



An  
Bord  
Pleanála

## Inspector's Report ABP-301783-18

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<b>Development</b>	The change of use of the existing motor repair and coffee shop to an unmanned petrol filling station.
<b>Location</b>	Woodbine Service Station, Stillorgan Road/Woodbine Road, Dublin 4.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D17A/1074
<b>Applicant(s)</b>	Maxol Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Fergus Flanagan
<b>Observer(s)</b>	Michael C Murphy
<b>Date of Site Inspection</b>	30 <sup>th</sup> July 2018
<b>Inspector</b>	Mary Crowley

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## 1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.863 ha is located at the junction of Woodbine Road and the Old Stillorgan Road and is opposite the UCD Campus. Adjoining the site to the west is the recently converted Montrose Hotel to student accommodation. There is an existing motor repair and coffee shop on site. The appellants house adjoins the appeal site to the north east. A set of photographs of the site and its environs taken during the course of the site inspection is attached.

## 2.0 Proposed Development

2.1. The Planning Application submitted to DLRCC on the 8<sup>th</sup> December 2017 sought permission for the redevelopment of the existing motor repair and coffee shop buildings to include the following:

- the change of use of the existing motor repair and coffee shop to an unmanned petrol filling station,
- demolition of existing forecourt buildings,
- the erection of new Unmanned Filling Station with a single storey Service Kiosk Building, acoustic corporate hoarding, five x 4.5 metre high poles with flood light and security cameras,
- two Underground Fuel Tanks, Underground Storm Water Slow Release Tank, Petrol Interceptor, erection of one 6.5m high aluminium clad illuminated gantry sign, and
- associated services, redesigned entrance and exit points, and all site works associated with the proposed development

2.2. The application was accompanied by a Planning Report, Traffic and Transport Assessment, Engineering Report, Waste Management Plan, Outdoor Lighting Report and Noise Impact Assessment.

2.3. Further information was requested on 6<sup>th</sup> February 2018. The following further information was submitted on the 17<sup>th</sup> April 2018 as summarised:

- Sign reduced sign from a height of 6.5m to 4.5m
- Lighting Report submitted. Proposed lighting into the adjoining property is well below the standards set out in the Light Guidelines document. Proposed to close the station each evening at 2300 hours. Also proposed to use low energy type lighting.
- Report from PUNCH Consulting Engineers submitted in relation to traffic and lighting. It contains letter and emails from the Local Authority showing acceptance of the measures proposed which include the required correspondence from the Public Lighting Section regarding the existing public lighting pole at No 5 at the R138 junction.
- Drawing showing NO ENTRY road markings in front of exit to the station.
- Stated that the proposed development is materially different from the development refused by the Board in 2005

2.4. The report was accompanied by an Outdoor Lighting Report and details and Road Engineering Report.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. DLRCC issued a notification of decision to grant permission subject to 16 generally standard conditions on 11<sup>th</sup> May 2018.

#### 3.2. Planning Authority Reports

3.2.1. The **Case Planner** in their first report recommended that the following further information be requested as summarised:

- 1) Scale and form of the proposed 6.5m high free standing, internally illuminated sign to be reduced
- 2) Confirmation of the number of flood lights being proposed and submit revised plans showing their location.
- 3) Letter of consent from the Planning Authority (Traffic Section), stating that they accept the required realignment of the kerb line and the proposed

extension to the roadway to accommodate the future swept path of Fuel Tanker deliveries

- 4) Letter from the Planning Authority (Public Lighting Section), stating that they accept the required relocation of the existing Public Lighting Pole (No.5) at the R138 junction
- 5) Detailed plan drawings of the: a) the relocated road sign at the R138 junction  
b) the relocated road sign at the Stillorgan Road/Woodbine Road Roundabout junction to accommodate the future swept path of Fuel Tanker deliveries
- 6) Detailed plan drawings showing NO ENTRY road markings in front of the exit

3.2.2. The **Case Planner** in their second report and having considered the further information recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by DLRCC reflects this recommendation

3.2.3. Other Technical Reports

3.2.4. **Transportation Planning** (30<sup>th</sup> January 2018) – Requested further information in relation to swept path for fuel tanker deliveries, public lighting and road signage. In a second report (4<sup>th</sup> May 2018) and having considered the further information recommended that permission be granted subject to conditions relating to taking in charge standards, road opening license, SuDS, construction traffic and repair of damage to public roads.

3.2.5. **Waste Section** (30<sup>th</sup> January 2018) – No stated objection subject to conditions relating to waste management and hazardous waste.

3.2.6. **Surface Water Drainage** (31<sup>st</sup> January 2018) – No objection subject to conditions relating to surface water and permeable hardstanding.

3.2.7. **Environmental Health Air Pollution & Noise Control** (31<sup>st</sup> January 2018) – No stated objection subject to conditions relating to hours of operation, construction work, plant service, normal noise operation restrictions, no emissions of malodours etc and delivery times.

3.2.8. **Public Lighting Section** (30<sup>th</sup> January 2018) – States that the outdoor lighting within the site is acceptable.

### 3.3. Prescribed Bodies

3.3.1. There are no further reports recorded on the planning file.

### 3.4. Third Party Observations

- 3.5. There are nine observations recorded on the planning file from (1) Daniel Brennan, (2) Fergus Flanagan, (3) Michael C Murphy, (4) Topaz energy Ltd, (5) Deborah Matthews, (6) Stephen Gillmor, (7) Amanda Pathe, (8) Anselm Griffin and (9) Roger Motherway.
- 3.6. Issues raised relate to land use zoning, need, planning history, noise, road safety, pedestrian safety, loss of character, light pollution, impact on residential amenity and visual impact.

## 4.0 Planning History

- 4.1. **PL09.216558 (D05A/0677)** – DLRCC refused permission for the demolition of existing service station including retail outlet, pumps and fuel tanks and the construction of a new forecourt shop, including delicatessen, invalid toilet and ancillary shop area and all associated works at Woodbine Service Station, Stillorgan Road/Woodbine Road, Dublin 4 as it would seriously injure the residential amenities of adjoining property.
- 4.2. The decision was appealed by the first party. The Board refused planning permission for the following reason:

*It is considered that the proposed development, by reason of the location, scale and height of the proposed forecourt shop building, would be visually obtrusive and oppressive to the adjoining residential property, number 2 Woodbine Road, would seriously injure the residential amenities of that property and would, therefore, be contrary to the proper planning and sustainable development of the area.*

- 4.3. This planning history has not been made available with the appeal file.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative Development Plan is the **Dun Laoghaire Rathdown County Development Plan 2016-2022**. The site is zoned **Objective A** where the objective is *to protect and/or improve residential amenity*. Section 8.2.6.7 deals with Petrol Stations.

### 5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The third party appeal has been prepared and submitted by Manahan Town Planning Consultants. The issues raised derive from the proximity of the proposed station to the appellants home at No 2 Woodbine Road and may be summarised as follows:

- **Safety** - Introducing underground petrol tanks, with the possibility of an explosion so close to the appellant's home is unacceptable. Precautionary principle should apply.
- **Land Use** - The site is located within an area where the zoning objective is to protect the residential amenities of the area. The use, never had the benefit of planning permission, had been abandoned, is not permitted under the zoning designation, and is therefore not an established or conforming use. The current proposal must be considered de novo and assessed in the light of the use zoning objective wherein a petrol station is not a permitted use.
- **Residential Amenity** - The application is accompanied by a Noise Impact report that provides conflicting information in relation to hours of operation. The proposal will diminish the residential amenity of the appellant's home by way of noise, disturbance, general activity, diminution of privacy and will be

seriously injurious to the residential amenity of the property and will thereby depreciate the value of their home.

- **Petrol Stations** - There are five petrol stations in close proximity along the Stillorgan Road and there is no obvious need for an additional petrol station in this area. Noted that in all those cases the surrounding residential properties are set well back from the petrol pumps, canopy and underground storage tanks.
- **Traffic Movements** - The Traffic Report unusually gives an indication of the potential number of vehicles likely to use this facility by week, day or hour. However it falls to the Noise report to submit that information. The future traffic generation is claimed to be “neutral” having regard to the existing traffic using site. There is no link or junction analysis undertaken in respect of this site. Further noted that no parking is provided on site for the proposed use. No measures are proposed to prevent congregation within the site by persons not using the facility.
- **Conclusion** - There have been three previous attempts to redevelop the site for a petrol station, all were refused by both the Council and An Bord Pleanála because of unacceptable impact on the appellants home. This application should receive similar treatment.

## 6.2. Applicant Response

6.2.1. The First Party response to the appeal has been prepared and submitted by O’Neill Town Planning on behalf of the applicant Maxol Ltd and may be summarised as follows:

- **Safety** - All of the standards will be in accordance with the guidelines of the APEA/Energy Institute, Design, Construction, Modification, Maintenance and Decommissioning of Filling Stations (3rd Edition). This includes the locations of the underground tanks. All the necessary technical reports were submitted with the planning application. These have been examined and deemed appropriate by the Local Authority engineers and the Fire Authority.
- **Noise** - The change of use from the existing motor repair and coffee shop to an unmanned petrol station will result in a significant reduction in noise (car



repair machinery and continual traffic and noise to coffee shop) due to the single nature of the facility and the short time customers would spend at the pumps filling up. The Noise Assessment report states that at all periods during daytime, evening and early night-time the noise level in the area will continue to be dominated by traffic noise on the Stillorgan Road (N11).

- **Land Use** - The proposed development entails the replacement of an established commercial operation with another commercial operation. The proposed development will be less injurious in residential amenity terms on the adjoining residence than the present operation, due to the reduction in noise and operating times. There will be a general improvement in the overall amenity for the appellants.
- **Petrol Stations** - Submitted that when one looks more closely at the examples of petrol stations in the general area the following similarities appear conclusive i.e. most of the petrol stations have large shops, car sales, repairs, car washes, and in some cases car sales. All are older established stations where a minimum site size was required due to the then regulatory environment. Modern petrol stations which are well designed need only be six metres from the nearest residents. Many city centre and suburban petrol stations have been successfully developed close to housing developments. A petrol station has to comply with the regulations and the suggestion that buffers are the norm is both incorrect and misleading.
- **Traffic** - The Roads Section of the Local Authority have approved all of the changes made and solutions regarding access to and from the site by tankers. There is no need for on-site car parking spaces as all of the users of the station will be refuelling and leaving immediately.
- **Lighting** - As all of the lighting is either tightly focused or below the acoustic hoarding on site, and will only operate during opening hours. There will be minimal spillage from the lighting, and as such it will not, as suggested, be “be visually obtrusive and oppressive.
- **Mitigation** - The applicants have dealt with all possible impacts of the proposed development at the adjoining residential property, including the externalities created by light, noise, operation, environment, visual and traffic.

Reference is made to the technical reports submitted with the planning application and with the Additional Information submission.

- **Conclusion** – The Board is asked to support this unmanned petrol station at this location, with all of the modern safeguards and methods of operation, that will not unduly affect the residential environment for people living in the area, and would be an improvement on the motor repair and coffee shop which has been in operation on the site for the last twenty years.

### 6.3. **Planning Authority Response**

- 6.3.1. DLRCC refers to the previous planners report and states that the grounds of appeal do not raise any new matters which in the opinion of the Planning Authority would justify a change of attitude to the proposed development.

### 6.4. **Observations**

- 6.4.1. There is one observation recorded on the appeal file from Michael C Murphy. The issues raised relate to safety, anti-social behaviour, residential amenities, visual impact and traffic safety.

### 6.5. **Further Responses**

- 6.5.1. There are no further responses recorded on the appeal file.

## 7.0 **Assessment**

- 7.1. This an application for a change of use of the existing motor repair and coffee shop to an unmanned petrol filling station. This assessment is based on the plans and particulars submitted to DLRCC on 8<sup>th</sup> December 2017 as amended by plans and particulars submitted in response to a request for further information on the 17<sup>th</sup> April 2018.

- 7.2. DLRCC issued a notification of decision to grant permission subject to 16 conditions on the 11<sup>th</sup> May 2018. The decision was appealed by one third party; the owner of No 2 Woodbine Road (adjoining residential property to the northwest). Having regard to the information presented by the parties to the appeal and in the course of

the planning application and to my site inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be addressed under the following general headings:

- Principle
- Residential Amenity
- Roads & Traffic issues
- Other Issues

## 8.0 Principle

- 8.1. The operative plan for the area is the Dun Laoghaire Rathdown County Council 2016 – 2022. Under the provision of this Development Plan the site is zoned Objective A which seeks to *protect and / or improve residential amenity* and where a petrol station is open for consideration. Section 8.3.4 of the Development Plan states that *uses shown as ‘Open for Consideration’ are uses which may be permitted where the Planning Authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects, and would otherwise be consistent with the proper planning and sustainable development of the area.*
- 8.2. As documented on the appeal file and as observed on day of site inspection there is an existing commercial use in operation on site comprising a motor repair units and coffee shop. Having regard to the location of the site, proximate to the Stillorgan Road and at the edge of a residential neighbourhood together with the existing use on site I consider the proposal i.e. an unmanned filling station, single storey kiosk and associated hoarding and signage in terms of use and scale to be acceptable in principle at this location. This is however subject to the acceptance or otherwise of site specifics / other policies within the development plan and government guidance.
- 8.3. In terms of the visual impact, I am satisfied that if permitted, the development (as amended) would be acceptable in terms of design and that the proposed signage which is stated to be smaller than the normal Maxol signs would not detract from the visual amenity or overall character of the area.

## 9.0 Residential Amenity

- 9.1. In my view the pertinent issue in this appeal is the impact of the scheme on adjoining residential properties and in particular the appellant's property at No 2 Woodbine Road. I note the specific concerns raised in relation to noise, disturbance, general activity and diminution of privacy.
- 9.2. It is noted that there was a previous refusal of permission at this site in 2006 for the demolition of an existing service station and retail outlet and the construction of a new forecourt shop, including delicatessen, and ancillary shop area together with 2 no. new pump islands and replacement service island (PL09.216558 (D05A/0677) refers). An Bord Pleanála refused permission for this scheme by reason of its location, scale and height and that it would seriously injure the residential property of 2 Woodbine Road.
- 9.3. It would appear that the main differences between the existing development on site, the refused planning application for a petrol station and retail shop and the current planning application is scale and operations. There are no ancillary uses such as a convenience shop or car wash associated with scheme currently before the Board. In fact no other ancillary structures are proposed save for a small kiosk which will be used solely for communications and computer software updates associated with the function and performance of the unmanned station. It would also appear that the proposed site arrangement is not significantly different to the current layout. I agree with the applicant that an important factor in this proposal is that there will be no retail shop on site. Customers will solely be visiting the station for fuel which will be paid for at the pumps with debit or credit card. There will be no customers visiting the site just for convenience goods particularly late at night, a feature of many filling stations, thus mitigating the potential further loss of amenity in this regard.

I agree with the applicant that the removal of a sometimes noisy motor repairs facility and coffee outlet from the site and its replacement with two pump islands and a small service kiosk would represent a significant improvement in the amenity to the residents of No 2 Woodbine Road. Together with proposed acoustic screen to be erected in place of the existing building and the nature of the proposed scheme i.e. unmanned filling station I am satisfied that the proposal will ensure adequate protection to the residential amenities of adjoining properties.

9.4. I also agree with the approach of DLRCC (Condition No 3 refers) that the hours of operation be restricted to between 0700 and 2200 which also appear to be in line with other filling stations in the area. Further, as all of the lighting is either tightly focused or below the acoustic hoarding on site, and will only operate during opening hours I am satisfied that there will be minimal spillage from the lighting.

## 10.0 Roads & Traffic

10.1. It is stated that the operation of the proposed development does not require parking for customers and staff. The existing entry / exit arrangement will be preserved for the proposed development, with dedicated entry only from Woodbine Road and dedicated exit only onto Stillorgan Road. These entry and exit points will be tightened and reduced in width, whilst accommodating the required vehicular manoeuvres, given the anticipated level of pedestrian activity in the immediate area. The proposed internal layout will provide a clear arrangement for customers and refuelling deliveries, with generous room for vehicle manoeuvres. The number of petrol pumps is restricted to 2 no pump islands accommodating refuelling by a maximum of 4 no vehicles simultaneously. It is stated that the preservation of the existing entrance / exit arrangement will not introduce a change in traffic behaviour in the locality.

10.2. It is noted that the Roads Section of the Local Authority have approved all of the changes made and solutions regarding access to and from the site by tankers. The report also noted that there was no need for on-site car parking spaces as all of the users of the station will be refuelling and leaving immediately.

10.3. Given the location of the appeal site together with the layout of the proposed scheme I am satisfied that the vehicular movements generated by the scheme would not have a significant material impact on the current capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area. Overall I consider the proposal (as amended) to be acceptable and I am satisfied that the proposed development will not result in the creation of a traffic hazard.

## 11.0 Other Issues

- 11.1. **Appropriate Assessment** - Given the location of the subject site, together with the existing level of development on the site and the proposal seeking to replace the existing motor repair and coffee shop with an unmanned petrol filling station, and its distance to the nearest European site, 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.
- 11.2. **Development Contribution** - The Board will note that no development contribution conditions were attached by DLRCC in their notification of decision to grant permission. DLRCC has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since 14<sup>th</sup> December 2015. In relation to replacement commercial developments Section 10(g) Exemptions and Reduction states as follows:
- g) Replacement dwellings or replacement commercial developments will be charged 50% on a like for like basis. In the case of demolition of developments, 50% of the demolished floor area is offset against the countywide element of the levy.*
- 11.3. Accordingly, the proposed development, as recommended is NOT exempt from the payment of a Section 48 Development Contribution. Therefore should the Board be minded to grant permission it is recommended that a Section 48 condition be attached.
- 11.4. **Health & Safety** - I note the concern raised regarding the proximity of the underground petrol tanks to the appellants home. It is stated that the development will be completed to the highest standards and will be in accordance with the guidelines of the APEA/Energy Institute, Design, Construction, Modification, Maintenance and Decommissioning of Filling Stations (3rd Edition). Accordingly I do not consider this to be material to the consideration of the appeal.
- 11.5. **Devaluation of Property Values** – I note that concern is raised by the appellant regarding the depreciation in adjoining residential property values. I am generally satisfied having regard to the existing use on site that the proposed scheme will not

result any significant loss of amenity to adjoining properties and is not therefore considered to be a bad neighbour in this context. Accordingly I am satisfied that this matter is not material to the consideration of this appeal in this instance.

11.6. **Existing Use** – I note the concerns raised by the appellant that the existing use on site never had the benefit of planning permission. It is my view that this is not a matter for An Bord Pleanála. The Planning Acts provide for a planning enforcement mechanism whereby any development works which requires permission and does not have that permission is unauthorised development. The planning system is operated on the ground by local planning authorities who are responsible for operating Ireland’s planning enforcement regime. Accordingly it is my view that such concerns should be dealt with at local authority level.

## 12.0 Recommendation

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

## 13.0 Reasons and Considerations

13.1. Having regard to the provisions of the current Dun Laoghaire Rathdown County Development Plan 2016-2022, the existing established use of the site as a motor repair unit and coffee shop and having regard to the information submitted as part of the planning application together with the information submitted to the appeal, the Board is satisfied that the proposed development of an unmanned Filling Station with a single storey Service Kiosk Building together with acoustic hoarding, flood light and security cameras (as amended) generally accords with the policy requirements of the Development Plan. It is further considered that the design, scale and finish of the proposed development would not seriously injure the visual or residential amenities of the area in the light of the scale of the existing development and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 14.0 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 17<sup>th</sup> April 2018 and by the further plans and particulars received by An Bord Pleanála on the 11<sup>th</sup> July 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. (a) No additional advertisements or advertisement structures shall be erected or displayed within the curtilage of the site without a prior grant of planning permission.

(b) The illumination of the entry and exit signage, advertising hoarding and floodlighting is limited to the petrol filling station's permitted hours of operation.

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

3. The filling station and ancillary services shall operate solely between 0700 hours and 2200 hours on a daily basis. No deliveries shall take place outside these hours.

**Reason:** To safeguard the amenities of the area.

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

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

5. 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.

6. All works to be carried out on the public road/footpath shall be at the Applicant's expense to meet the Dun Laoghaire-Rathdown County Council's 'Taking-in-Charge' requirements and all to the satisfaction of the Municipal Services Department.

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

7. (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.

8. 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 offsite disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity

9. Prior to commencement of development, the developer shall engage an appropriately qualified environmental consultant to carry out a site contamination report complete with appropriate remediation measures. The report shall be submitted to, and agreed in writing with, the planning

authority and all the agreed remediation measures shall be carried out in full.

**Reason:** In the interest of public health and to ensure a proper standard of development.

10. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

11. 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 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.

**Mary Crowley**

**Senior Planning Inspector**

**4<sup>th</sup> September 2018**