



An
Bord
Pleanála

Inspector's Report ABP-301669-18

Development	Construction of a new two storey service station with ancillary retail and food court and all associated site works
Location	Townparks, Cavan Road, Kells, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	KA171335
Applicant(s)	Michéal McKeon
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Residents of Cavan Road
Observer(s)	Eureka Secondary School
Date of Site Inspection	21 st September 2018
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of c. 1.09 ha, is located on the southern side of the Cavan Road (R147), on the western edge of Kells, Co. Meath. The site is located c. 165m from the N52/R147 roundabout, with the N52 linking to the M3 c. 1.7km south of the appeal site.
- 1.2. An existing Aldi supermarket and associated car park and access road is located to the west of the appeal site, with a single detached house to the east. Further to the east, construction of the new Eureka Secondary School is near completion. The northern side of the Cavan Road features detached single storey and dormer houses.
- 1.3. The appeal site rises from north to south and it is generally undeveloped with the exception of a number of containers and hoarding.

2.0 Proposed Development

- 2.1. The proposed development, as amended on foot of a request for further information, consists of the construction of a two storey service station with ancillary retail and food court including:
 - Service building (1771 sq m), containing retail floor space, off licence, 3 No. food/cafe offers (including drive thru restaurant) with preparation areas, storage, serving counters, seating areas, back of house area, public facilities, storage, circulation, plant and ancillary areas, and an external seating area.
 - Signage, including illuminated totem on Cavan Road, building signage and wayfinding signage throughout the site.
 - 4 No. fuel pump islands with illuminated canopy over (including corporate logo), and 1 No. HGV fuel pump island with illuminated canopy (including corporate logo).
 - 1 No. jet wash and 1 No. brush wash with water recycling capabilities, storage tank and water/air facilities.
 - Extension and reconfiguration of part of the existing access road to provide a footpath, cycle lane and vehicular/pedestrian access to the site.

- New pedestrian access from the Cavan Road footpath into the site
- All associated and ancillary site works including 74 No. parking spaces, 3 No. electric car charging points, 5 No. wheelchair accessible spaces, 4 No. coach and 6 No. HGV parking bays, partially covered cycle parking, landscaping, boundary treatments, public lighting, retaining walls, footpaths, road markings, surfacing, rainwater storage and attenuation, underground tank farm, and new connection to public mains, foul sewer and storm main.

2.2. The application documentation, as supplemented by the further information submitted, included a Planning Report, Traffic Impact Assessment, Design Statement, Photometric Report, Stage 1 Road Safety Audit, Appropriate Assessment Screening Report and an additional Traffic Report.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Meath County Council decided to grant planning permission. The following summarised conditions are noted:

- C2: Retail floor area restricted to area identified as 'retail area' on plans. It shall not be extended by incorporating ancillary areas.
- C4: Details of boundary treatments, cyclepath, footpaths etc. along R147 and access road to be submitted for agreement. Details of measures to address the recommendations of the Stage 1 Road Safety Audit to be submitted for agreement.
- C5: Report to be submitted detailing the condition of the attenuation tanks on site.
- C6: Development in accordance with RSA and TIA.
- C7/C8: Petrol/oil interceptors.
- C9: Detailed requirement for car wash water supply, use and discharge.
- C13: Archaeological testing.
- C17: Construction management plan.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's reports can be summarised as follows:

- Due to location, the development could not be considered an offline motorway service station.
- Development is well-designed and although there are residential properties in the vicinity, its location on the edge of the built-up area is appropriate.
- Proposed development is compliant with the petrol station criteria of the Development Plan.
- Net convenience retail floor space is below the 100 sq m threshold. Nature of development is that it will serve motorists using the road network and will not attract customers from the town centre.
- The proposed development is similar in scale to other service areas countrywide and in that context is not contrary to retail policy.
- Design is contemporary and considered acceptable. Landscaping to northern and western boundaries is acceptable.
- Proposed development can be integrated into the area without any significant adverse traffic impacts.
- Condition required in relation to agreeing final details of road and cycleways/footpaths.
- Condition regarding implementation of Road Safety Audit recommendations required.
- Stage 2 AA is not required.
- Condition required regarding boundary wall on eastern boundary.
- Traffic concerns have been addressed to the satisfaction of the Planning Authority and TII.
- Development is consistent with the zoning objective and well designed in terms of visual appearance.
- Retail area is limited and will not impact on the town centre.

3.3. Other Technical Reports

- 3.3.1. **Conservation Officer:** No objection, subject to conditions.
- 3.3.2. **Public lighting:** No objection, subject to conditions.
- 3.3.3. **Transportation Department:** No objection, subject to conditions.
- 3.3.4. **Water Services:** No objection, subject to conditions.
- 3.3.5. **Chief Fire Officer:** No objection.

3.4. Prescribed Bodies

- 3.4.1. **Irish Water:** No objection.
- 3.4.2. **Department of Culture, Heritage and the Gaeltacht:** Archaeological monitoring required.
- 3.4.3. **Transport Infrastructure Ireland:** No objection, subject to condition.
- 3.4.4. **Inland Fisheries Ireland:** Refusal recommended or connection to be postponed until upgrading of Kells WWTP is completed.

3.5. Third Party Observations

- 3.5.1. A number of third party observations were made at application stage and following the receipt of further information. The issues raised were generally as per the appeal, as well as the following:

- Legal agreement between applicant and observer's father who previously owned the application site, requires construction of a 2.4m high concrete block wall. Wall is required for privacy, noise, security and property value protection.
- Air quality, noise and fumes.
- Impact on school due to traffic, fast food and off-licence.
- Risk of explosion due to fuel storage.
- Visual impact.
- Impact on heritage of Kells.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. **PL17.220439 (Reg. Ref. KA/60117):** Permission granted in 2008 for 3 No. ground floor retail warehouse units with first floor mezzanine storage and 7 No. ground floor light industrial units and associated signage and site works.

4.2. Surrounding Area

- 4.2.1. **PL17.226508 (Reg. Ref. KA/60768):** Permission granted in 2008 for single storey licensed Aldi discount foodstore, 98 car parking spaces and associated development.
- 4.2.2. **Reg. Ref. KA/140555:** Permission granted in 2014 for construction of a new 800 pupil two storey post primary school and associated development.
- 4.2.3. **Reg. Ref. KA/50030:** Withdrawn application for 8 No. ground floor retail warehouse units with first floor mezzanine storage, 5 No. ground floor warehouse units with first floor mezzanine storage and 3 No. ground floor light industrial units with first floor mezzanine storage, and associated development.
- 4.2.4. **Reg. Ref. KA/60114:** Withdrawn application for a single storey Aldi supermarket and associated development.

5.0 Policy Context

5.1. Retail Planning Guidelines for Planning Authorities 2012

- 5.1.1. Section 2.4.3 of the Guidelines states that there is a floorspace cap for petrol filling station shops of 100 sq m net, irrespective of location.
- 5.1.2. Annex 1 sets out a glossary of terms, and defines '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. Meath County Development Plan 2013-2019

5.2.1. Kells is designated as a ‘Moderate Sustainable Growth Town’ in the Settlement Strategy for County Meath. It is also designated as a ‘Secondary Economic Growth Town’ within the ‘Navan Core Economic Area’, and as a Level 3 retail centre within the Retail Hierarchy for the County.

5.2.2. Section 11.10 relates to petrol service stations and states that:

“New petrol filling stations and refurbished existing stations will be required to have a high quality of overall design and architectural layout to ensure an attractive environment, which integrates with and complements or enhances its surroundings.

Proposals for petrol filling stations shall comply with the requirements of Design Manual for Roads and Bridges (National Roads Authority) as well as the Dangerous Substances (Retail and Private Petroleum Stores) Regulations 1979 to 2010 (or any such other relevant standards and legislation that may be enacted) and Smarter Travel. Proposals for petrol stations should consider the risk of any hydrocarbon contamination of Natura 2000 sites and groundwater. Particular attention should be paid to the relevant River Basin Management Plan.

Ancillary retail uses may be permitted but having regard to the impact of excessively scaled retail uses on established urban retailing areas and the considerations of public and traffic safety, it will be a requirement that any retailing component shall not exceed 100 sq.m. of retailing area.

5.2.3. Section 11.10.1 states that in assessing individual planning applications for new petrol service stations, the following standards shall apply, where appropriate:

- A minimum frontage of 30 metres shall be provided inside a 60 km/h (40 mph) speed limit zone and this frontage must be kept clear of any structure (apart from boundary fence) for a depth of not less than 4.5 metres from the roadside boundary of the site.

- Every new petrol filling station must be laid out in such a manner that vehicles are refuelled, and can wait to be re-fuelled, clear of the adjoining roadway. The means of access should be designed to give best visibility.
- The layout of new or redeveloped petrol filling stations shall permit safe access for delivery tankers (cab plus trailer) up to 15.25 metres in length, and an adequate off road area shall be provided for parking these vehicles safely without obstructing access to pumps while fuel is being delivered to petrol filling stations.
- The scale of buildings contained in a petrol filling station shall be related to the scale, character and form of adjoining structures to ensure an attractive development that integrates with and complements its surroundings.
- Car washing and vacuuming facilities are to be sited so as not to interfere with residential amenities or other adjoining sensitive land uses.
- Landscaping, including trees or shrub planting and suitable screening, shall be required to protect the amenities of the surrounding area and enhance the appearance of the development. A comprehensive landscaping scheme shall be prepared by a fully qualified landscape architect and submitted as part of the planning application. The use of native non-invasive species will be preferred in landscaping.
- The surface of the forecourt shall be graded, surfaced with bitumen macadam or other suitable material and drained to the satisfaction of Meath County Council. A petrol interceptor trap shall be fitted to the surface water drainage system. Provision shall be made for the storage and removal of refuse and waste material.

5.2.4. Section 11.10.2 sets out the location requirements for such development:

- Such facilities will generally be required to locate within the 60 km/h and 50 km/h speed limit areas and they shall not be permitted where the amenities of nearby properties will be affected and or obstruction of traffic flows would arise.
- Petrol service stations will not generally be permitted adjoining residential areas, unless it can be clearly demonstrated that no significant damage to

residential amenities will occur by reason of factors such as noise, visual obtrusion, safety considerations or fumes and smells. Hours of operation will be limited in residential areas.

5.2.5. Section 11.10.3 provides criteria for signage and advertisements at service stations.

5.2.6. Section 11.10.4 states that forecourt lighting should be limited to that which is necessary for the safe operation of a petrol filling station. The use of high level and powerful lighting should be avoided where possible and should not interfere with the amenities of adjoining premises or cause glare, hazard or confusion to public road users. All external lighting shall be cowled and diverted away from the public roadway to prevent a traffic hazard.

5.3. **Kells Development Plan 2013-2019**

5.3.1. The appeal site is located within the Kells development boundary and is zoned 'B2', to provide for the development of a retail warehouse park. The Aldi to the west is zoned 'B1', commercial/town centre, with the lands to the west of this also zoned 'B2'. The lands to the east and north of the appeal site are zoned 'A1', existing residential.

5.3.2. Petrol stations, restaurants/cafes, drive through restaurants and take-aways/fast food outlets are all 'open for consideration' uses under the B2 zoning objective.

5.3.3. The following Town Centre Policies are noted:

- **Town Centre POL 2:** To encourage the development of the retail and service role of Kells as a self sustaining Moderate Sustainable Growth Town in accordance with the policies contained in the County Development Plan, the County Retail Strategy and the Greater Dublin Area Retail Planning Guidelines 2011.
- **Town Centre POL 3:** To protect and enhance the vitality of Kells town centre and to promote the orderly expansion of the town centre in a manner which provides permeability between the existing town centre and designated expansion areas.
- **Town Centre POL 7:** To facilitate the appropriate expansion of the lands adjoining the Aldi Discount Foodstore on the Cavan Road for the provision of

retail warehousing / car showrooms / service areas generally in accordance with the agreed Framework Plan for the extent of lands now zoned (Appendix F refers). In addition, future development proposals will be subject to a Traffic & Transport Assessment (TTA), where appropriate, in relation to the potential impact of any specific development on the national road network in the area.

- 5.3.4. Appendix F of the Development Plan contains the Cavan Road Framework Plan 2013, and the appeal site is located within this area. Section 4.7 of the CRFP states that “the Planning Authority also considers the subject lands to be suitable to potentially accommodate a car showroom use and/or a petrol filling station type use on the opposite side of the main entrance road to the Aldi development. This will allow for the displacement of similar type uses along Bective Street in the town centre to a more appropriate location”.
- 5.3.5. An indicative site layout plan for the Framework Plan shows a ‘car showroom/filling station’ to the front (north) of the appeal site, with a ‘light industrial’ unit to the rear (south).

5.4. Natural Heritage Designations

- 5.4.1. The appeal site is not located within or in close proximity to any sites with a natural heritage designation. The closest such sites are the River Boyne and River Blackwater SAC (Site Code 002299) and SPA (Site Code 004232), c. 1km north of the appeal site.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. One third party appeal was lodged by a group of six individuals referring to themselves as ‘residents of Cavan Road’. The issues raised in the appeal can be summarised as follows:
- Development is unsuitable in an urban residential area.

- Due to cul de sac type of entrance, it is wholly unsuitable for vehicles and HGVs to negotiate safe passage to and from the proposed development and the existing Aldi supermarket via the same entrance road.
- There is no pedestrian crossing to gain access to Aldi currently. Addition of proposed development would make it hazardous for pedestrians.
- Kells has a bye-law banning HGVs. Proposed development would be in contravention of this ban.
- Proposed development would be more suitable adjacent to a motorway.
- Dangerous carbon monoxide fumes from proposed development.
- Noise impacts from traffic and HGVs.
- Light pollution.
- 24 hour business is unsuitable in a residential area.
- Proximity to Eureka Secondary School and health impacts of fast food outlets and off licence. Potential anti-social behaviour.
- Proposed development would destroy the ambience of the area.
- Impact on struggling businesses in Kells town centre.
- Fatalities due to HGVs in Kells have occurred in the past. Likelihood of such incidents increased.

6.1.2. The appeal also includes copies of the appellants' earlier observations to the Planning Authority and asks the Board to also consider these, as they contend that the Planning Authority or applicant did not address their concerns. These observations are summarised at Section 3.5 above.

6.2. Applicant Response

6.2.1. A response to the third party appeal was submitted on behalf of the applicant by Declan Brassil & Co. and can be summarised as follows:

- Site is a transitional mixed-use area close to the urban edge. It is not accurate to describe it as a residential area.

- The site is proximate, accessible and convenient to N3, M3 and N52. EU Directives designate 'roads' as a workplace, and require facilities to be provided.
- Proposed development is consistent with Kells Development Plan and the Framework Plan agreed with the Planning Authority in 2013.
- The nature, scale, height, massing and details of the proposed development are consistent with the character and context of lands in the immediate vicinity.
- The principle of the coherent and plan-led development of the Framework Plan lands was supported by the Board in 2008 (Ref. PL17.220439).
- A filling station was envisaged and provided for under the zoning objective and Framework Plan. Traffic will not pass through residential areas to access the facilities.
- The full range of services will not be available on a 24 hour basis. The operation from 23:00 to 06:00 will be limited to the ability to refuel vehicles and provide payment via a hatch or at the pump.
- The majority of properties on the northern side of Cavan Road will be effectively screened from the proposed development by the existing dense tree line to the east of the site. The Cloisters development to the south will also be screened, due to earthworks and the proposed hedgerow along the southern boundary.
- The proposed service station and canopy have been set back from the road, with high quality landscaping along the northern boundary to soften and screen the development.
- Lighting is designed to avoid light pollution and spillage. Lighting report submitted with application. There is existing external lighting at the adjacent Aldi supermarket.
- 24 hour element and internally directed security cameras will act as a deterrent to anti-social or criminal behaviour.
- Planning Authority was satisfied with TIA and further information submitted.

- The alleged contravention of a HGV traffic restriction was not considered to be a relevant issue by the Planning Authority. It was addressed in the ILTP report submitted as further information.
- The proposed development is located on the urban fringe and has been designed to provide adequate services to motorists and freight travelling on the N52 and M3. It is not intended to detract from the businesses or vitality of the town centre. Retail element is modest at 99 sq m, and the food offer is to cater for drivers.
- Proposed development will create employment and will not have an adverse impact on the vitality or vibrancy of the retail core.
- The applicant has engaged with the school administration in respect of the proposed development. The applicant is committed to supporting healthy eating by ensuring a range of healthy option. The three food offers include a deli/carvery, a coffee dock and a restaurant with drive through.
- It is intended that the requirements of the school administration and public at large regarding healthy eating will be reflected in the offerings of the proposed food elements.
- The proximity of fast food restaurants to schools is addressed in the LAP Guidelines, noting that the proximity of fast food outlets to schools and parks is a relevant consideration in the process of determining zoning objectives and priorities.

6.3. Planning Authority Response

6.3.1. The Planning Authority's response can be summarised as follows:

- Proposed development is consistent with the policies and objectives of the Development Plan.
- Proposed development is consistent with zoning and is located in a strategic location in close proximity to the N52.

- The Executive of Meath County Council have no issue with undertaking a review of the town by-laws which ultimately are a function of the Elected Members.
- The Board is asked to uphold the decision of the Planning Authority.

6.4. **Observations**

6.4.1. One observation was received from Eureka Secondary School and can be summarised as follows:

- Fast food outlets and off licence would negatively impact on pupils. Secondary school pupils would be able to access the fast food outlets when travelling to and from school and at break times. Students over 18 would be able to access the off-licence at these times.
- Increased traffic would present a traffic hazard.
- Noise/air pollution.
- Local Area Plan Guidelines for Planning Authorities state that Planning Authorities should carefully consider the appropriateness of fast food outlets in the vicinity of schools.
- National Policy Framework for Children and Young People details the potential costs of inaction in relation to children's health.
- Planning precedent under PL17.244281, where permission was refused for a drive through restaurant due to proximity to schools.
- The sale of fast food and alcohol in close proximity to a school was not given adequate consideration by the Planning Authority.

6.5. **Further Responses**

6.5.1. None.

7.0 **Assessment**

7.1. I consider that the key planning issues arising in this appeal are as follows:

- Principle of proposed development.
- Roads and Traffic.
- Residential amenity.
- Design and layout.
- Proximity to school.
- Other issues.
- Appropriate Assessment.
- Environmental Impact Assessment.

7.2. Principle of Proposed Development

- 7.2.1. The appeal site is primarily located within the development boundary for Kells and is primarily zoned 'B2' under the Kells Development Plan 2013-2019, to provide for the development of a retail warehouse park. The Aldi to the west is zoned 'B1', commercial/town centre, with the lands to the west of this also zoned 'B2'. The lands to the east and north of the appeal site are zoned 'A1', existing residential. I note, however, that the southernmost part of the appeal site, comprising the HGV/bus parking, refuelling and circulation areas are located on unzoned lands outside of the Kells Development Boundary.
- 7.2.2. Petrol stations, restaurants/cafes, drive through restaurants and take-aways/fast food outlets are all 'open for consideration' uses under the B2 zoning objective.
- 7.2.3. Appendix F of the Development Plan contains the Cavan Road Framework Plan 2013, and the appeal site is located within this area. Section 4.7 of the CRFP states that "the Planning Authority... considers the subject lands to be suitable to potentially accommodate a car showroom use and/or a petrol filling station type use on the opposite side of the main entrance road to the Aldi development. This will allow for the displacement of similar type uses along Bective Street in the town centre to a more appropriate location".
- 7.2.4. An indicative site layout plan for the Framework Plan shows a 'car showroom/filling station' to the front (north) of the appeal site, with a 'light industrial' unit to the rear (south).

7.2.5. The proposed development does not include a light industrial unit or a car showroom, however I consider the principle of the proposed filling station development to be broadly consistent with the zoning objective and the Framework Plan pertaining to the site and the Policies set out in the Kells Development Plan which seek to encourage the development of the retail and service role of Kells as a self-sustaining Moderate Sustainable Growth Town and I therefore consider the proposed development to be acceptable in principle, subject to consideration of the planning issues identified in Section 7.1 above.

7.3. Roads and Traffic

7.3.1. The appellants raise a number of issues with regard to issues of traffic congestion and traffic hazard, particularly with regard to HGV traffic.

7.3.2. The Planning Report submitted with the planning application outlines that the proposed development has been located and designed to serve inter-urban motorist and freight traffic from the N52, M3 and Kells Business Park. Notwithstanding this, having regard to the proposed access from a Regional Road (R147) and the c. 1.5km separation distance from Junction 10 of the M3 Motorway, I do not consider that the proposed development represents an 'Off-line Motorway Service Area', as described in the Spatial Planning and National Roads Guidelines for Planning Authorities, 2012. I note in this regard that, following the submission of further information, TII did not object to the proposed development subject to the development being undertaken in accordance with the recommendations of the Transport Assessment and Road Safety Audit submitted by the applicant. It is also of note that the Transportation Department had no objection, subject to conditions.

7.3.3. It is proposed to access the proposed development via an existing access road off the R147 which currently serves the Aldi supermarket to the west of the appeal site. This access road and the junction with the R147 are within the 60 km/hr zone and there is an existing dedicated right-turn lane in place on the R147 which facilitates access from the west without impeding flow on the R147. The R147 also features footpaths and an off-road cyclepath linking the town centre with the appeal site. The access road is c. 7m wide, with footpaths and off-road cyclepaths on both sides. The existing visibility splays at the junction of the access road and the R147 are unobstructed, and are in excess of the DMURS requirements in my opinion.

- 7.3.4. It is proposed to provide separate access points to the proposed development from the access road for cars and HGVs/buses, and a pedestrian access is also proposed from the R147 in the north eastern corner of the site. The proposed access arrangements will require the extension of the access road a short distance to the south, but no works are proposed to the R147.
- 7.3.5. The pedestrian route through the proposed development is well-considered through the provision of road markings, clearly defined surface treatments and separate pedestrian access onto the R147. I also consider the proposed separation of HGV/bus traffic from car traffic to be appropriate in the interests of traffic safety, and I consider the one-way circulation system for HGV/bus traffic to be a suitable means of reducing the requirement for reversing movements within the site.
- 7.3.6. With regard to car parking, a total of 82 No. car parking spaces are proposed, including 5 No. disabled access spaces and 3 No. electric car charge points. It is also proposed to provide 6 No. HGV parking spaces, 4 No. bus/coach parking spaces and 30 No. bicycle parking spaces. This level of car parking is generally in accordance with the Development Plan parking standards.
- 7.3.7. In terms of the impact of the proposed development on the surrounding road network, the TIA includes the results of PICADY traffic modelling analysis. The data underlying this analysis included traffic count surveys, data and findings from the TTA prepared for the Eureka Secondary School planning application and comparison with the TRICS database. I consider that a relatively conservative approach has been taken in the traffic modelling, and note that it also considered the effect of a potential future 100 unit residential development on the applicant's currently unzoned lands to the south of the appeal site, which would also utilise the access road serving the proposed development and the Aldi supermarket. The modelling found that the access road/R147 junction would operate well within capacity, with a maximum Ratio of Flow to Capacity of 0.53 for the 2033 Design Year. Similarly, ARCADY traffic modelling of the R147/N55 roundabout found that the base year maximum RFC to be 0.304, with a maximum RFC of 0.494 for the 2033 Design Year. No significant queueing or delays are predicted at the roundabout.

- 7.3.8. Having reviewed the TIA and the subsequent report submitted in response to the request for further information, I am satisfied that the proposed development will not have a significant effect on the operation of the R147/access road junction or the R147/N55 roundabout and I consider that, given the proposed access arrangements via an existing access road served by a dedicated right-turning lane and the presence of good pedestrian and cyclist infrastructure in the area, the additional traffic generated on the R147 in each direction is not likely to result in any significant additional traffic congestion or the creation of a traffic hazard.
- 7.3.9. Notwithstanding the general acceptability of the proposed development in terms of its traffic impact, I note that the Stage 1 Road Safety Audit submitted in response to the request for further information identified a number of relatively minor issues. Should the Board be minded to grant permission, I recommend that a suitable condition be included to require compliance with the recommendations of the RSA, and the submission of compliance drawings to the Planning Authority.
- 7.3.10. **Ban on HGVs**
- 7.3.11. As noted above, the proposed development includes 4 No. coach and 6 No. HGV parking bays with a standalone HGV fuel pump island.
- 7.3.12. The appellants note that there is currently a HGV ban in operation in Kells. This ban was introduced under the Kells Heavy Good Vehicles (HGV) Traffic Restriction Bye-Laws 2016. While the appeal site itself is outside of the HGV ban perimeter, the extent of the R147 Cavan road between the roundabout to the west of the appeal site and the town centre to the east is within the ban perimeter, and is a Specified Road for the purposes of the Bye-Laws.
- 7.3.13. The Planning Authority's response to the appeal states that the Executive of Meath County Council have no issue with undertaking a review of the town bye-laws however they acknowledge that this is ultimately a function of the Elected Members.
- 7.3.14. Article 4 of the Bye-Laws states that except for vehicles exempted under the provisions of Article 5, a vehicle having 4 axles or more shall not enter upon a Specified Road. Article 5 sets out categories of exempted vehicles. This includes, *inter alia*, public transport vehicles, vehicles requiring to enter upon a Specified Road for the purpose of delivery or collection of goods or provision of services to businesses and residents in Kells, and vehicles owned by a resident or person

operating a business in that part of Kells served by the Specified Roads. It does not appear to me that general HGV traffic solely seeking to utilise the proposed development for refuelling and other services would come within any of the exempted vehicle categories.

- 7.3.15. The applicant's Planning Report states that the siting of the proposed development is intended to serve inter-urban motorist and freight traffic from the N52, M3 and Kells Business Park (which is to the north west of the appeal site). The proposed development would therefore seek to attract HGVs onto a Specified Road where a ban on vehicles with 4 axles or more is in effect. Notwithstanding this, I also accept the applicant's contention that the function of the HGV ban is ultimately to remove HGV traffic from Kells town centre to the new roads which by-pass the town centre (i.e. the N52). In this regard, I consider that the majority of HGV traffic is likely to approach from and return to the west (i.e. the N52 and the M3), rather than continuing east towards Kells Town Centre. The applicant has proposed additional signage on the R147 to remind HGVs not to proceed through the town centre, however this would be a matter for agreement with the Local Authority.
- 7.3.16. Given that the HGV ban is in force due to a bye-law, that the Executive of the Planning Authority have indicated that they have no objection to a review of said bye-law, and that it may or may not ultimately be amended by the Elected Members, I do not consider that this should form the basis of a refusal of planning permission. I note in this regard the provisions of section 34(13) of the Planning and Development Act 2000, as amended, which states that a person is not entitled solely by reason of a permission to carry out any development. In other words, a grant of permission would not free the developer from a requirement to comply with any relevant bye-laws that are in effect.

7.4. Residential Amenity

- 7.4.1. The appeal raises issues regarding the impact of the proposed development on residential amenity.
- 7.4.2. While the appeal site and adjacent lands to the west are zoned for retail warehouse park and commercial/town centre, respectively, the existing dwellings to the north (on the opposite side of the R147) and the dwelling to the east are zoned 'existing

residential'. Given the mixed zoning of the area, it is clear that regard must be had to the protection of residential amenity.

7.4.3. The proposed development of this currently vacant site will introduce built structures, noise and lighting as well as additional traffic movements in the vicinity of the existing dwellings. This, allied with the lengthy hours of operation proposed for the development (including 24 hour operation for refuelling), will result in the proposed development having the potential to alter the local character of the area and impact on residential amenities.

7.4.4. Notwithstanding this, the appeal site is located alongside the busy R147 Regional Road which is one of the main entrances to Kells Town Centre, with an existing Aldi supermarket to the west and a Secondary School nearing completion a short distance to the east. Due to the proposed site layout the houses to the north of the appeal site have a minimum separation distance of c. 30m from the northern boundary of the appeal site, and c. 100m from the service building. Given these separation distances, the existing background noise arising from traffic on the R147, the built-up character of the environment, the proposed site access arrangements which include the shared use of an existing access road which currently serves the Aldi supermarket, and the proposed landscaping works, I do not consider that the proposed development would have an unacceptable impact on residential amenity. I also note that the majority of traffic seeking to utilise the proposed development will be approaching from the west, and will turn into the site in advance of the residential areas. The majority of the traffic leaving the proposed development will also be turning west, again away from the residential areas. Nevertheless, should the Board be minded to grant permission, I consider that a number of mitigation measures would be appropriate given the presence of existing residential dwellings on the R147. This should include the implementation of the landscaping plan, controls on the hours of operation, and controls relating to signage and lighting. I also note that a significant amount of excavation will be required to facilitate the proposed development due to the site topography, and I recommend that a Construction Management Plan be required by way of Condition to ensure that construction-stage impacts are suitably eliminated or mitigated.

7.4.5. With regard to the dwelling to the east, I note that a solid boundary wall is proposed, which allied with the screening offered by the existing mature coniferous trees and

the separation distances will be sufficient to mitigate the impact on the residential amenity to an acceptable level in my opinion.

- 7.4.6. In conclusion, and subject to the conditions mentioned above, I do not consider that the proposed development would have an unacceptable impact on residential amenity.

7.5. Design and Layout

- 7.5.1. The proposed service building is relatively large, with a total gross floor area of 1,771 sq m. The proposed retail element of the proposed development, including the off-licence area, extends to 99 sq m. This is below the 100 sq m cap set out in the Retail Planning Guidelines and the County Development Plan and is acceptable in my opinion.
- 7.5.2. In terms of footprint and height, the proposed service building with its maximum height of c. 10.4m is comparable with the existing Aldi supermarket to the west, albeit that it is further set back from the road. The proposed canopy over the fuel pumps would, however, extend forward of the Aldi building line. The proposed finishes comprise a mix of metal cladding, precast concrete, timber cladding and extensive glazing, with a dual monopitch roof design with sedum grass on the more visible west-facing roof plane. A number of signs of various sizes are proposed to the service building and canopies, with a c. 9.7m high free-standing totem-style sign at the north western corner of the site (i.e. the junction of the R147 and the access road). This proposed totem sign features a large Celtic-style spiral design at the top. I do not consider the level of signage proposed to be excessive with regard to the scale and extent of the proposed development and its proposed use.
- 7.5.3. I consider the design of the proposed building to be broadly acceptable in terms of its scale, layout and restrained design, enlivened by features such as the sedum roof, circular rooflights and the timber cladding. I also consider it to be broadly consistent with the detailed guidance for service stations set out in Section 11.10 of the Meath County Development Plan 2013-2019.
- 7.5.4. I also consider the site layout to be generally acceptable, and note that due to the location of the appeal site in relatively close proximity to the R147/N52 roundabout, the existing Aldi and the new Eureka Secondary School a short distance to the east,

the proposed development would result in the emergence of a more urban form that will form an appropriate entrance point to the town of Kells in my opinion.

7.5.5. Due to the site topography there will be a requirement for a significant amount of excavation in the southern portion of the appeal site and the construction of substantial retaining walls. This excavated area will, however, be largely screened from the public road and nearby residential areas by the proposed service building and the existing line of high coniferous trees along the eastern boundary of the appeal site.

7.5.6. In conclusion, I consider the design and layout of the proposed development to be broadly acceptable.

7.6. Proximity to School

7.6.1. Both the appellants and the observer have raised concerns regarding the proximity of the future Eureka Secondary School to the appeal site, and contend that the presence of fast food outlets within the proposed development will impact on the health of children attending the school. The observer also contends that pupils over the age of 18 will be able to utilise the proposed off-licence at break times.

7.6.2. The observation made by Eureka Secondary School also draws the Board's attention to what they contend is a planning precedent under ABP Ref. PL17.244281, where permission was refused for a drive-through restaurant. I note, however, that while the Inspector in that case recommended refusal on the basis of, *inter alia*, the proximity of the fast food outlets to schools and public health nuisance, the Board did not ultimately include this as a reason for refusal.

7.6.3. With regard to planning policy, there do not appear to be any specific Objectives or Policies in the County Development Plan or the Kells Development Plan which seek to control or restrict land uses in the proximity of schools.

7.6.4. Having regard to the scale of the proposed development and its associated refuelling and parking facilities, and the site location which is accessible from the national road network, it appears to me that the focus of the proposed development is primarily inter-urban car-borne customers.

- 7.6.5. The development for which the applicant has sought permission includes a retail element, off-licence and three food offerings. I note that the floor plans indicate a deli servery, a carvery servery, and what would appear to be a 'fast food' type restaurant with drive through facility.
- 7.6.6. While there is a new school nearing completion a short distance to the east of the appeal site, I do not consider it reasonable to refuse permission or to omit the food offerings and off licence area on the basis of health impacts. There is already an Aldi supermarket adjacent to the appeal site which sells alcohol and a range of foodstuffs, including snacks and confectionary. Given that schools in built-up areas would typically be in close proximity to a range of food offerings and sources of alcohol, I do not consider it appropriate to seek to restrict such uses in an area where there is no Development Plan or other policy-based support for such restrictions.
- 7.6.7. I therefore do not consider that the proximity of the appeal site to the secondary school should form the basis of a refusal of planning permission.

7.7. **Other Issues**

7.7.1. Archaeology

- 7.7.2. The Department of Culture, Heritage and the Gaeltacht made a submission to the Planning Authority recommending that an archaeological monitoring condition be included in any grant of planning permission.
- 7.7.3. Given the extent of the proposed development and the scale of excavations required, and noting the proximity to the historic town of Kells, I consider the Department's recommendation to be appropriate. Therefore, should the Board be minded to grant permission, I recommend that a suitable condition requiring archaeological monitoring be included.

7.8. **Appropriate Assessment**

- 7.8.1. The appeal site is not located within or in close proximity to any sites with a natural heritage designation. The closest such sites are the River Boyne and River Blackwater SAC (Site Code 002299) and SPA (Site Code 004232), c. 1km north of

the appeal site. Killyconny Bog (Cloghbally) SAC (Site Code 000006) is also located c. 6.5m to the north west.

- 7.8.2. The features of interest for the River Boyne and River Blackwater SAC are: Alkaline fens; Alluvial forests; River Lamprey (*Lampetra fluviatilis*); Salmon (*Salmo salar*); and Otter (*Lutra lutra*). The sole feature of interest for the River Boyne and River Blackwater SPA is the Kingfisher (*Alcedo atthis*). The features of interest for Killyconny Bog (Cloghbally) SAC are active raised bogs and degraded raised bogs still capable of natural regeneration. The Conservation Objectives for both SACs and the SPA are to maintain or restore the favourable conservation condition of the various habitats and species for which each site was selected.
- 7.8.3. An Appropriate Assessment Screening Report, prepared by Faith Wilson Ecological Consultant, was submitted in response to the request for further information. The Report notes that there are no watercourses, drainage ditches, ponds, or buildings or trees suitable for roosting bats within the appeal site. Due to the lack of water features, the report considers that otters are not likely to utilise the site, which is a reasonable conclusion in my opinion.
- 7.8.4. The report rules out potential impacts on Killyconny Bog (Cloghbally) SAC, due to distance and lack of connectivity with the appeal site. I consider this conclusion to be reasonable.
- 7.8.5. With regard to the River Boyne and River Blackwater SAC and SPA, the report considers that potential impacts could arise from the surface water network, foul network and the water main supply.
- 7.8.6. With regard to water supply, it is proposed to use the public mains water, and therefore no significant effects are likely to arise. With regard to surface water management, it is proposed to attenuate flow from the site to greenfield levels with attenuation tanks, permeable paving, hydrobrake and a Class 1 bypass separator before water enters the public drainage system. Wash water from the car wash will be recycled for re-use, with the remainder discharged to the foul network. With regard to foul drainage, it is proposed to utilise an existing foul storage tank and pumping station within the appeal site, which is currently used by the Aldi supermarket, to connect to the public foul drainage network

- 7.8.7. The AA Screening Report concludes that no Natura 2000 site or the qualifying interests of same will be potentially impacted by the proposed development. A full Appropriate Assessment / Natura Impact Statement is therefore not considered to be required. I note that the Planning Authority concurred with this conclusion.
- 7.8.8. I note with respect to wastewater management that Inland Fisheries Ireland made a submission to the Planning Authority at application stage contending that Kells WWTP is overloaded and recommending that permission be refused or that connection be postponed until upgrading of the WWTP is completed. However, neither Irish Water, nor the Water Services Department of the Planning Authority had an objection to the proposed development and their respective reports make no mention of capacity issues at Kells WWTP.
- 7.8.9. Given that it is proposed to connect to the public foul network, that Irish Water has not identified any issues with regard to this proposed connection or the capacity of Kells WWTP, and noting that a connection agreement will be required prior to the commencement of development, I consider it reasonable to form the view that wastewater arising from the proposed development is not likely to result in a significant effect on the SAC or SPA in light of the sites' Conservation Objectives.
- 7.8.10. 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 not be likely to have a significant effect on the River Boyne and River Blackwater SAC (Site Code 002299) and SPA (Site Code 004232), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.9. **Environmental Impact Assessment.**

- 7.9.1. Having regard to the nature and scale of the development for which permission is sought, the nature of the receiving environment and proximity to the nearest sensitive locations, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

- 8.1. I recommend that planning permission should be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature and scale of the proposed development, the provisions of the current Meath County Development Plan 2013-2019, the Kells Development Plan 2013-2019 and the associated Cavan Road Framework Plan 2013 contained therein, the zoning objective pertaining to the site, the pattern of existing development in the vicinity and the information submitted with the planning application and appeal, the Board is satisfied that the proposed development generally accords with the policy requirements of the Development Plan. It is further considered that the design, scale and finish of the proposed development, subject to conditions, would not seriously injure the visual or residential amenities of the area, would not represent a traffic hazard and 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 21st 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 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 Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April, 2012.

3. Prior to commencement of development, details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority.

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

4. The retail and food related elements of the proposed development shall not operate outside of the period between 0700 hours and 2300 hours on a daily basis. No deliveries shall take place outside these hours.

Reason: To safeguard the 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. The works to the public road and the internal road network serving the proposed development, including junctions, parking areas, cycle parking, directional signage, footpaths, cyclepaths and kerbs, shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interests of amenity and of traffic and pedestrian safety.

7. Details of the proposed measures to address the recommendations of the Stage 1 Road Safety Audit submitted to the planning authority on the 21st day of March 2018 shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety.

8. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

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

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

10. All service cables associated with the proposed development shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

11. The site shall only be used as a petrol filling station and no part shall be used for the sale, display or repair of motor vehicles without a prior grant of planning permission.

Reason: In the interest of protecting the residential amenities of the area.

12. The landscaping scheme, as lodged with the planning application, shall be carried out within the first planting season following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

13. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:-

- (i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.
- (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

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

Reason: To protect the residential amenities of property in the vicinity of the site.

14. 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 and to ensure a proper standard of development.

15. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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.

16. 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 measures to prevent spillage on the public road network, construction traffic management, construction traffic parking, noise and dust management measures and off-site disposal of construction/demolition waste.

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

17. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

18. 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, 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.

Niall Haverty
Planning Inspector

8th January 2019