



An  
Bord  
Pleanála

## Inspector's Report PL.92.248331

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<b>Development</b>	Permission for Petrol Filling station, jet wash, retail shop and restaurant, new vehicle entrance and exit, vehicle parking, signage and all associated site works.
<b>Location</b>	Lawlesstown, Clonmel, Co. Tipperary.
<b>Planning Authority</b>	Tipperary County Council.
<b>Planning Authority Reg. Ref.</b>	16/600601.
<b>Applicant(s)</b>	Glenconnor Development Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party v. Grant
<b>Appellant(s)</b>	<ol style="list-style-type: none"><li>1. Alan Maher</li><li>2. Petrogas Group Ltd.</li></ol>
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	22 <sup>nd</sup> June 2017.
<b>Inspector</b>	Susan McHugh

## 1.0 Site Location and Description

- 1.1. The appeal site is a greenfield site located at the entrance to the Ard Gaoithe Business Park. The site which has a stated area of 0.662ha is located off the R688 Cashel to Clonmel Road within the townland of Lawlesstown approx. 2.5km to the north west of Clonmel Town Centre.
- 1.2. Access to the appeal site is from the roundabout on the R688 and the access road into the Ard Gaoithe Business Park. This access road serves approx. 8 other commercial businesses and some vacant plots and ends in a cul de sac. There are two other major pharmaceutical facilities Abbott Vascular Ireland and Boston Scientific further south, the former is also accessed from the same roundabout.
- 1.3. The site is bounded by the R688 to the east, beyond which is a single storey residential property set back from the public road and screened by mature planting. The access road to the Business Park forms the boundary to the south with occupied units to the south and west. To the north the site is bounded by an area of grassed open space, approx. 100m further north of which is a single storey thatched cottage which is screened from the site by mature planting.
- 1.4. Mahers Londis Shop and petrol filling station (appellant no. 1) is the closest shop and filling station and is located approx. 1.5 km south of the appeal site and accessed off the Cashel roundabout on the N24.

## 2.0 Proposed Development

- 2.1. The proposed development comprises a new petrol filling station which will consist of:
  - 6 no. fuel dispensing pumps, with forecourt canopy over linking to proposed fuel station shop and restaurant.
  - Underground fuel storage tanks, jet wash and 2 petrol pumps and parking for 2 HGV trucks are located along the northern boundary.
  - A new single storey building to include a retail shop, restaurant, toilets, stores and staff accommodation with an overall floor area of 324.42sq.m. It comprises retail shop with a floor area of 97.40sq.m, and a restaurant with

indoor seating for 28, and external seating, toilets, stores and staff accommodation. The building is contemporary in design with mono pitch roof 5.935 in height and is finished in metal cladding. The restaurant area has a glazed elevation to the south and western elevations. The remainder of the building is finished in render, and cedar cladding.

- Extension of existing road way access from the existing access road to Ard Gaoithe Business Park to the west for new vehicle entrance only, and creation of exit only along south-western boundary to existing access road to Business Park. A total of 79 surface car parking spaces are proposed, 20 are located inside the entrance and along the north-western and south-western boundary. The remaining are located on the southern part of the site arranged in a one-way system.
- General signage and on site lighting is provided to the single storey building and service area. A non-illuminated monopole sign is proposed on the southern tip of the site at the entrance from the existing roundabout. This has a height of 7.1m.
- New underground surface water attenuation is provided beneath the main surface car park area, and it is proposed to provide a connection to existing foul and surface water sewers
- All associated site works include alterations to existing site levels.

2.2. The application for the proposed development is accompanied by the following:

- Planning Report.

2.3. The approved development was subject to a number of amendments over the course of the application with the approved layout and design re orientated towards the entrance to the business park and public roadway. Extraction ventilation is located on the roof of the single storey building, HGV parking fuelling area and fuel storage tanks located along the eastern boundary of the site and south from the location originally proposed. New totem sign opposite the site to cater for all signage associated with the business park,

## 3.0 Planning Authority Decision

### 3.1. Decision

The decision of the planning authority was to grant permission 16<sup>th</sup> March 2017 subject to 16 conditions including:

Condition 1	Compliance with plans and particulars, hours of operation, overnight parking of trucks, requirements for the underground fuel storage tanks, and vapour emissions.
Condition 2.	Retail area of convenience shop not to exceed 100sq.m.
Condition 3	External finishes.
Condition 5 and 12.	Undergrounding of service cables.
Condition 6.	Delineation of parking spaces to be used solely for parking.
Condition 7.	Junction signage and road markings.
Condition 8 and 15	Noise level and ventilation requirements.
Condition 9 and 11	Signage and public lighting requirements <sup>3</sup>
Condition 10.	Surface or storm water discharge requirements.
Condition 13.	Phasing of operation after completing of access arrangements.
Condition 14.	Excavated material storage and removal.
Condition 16.	Section 48 contribution.

### 3.2. Planning Authority Reports

- 3.2.1. The **1<sup>st</sup> Senior Executive Planners** report dated **16/08/2016** is the basis for the Planning Authority decision. It includes:

- Planning history, the sites zoning and other development plan provisions, objections submitted and reports received.
- Principal of development - is acceptable as a Petrol Station is open for consideration under the Light Industry and Employment land use zoning. The shop is within the recommended size limit as set down in the Clonmel and Environs Development Plan 2013.
- The proposal will not give rise to a concentration of similar uses, is located 500 yards from the existing petrol facility (Mahers Londis Shop), and the impact on the existing service station is not a planning concern.
- Design - does not address the Cashel Road or entrance to the business park, notes level differences between the site roadside boundary wall and public roadway, and recommends a revised design and layout. This should include landscaping. The totem sign is acceptable but could include signage for other businesses within the park.
- Access traffic and parking – a request for further information in relation to Traffic Impact Assessment, upgrading of existing access road to roundabout, provision for bicycle parking and continuation of public footpath along the road side boundary for the full length of the site.
- Impact on residential amenity and security – recommends further information in relation to noise and light spill from HCV parking, refuelling and car wash. Notes potential for odour emissions from fuel storage tanks and the lack of detail in relation to refrigeration and air conditioning.
- Environmental Impact Assessment (EIA) – The proposed development is below the threshold for an EIA as set out in Schedule 5 of the Planning and Development Regulations 2001 as amended.
- Appropriate Assessment (AA) – AA has been screened out.
- Flood Risk – The site is removed from a flood risk zone.
- Requirements from the EHO – can be dealt with by condition.
- On 18/08/2016 a request for further information in relation to 10 items was sought in accordance with the Planner's recommendation.

3.2.2. A response to the further information request was submitted 20<sup>th</sup> February 2017 and was accompanied by an article on how to reduce air condition noise, product information on sound blankets, odour ventilation systems, a Traffic Impact Assessment, vapour recovery system and, BMS petrol / oil interceptor product information, details on calculations for proposed surface water attenuation area and HRD Vortex Flow Control information.

3.2.3. The **2<sup>nd</sup> Report** dated **16/03/2017** following further information included:

- Revised layout and design proposals with finished floor levels indicated address previous concerns, service station building relocated and orientated to the south east and onto the R688 and set behind the proposed forecourt and further from the roadway.
- Revised location of petrol pumps and service station building will mitigate noise and odour impacts from air conditioning and chilling equipment which is to be located on the roof screened by a parapet, and extraction infrastructure from the kitchen is to be located to the rear elevation of the building.
- Revised proposals for traffic and access acceptable.
- Revised layout for HGV parking and fuel storage tanks along the eastern boundary of the site and south from the location originally proposed, but not satisfied that this addresses concerns with the impact of the adjoining residential property. Proposed planting along the eastern boundary should mitigate the impacts of the lights of the HGV's, concerns in relation to noise can be mitigated through limiting the operating times and planting and recommend a condition be attached accordingly.
- Landscaping and planting proposals acceptable.
- Odour, vapour and leak issues from fuel storage tanks, proposal to install a vapour recovery system is acceptable, and tanks to be double skinned and monitored is acceptable subject to conditions.
- Revised location of the totem sign at entrance to the site on the western side of the access road to serve the overall business park is acceptable.
- Revised proposals to provide refuse storage facilities within the service station building is acceptable.

- Revised proposals to complete works to the roadway acceptable and can be conditioned.
- Drainage proposals are acceptable.
- Revised site plan indicates provision for 83 no car parking spaces and 2 no. HGV parking spaces. Parking provision exceeds development plan requirements.
- Issues raised in submissions received are assessed and conditions recommended.
- Revised building plan indicates a retail area of 78sq.m and a restaurant area of 55sq.m approx.
- A grant of permission was recommended subject to conditions.

#### 3.2.4. Other Technical Reports

**Roads** in a report dated 20<sup>th</sup> July 2016 recommends that the proposal be referred to the District Engineer.

**District Engineer** - First report recommends further information in relation to surface water drainage attenuation and connection to the surface water drainage system and a requirement for a petrol interceptor. A Traffic Impact Assessment should be prepared, the existing access road within the Business Park should be completed from the roundabout to the forecourt entrance, and a single sign to accommodate all businesses within the estate should be located at the access roundabout. In the second report dated 16<sup>th</sup> March 2017 recommended no objection.

**Environment** - Report dated 12<sup>th</sup> August 2016 recommends further information in relation to the bin storage area, location and nature of air handling units/ air conditioning units.

**Executive Scientist** –Report dated 15<sup>th</sup> March 2017 recommends no objection subject to conditions.

### 3.3. Prescribed Bodies

**HSE** - Report dated 26<sup>th</sup> July 2016 recommends no objection subject to requirements. Second Report dated 1<sup>st</sup> March 2017 recommends no objection subject to requirements and conditions.

### 3.4. Third Party Observations

8 no. submissions were submitted on the application as lodged, these can be summarised as follows:

#### Adjoining Residents

- Patrick and Maria O'Connell object to the development. Concerns in relation to noise associated with development, the large underground fuel storage tanks located opposite their property, the emission of smells and vapour, the elevation of the development, quantum of car parking and light pollution.
- Thomas and Maura Lyons object to the development. The use is not consistent with the zoning.
- David O Connell object to the development. Concerns in relation to noise, questions the location and size of the wastewater attenuation area and risk to groundwater contamination. Notes the proximity of the truck parking area to the fuel storage tank area and riser pipes, and the location of the underground fuel storage tanks up-gradient of the Cashel Road and near the entrance to their home. Concerns in relation to the elevation of the site which will overlook their property, and potential light pollution from the development and cars.. Scale of car parking is excessive, and the entrance to the site is too small for trucks and traffic volumes.
- Gail Long object to the development based on noise light and air pollution, impact on ecology in garden, impact of water draining into her property and drainage in business park considered inadequate. Concerns in relation to increased traffic at the roundabout at the entrance to the Business Park particularly for trucks and where there are two left turns very close together. Concern in relation to potential dangers associated with storage of petrol and diesel underground, and security generally.



- Denis Hannan object to the development. Concerns in relation to the creation of a traffic hazard on the Cashel Road, potential for environmental; pollution of ground water, negative visual impact, the zoning is not consistent with the proposed use, multitude of petrol stations in and around Clonmel and located within 600m of another service station.

### Commercial

- Noel Maher and Alan Maher individually object to the development. Concerns in relation traffic hazard, breach of land zoning, multiplicity of similar facilities in the environs of Clonmel, and negative impact on their existing facility Mahers Londis Shop on Cashel Road some 500 yards away.
- Sinead Kennedy on behalf of Applegreen Service Areas Ltd, wish to be kept informed of any decision.

3 no. submissions were submitted following further information these can be summarised as follows:

- Gail Long considers further information response does not address concerns. Proposals to mitigate noise and odour unrealistic. Revised location of building will result in emissions now being directed to her home and interfere with air flow. Concern with noise from alarms, damage from drainage, questions if there is sufficient water for firefighting, and whether an environmental survey has been undertaken, proposals for stockpiling of soils and unsocial nature of times that rubbish will be collected.
- David O'Connell considers further information response does not address concerns. Notes proximity of HGV parking area and fuel tanks to his property, site is too small for HGV traffic, and concern on impact on residential amenity from light and noise. Proposed mitigation measures not considered acceptable to address health and noise impacts. Considers that there is a risk of potential leaks and accidents from underground fuel tanks. Noted problem of antisocial behaviour and disturbance from business park. Concern with leachate from attenuation area and concern with footpath opening in the wall leading from the car park to the road on the eastern side which could impact on residential amenity and give rise to a traffic safety issue.

- Patrick and Maria O'Connell concerned with disturbance, noise and light spill from traffic and HGV's, and security and anti social behaviour. Concern with potential for fire or explosion of fuel tanks, and numerous filling stations in the area.

## 4.0 Planning History

There is no recent planning history relating to the appeal site.

## 5.0 Policy Context

### 5.1. National Guidelines

#### **Retail Planning Guidelines, DoECLG 2012**

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

### 5.2. Development Plan

5.2.1. The **South Tipperary County Development Plan 2009** as varied and **Clonmel and Environs Development Plan 2013** refer. The site is located on lands zoned Light Industry, Li. The objective is 'to provide for light industry and technology, incubation units, general employment and related uses'. Notably the zoning matrix provides that Petrol Stations are 'open for consideration' on lands zoned Light Industry. Whilst Shop – neighbourhood, Supermarket and Takeaway are 'not permitted' within this land use zoning objective. A Neighbourhood shop is defined as a small convenience shop catering for the needs of the local area.

5.2.2. A number of relevant policies within the Clonmel and Environs Development Plan 2013 include:

5.2.3. Section 9.25 Petrol Filling Stations

*'The traditional role of filling stations is expanding to include the provision of general convenience retail and sometimes delicatessen. Petrol filling stations can provide a wide range of retail goods in an associated shop. While the important role of such provision is recognised, such shops shall, in general, remain secondary to the use as a filling station. The Guidelines for Planning Authorities – Retail Planning published by the DECLG in 2012 stipulates that generally the maximum net retail floor space shall not exceed*

100sqm. Where floor areas in excess of this figure are proposed, the development shall be subject to the retail sequential test approach.

The Council will facilitate new filling stations or redevelopment of existing stations on appropriately zoned land where they comply with the following:

- The proposed development is in accordance with land use zoning objectives;
- The net retail sales area does not exceed 100 sqm or detract from the viability and vitality of the town centre;
- The proposed development complies with the requirements of the Retail Strategy and the Retail Planning Guidelines 2012 (DECLG), or amendments thereto; and,

The Council will require compliance with the requirements of S.I. 311 of the 1979 Dangerous Substances (Retail and Private Petroleum Stores Regulations), Building Regulations 2000 and the following:

- A minimum of frontage of 30m within a 50 kph area and 45m in other speed limit areas;
- A minimum distance of 7m from the pump island to the road boundary;
- Two access points, between 7-9m wide, with a minimum junction radius of 10.7m;
- A minimum distance of 50m from entrance to nearest major junction and 25m to nearest minor junction;
- A footpath of 2m wide with 0.5m high wall along the front boundary;
- A petrol/oil interceptor to the surface water drainage;
- Adequate facilities for storage of refuse and waste on site;
- A scheme of landscaping;
- Any associated retail unit shall cater for motor related goods, and ancillary convenience type shops limited to a floor area not exceeding 100 square metres gross. An associated workshop may be permitted where there is no adverse effect on the amenities of the area. ‘

- 5.2.4. Section 4.2 - The Ard Gaoithe Business Park is identified as one of the existing employers and that the Council will continue to encourage the expansion of existing employment and the creation of new employment at appropriate locations.

### 5.3. Natural Heritage Designations

The Lower River Suir SAC (Site Code 002137) is located approx. 2.6km to the south.

The Comeragh Mountains SAC (Site Code 001952) and Nier Valley Woodlands SAC (Site Code 000668) are located approx. 13km to the south east.

## 6.0 The Appeal

### 6.1. Grounds of Appeal No. 1

The third party appeal No. 1 was submitted by Clare Gunn Planning Consultant on behalf of Alan Maher of Mahers Londis Shop and petrol filling station.

#### Inappropriate Land Use

- The land use zoning matrix does not permit restaurants and retail shops and therefore these facilities should not be permitted at this location.
- While a petrol station is open for consideration the assumption should not be made that it is entirely suitable or should be permitted.

#### Impact on town centre

- Contrary to provisions of Section 9.25 of the Clonmel and Environs Development Plan 2013 - No necessity and not always appropriate to provide for retail at the same location as petrol filling stations.
- Shops and restaurants should be provided within the town centre and other land use zones considered suitable.
- Clonmel town centre has suffered greatly in recent years with the closure of several retailers, the proposed development is contrary to the objectives of the Development Plan.

#### Filling station is secondary to use as retail and restaurant

- Contrary to the Clonmel and Environs Development Plan as Filling Station use is subsidiary to retail and restaurant use
- Scale of parking proposed suggest that the development will attract customers to the shop and restaurant primarily.
- Query the calculation of net retail sales area whether it exceeds 100sq.m and if so a retail sequential test approach would be required.

### Failure to acknowledge town centre

- Condition no. 2 of grant of permission refers to the protection of the viability of shops in nearby village settlements, and no reference to existing facilities in Clonmel.

### Incorrect date on site Notice

- Disputes the date on the site notice.

## **6.2. Grounds of Appeal No. 2**

The third party appeal No. 2 was submitted by David Mulcahy Planning Consultants LTD on behalf of Petrogas Group Ltd T/A Applegreen PLC. The grounds of the appeal can be summarised as follows:

- Removal of Fill – no reference to same in public notices. Given quantum of fill to be removed - considered a material planning issue and subject to Appropriate Assessment.
- Impact on Town Centre – significant size and scale, location on the periphery will compete with and undermine the vitality and viability of Clonmel town centre. No Town Centre Impact Analysis report for Clonmel. Refers to precedent for refusal of filling station by the Board in Co. Louth.
- Traffic Safety – no Road Safety Audit was submitted, provision of only 2 no. HGV parking spaces is low, and potential traffic hazard at entrance to industrial estate and intensification of use of the roundabout junction which would interfere with the safety and free-flow of traffic on the public road.
- Visual Amenity – Poor design and excessive parking at a visually prominent site leading into the town.

## **6.3. Applicant's Response to Appeals**

6.3.1. The applicant's response to Appeal No. 1 can be summarised as follows:

- Inappropriate Land Use – Identified need for the proposed development north of the N24 on the Cashel Road, with 5 distinct groups including Ard Gaoithe

Business Park, Abbot Vascular Ireland, Boston Scientific, immediate residential areas and Clonmel Waste Disposal Ltd and The Toyota Dealership on the N24 Roundabout. Clonmel is bypassed by the N24 and acts as a physical barrier to the areas to the north. Smaller population centres in the vicinity are served by filling stations and associated shops.

- Impact on Town Centre – The proposed development is to serve residents and employees north of the N24 on the Cashel Road, and do not consider that the concern of the appellant is the centre of Clonmel town but rather their Londis shop which is not located in the town centre.
- Filling Station is secondary to use as retail and restaurant- The applicant also operates the business park and where there is a lack of parking. The retail space at 78sqm is 22sq.m less than that permitted by the South Tipperary County Development Plan, and as such sequential testing is not required.
- Failure to acknowledge town centre- The proposed development does not constitute a major retail outlet and is described more as being a local convenience store which is well needed in the area.
- Incorrect Date on Site Notice- Clarified dates of site notices erected and newspaper notices.

6.3.2. The applicant's response to Appeal No. 2 can be summarised as follows:

- Notes that the parent company of Petrogas Group Ltd is Applegreen PLC who operate 2 filling stations within Clonmel, one on the Dungarvan / Ardfinnan Road (R665) and one located off the N24 on the Moangarriff Road / roundabout approx. 3km from the proposed site. Believe appeal is initiated due to a fear of competition and is not based on concern for the town of Clonmel.
- Notes errors in appeal report with reference to proposed retail area and distance to Maher's existing filling station.
- Removal of Fill – Requirements in relation to removal of fill can be subject to condition, and that the description of all associated site development works covers the removal of fill.

- Impact on Town Centre – Notes reference to An Bord Plenana refusal for the edge of town filling station application outside Ardee, Co. Louth, relates to a development of 2,950sqm supermarket and not a filling station. Clonmel has developed differently to Ardee as development has occurred on the side of the N24 which is not the side the town centre is located on. Notes the 5 distinct groups north of the N24 which the proposed development would serve.
- Traffic Safety – A traffic impact assessment was carried out by Road Plan Consulting, specialist engineers on traffic safety and concluded that the proposed development can be accommodated by the existing road infrastructure and would not significantly increase traffic load on the existing R688.
- Visual Amenity – Notes the neighbouring buildings and associated car parking which are well designed, and contests that the proposed development will be lost within a sea of car parking.
- Conclude – The development would improve road safety, and that the appellants points are flawed and without technical foundation

#### **6.4. Planning Authority Response**

6.4.1. In relation to Appeal No. 1 the planning authority submitted:

- They are satisfied that the shop and restaurant are ancillary to the parent use proposed as a petrol station. The shop has a net retail area of 97.40sqm and is within the recommended size limit as per Section 9.25 of the Clonmel and Environs Development Plan 2013. The seating is considered ancillary to the deli service.
- The restaurant space associated with the deli is small in size at 55sq,m and are satisfied that it would not impact on the retail health of Clonmel's town centre.
- The limitation of the net retail area to no greater than 100sq.m. in floor area is consistent with the Retail Planning Guidelines, 2012.

- The site notice submitted with the application is dated 16<sup>th</sup> June 2016, and the site was inspected within the statutory timeframe and no issues were noted. The appeal refers to photographs of a site notice dated 25<sup>th</sup> May 2016 yet no copy of same has been included in the appeal submission.

6.4.2. In relation to Appeal No. 2 the planning authority submitted:

- Consider that the reduction in site levels comes within the development description of associated site works, is authorised by the grant of permission and an Appropriate Assessment (AA) screening was undertaken.
- Regarding the nature of the fill and where same will be deposited, there is no evidence of any soil contamination. Condition no. 14 precludes the stockpiling of excavated material on site and the treatment of same to be agreed with the Planning Authority prior to construction.
- The development is consistent with the land use zoning objectives of the site and would not conflict with the policies and objectives of the Clonmel and Environs Development Plan 2013. The range of uses is common to a service station and the scale is acceptable.
- The shop size is within the recommended size limit under Section 9.25 of the Clonmel and Environs Development Plan 2013, the restaurant space associated with the deli is small in size at 55 sqm. and given the nature and extent of the development would not impact on the retail health of Clonmels town centre.
- The proposed site entrance and associated traffic impacts and movements, and HGV parking were examined by the District Engineer who raised no concerns and considered the proposal acceptable.

The planning authority concludes that the development design and layout is acceptable and note the positive interface between the buildings on site and the public roadway.



## 6.5. Observations

None.

## 6.6. Further Responses

6.6.1. A further response from Appellant No. 1 can be summarised as follows:

- Taking into account the provision of generous seating for dining customers and the abundant car parking spaces provided, this facility will primarily be seen as a destination to shop and dine giving the petrol filling station a secondary function.
- Examples of other petrol filling stations to the north of the N24 cited by the applicant are smaller in scale to that of the current proposal.
- Pedestrians will also have to cross the road to access the proposed development similar to the Mahers Londis Shop, which has the potential to increase accidents.
- As a resident and business owner genuine and valid concerns expressed in relation to the impact on the town centre.
- Considers that because of the size of the proposed restaurant people will primarily visit the facility to eat particularly given the provision of car parking, which will detract from the viability and vitality of the town centre.

6.6.2. A further response from Appellant No. 2 can be summarised as follow:

- Accept that the net retail area decreased in size at further information stage and is below the 100sq.m cap.
- Accept that the area planner was incorrect in the 500m distance referred to and notes the distance to the Topaz on Prior Park Rd is 1lm from the site as the crow flies.
- Submits that the removal of fill proposed is not considered minor works, and given the scale of fill to be removed to be a material consideration which third parties or the Council have not been provided with information on.

- Notes the applicant has not addressed the absence of any Town Centre Impact Analysis report, the scale of the carpark proposed and that the food operator will be a fast food operator which increases the likelihood of this filling station becoming a destination in its own right.
- Submits that the TIA does not specifically address road safety which is the purpose of a RSA and has failed to provide a RSA.
- Maintain that there is a very real risk of haphazard HGV parking along the roads of the site giving rise to traffic hazard.
- Argues that the Ardee case referred to in the appeal is similar to the current proposal in that they are both located close to a roundabout junction which is a material issue in terms of traffic safety.
- Submits that the Abbot Vascular surface car park contains significant landscaping which significantly mitigates the visual impact. The car parking in the current proposal will dominate the view, and the location of the parallel HGV parking will dominate the primary view of the filling station which is a fundamental flaw in the design.
- The applicant has not addressed the lack of information about the operator of the restaurant and whether it will serve fast food or not, or the floor area of the seating area associated with the restaurant.

## 7.0 **Assessment**

7.1. There are two third party appeals, and I consider it appropriate to consider them jointly. I consider the key issues in determining this appeal as follows:

- Principle of development
- The location of the proposed development / Impact on Town Centre
- Traffic Impacts
- Visual Amenity
- Residential Amenity
- Appropriate Assessment

## **7.2. Principle of development / compliance with Retail Planning Guidelines**

- 7.2.1. The appeal site is located on lands zoned Light Industry under the South Tipperary County Development Plan 2009 as varied and Clonmel and Environs Development Plan 2013. The definition of this zoning is 'to provide for light industry and technology, incubation units general employment and related uses'. Under the 'land zoning matrix' petrol stations are 'open for consideration'. It is also noted that Shop – neighbourhood, Supermarket and Takeaway are 'not permitted' within this land use zoning objective. A Neighbourhood shop is defined as a small convenience shop catering for the needs of the local area.
- 7.2.2. The applicant contends that the proposed service station building which includes a shop and restaurant could be considered 'related uses' to the main petrol station use and industrial use of the land, and will provide much needed employment and services to the existing business park and immediate area.
- 7.2.3. The case is made by the applicant that the wider area comprises 5 distinct areas of significant employment and residential areas located north of the N24 Limerick to Waterford Road that are not currently served by any petrol station, neighbourhood shop or delicatessen/restaurant. I also note the significant area of zoned land for Light Industry in this general area of Clonmel and the significant scale of employment particularly Abbott Vascular Ireland and Boston Scientific employing approx. 2000 persons.
- 7.2.4. I concur with the applicant in so far as there appears to be an absence of ancillary facilities in the immediate area. In addition, subject to limit by conditions I consider that the proposed petrol station, associated shop and restaurant can be considered as related uses and in the context of the scale of employment locally that the petrol station, shop and restaurant are appropriate in this location.
- 7.2.5. The third parties submit that the net retail area exceeds the recommended size limit of 100sqm for petrol stations as set out in the Retail Planning Guidelines. I note however that the net floor area of the convenience store was reduced from the original 97.40sqm by way of further information to give a net retail area of 78sq.m and so falls below the 100sqm threshold specified in the RPG's as requiring a sequential analysis. The restaurant has a floor area of 55 sq.m. and an associated

seating area. I also consider the retail shop and restaurant and seating area to be ancillary to the main use of the service station building and are acceptable. The proposed development is consistent with the Retail Planning Guidelines.

- 7.2.6. Accordingly, I would consider having regard to the zoning objective of the appeal site, the pattern of development in the area and the nature of the proposed uses that the principle of the proposed development is acceptable.

### **7.3. The location of the proposed development / Impact on Town Centre**

- 7.3.1. The site of the proposed development lies immediately north of the roundabout on the R688 Clonmel to Cashel Road and at the entrance to the Ard Gaoithe Business Park, which is located on the northern periphery of zoned light industrial land, and approx. 2.5km north of Clonmel Town Centre.
- 7.3.2. The appellants submit that given the size and scale of the proposed development located on the periphery of Clonmel that it would undermine the vitality and vibrancy of Clonmel Town Centre, and refer to the need for a Town Centre Impact Analysis and to a Board decision in Ardee, Co. Louth PL15245128.
- 7.3.3. I would concur with the applicant that the Ardee case is not similar to the current appeal in terms of scale or context. I consider given the catchment which is local, and the limited scale of retail use that a Town Centre Analysis is not warranted. I do not consider that the retail space and restaurant attached to a petrol station would have any significant adverse impact in terms of the vitality and vibrancy of the existing town centre and would reiterate the fact that in my opinion the proposed development is broadly consistent with the zoning under the development plan and the retail planning guidelines.
- 7.3.4. The applicant contends that the third-party appeals have been triggered due to a fear of competition and as such the items contained within the appeals are without merit. I consider that it is not within the Boards remit to regulate the competition of private retailers purely on commercial grounds, unless it has major planning implications.

#### **7.4. Traffic Impacts**

- 7.4.1. In terms of traffic impact it is important to note the context of the proposed development. Although likely to generate additional traffic, the proposed development is part of an overall complex of development of which it is likely to be a small component serviced by the same road infrastructure. The proposal includes the use of the service roads and roundabout already in place to serve the Ard Gaoithe Business Park and the Abbott Vascular Ireland facility. In this regard, I would note that the existing infrastructure is in place to manage traffic impact of the proposed development.
- 7.4.2. A Traffic Impact Assessment was requested by the planning authority. This TIA took into consideration traffic surveys in the area to estimate trip generation and modelling of the junctions in the area to determine traffic impact. It is assumed that, the distribution of development traffic at the existing Ard Gaoithe Business Park and Abbot Roundabout will be similar to the distribution of existing traffic at the junction. The conclusion of the TIA is that at present the existing R688 Ard Gaoithe Business Park and Abbot Roundabout operates within capacity with minimal queues and small delays, and that the junction will continue to operate within capacity with minimal queues delays in 2017 year of completion, in 2022, five years after completion and in 2032, fifteen years after completion.
- 7.4.3. I can confirm from my (albeit mid-day) site inspection that the Cashel Road and roundabout had a steady volume of traffic. I would consider however that the scope and methodology of the TIA to be robust and satisfactory and the conclusions of the TIA to be reliable.
- 7.4.4. It is notable that the Councils Roads department had no comment on the original proposal and that the District Engineer requested a TIA detailing traffic volumes entering and exiting the site and the potential impact of this increased traffic volume on the existing business park traffic. They also requested details on turning movements entering and exiting the site and the impact of these turning movements on all traffic using the access road should be assessed.
- 7.4.5. In response, the applicant submitted a revised Traffic Management Plan which provides for revised vehicular access and egress arrangements and circulation routes for cars, trucks and pedestrians. The Councils Roads Department were

satisfied with the revised proposals subject to the completion of an existing unfinished section of roadway and provision for parking for 2 HGV vehicles along the eastern boundary.

- 7.4.6. Overall I consider that the traffic impact assessment of the proposed development is adequate in scope to be a reliable indicator of the traffic impact of the proposed development. I am satisfied that there is sufficient space within the site to avoid excessive queuing of vehicles, in the unlikely event it does occur I am also satisfied adequate measures are in place to deal with it safely. The proposed development entails use of existing traffic infrastructure put in place to serve the existing business park which is a much large scale in terms of traffic generation. The proposed development is therefore satisfactory in terms of traffic safety.

## 7.5. Visual Impact

- 7.5.1. The appeal site is located at a prominent and elevated point at the entrance to the Business Park. The area has a mix of development in the area including commercial industrial and residential uses. The site is currently a vacant site along the R688. I note that the site levels have been raised as a result of fill from other developments in the Business Park. While the appellant raised an issue in relation to the description of works not including the removal of fill, I am satisfied that the description is adequate (including associated site works), and requirements in relation to the removal of fill can be subject to condition.
- 7.5.2. The applicants made some efforts to revise the proposal to take account of the planning authority's concerns regarding visual impact through the reduction in site levels and the reorientation and redesign of the single storey building, with greater separation to the R668 and landscaping to screen the area of surface parking of cars and HGV's from view of the public road.
- 7.5.3. Albeit introducing a new built form and activity on site, the proposed development represents a significant visual improvement at the entrance to Clonmel as this site is currently a vacant and underutilised plot. I would consider that revisions made to the overall design to incorporate use of glazing and metal cladding are satisfactory and the general visual impact of the proposed development is acceptable. I do not

consider that the proposed development would be out of character at this location or have a negative visual impact.

7.5.4. I would also draw the Board's attention to the proposals in relation to signage in the context of an ongoing issue with unauthorised signage at the entry point to the business park. The applicant was requested to submit revised proposals in relation to a co-ordinated approach to signage at the entrance to the business park advertising the businesses within same. The applicant submitted revised proposals for a totem sign 9.5m in height and located on the internal access road and as a consequence the boundaries of the original application have changed and revised public notices were erected. I consider the revised advertising proposals to be acceptable.

7.5.5. I am satisfied that the proposed development will not detract from the visual amenity of the area and is acceptable.

## 7.6. Residential Amenity

7.6.1. A number of issues were raised in submissions from adjoining residents in relation to noise, odour, lighting, location of underground fuel tanks and general disturbance associated with the proposed development. These issues were noted by the planning authority and were addressed in part by the applicant by way of further information. In general terms the revised layout of the proposal addresses many of the concerns raised and were considered acceptable subject to conditions to the Environment Section and the HSE.

7.6.2. I would also note the separation distances of the proposed development to the nearest dwellings. The existing house to the north is located approx. 100m from the appeal site and is screened from the development by mature trees and planting. The house located opposite the appeal site is located approx. 500m to the east and separated by the R688. Similarly, this house is well screened by mature planting along its road side boundary.

7.6.3. The proposed layout was amended by way of further information, and I am satisfied that subject to conditions in relation to noise, lighting, control of odours, waste management, parking of HGV's and hours of operation, that the proposed

development which is located within an existing business park will not be seriously injurious to the residential amenities of the adjoining residential properties.

## **7.7. Appropriate Assessment**

- 7.7.1. Based on the information on the file, inclusive of the appropriate assessment screening, the separation between the site and the Lower River Suir SAC, the nature scale of the proposed development, and the nature of the receiving environment, namely an urban and fully serviced location, I consider it reasonable to conclude that 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 any European site.

## **8.0 Recommendation**

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

## **9.0 Reasons and Considerations**

- 10.0 Having regard to the design and layout of the proposed development, the policy of the South Tipperary County Development Plan 2009 as varied and Clonmel and Environs Development Plan 2013 and the policies of the Retail Planning Guidelines, it is considered that, subject to conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **11.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 27<sup>th</sup> June 2016, and as amended by the further plans and particulars submitted on the 20<sup>th</sup> February 2017, except as may be otherwise be required in order to comply



with the following conditions. Where such conditions require details in writing with the planning authority prior to commencement of development the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The total net retail space of the forecourt shop shall not exceed 100 square metres.

**Reason:** To comply with national policy, as set down in the Guidelines for Planning Authorities Retail Planning issued by the Department of the Environment, Community and Local Government in April 2012.

3. The proposed development shall not operate outside the times of 07.00am to 23.00pm. The development shall not accommodate overnight parking of trucks or Heavy Goods Vehicles.

**Reason:** In the interest of proposer planning and sustainable development of the area.

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

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

5. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the canopy, on the forecourt building or anywhere within the curtilage of the site unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

6. During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location with the vicinity, shall not exceed –

(a) an Leq, 1h value of 55dB(A) during the period 0800 to 2200 hours from Monday to Sunday inclusive.

(b) and Leq, 15min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10dB(A) above background levels at the boundary of the site.

All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics -Description and Measurement of Environment Noise.

**Reason:** To protect the amenities of properties in the vicinity of the site.

7. 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.

8. 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 for the storage and separation and collection of 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.

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

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

10. Rock and soil excavated during construction works shall not be left stockpiled on-site following completion of the development. Details of the treatment of excavated rock and soil shall be submitted to and agreed in writing with the planning authority prior to commencement of development. On completion of site development works all machinery, equipment and spoil materials not used in the landscaping of the site shall be removed from the site.

**Reason:** In the interest of visual amenity.

11. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of public health and to protect the amenities of the area.

12. Parking for the development shall be provided in accordance with a detailed layout which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The layout shall provide for landscaping within the boundary of the parking area and lining or other method of demarcation of the individual spaces.

**Reason:** To ensure a satisfactory parking layout in the interests of pedestrian and traffic safety and visual amenity.

13. The development shall not open for operation until the appropriate section of access road, footpath, lighting, and infrastructural services benefitting the proposed development has been completed to the satisfaction of the planning authority.

**Reason:** In the interest of visual amenity and orderly development.

14. The underground fuel storage tanks shall be double skinned and fitted with a leak detection system. Excavations for the tanks shall be lined/bunded in the case of an emergency where there is an accidental leak. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interest of public health.

15. All service cables associated with the proposed development shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual amenity.

16. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000 as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the

planning authority and the developer or, in default of such agreement, the matter shall be referred to 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.

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Susan McHugh  
Planning Inspectorate

1<sup>st</sup> Aug 2017