



An
Bord
Pleanála

Inspector's Report ABP-301664-18

Development	Alterations to petrol filling station.
Location	16 Lynn Business Park, Mullingar, Co Westmeath
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	17/6259
Applicant(s)	Rustic Oil Products.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Rustic Oil Products.
Observer(s)	None.
Date of Site Inspection	2 nd December 2018.
Inspector	Karen Kenny

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1.0 Site Location and Description

- 1.1. The site is located in the Lynn Business Park in Mullingar. This is an established business park located to the south of Mullingar town centre.
- 1.2. The site (0.1375 ha) contains petrol filling station with fuel forecourt and associated service station building. There is an open yard on the eastern side of the site that is used for car parking and provides vehicular access (via a right of way) to a commercial premise to the rear of the site. The fuel forecourt comprises 2 no. pump islands with a canopy over. The service building contains a shop, deli counter, seating area, offices, toilets and a storage area.

2.0 Proposed Development

- 2.1. Permission is sought for alterations to the service building as follows:
 - Demolish a projecting bay window on the front elevation (17sq. metre) and construct a new glazed façade to front and side of the building. The front building line of the building would be set back by c. 1.5 metres.
 - Alter the internal layout of the service building. The alterations would extend the retail, food preparation, food counter and seating floor areas and reduce the area given over to storage.
 - Remove existing first floor storage area.
 - Relocate boiler compartment.
 - Erect new signage.
 - Remove existing oil storage tanks and bunded walls to the rear of the premises and provide new replacement underground tanks.
 - All associated works including adjustment to drainage and parking and alterations to service and fire exits.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Refuse permission for the following 3 no. reasons:

1. The development, by virtue of the level of retail floorspace proposed in combination with the expanded cafe use would cause harm to the vitality and vibrancy of the town centre retail core. The development is considered to be contrary to general retailing policies P-RET1, P-RET6 of the Mullingar Local Area Plan 2014-2020 and to the proper planning and sustainable development of the area.
2. The development proposes access/egress arrangements over lands that the applicant has no control over. The development is therefore considered to cause a traffic hazard and is prejudicial to roadway safety.
3. The development would result in the intensification of use of the premises with access/egress arrangements that results in traffic conflicts with accesses into other premises and third-party lands together with a car parking layout that would result in further conflicts and is therefore considered to cause a traffic hazard and would be prejudicial to roadway safety.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Following an initial assessment further information was sought in relation to the extent of retail floorspace, design, car parking, entrance / exit arrangements, surface water drainage and refuse storage. Following the submission of further and clarification of further information the Planning Officer's Report recommended that permission is refused for reasons relating to the level of retail floorspace and access / egress / parking arrangements.

3.2.2. Other Technical Reports

Area Engineer: Refusal recommended due to conflicting traffic movements and proposal to access the site via third party lands.

Environment: No objection.

Fire Officer: No objection.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

4.1.1. The following planning history relates to the site and lands in the immediate vicinity:

P.A. Ref. 94/576: Permission granted for extension to shop and offices.

P.A. Ref. 92/647: Permission granted for new canopy and signage.

P.A. Ref. 88/533: Permission granted for retention of sign.

P.A. Ref. 87/512: Permission granted for extension and retention of extension.

P.A. Ref. 82/907: Permission granted for glass manufacturing unit.

P.A. Ref. 82/743: Permission granted for petrol pumps and sign.

P.A. Ref. 81/655: Permission granted for workshop and store.

5.0 **Policy Context**

5.1. **Retail Planning Guidelines for Planning Authorities, DECLG, 2012**

5.1.1. Section 2.4 of the guidelines sets out national policy in relation to retail floor area caps. The guidelines set a cap of 100 square metres (net) for retail floorspace associated with petrol filling stations. Retail floorspace above 100sq.metres (net) is to be assessed as a retail development (without petrol/diesel filling facilities).

5.1.2. Annex 1 of the Guidelines define net retail floorspace as the area within the shop or store which is visible to the public and to which the public has access including fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer service areas, and internal lobbies in which goods are displayed, but excluding storage areas, circulation space to which the public does not have access to, cafes, and customer toilets.

5.2. **Development Plan**

5.2.1. The Mullingar Town Development Plan 2014-2020 is the relevant statutory plan. The site is zoned Commercial with an objective “to provide for commercial development which does not need to be located in the town centre or retail warehousing zone”. The Development Plan states that this zoning provides for expansion of existing commercial uses and for new uses such as offices, hotel, showrooms and that such uses shall be consistent with the Retail Strategy and shall not detract from the retail function of the town centre. The following policies are also considered to be relevant:

- P-RET1: To protect and strengthen the retail primacy of Mullingar within the region.
- P-RET3: To protect the retail function of the Core Shopping Area.
- P-RET5: To sustain the vitality and viability of the major shopping areas and to encourage measures to improve their attractiveness.
- P-RET6: To adhere to the provisions of the Sequential Approach in the consideration of retail applications located outside of Core Retail Area.

5.3. **Natural Heritage Designations**

None.

6.0 The Appeal

A first party appeal has been received in respect of the decision of the Planning Authority to refuse permission. The grounds of appeal can be summarised as follows:

Refusal Reason No. 1

- The council have formed the view that the net retail area includes the 2 no. food service areas in addition to the 100sq.m net retail area and the circulation area resulting in a net retail floor area of 222.2 square metres and revised to 238.5 sq.m at further information stage.
- The net retail area is 100sq.m. The two restaurants, including seating area, ATM and circulation space should not be included in this net retail area.
- There is a clear distinction between net retail area and restaurants in the case of filling station developments. Reference is made to ABP determinations ABP Ref. PL06F.242051, ABP Ref. PL15.244191 where café / hot food deli floorspace was not considered to form part of the net retail floorspace. Reference to ABP Ref. PL06S.246498 as an example of where a serving counter was considered to be retail as minimal seating was made available.
- Restaurant is excluded from the definition of a shop in the Planning and Development Regulations. Reference to the definition of net retail floorspace in the Retail Planning Guidelines 2012 (Annex 1, Glossary of Terms).
- Restaurant is excluded from the legal planning definition of a shop and is excluded from the definition of net retail area in the national guidelines. The proposed development fully accords with the retail cap of 100sq.metres and will not impact on the town centre. The Council have erred in including the restaurant element in the net retail area.
- Applicant invites a condition that requires the circulation areas to be identified by a different floor surface and states that retail shall not encroach onto this area.

- The type of food offer in the proposed restaurant will be of the quick serve type and is specifically aimed at motorists who wish to avail of a quick and convenient meal whilst obtaining fuel.
- The applicant also opposes the view that the ATM should form part of the net retail area.

Reason for Refusal No. 2

- The lands over which a third party right of way exists are outlined in drawing P2756-C006. It consists of a narrow strip running along the east side of the site to allow for vehicular access to a third-party site at the rear.
- A narrow strip of land to the west side of the site that falls outside the site. It is not used for any purpose and is currently blocked off by a cage of gas containers in order to prevent anti-social behaviour. Existing access / egress arrangements involve vehicles passing over the third-party lands. This has operated without any issue to date. There is no submission from the relevant third party indicating concerns.
- The right of way to the east and the existing vehicular access to the west will both be free from any development or car parking. It is accepted that cars will need to manoeuvre into the right of way (as detailed in Drawing No. P2756-C005) but this is the existing arrangement and it operates without any issue. The Board under ABP Ref. PL08.246283 granted planning permission where a similar situation exists.
- The Council have not articulated what concerns they have in relation to the traffic conflicts that would arise.
- The proposed development will represent a significant improvement to the existing situation in terms of organisation of the site and the delivery of a more ordered and safe configuration. The absence of line markings, signage and controls at present results in confusion at peak times. Given the slow moving nature of vehicles within the forecourt this does not result in traffic hazard but does result in some congestion. The proposed development will introduce a one way system, new line markings, bollards to prevent on street parking, signage and dedicated car parking. When combined these enhancements will

ensure a more logical layout for the motorist and improve traffic safety on the forecourt.

Reason No. 3 Traffic Hazard

- The issues raised in the third reason for refusal are a repeat of the issues raised in the second reason.
- The Council have determined that a total of 23 no. car parking spaces are required for the proposed development. There are no car parking requirements for a petrol filling station in the Westmeath CDP or the Mullingar LAP. The Council have thus applied the requirements for a retail development. This is inappropriate and at odds with the requirements for other petrol filling stations around the country.
- Application based on the gross flood space is not appropriate as areas of the site are given over to back of house uses that generate no car parking requirement.
- PFS are unique as a land use in terms of car parking in that the majority of parking is accommodated at the pumps. It is only really customers availing of seating associated with the restaurant element that will use the other car parking spaces.
- The existing development has a total of 16 no. car parking spaces (inc. the 4 spaces at the pumps and 3 no. staff car parking spaces at the rear. The retail element will be served by the spaces at the pumps. Parking will be required for 2 no. staff and the office will generate a need for 1 no. additional space. It is estimated that the restaurant will have a total of 4 no. staff. In terms of customer demand the seating area at 33 square metres would necessitate 6 no. customer car parking spaces. The total amount of spaces required on a worst-case scenario, based on actual requirements and assuming all staff drive would be 17 no. spaces.
- The PFS is located in a large industrial area and many of the employees visit the site from the estate on foot and do not create any parking demand.
- It is noted that the Laois County Development Plan includes a car parking requirement for PFS at 1 space per 300sq.m gross floor space plus retail at 1

space per 26sq.m. This would generate a requirement for 7-8 car parking spaces.

- The proposed development seeks to provide 17 no. car parking spaces on the site and 6 no. spaces on the additional site included at further information stage, which is owned by the applicant. It is submitted that the 6 no. additional spaces are not required and were only proposed to satisfy the demands of the Council for 23 no. spaces. The Board are invited to include a condition to omit these spaces or to designate them as overflow spaces.

6.1. Planning Authority Response

The response of the planning authority can be summarised as follows:

- The reports dated 26/10/17, 05/02/18 and 24/04/18 and 25/04/18 fully outline the authority's assessment of the above application.
- The PA does not consider the 100 square metre area annotated on the submitted floor plans to be consistent with the net retail floor area defined in Annex 1 of the Retail Planning Guidelines.
- The Planning Authority does not agree that the hot and cold food counters would be used as restaurant only. The trade from these counters was witnessed to be 80% (20 people out of 25) on a retail basis, with 20% using seats.
- The provision of a restaurant / café development would detract from the vibrancy and vitality of the town core where such uses should be located in the first instance. Economic Development policies contained in Chapter 3 and Town Centre & Urban Design policies contained in Chapter 4 of the Mullingar LAP encourage such uses to be consolidated within the town and retail core.
- Due to the ownership and right of way constraints it appears impossible for the applicant to put in place the necessary measures required to control traffic flows generated by the proposed development. It is considered that the proposed development would increase the traffic flows to and from the site and would exacerbate the current situation and further reduce the level of service.

6.2. Observations

None.

7.0 Assessment

7.1. A first party appeal has been received in relation to the decision by the planning authority to refuse permission for alterations to an existing petrol filling station. The grounds of appeal focus on the refusal reasons contained in the notification to refuse permission. I consider that the key issues for consideration are as follows:

- Principle of development
- Traffic and Parking
- Other Issues
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The Mullingar Town Development Plan 2014-2020 is the relevant statutory plan for the area. The appeal site is zoned 'commercial' with an objective "to provide for commercial development which does not need to be located in the town centre or retail warehousing zone". Chapter 10 of the Development Plan indicates the land uses that are permitted or open for consideration under the various zoning provisions. A petrol filling station and shop are 'open for consideration' in the commercial zone, while a restaurant is a 'permitted' use. I would note that the petrol filling station and shop uses are long established on the site. From the planning history attached to the site, as summarised in Section 4.0 of this report, it is evident that a petrol filling station use was approved in 1982 and that an extension to the shop was approved in 1994. The applicants appeal submission states that the proposed development seeks to improve the appearance of the petrol filling station and to improve drainage and fuel storage arrangements and the offering to the public.

7.2.2. The first reason for refusal states that the development, by virtue of the level of retail floorspace proposed in combination with the expanded cafe use would cause harm

to the vitality and vibrancy of the town centre retail core. The grounds of appeal argue that the councils view that the net retail area includes the food service areas and the circulation area is incorrect and that the retail area falls within the 100 sq.m cap set out in the Retail Planning Guidelines. The applicant argues that the two food counters and the associated seating area should not be included in the net retail area.

- 7.2.3. Permission is sought to alter the internal layout of the building and to extend food counters, the food preparation area and retail area into existing storage areas.
- 7.2.4. Given the land use zoning and the established use of the site I am of the opinion that the principle of a petrol filling station with shop and associated food counters and seating area is acceptable in principle. The mix of uses proposed on the site is part of the normal ancillary services provided with a petrol filling station. I would not concur with the view taken by the planning authority that food counters, circulation areas and seating (inc. ATM area) should be included in the net retail floorspace on the basis of the definition of net retail floorspace contained in Annex 1 of the Retail Planning Guidelines, 2012. I would concur with the applicant's view that the retail floor area is confined to the hatched area shown on the floorplan drawing and that it complies with the 100sq.m cap. I also do not agree that the café area and associated seating is excessive and would represent a new destination. The proposed food counters and seating areas are similar to those found in most modern petrol filling stations. It is my opinion that the scale of the petrol filling station and associated uses is such that the development will mainly attract local and passing business.
- 7.2.5. Having regard to the foregoing, I am satisfied that the proposed development is acceptable in principle and accords with the land use zoning provisions of the Development Plan. Other relevant planning issues are considered below.

7.3. **Traffic and Parking**

- 7.3.1. The second reason for refusal states that the development proposes access/egress arrangements over lands that the applicant has no control over and that the development is therefore considered to cause a traffic hazard and be prejudicial to road safety. The third reason states that the development would result in the

intensification of use of the premises with access/egress arrangements that results in traffic conflicts with accesses into other premises and third-party lands together with a car parking layout that would result in further conflicts.

7.3.2. The established access and egress arrangements to the fuel forecourt involve cars traversing lands to the west of the forecourt that are outside of the applicant's ownership and control. I note the concerns raised by the Planning Authority in relation to this established practice. I would submit that the proposed development does not include alterations to the forecourt area or to the established access arrangements in the forecourt area. The proposed works relate principally to the service building and parking layout along the eastern and northern edges of the building and to fuel storage and drainage arrangements. Drawing P2756-C006 details the extent of the applicant's ownership and a right of way that crosses the eastern section of the site. On the basis of the submitted details, I am of the view that the applicant has sufficient legal estate or interest in the land to carry out the works proposed. I am also satisfied that the forecourt area can be accessed by light vehicles without traversing third party lands via a one-way system (separate of c. 3.7 metres between fuel island and site boundary) and that the proposal to remove a bay window and set the front building line of the service building back will further improve circulation in the forecourt. I am also of the view that the proposal to access car parking spaces via the right of way that runs along the eastern site boundary would not result in a traffic conflict. I am therefore of the view that refusal of permission is not warranted on foot of this issue. In the event that the Board is minded to grant permission, I recommend that a condition is attached that requires the applicant to submit details of circulation arrangements within the site to the Planning Authority for agreement prior to the commencement of development, to include details of a one-way system in the forecourt area.

7.3.3. In terms of car parking provision, the Report of the District Engineer calculates a car parking requirement based on the GFA of the building (375 sq.m) with a stated requirement of 23 no. spaces. The grounds of appeal argue that this requirement is overstated on the basis that only 100 square metres of the development is retail. The grounds of appeal also argue that the proposed arrangements would provide a more ordered and safe configuration for traffic within the site. I would concur with this view. While there is no car parking standard in Table 9.11 of the Development

Plan for a petrol filling station, standards are set out for retail and restaurant uses. Both retail and restaurant use requires 6 car parking spaces per 100sq.metres GFA. I would note based on the calculations provided in Section 2.3.1 of the appeal that the combined floor area of public areas (retail, food preparation, seating and circulation) is c. 270 sq.m and that a parking requirement of 17 no. spaces would arise on this basis. The layout submitted with the application detailed 9 no. spaces (inc. disabled space) along the eastern side of the building, 3 no. staff car parking spaces to the rear and 4 no. spaces in the fuel forecourt, a total provision of 16 no. spaces. Having regard to the established use on site and the relatively modest increase in commercial floorspace proposed I am of the view that this level of provision is acceptable and would adequately cater for the development. In the event that the Board is minded to grant permission, I recommend that a condition is attached that requires the applicant to implement the car parking layout detailed on the site layout plan submitted with the application.

7.4. Other

7.5. I consider that the proposed elevational changes (as amended at further information stage) are well designed and would integrate well within the established industrial area. Furthermore, drainage and servicing arrangements are to the satisfaction of the planning authority.

7.6. Appropriate Assessment

7.6.1. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, in particular its location in a serviced urban area, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that permission is granted subject to the conditions set out below.

9.0 Reasons and Considerations

Having regard to the location of the site in an urban area and the pattern of existing development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity and would not conflict with the objectives of the Mullingar Development Plan. 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 as amended by the further plans and particulars submitted on the 12th day of January, 2018 and on the 14th day of March 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The car parking layout shall be in accordance with the layout detailed on drawing 844-08/16-P01 submitted on the 14th day of September 2017.
 - (b) A footpath shall be provided along the front site boundary and shall be dished to allow for entry and egress to the site.
 - (c) Provisions shall be made for a one-way entry / exit system to the petrol forecourt area on lands that are within the applicant's ownership and control.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This shall include details of line markings,

signage and other works to demarcate car parking spaces and circulation routes.

Reason: In the interests of traffic safety.

3. 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.

4. The total net retail sales 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.

5. The hours of operation of the development shall be limited to Monday to Saturday 0700 to 2300 hours, Sundays and public holidays 0700 to 2200 hours.

Reason: In the interest of residential amenity.

6. No additional advertising signs, symbols, flags, emblems or logos shall be erected externally on the buildings or anywhere on site whether or not such signs would constitute exempted development or not without a prior grant of planning permission. No internally illuminated or neon signage shall be permitted.

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

7. The external finishes of the development shall be in accordance with plans and elevation drawings submitted unless as otherwise agreed in writing with the planning authority.

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

8. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

9. All waste from the facility shall be securely stored on site prior to collection from an authorised specialist waste management operator and shall not be stored on the public road.

Reason: In the interest of public health.

10. Litter in the vicinity of the premises shall be controlled in accordance with a Litter Management Plan which 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 and visual amenity.

11. During construction the developer shall provide adequate off carriageway parking facilities for all traffic associated with the proposed development, including delivery and service vehicles/trucks. There shall be no parking along the public road.

Reason: In the interest of traffic.

12. Site development and building works shall be carried out only between the hours of 08.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 13.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the [residential] amenities of property in the vicinity.

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

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Karen Kenny,
Senior Planning Inspector

2nd December 2018