



An
Bord
Pleanála

Inspector's Report ABP-300643-18

Development

Petrol station, underground fuel storage tanks, retail shops, play area, car parking, brush wash, car service area and all associated development works.

Location

New Relief Road R420, Link Road, Portarlinton, County Laois.

Planning Authority

Laois County Council.

Planning Authority Reg. Ref.

17/548.

Applicant(s)

Petrogas Group Ltd.

Type of Application

Permission.

Planning Authority Decision

Refuse Permission.

Type of Appeal

First Party v. Decision.

Appellant(s)

Petrogas Group Ltd.

Observer(s)

1. Colm Gainey
2. Harry & Sadie Dempsey.
3. Rory & Linda Dempsey.
4. Martin Lyons

Date of Site Inspection

21st March 2018

Inspector

Susan McHugh.

1.0 Site Location and Description

- 1.1. The appeal site forms part of a larger field and landholding located east of the main street and town square, within the town boundary of Portarlington. The site, which has a stated area of 0.028ha, is located off the R420 Link Road.
- 1.2. The site is bounded to the south west by the R420 Link Road, beyond which are commercial properties. Access to the appeal site is from the R420, which traverses a wide grass verge and tarmac area, with planting, via a single agricultural gate entrance. This boundary is defined by a concrete post fence.
- 1.3. To the west is part of the open field, beyond which are two residential properties, a two storey detached house to the front and a single storey house to the rear. The boundary is defined by a 2m high wall. To the north, northeast and east the site lies the remainder of the open field which adjoins the River Barrow. There was evidence of significant ponding in an area of depression closer to the River Barrow and outside the appeal site on the day of inspection. To the south the site is bounded by more open agricultural lands.
- 1.4. There is a gradual fall in site levels from OD 65.98 to the south west along the R420 to 64.58 OD to the north, north east and south east. More notably the overall field slopes more gradually to the River.
- 1.5. There are a number of petrol stations on the approach roads to Portarlington including the closest Emo garage on the R419.

2.0 Proposed Development

- 2.1.1. The proposed development comprises a new petrol filling station which will consist of:
 - 4 no. pump islands with branded forecourt canopy over.
 - Underground fuel storage tanks located under the forecourt.

- A new single storey building to include a retail shop, ancillary off licence, food offer, and ancillary services area, toilets, stores and staff accommodation with an overall floor area of area 320.5sqm. It comprises a retail shop with a floor area of 94.5sqm, an off licence of 5.5sqm, a deli with an area of 35.7 sqm and indoor seating area for 26, external seating and play area. The building is contemporary in design with a parapet height of 5.9m capped in grey metal capping. The retail shop and deli area have a glazed elevation to the west and southern elevations. The remainder of the building is finished in render.
- Creation of new vehicular entrance from the R420 to include the existing grass verge and tarmac area to the front. A total of 25 surface car parking spaces are proposed located along the east and northern boundary to the site and to the front of the retail shop.
- The car wash area is located to the rear of the retail shop along the southern boundary. The car service area is located along the western boundary to the site.
- General signage and on-site lighting is provided to the single storey building and service area. An internally illuminated double sided monopole sign is proposed on the southern end of the site at the entrance from the R420. This has a height of 7.5m.
- New underground surface water attenuation is provided beneath the area between the forecourt and the retail shop, and it is proposed to provide a connection to existing foul and surface water sewers.
- All associated site works include landscaping, boundary details and alterations to existing site levels.

2.1.2. The application is accompanied by the following:

- Planning and Design Report prepared by Cunnane Stratton Reynolds – Describes the site context, planning history, the nature of the proposed development including national transportation, retail and flooding planning guidelines and local planning policy context. It refers to the two site layout options considered, and the preferred option 2 site layout which does not

show any notable increase in flood levels in the area. The opening hours will be 24 hours with the retail store open 6am to 11pm and hatch service from 11pm to 6am.

- Flood Risk Assessment (FRA) Report prepared by JBA Consulting – Provides details regarding the River Barrow, and flood history at or near the site. It notes that the majority of the site is within Flood Zone A (1% AEP or 1 in 100 year flood event), with the remainder being within Flood Zone B (0.1% AEP or 1 in 1000 year event).
- Drainage and Services Report prepared by JA Gorman Consulting Engineers – Provides details regarding the arrangements for foul and surface water and provides attenuation and rainwater harvesting system calculations designed for both the 30 and 100 year storm event plus 10% climate change.
- A Natura Impact Statement (NIS) prepared by Scott Cawley – Identifies European sites in the vicinity of the appeal site which are linked to the proposed development, namely the River Barrow and River Nore SAC. Having regard to the arrangements for the disposal of surface water during construction and operations, which will ensure that there are no impacts on water quality as a consequence of the development, it concludes that it is possible to rule out likely significant effects on this European site.
- A letter of consent from Laois County Council to include part of the site adjacent to the link road in the application.
- A letter of consent from Gerard Hickey the owner of the site to submit a planning application on his lands.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The decision of the planning authority was to refuse permission for three reasons which refers to:

1. *'The site is located in close proximity to the River Barrow and on lands designated as Flood Zone A and Flood Zone B. Having regard to the Site Specific Flood Risk Assessment submitted with the application and notwithstanding the flood risk management measures proposed, the Planning Authority is not satisfied that the proposed development would not increase the risk of flooding of other lands and property upstream and downstream in the vicinity. It is considered that the proposed development would contravene objective FRP 2 of the Portarlington Joint Local Area Plan 2012-2018 which seeks 'to avoid inappropriate development in areas at risk of flooding and ensure new development does not increase flood risk elsewhere, including that which may arise from surface water runoff' and would, therefore, be contrary to the provisions of The Planning System and Flood Risk Management Guidelines 2009, The Flood Risk Management Guidelines for Planning Authorities (DoEHLG, 2009) and of the proper planning and sustainable development of the area.'*
2. *'Having regard to the location of the site immediately adjacent to a Special Area of Conservation – The River Barrow and River Nore SAC and the findings of the Natura Impact Statement received as part of the Planning Application, which relies on the findings of the Site Specific Flood Risk Assessment, the Planning Authority is not satisfied that the proposed development, due to the threat of flooding of the site, notwithstanding the proposals to raise ground levels, would not pose a threat to the adjoining Special Area of Conservation. It is therefore considered that the proposed development would contravene objective NHP 3 FRP 2 of the Portarlington Joint Local Area Plan 2012-2018 which seeks to 'maintain, protect and where possible enhance the conservation value of existing European designated sites in the town and any additional site that may be proposed for designation during the period of the Plan'. As such it is considered that the proposed development would if permitted, militate against the preservation of this European site and would therefore be contrary to the proper planning and sustainable development of the area.'*
3. *'The site is located in close proximity to the River Barrow and is currently a recognised floodplain. Notwithstanding the flood risk mitigation measures*

proposed as part of the proposed development, it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area because of the proximity to the River Barrow and the loss of an existing floodplain that is attached to the River and would be considered haphazard and piecemeal in advance of flood relief works in Portarlinton town as a whole.'

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 30th November 2017)

Basis for the planning authority decision. It includes:

- A petrol station is permitted in principle on Town Centre Zoning site.
- Proposals for new development in areas at risk of flooding as identified on land use maps within this zone will be subject to the development management justification test as outlined in the '*Planning System and Flood Risk Management Guidelines*' 2009.
- Reference to the *Portarlinton Strategic Flood Risk Management Strategy 2007* and the three phases of works to address flood risk in the town.
- In general, the design and scale of the development is considered acceptable and in keeping with objectives for the town centre land use.
- Flood Risk - The subject site is located within Flood Zone A and Flood Zone B as per Laois County Council JBA flood mapping. The site is located in Flood Zone A as per the *CFRAM study*.
- Flood Risk Assessment - The flood risk assessment indicates that the site is located in the 10% AEP or 1 in 10 year event indicating frequent flooding at depths of 0.5. No further consideration is given to this more frequent flooding but instead focuses on the 1% AEP.
- No proposals to provide compensatory storage, but are raising the land and then demonstrating through flood risk assessment that no increased risk of flooding is created elsewhere. Hydraulic modelling of the River Barrow was undertaken for several different scenarios. The JBA mapping produced as part of the study shows the majority of the site within flood zone A, with a

small area to the centre in Flood Zone B. Flood depths have been indicated at 1m across the site reducing to 0.5m along the edge of the flood extent. The post development flooding levels indicated are minimal. The site proposed indicates a reduction in flooding as the site is raised above the 1 in 100 flood level while upstream there will be an increase of 1-4mm on undeveloped lands.

- Mitigation measures are listed.
- Justification Test – The applicant has undertaken a justification text while the development is classed as a less vulnerable use to the impacts of flooding. There are a number of deficiencies contained therein.
- Appropriate Assessment – Generally agree with the findings of the Natura Impact Study submitted, raise concerns in relation to the basis on which the study has been completed especially relating to flooding. Notwithstanding the mitigation measures proposed, do not accept that construction materials or hydrocarbons will not be washed into the river based on the site inspection and the reliance on the 1 in 100 year flood event modelling.
- On date of site inspection site was significantly inundated with flood water.
- Concludes that based on the phasing as set out in the *Portarlinton Strategic Flood Risk and Management Strategy*, no development should take place until phase 1 works have been completed, and not aware of any of these works having been delivered. Notes that flood protection measures proposed as part of the *CFRAM study* to developed lands in Portarlinton should be carried out before any development is permitted on the floodplain.
- Considers that a precautionary principle should be applied and regard should be had to the previous decisions on the wider landholding.

3.2.2. Other Technical Reports

Road Design: Report dated 12/10/2017 recommends further information in relation to storm water attenuation, parking requirements as per development plan standards, road safety and public lighting requirements.

Area Engineer: Report dated 06/12/2017 notes recent flooding on the site and recommends that the site should not be developed for this reason.

Chief Fire Officer: Report dated 9/11/2017 recommends no objection.

3.3. Prescribed Bodies

Irish Water: Report dated 15/11/2017 recommends further information.

Inland Fisheries: Report dated 7/11/2017 recommends no objection in principle but expresses concern in terms of such a development as proposed being permitted in Flood Zone A.

Heritage Council: No report received.

National Park and Wildlife Services: No report received.

DAU, Department of Culture, Heritage and the Gaeltacht: No report received

An Taisce: No report received.

3.4. Third Party Observations

3.4.1. Eleven no. third party observations were made in respect of the application, These were lodged from the following parties;

- Colm Dunne, Spa Street, Portarlington.
- David Donohue, 54 Shandra Woods, Portarlington.
- Sharon Mooney, 3 Barrow Way, Spa Street, Portarlington.
- Cliona Ryan, Property Resource Planning Management and Development, Dublin.
- David Coakley, Coakley O'Neill Town Planning, Cork.
- Harry & Sarah Dempsey, 1 Patrick Street, Portarlington.
- Derek Connolly, The Paddock, Spa Street, Portarlington.
- Martin Lyons, French Church Street, Portarlington.
- Colm Gainey, Ullard Cottage Ullard, Portarlington.

- David Orford, Bridge House, Patrick Street, Portarlington.
- Cllr. Tom Mulhall MCC, Cappakeel, Emo, Co. Laois.

3.4.2. The issues raised in respect of the application can be summarised as follows;

- Site is in a flood plain and possible increase in flooding.
- Contrary to the Flood Risk Assessment and Management Guidelines.
- Location of the site adjacent to the River Barrow/Nore SAC, and potential of pollution.
- Non compliance with policies in the LAP in relation to petrol filling stations.
- The level and type of development will become a destination in itself.
- Traffic impact, a TIA should have been carried out.
- Negative impact on residential amenities.
- Sufficient petrol filling stations in Portarlington.
- Planning history on the site for refusals.

4.0 Planning History

P.A. Reg. Ref. 12/130: Permission **refused** March 2012 to construct ten town centre shop units, a civic centre with outdoor leisure/tourism zone, car parking, access from the New Relief Road via a roundabout junction and all associated site development works including landscaping, riverside buffer zone and riverside walkway. This application related to the overall landholding.

The first two reasons for refusal referred to the risk of flooding and proximity to the River Barrow / Nore SAC, similar to the first two reasons for refusal in the current appeal case. The third and fourth reasons for refusal referred to the overall layout and design of the development which did not respect the sites sensitive location, and requirements in respect of car parking.

P.A. Reg. Ref. 07/1014 ABP Ref. PL11.228132: Permission **refused**

November 2008 to construct a foodstore 3,281sqm gross floor area (2,180 sqm net) with off-licence, roundabout and access provisions from New Relief Road, associated car parking, ancillary signage, 7m high Totem sign, service areas, landscaping, circulation areas, flood relief works and riverside walkway access and all site developments.

The first reason for refusal referred to the proximity of the site to the River Barrow and River Nore candidate Special Area of Conservation which is recognised as a floodplain, and that the Board was not satisfied that the proposed flood relief works would not have significant adverse effects on both the natural heritage of the area and the future use of the river and adjoining lands.

The second reason for refusal referred to the proximity of the development to the River Barrow and the design which would seriously injure the amenities of the area notwithstanding the town centre zoning objective for the site.

Note - The site was zoned Town Centre in the Portarlington Local Area Plan 2007-2013.

P.A. Reg. Ref. 05/315: Permission **refused** March 2005 to provide a Tesco Ireland store of 3,303sqm. gross floor area, associated parking and access, signage and a 6.5m high sign adjacent to the New Relief Road.

The five reasons for refusal referred to the risk of flooding, the flood defence proposals which would exacerbate flooding upstream, prematurity pending a detailed study and analysis of the impact of flooding and preparation of a floodplain management plan, materially contravene the open space zoning objective, and would set a precedent.

P.A. Reg. Ref. 03/881: Application for permission in July 2003 following grant of outline permission P.A. Reg. Ref. 01/419. Application deemed **withdrawn**.

P.A. Reg. Ref. 01/419: Outline Permission **granted** June 2002 for 12 no. 4 bedroom semi-detached dwelling houses, 8 no. 3 bedroom semi-detached dwelling houses and 24 no 2 bedroom apartments on a site area of 1.7ha.

P.A. Reg. Ref. 00/884: Permission **refused** July 2000 to construct 52 houses.

5.0 Policy Context

5.1. Portarlington Local Area Plan 2012-2018

- 5.1.1. Under the Portarlington Local Area Plan 2012-2018, the site is zoned '**Town Centre:** *To protect and enhance the special physical and social character of the existing town centre and to provide for and improve retailing and commercial activities*'.

'The purpose of this zone is to protect and enhance the special character of the Town Centre and to provide for and improve retailing, residential, commercial, office, cultural, public facilities and other uses appropriate to the centre of a developing urban core. It will be an objective of the Council to encourage the use of buildings and backlands and especially the full use of upper floors, preferable for residential purposes. Warehousing and other industrial uses will not generally be permitted in the urban core of towns and villages. Proposals for new development in areas at risk of flooding as identified on the land use maps within this zone will be subject to the development management justification test as outline in 'The Planning System and Flood Risk Management Guidelines' 2009.

- 5.1.2. A Petrol Station and Retail use of less than 100sqm comparison are acceptable in principle within the Town Centre zoning.

- 5.1.3. A number of relevant policies within the Portarlington Local Area Plan 2012-2018 include:

- 5.1.4. **Section 10** refers to **Flood Risk**

'Aim: To develop, improve and extend flood alleviation measures throughout the town and rural hinterland so as to complement the overall strategy for economic and population growth and to achieve improved physical and environmental protection'.

- 5.1.5. **Map 4 Flood Potential Map for Portarlington Joint Local Plan Area**

This was informed by the Portarlington Strategic Flood Risk Management Strategy 2007. In particular the appeal site is identified on Map 4 as having flood potential. (see in pouch attached).

5.1.6. **Portarlington Flood Risk Management Strategy 2007**

The study, *'recommends a series of mitigation measures in the form of floodwalls, levees, embankments and attenuation areas provided at various locations through the centre of Portarlington along the banks of the River Barrow and the Blackstick Drain.*

The strategy sets out 3 phases of works to address flood risk in the town.

- *Phase 1 will reduce the risk of flooding to existing properties, primarily the town centre area including Spa Street and Patrick Street. This phase will also reduce the flood risk to a section of undeveloped land to the rear of Patrick Street, representing a key opportunity for Town Centre development.*
- *Phase 2, will improve the growth potential of the town between the Railway Bridge and Rosecourt, and will require a partnership approach between Laois and Offaly County Councils. This phase cannot be carried out until phase 1 is implemented.*
- *Phase 3, will also improve growth potential of the town in the area south of Marian Hill, on the Laois side of the town. This phase cannot be carried out until phase 1 is implemented.'*

5.1.7. It is the policy of the Councils to:

FRP 2: *'avoid inappropriate development in areas at risk of flooding and ensure new development does not increase flood risk elsewhere, including that which may arise from surface water run off'*

FRP 3: *'have regard to the recommendations of the South Eastern Catchment Flood Risk Assessment Management Study and to ensure that any development adjacent to these watercourses or their tributaries take cognisance of these reports/studies and to ensure the landuse is appropriate to the risk of flooding identified subject to the development management justification test.'*

FRP 9: *'ensure protection of Natura 2000 sites supporting rivers and streams by avoiding development on flood plains and ensure flood risk assessment policies, plans or projects are compliant with Article 6 of the Habitats Directive and avoid or mitigate native impacts on Natura 2000 sites.'*

5.1.8. **Section 13** refers to **Natural Heritage**

5.1.9. It is the policy of the Councils to:

NHP 2: *'encourage access to natural heritage and to promote access where it is practicable and does not affect the integrity of protected sites or conflict with their conservation objectives'*

NHP 3: *'maintain, protect and where possible enhance the conservation value of existing European designated sites in the town and any additional sites that may be proposed for designation during the period of the Plan'*

NHP 9: *'ensure that floodplains and wetlands, where appropriate, are retained for their biodiversity and flood protection value.'*

5.1.10. **Section 15** refers to **Town Centre, Retailing, Connectivity, Renewal, Opportunity Sites.**

TCP 1: states it is the policy of the Council to *'encourage and enhance the role of Portarlington Town Centre as a retail and commercial centre serving the town and its wider hinterland'*.

TCP11: states it is the policy of the Council *'In the case of proposed development adjoining the River Barrow, it is the Council's policy that any such development should address and integrate with the river in an appropriate manner'*.

5.2. **Laois County Development Plan 2017-2023**

5.2.1. **TRANS 25** states it is the policy of the Council to *'Consider proposals for petrol filling stations/service stations/ truck parking facilities subject to compliance with the following general principles and the design standards contained in the development management standards in Section 8 of the Plan:*

- a. *Such developments at or near national roads shall be assessed having regard to NRA Guidance contained in Spatial Planning and National Roads Guidelines for Planning Authorities (DECLG, 2012) and the NRA Service Area Policy (2014), or as amended.*

- b. The provision of such facilities on those sections of regional roads and local roads where the maximum speed limit applies will generally be discouraged, unless an overriding need for the development in that location is clearly demonstrated.*
- c. The proposed development would not result in traffic safety hazards, serious traffic congestions, or the undue obstruction to other road users.*
- d. The proposed development would not result in adverse impacts on the environment and local amenities.*
- e. The proposed development would not result in an undue proliferation of such facilities.*
- f. The proposed development would not undermine the vitality of retail services in local villages in contravention of the retail objectives of this Plan.*
- g. The proposed development shall not contravene other policies of this Plan.*

5.3. National Policy

5.3.1. Flood Risk Management Guidelines 2009

National guidance on flood risk management is contained within the Department's document '*The Planning System and Flood Risk Management*'. In essence the guidelines seek to avoid development in areas at risk of flooding, substitute less vulnerable land uses and if avoidance and substitution are not possible, mitigate and manage risks. Less vulnerable development is considered to include commercial development.

Exceptions to the restrictions on development due to potential flood risks are provided through the use of a justification test. In this regard the Guidelines recognise that some existing urban centres may have been targeted for growth, and also recommend a precautionary approach.

The Guidelines are issued under Section 28 of the Planning and Development Act 2000 as amended and the Board is required to have regard to them.

The DoEHLG Circular Letter PL2/2014 provides guidance on the use of OPW Flood Mapping in assessing planning applications. The guidance notes the Draft Indicative Flood Risk Assessment (PFRA) Maps produced by the Office of Public Works (OPW) in 2010 were prepared for the purpose of an initial assessment, at a national level, of areas of potentially significant flood risk, as required by the EU Floods Directive 207/60/EC. The circular notes that *'the maps provide only an indication of areas that may be prone to flooding. They are not necessarily locally accurate and should not be used as the sole basis for defining Flood Zones, or for making decisions on planning applications'*.

5.3.2. **Retail Planning Guidelines, DoECLG 2012**

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

5.4. **Natural Heritage Designations**

The River Barrow and River Nore SAC (Site Code 002162) is located approximately 44m to the north and east of the site.

The Mountmellick SAC (Site Code 002141) is located approximately 6.2km to the southwest of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appeal is lodged by Cunnane Stratton Reynolds on behalf of Petrogras Group. It includes correspondence from Irish Water, Flooding Report from JBA, Drainage and Services Report from JA Gorman Consulting Engineers. Grounds of appeal asserts that;

- Flood Risk - The Flood Risk Assessment, prepared by JBA Consulting, clearly indicated that there was no flood risk issue / concern associated with the proposed development. The Option 2 site layout does not show any notable

increase in flood levels in the area. Subsequent modelling has shown a similarly negligible change during the 10% AEP flood event. There is no increase recorded at any property upstream or downstream of the site.

- Town Centre Zoning - The site is zoned for Town Centre development. The LAP for Portarlinton contains a series of comments about Flood Alleviation measures and clearly identifies areas of flood risk (including the application site) in the town. The lands were zoned in the full knowledge that a flood risk pertained to the area.
- Commercial Interests - The significant local opposition to this proposal may have been commercially driven and contributed to this decision. For no development to be located on the site would be inconsistent with the zoning. The use is perhaps the most viable and lowest risk town centre type use at this location and to refuse permission would prevent development. The proposal will create competition in the local area but the purpose of the planning system is not to inhibit competition.
- Precedent - The Board have previously permitted petrol stations in flood locations and the same approach should be followed for this site. In Limerick, within a flood risk area the Board permitted the Coonagh PFS permission (PL30.236846), and in Carrick On Shannon the Board permitted (PL12.240704). Both permissions included conditions requiring appropriate mitigation, resilience and management measures in place.
- Detailed Design - Accept that there is a flood risk but as a retailer (Applegreen) has a portfolio that is insured and can carry the risk associated with an inundation event. The property will be fitted out to be flood resilient and the external areas, pumps tanks etc. are designed to be sealed and the Board can condition same. The detailed design and operational control of the site can be subject to a condition, and note that the storage tanks are to be double skinned and sealed. The property will not operate if there is ever a flood event, but the risk of this arising as a result of a direct inundation from the river is less than 0.1% annually. Section 6 of the FRA outlines that the FFL at 65.28m OD is above the 1% flood levels with an allowance for climate

change and the forecourt and shop are at 66.00m with a building cill to the forecourt windows at 66.30m OD above.

- Drainage - Some confusion in internal Council reports with respect to information that has been identified by the Council as being necessary as Further Information. Foul and Surface water drainage goes to existing public systems.
- Water Supply - Irish Water requirements are agreed following any Pre-Connection Agreement Submission, correspondence from IW has been received in relation to this matter and is contained in Appendix B.
- Assessment by Area Engineer - Internal Council reports include pictures that show flooding in the area, and illustrate that the appeal site is at risk of flooding which is acknowledged by the FRA, not the proposed end state as presented by the applicant. The Area Engineer has made comments with respect to the lands in the overall 'blue line' landholding and has not qualified or referred to the flood risk assessment or details of the design in this respect. There is a critical differentiation between the site subject of the application within the 'red line' and the wider field which runs down to the river.
- Flood Relief Works - Councils reference to piecemeal development in advance of 'flood relief works', despite there being no reference in the LAP to such works.
- Additional Flood Risk review - by JBA Consulting which supports the contention that the proposal is a sustainable proposal having regard to the modelling carried out, contained in Appendix C.
- The decision of the Council to refuse permission is unreasonable and unfounded and ask that the Board overturn the decision and grant permission.

6.2. Planning Authority Response

None.

6.3. Observations

Four observations to the appeal were received, from the following parties;

1. Colm Gainey, Ullard Cottage, Portarlinton

Issues raised can be summarised as follows;

- Object to the development.
- Notes that the issues raised in earlier submission are closely aligned to the refusal reasons contained in the decision of Laois County Council.
- Having reviewed the first party appeal, does not consider that any new or significant additional information is provided that would warrant the overturning of the decision of the planning authority. More recent significant flooding in Portarlinton has reemphasised the need for careful consideration of new development proposals in flood prone areas. Recent flood event caused significant damage to lands and property in the town and any development, such as the current proposal, that increases the risk of flooding on other lands should not be permitted.

2. Harry and Sadie Dempsey, 1 Patrick Street, Portarlinton

3. Rory and Linda Dempsey, Boley Lane, Portarlinton

Issues raised can be summarised as follows;

- Object to the development.
- The site is in a floodplain and any development will cause serious flooding for local residents and businesses in the town.
- Recent flooding on this site and that of unprecedented flooding in neighbouring town of Mountmellick further emphasises the risk a development here would make.
- Placing fuel tanks in the ground so near the river would be highly hazardous to the public and the wildlife in the area.

4. Martin Lyons, French Church St, Portarlington

Issues raised can be summarised as follows;

- Supports the decision of the planning authority.
- Notes recent flooding in the town, and disruption caused to businesses and schools.
- Requirement for extensive flood relief works and development of existing zoned flood plains will only contribute to ongoing problems.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings;

- Principle of Development
- Flood Risk
- Prematurity
- Appropriate Assessment

7.2. **Principle of Development**

7.2.1. The appeal site is located on lands zoned Town Centre under the Portarlington Local Area Plan 2012-2018. The objective of this zoning is '*to protect and enhance the special physical and social character of the existing town centre and to provide for and improve retailing and commercial activities*'. Under the 'land zoning matrix' a Petrol Station and Retail use (of less than 100sqm comparison) are acceptable in principle.

- 7.2.2. I note the net retail area recommended size limit of 100sqm for petrol stations as set out in the Retail Planning Guidelines. I note that the net floor area of the retail store including the off licence is 100sqm and is at the 100sqm threshold specified in the RPG's as requiring a sequential analysis. The restaurant has a floor area of 35.7sqm 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.
- 7.2.3. I also note that within the Town Centre zoning objective it states that '*proposals for new development in areas at risk of flooding as identified on the land use maps within this zone will be subject to the development management justification test as outlined in 'The Planning System and Flood Risk Management Guidelines' 2009.'*
- 7.2.4. As part of the Flood Risk Assessment undertaken by JBA, a development management justification test was carried out. This noted that under the Flood Risk Assessment Guidelines the proposed development would be classified as a less vulnerable development, and determined that the proposed development passed all the criteria. I have examined the justification test carried out and am satisfied that the criteria are met.
- 7.2.5. I also concur with the applicant that the appeal site is zoned for commercial development in the Portarlinton Local Area Plan, and that the proposed use, which is a less vulnerable use as classified in the Flood Risk Management Guidelines, is an appropriate use at this location within the Town Centre.
- 7.2.6. In conclusion, I am satisfied that having regard to the zoning objective of the appeal site, that the principle of the proposed development is acceptable.

7.3. **Flood Risk**

- 7.3.1. Reason for refusal no. 1 relates to flood risk. The fact that the overall site is prone to flooding is acknowledged. That the development will exacerbate flooding already prevalent in the area is raised as a concern.
- 7.3.2. Objective FRP 2 of the Portarlinton Local Area Plan 2012-2018 states that it is the policy of the Councils to '*avoid inappropriate development in areas at risk of flooding*

and ensure new development does not increase flood risk elsewhere, including that which may arise from surface water run off’.

- 7.3.3. In accordance with the ‘*Planning System and Flood Risk Management Guidelines*’ 2009, a site-specific flood risk assessment has been undertaken by the applicant.
- 7.3.4. I note the Flood Risk Assessment (FRA) Report dated July 2017 prepared by JBA Consulting is based on the OPW National Flood hazard mapping website, the JBA Portarlinton Flood Risk and Management Study (2007), and the OPW South Eastern Catchment Flood Risk Assessment and Management Study (South Eastern CFRAM), which commenced in 2011.
- 7.3.5. An extract from the draft extent map shows part of the site is within Flood Zone A with the remainder being within Flood Zone B. The report refers to the OPW Preliminary Flood Risk Analysis (PFRA) and the Portarlinton Joint Local Area Plan 2012-2018 which sets out surface water and drainage objectives for the site, and a Flood Map Potential Outline which is similar to the flood maps produced as part of the CFRAM study, but are superseded by the more detailed modelling in the South Eastern CFRAMS study. It also provides modelling for a number of flood risk management options and outlines mitigation measures to ensure there is no increase in flood levels to neighbouring lands.
- 7.3.6. The report determined that the majority of the site is located in Flood Zone A (1% AEP or 1 in 100 year flood event), with the remainder being within Flood Zone B (0.1% AEP or 1 in 1000 year event). It is understood that the source of flooding is fluvial from the River Barrow, and it is acknowledged that the site has experienced flooding.
- 7.3.7. The report details that in order to ensure that the development would not result in flooding elsewhere due to factors such as increased surface water run-off, a number of criteria were considered in the design of the development. Mitigation measures include;
- Selection of option 2 as the preferred layout as it provides for a smaller footprint and results in no increase in water levels.
 - Raised site levels of the service station, including parking and forecourt to above the 1% flood levels. The recommended level is 65.28mOD or higher.

- The kiosk building and vents to be further raised to provide a minimum of 150mm freeboard above the forecourt level. The recommended floor level for the kiosk is 65.43mOD.
- The development also provides for surface water attenuation measures including rain water harvesting and green roofs which are incorporated into the design. Stormwater generated on the hard surfacing is captured through permeable paving in the car parking areas.

7.3.8. It is detailed that works as part of the scheme will significantly mitigate flood impact in this area.

7.3.9. The Drainage Department of the planning authority in their report noted recent flooding on the site and recommended that the site should not be developed for this reason. The planner in their report took account of the technical assessment and hydraulic modelling carried out by JBA. The report specifically notes that the Council have concerns in relation to a number of deficiencies which include the following;

- No examination is given to the 1 in 10 year event which the report identifies as causing flooding depths of 0.5m on the site.
- The design of the development increases ground level and floor levels to take account of flooding in a 1 in 100 year event and considered that there is potential for inundation of the surface water network and foul network.
- Little consideration has been given to the impact of the development on lands downstream of the proposed development.

7.3.10. Having reviewed the information presented by the applicant including the various flood maps, I am satisfied that the development footprint is located in flood zone A and B. In this regard, the key issues to consider is whether the development in its own right would exacerbate flood elsewhere due to factors such as displacement.

7.3.11. I note the further JBA report submitted on appeal and subsequent hydraulic modelling carried out which shows a negligible change during the 10% AEP flood event. It is also noted that under the Planning System and Flood Risk Management Guidelines, it is the 1% and 0.1% AEP events (Flood Zone A and B) which require investigation and mitigation. I accept the findings that there is no increase recorded at any property upstream or downstream of the site.

7.3.12. I also note that the appeal site comprises only a part of the overall landholding. While it is prone to flooding, it is located on the higher part of the overall site and away from the River Barrow.

7.3.13. I am satisfied, based on the detailed technical information submitted by the applicant in relation to the site specific flood risk assessment, flood risk mitigation proposals and hydraulic modelling carried out, that the proposed development, which is located in Flood Zone A and B, in itself will not exacerbate flooding to adjacent lands. I am also satisfied that adequate attenuation measures have been incorporated into the design of the scheme to address surface water run-off including that which occurs in an extreme event. I am satisfied that the flood assessment is robust and therefore that the development will not result in any adverse or material flooding impacts.

7.4. Prematurity

7.4.1. Reason for refusal no. 3 relates to the loss of an existing floodplain attached to the River Barrow and that the proposed development would be haphazard and piecemeal in advance of flood relief works in Portarlinton town as a whole.

7.4.2. The planner in their report refers to the Portarlinton Strategic Flood Risk and Management Strategy and the three phases of works. They note that the subject site would form lands to the south of Marian Hill which is in phase 3 and that this phase cannot be carried out until phase 1 is implemented. They note that the flood protection measures proposed as part of the CFRAM study relate to developed lands in Portarlinton and concludes that these works should be carried out before any development is permitted on the floodplain.

7.4.3. I note that the subject site is only part of the larger overall site, and consider that there is still a significant area of open land within the floodplain to accommodate flood waters during a flood event.

7.4.4. I also note that the consultants of the Portarlinton Flood Risk Management Study, JBA Consulting, assessed the proposed development including the mitigation measures to be carried out in the context of this study. In particular, the consultants assessed the proposed development in the absence of implementation of any other measures contained in the Flood Risk Management Study. The report dated July 2017 concludes that the impact of the proposed development option 2 would not

result in an increase in flood levels at any property upstream or downstream of the site. On this basis, I consider that it would be unreasonable to conclude that the proposed development will have a flood risk impact or that there is a risk arising from the piecemeal implementation of the measures contained in the Flood Risk Management Study.

I am satisfied, therefore, that this reason for refusal should not be upheld.

7.5. Appropriate Assessment

Reason for refusal no. 2 relates to Appropriate Assessment. The application was accompanied by a Natura Impact Statement (NIS) in support of the Appropriate Assessment prepared by Scott Cawley.

7.5.1. Project Description and Site Characteristics

7.5.2. The proposed development is described in the report above and in the application documentation. It is proposed to construct a petrol station and associated retail and service areas with surface water attenuation, by-pass separators and rainwater harvesting on a site of 0.028ha. The site is composed of grassland, scrubby vegetation and areas of disturbed and recolonizing bare ground. The River Barrow lies approximately 44m to the north-east of the proposed development at its closest point. The River Barrow flows through Monasterevin, Co. Kildare before ultimately discharging to Waterford Harbour after flowing through counties Kildare, Carlow and along the Wexford border.

7.5.3. Screening – Stage 1

The NIS confirms that the proposed development would not be located within a European site. The NIS identifies the following two sites within a 15km radius of the appeal site:

- *River Barrow and River Nore SAC*
- *Mountmellick SAC*

The proposed development is proximate to the *River Barrow and River Nore SAC* which is prone to flooding. Through surface and/or groundwater there are therefore, several source-pathway-receptor linkages (S-P-R) between the proposed development and the River Barrow and River Nore SAC. The proposed development, therefore, has the potential to impact upon this Natura 2000 site through contamination of surface/ground water.

While I note the other nearest designated site is the *Mountmellick SAC*, there are no ecological connections to this site as it is upstream and is located a considerable distance from the appeal site.

I have had regard to the NIS Stage 1 screening assessment which has determined that only one of the sites identified be carried forward to Stage 2 appropriate assessment. I concur with the determination of the need to carry out a Stage 2 appropriate assessment, in relation to one of the sites only, the River Barrow and River Nore SAC.

7.5.4. Screening Conclusion

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would be likely to have a significant effect on European Site No. 002162, (but not on any other European site), in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is therefore required.

7.6. Appropriate Assessment – Stage 2

The relevant European site is the River Barrow and River Nore SAC (site code 002162).

A copy of the detailed conservation objectives for the River Barrow and River Nore SAC, updated by NPWS 19th July 2011, is attached. The overall aim of the objectives is to maintain or restore the favourable conservation status of habitats and species of community interest.

The Natura 2000 Standard Data Form (NPWS, 2015) states that the SAC has a wide range of habitats associated with the rivers including substantial areas of woodland,

dry heath, wet grassland, swamp and marsh vegetation, salt marshes, a small dune system, biogenic reefs and intertidal sand and mud flats. It also indicates that the site supports many habitats listed on Annex I of the EC Directive including priority habitats of alluvial woodland and petrifying springs. Quality of habitats is generally good. The site supports a number of Annex II animal species associated with the riverine environment as well as Annex 1 bird species.

The species are sea lamprey, river lamprey, brook lamprey, freshwater pearl mussel, Nore freshwater pearl mussel, freshwater crayfish, twaite shad, atlantic salmon, otter, the snail vertigo moulinsiana and the plant Killarney fern.

7.6.1. **Potential Effects**

The proposed development is not located immediately within the designated area and as such there will be no direct impacts upon the Natura 2000 site associated with the development.

The NIS notes that estuarine, coastal and saltmarsh habitats for which the site is designated would not be considered vulnerable to pollution events due to the distance between the site and the nearest location of these habitat types which are all located on the southern stretch of the river i.e. south of Graiguenamanagh (from which the river is tidal).

Potential impacts on otters would be as a result of indirect effects of impacts on water quality in the River Barrow. The two Annex II bivalve species for which the SAC is designated, namely the Freshwater Pearl Mussel and the hard water species, the Nore Freshwater Pearl Mussel, are not deemed to be at risk from adverse impacts to the river via pollution. It is noted that the Nore Freshwater Pearl Mussels are contained within a different water course (River Nore) catchment with the only hydrological connection located approximately 80km downstream. In addition, the populations of Freshwater Pearl Mussel contained within the Barrow river catchment lie over 86km downstream.

The following qualifying habitats and species of the River Barrow and River Nore SAC would be potentially at risk from an accidental pollution incident, if it was of sufficient magnitude and duration to significantly affect water quality in the river;

- Water courses of plane montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation
- Hydophilous tall herb fringe communities of plains and of the montane to alpine levels
- Petrifying springs with tufa formation
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*
- Otter
- White clawed crayfish
- Sea Lamprey
- Brook Lamprey
- River Lamprey
- Twait shad
- Atlantic salmon

The NIS concludes that the only potentially adverse effects associated with the proposed development (in the absence of mitigation) arise from potential construction-related activities and discharges from the proposed development and the potential for these effects to reach downstream European sites, owing to the potential source-pathway-receptor linkage between the development and the River Barrow and River Nore SAC. In this regard there is potential for;

- accidental spillage of oils, cement or other potential pollutants during construction works that could potentially be released into either the surface water drainage network or the existing local storm water sewer network which more than likely discharge to the River Barrow.
- run-off of sediment into the surface water network during construction or during a storm water overflow.
- contamination of the surrounding environment following accidental spillage on site during operation.

- contamination of the surrounding soils and environment during operation.

I have identified the proximity of the site within the floodplain of the River Barrow which forms part of the River Barrow and River Nore SAC.

I am satisfied that, while there is potential for contamination of ground and/or surface water through contamination during the construction phase, subject to standard practice, and as outlined in the Outline Construction Management Plan, it is unlikely to arise.

As previously described in Section 7.3 on flood risk above, I am satisfied that the site is suitable for development given the proposed layout, raised site levels of the service station, including parking and forecourt above the 1% flood levels, raised levels to the kiosk building and vents to provide a minimum of 150mm freeboard above the forecourt level, separation distances to the River Barrow, and the proposed surface water attenuation measures.

In particular, the forecourt areas and offloading slab will be constructed of impermeable material, independently contained and drained via a 10,000L full retention alarmed interceptor before discharging to the site surface water drainage network. I note the petrol interceptor will be fully sealed and alarmed for level of intercepted materials. I also note that the underground petrol storage tanks are to be double walled and alarmed. I am satisfied that these works will significantly mitigate flood impact in this area.

I consider that, given the sensitivities of the site as outlined in the NIS, and subject to the implementation mitigation measures proposed, that the potential for contamination of ground and/or surface water occurring from the proposed development during the operational lifetime of the development is unlikely. I can rule out therefore, that adverse effects could arise from the development.

7.6.2. In combination effects

I note that the NIS assesses the potential cumulative impacts which could possibly arise with due cognisance had to the loss of habitat, water quality and loss of flood plain storage. No potential for significant in-combination impacts are identified. I am satisfied that no significant in-combination effect will arise.

7.6.3. Appropriate Assessment - Conclusion

On the basis of the information provided with the application and appeal, including the Natura Impact Statement and proposed mitigation measures, I am satisfied that the proposed development individually, or in combination with other plans or projects, would not adversely affect the integrity of the European Site No. 002162, in view of the site's Conservation Objectives.

7.7. Precedent

- 7.7.1. The applicant has referenced two Board decisions which permitted petrol stations in flood locations and advocates that the same approach should apply for this site. The first is in Connagh, Ennis Road, Co. Limerick under (ABP Ref. PL30.236846), the second is in Carrick On Shannon, Co. Leitrim under (ABP Ref. PL12.240704).
- 7.7.2. I have reviewed both decisions cited and note that the decisions date back to 2010 and 2012 respectively, and that both sites were located within Flood Zone A. While the Board were satisfied that the measures proposed were adequate to prevent contamination of surface water in the event of a flood no specific conditions relating to same were attached.
- 7.7.3. I am satisfied that there is precedent in terms of permitting petrol stations in flood plains subject to measures proposed to prevent environmental pollution and that a similar approach could be taken by the Board in the current appeal.

8.0 Recommendation

- 8.1. I recommend that planning permission be granted for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the location of the site within the town centre, and the associated zoning in the Portarlinton Local Area Plan 2012-2018, and the design and layout of the proposed development, it is considered that the proposed development would subject to compliance with the conditions set out below, not increase the risk of flooding on lands in the vicinity, or adversely affect the integrity of the River Barrow and River Nore SAC. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 12th October 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed 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. Water supply and drainage arrangements, including the attenuation and 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.

3. 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.

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

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

5. The proposed development shall not accommodate overnight parking of trucks or Heavy Goods Vehicles.

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

6. 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.

7. 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 permission.

Reason: In the interest of visual amenity.

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, 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. 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.

11. 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 individual spaces.

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

12. 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.

13. 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 located underground as part of the site development works.

Reason: In the interests of visual amenity.

14. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Susan McHugh
Planning Inspectorate

13th April 2018