appropriate that in the event of a grant of permission a condition requiring ground investigations would be attached.

7.5.2. The application is not accompanied by a screening for appropriate assessment. The site is located within c. 1.1km of the Lower River Shannon SAC (site code 002165) and the features of interest for this site include lamprey species, salmon and otter. As set out above, subject to good construction practice and design it is considered unlikely that there would be any significant adverse impact on the conservation objectives for this site.

## 8.0 Recommendation

8.1. Having regard to the above it is recommended that permission be refused based on the following reasons and considerations.

## 9.0 Reasons and Considerations

1. The appeal site is located on lands that are zoned 'Residential' under the provisions of the *Clare County Development Plan, 2017-2023*. A petrol station is identified as a use that is not normally permitted on lands that are zoned residential and paragraph 19.5.3 of the Plan states that such developments would only be permitted in exceptional circumstances. The proposed development would therefore be contrary to the residential zoning objective of the site, would have adverse impacts on the residential amenity of existing and future residential development in the vicinity and would therefore be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location, nature and design of the proposed development, including its location within an established residential area, to the proximity to existing residential properties, to the proposed access via a residential estate road, the proposed 24 hour operation of the site and the extent of signage and commercial branding and proposed and lighting of the site it is considered that the proposed development would be incompatible with the prevailing pattern of development in the vicinity, would have a significant negative impact on the character of the area due to visual



prominence and would seriously injure the amenity and depreciate the value of properties in the vicinity due to noise, light pollution and general disturbance. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3. Having regard to the location of the site accessed via an existing residential estate road and a roundabout from the R.458, the proximity of the entrance to the site to the junction with the R.458 and the layout of the proposed exit to the site and potential restrictions to visibility at this point it is considered that the proposed development would result in potential conflicts with existing pedestrian, vehicular and cycle movements. The proposed development would therefore endanger public safety by reason of the creation of a traffic hazard.

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Stephen Kay  
Planning Inspector

26th January, 2017