



An
Bord
Pleanála

Inspector's Report ABP-302843-18

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| Development | Vehicle & HGV Fuelling Station, Convenience Store, Food Court, External Dining & Children's Play Area, Car Parking & Extensive Road Upgrade Works |
| Location | Kiely's Cross, Mwelling & Reankeha, County Waterford |
| Planning Authority | Waterford City and County Council |
| Planning Authority Reg. Ref. | 18534 |
| Applicant | Michael Ryan |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Type of Appeal | First Party v Refusal |
| Appellant | Michael Ryan |
| Observer | Transport Infrastructure Ireland |
| Date of Site Inspection | 12 th , December 2018 |
| Inspector | Paddy Keogh |

1.0 Site Location and Description

- 1.1. The site of the proposed development has a stated area of 5.9 ha. The site is located c. 6.5 km north-east of Ardmore, 9km south-west of Dungarvan and 12 km north-east of Youghal. The location of the site is at Kiely's Cross which is defined by the junction of the N25 with the R673. The site which is traversed by the N25 is predominantly in agricultural use. The bulk of the site is located on the eastern side of the N25. The site includes a Public House located on Kiely's Cross (Kiely's Cross Bar) together with an associated poorly surfaced car parking area opening onto the N25. The site also includes a house with vehicular access onto the R673.
- 1.2. The appeal site incorporates the junction of the Local Primary Road L2023 and the N25 (northern end of N25 frontage), the junction of the Local Secondary Road L6090 and the N25 (joining N25 from the west), the junction of the regional road R673 and the N25 (southern end of N25 road frontage) and the junction of a local tertiary road with the R673.
- 1.3. The eastern portion of the site includes fields bounded by natural hedgerows. Levels on this portion of the site and beyond rise in a north-easterly direction.
- 1.4. There is a house adjacent to the site on the opposite side of the R673. There is a second house near the site (accessed from the L6090) on the opposite side of the N25. There is a light scattering of houses in the wider hinterland of the site.

2.0 Proposed Development

- 2.1. The proposed development involves the construction of a 24-hour operation Vehicle Service Area to include:
 - 12 bay vehicle fuelling station with canopy over.
 - Part single-storey, part two-storey services building (floor area 900 sq.m.) including convenience store (90 sq.m.) food court (184 sq.m.).
 - 2 no. food outlets including takeaway/drive through restaurant with first floor offices and associated services over (184 sq. m.).
 - External dining area, external children's play area.
 - Car parking and HGV parking spaces.

- 1 no. totem advertising sign.
- Building signage.
- Demolition of a dwelling.
- Underground fuel storage tank.
- Sewage treatment plant and percolation area.
- Storm water attenuation system.
- Bored well.
- Upgrade and widening of the N25 for 320m and the provision of new priority junctions with the R673, realignment of the R673 and realignment of L2023 & L6090.
- Construction of a new roundabout on the R673.
- Creation of a new agricultural access from the R673.
- New public lighting, drainage and boundary fencing.

3.0 Planning Authority Decision

3.1. Decision

Notification of a decision to refuse planning permission for the proposed development for 2 reasons was issued by the planning authority per Order dated 27th, September 2018. The stated reasons for refusal were as follows:

- (1) *The proposal would give rise to an increase in trip generation and traffic movements on a Section of the N25, National Primary Route, where the maximum permitted speed limit applies, resulting in a negative impact on the traffic safety and carrying capacity of this National road. The proposed development which is not plan led, by itself or the precedent it would set, would be contrary to the policies and objectives on the Waterford County Development Plan 2011-2017, as varied, and would be contrary to the Spatial Planning and National Roads Guidelines for Planning Authorities 2012 which seeks to direct such development to appropriately zoned service centres and as such same is contrary to the proper planning and sustainable development of the area.*

(2) *It is considered that the subject development on a site subject to a visually vulnerable designation along a scenic route would result in an undesirable precedent, the proposal will be visually prominent in this rural location. The development will generate noise/nuisance, traffic movements and lighting requirements on a 24hr cycle 365 days a year and other negative impacts on the visual and residential amenities of the area which would not otherwise occur. The proposed development is therefore contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner Report dated 27th, September 2018 is the basis of the decision and includes:

- Supporting documentation accompanying the application (Development Appraisal Report) fails to address the fact that the proposed development is contrary to national policy – the proposal does not occur at a national road junction or interchange and is not located at a location that has been identified for strategic development
- The development is located within a visually vulnerable scenic area on a designated scenic route. Despite the proposed buildings being setback from the N25 by c. 50m the proposed {and future additional} car parking will be forward of these buildings.
- Despite the applicants landscaping proposals to mitigate the visual impact of the proposed development (buildings up to 7.4 m in height with petrol pump canopy 6m high and internally illuminated totem sign 9m high) the development will be visually prominent in a rural area.
- The proposed development will generate noise/nuisance, traffic movements, lighting requirements etc. on a 24/7 basis 365 days a year.
- National Guidelines as set out in the *Spatial Policy and National Roads Guidelines, 2012*' state that in general sufficient road side facilities exist on non-motorway national road network, which also pass through or are in close

proximity to a significant number of urban towns and villages where such facilities can be provided for in a sustainable manner.

- The proposed development could compromise the carrying capacity and safety of the N25 and as such is contrary to National Guidance.
- The proposed development provides for improvement works to the current alignment and junction arrangements of the Regional and Local roads discharging to the N25 which could represent positive improvements. Nonetheless, serious concerns about the proposed development have been raised by T.I.I. and the District Engineer and Roads Design section of Waterford County Council in relation to the principle of the proposed development on a National Primary route.
- The proposed water supply (private well) and surface water drainage arrangements are generally deemed to be acceptable. A Section 4 Discharge Licence will be required in relation to waste water disposal – details in relation to the assimilative capacity of receiving waters have not been submitted.
- An Appropriate Assessment Screening Report concludes that having regard to the location of the subject site and to the nature of the proposed development, and the intervening distance with identified Natura 2000 sites, it is not possible to determine if the proposed development either individually or in combination with other plans and projects would likely have a significant effect on a Natura 2000 site (notable Blackwater River (Cork/Waterford) SAC).

The decision is in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

Heritage Officer – no report.

Building Control Officer- no report.

The Area Planner report dated 27th, September 2018 refers to a report from **Water Services Department** to the effect that a Section 4 Discharge Licence would be required for the treated foul water discharge and that details of full assimilative

capacity in respect of the receiving waters would be required. Also, potable water supply will need to be proven. Proposals for storm water management are considered reasonable.

The Area Planner report dated 27th, September 2018 refers to a report from the **District Engineer** and **Roads Design Section** who have confirmed their opinion (per reports on earlier applications for a similar development) that the proposed development is contrary to National Policy on Service Areas. It is considered that there is no identified need for additional services outside of service centres on the N25. The proposal would represent a destination in its own right.

3.3. **Prescribed Bodies**

Transport Infrastructure Ireland (T.I.I.)– report dated 24th, August 2018, states that the proposed development is at variance with official policy in relation to control of development on/affecting national roads, as outlined in the Dept. of Environment, Community and Local Government *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)* as the proposed development by itself, or by the precedent which a grant of planning permission for it would set, would adversely affect the operation and safety of the national road network. The proposed development would create an adverse impact on the national road where the maximum permitted speed limit applies and would be at variance with national policy in relation to control of frontage development on national roads.

National Roads Authority (N.R.A.) – no report received.

3.4. **Third Party Observations**

A submission from an agent acting on behalf of Bricklin Limited of Rock Street, Tralee, Co. Kerry states that Bricklin Limited have no objection in principle to the proposed development. However, it is submitted that a more sympathetic layout and design response is required having regard to the site's location on a scenic route and having regard to the sensitive landscape areas located beyond the site to the east. It is further submitted that Appropriate Assessment Screening of the development is required in order that significant impacts on a Special Area of Conservation (SAC) can be ruled out.

4.0 Planning History

Reg. Ref. 16660 - Notification of a decision to refuse planning permission for a 24 hour HGV fuelling station, service building, convenience store, food court, 3 no. Food outlets including drive through restaurant etc. at Kiely's Cross was issued by the planning authority per Order dated 29th, November 2016. Briefly, the 2 reasons for refusal were (1) endanger public safety by reason of a traffic hazard – access onto the heavily trafficked N25 and (2) unacceptable level of intensification of use in a rural area adjacent to residential property – serious injury to the amenities of the adjoining residential property.

Appeal No. 24.235956 - A decision by the planning authority to refuse planning permission for service stop, 24 hours HGV refuelling facility and associated facilities including shop/café, vehicle service area, forecourt, pumps, recharge area, demolition and relocation of public house, incorporation of a new restaurant etc. was upheld by the Board per Order dated 16th, August 2010. Two reasons for refusal were stated by the Board. These were:

(1) It is considered that the proposed development would endanger public safety by reason of traffic hazard because the site is located alongside the heavily-trafficked National Primary Road N25 at a point where a speed limit of 100km/h applies and the traffic turning movements generated by the proposed development would interfere with the safety and free flow of traffic on the public road. The proposed development would also contravene the objectives of the planning authority (which are considered reasonable) to preserve the level of service and carrying capacity of the National Primary Road and to protect the public investment in the road.

(2) It is considered that the scale of the proposed development would result in an unacceptable level of intensification of a use at this location in a rural area and directly adjoining a residential property and that the realigned regional road (R673) would be detrimental to the existing residential amenities. The proposed development would seriously injure the amenities of adjoining property by reason of loss of privacy, visual obstruction and depreciate the value of property. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

Reg. Ref. 071474 – Planning permission for the erection of a petrol filling station and associated facilities including car wash and service area, customer parking, realignment of public roads etc. at Kiely's Cross was refused by the planning authority per Order dated 20th, November 2007. Briefly, the reasons for refusal were (1) creation of a new access onto a National Primary Road, (2) creation of a multiplicity of accesses onto the N25 at Kiely's Cross and (3) contrary to County Development Plan 2005 policy which stipulates that *'new filling stations outside speed limits and rural locations will be discouraged unless there is a clear case of hardship for isolated rural communities'*.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. On 1st, June 2014, Waterford City & County Council was established following the amalgamation of Waterford City Council and Waterford County Council. The lifespan of the Waterford County Development Plan 2011 was extended pursuant to the provisions of the Section 11A of the Planning & Development Act 2000, as amended, pending the completion of a new City & County Development Plan which will be prepared after the Regional Spatial & Economic Strategy has been made by the Southern Regional Assembly.
- 5.1.2. The site of the proposed development is zone 'A' - 'Agriculture' in the Waterford County Development Plan 2011-17. The stated objective of this zoning is 'To provide for the development of agriculture and to protect and improve rural amenity'. A Petrol Station is listed as 'open for consideration' in this zone in the Land Use Zoning Matrix set out at Table 10.11 of the Development Plan.
- 5.1.3. It is Development Plan policy 'To protect and where necessary enhance the quality of service infrastructure that will promote socioeconomic development and environmental objectives in the County and improve the quality of life of its citizens' (**Policy INF 1**).
- 5.1.4. It is Development Plan policy 'To protect the efficient and safe operation, and facilitate the ongoing development of National, Regional and County Roads throughout Waterford in accordance with the National Development Plan 2017-2013 and Transport 21' (**Policy INF 3**).

- 5.1.5. It is a stated objective of the Development Plan 'To protect the carrying capacity of National Roads and associated junctions in the interest of road safety' (**Objective INF 1**).
- 5.1.6. The site is located along a 'scenic route' and within a 'visually vulnerable' scenic landscape classification as set out in the *Scenic Landscape Evaluation 1999* prepared by Consultants on behalf of Waterford County Council.
- 5.1.7. The Development Plan states that 'Scenic Routes indicate public roads from which views and prospects of areas of natural beauty and interest can be enjoyed. There is an onus on developers/applicants for planning permission to demonstrate that any proposed development shall not negatively impact on the character of a scenic route and that there shall be no obstruction or degradation of views towards visually vulnerable features or sensitive areas' (**Section 8.1**).
- 5.1.8. It is Development Plan policy to 'assess all proposals for development in terms of the Scenic Landscape Evaluation map...'
- 5.1.9. Development Plan policy stipulates that the preferred location for petrol stations is within the 50km or 60km speed limit zone of settlements (**Section 8.6 – Variation No. 1**).
- 5.1.10. Development Plan policy in relation to National Roads states 'National policy in relation to access to national roads is set out in the Spatial Planning and National Roads Guidelines for Planning Authorities (DoEC&LG. 2012)...A multiplicity of entrances onto these routes would create a traffic hazard and reduce the carrying capacity of the routes significantly. Therefore, it is a policy of the Council to avoid the creation of any additional access points from new development to which speed limits greater than 60 kmh apply in accordance with Government Policy as outlined within the Spatial Planning and National Roads Guidelines for Planning Authorities (2012) issued by the DoECLG' (**Section 10 – Variation No. 1**).

5.2. **Spatial Planning and National Roads Guidelines for Planning Authorities (2012)**

- 5.2.1. The Guidelines state that '*The creation of new accesses to and the intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduce additional safety risks to road users. Therefore, from a*

road safety perspective, planning authorities, the NRA, road authorities and the Road Safety Authority must guard against a proliferation of roadside developments accessing national roads to which speed limits greater than 50-60 kmh apply as part of the overall effort to reduce road fatalities and injuries’.

- 5.2.2. The Guidelines highlight the fact that *‘Development should be plan-led’* and *the strategic function of the national roads network’* should be protected. The Guidelines also highlight the need to *‘protect the capacity, efficiency and safety of national roads and associated junctions’.*
- 5.2.3. Key messages contained within the Guidelines include *‘Development Plans must include policies which seek to maintain and protect the safety, capacity and efficiency of national roads and associated junctions, avoiding the creation of new accesses and the intensification of existing accesses to national roads where a speed limit greater than 50kmh applies’.*
- 5.2.4. In relation to the provision of Roadside Service Facilities at Non-Motorway National Roads and Junctions, the Guidelines state that *‘A proliferation of service area facilities along rural sections of national roads and/or associated junctions, where maximum speed limit applies, would create significant safety risks and affect the level of service available to road users, as well as impact on the viability and vitality of existing urban settlements. In general sufficient road side facilities exist on non-motorway national road network, which also passes through or is in close proximity to a significant number of urban towns and villages where such facilities can be provided for in a sustainable manner’.*
- 5.2.5. The Guidelines stipulate that Development Plan policies shall be formulated *‘to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kmh apply. This provision applies to all categories of development...’.*
- 5.2.6. The Guidelines state that in *‘Exceptional Circumstances’ ‘planning authorities may identify stretches of National roads where a less restrictive approach may be applied’.* However, this is subject to a caveat that this can happen *‘only as part of the process of reviewing or varying the relevant Development Plan and having consulted and taken on board the advice of the National Roads Authority (NRA). Furthermore,*

where such an approach is to be followed in order to facilitate developments of National and Regional Strategic importance *'such proposals must be in accordance with the National Spatial Strategy (replaced by the National Planning Framework), Regional Planning Guidelines and other Guidelines issued by the Minister..'*

5.3. Natural Heritage Designations

Special Areas of Conservation (SACs):

- Blackwater River (Cork/Waterford) SAC (Site Code 002170). – c. 1km north-west of the site.
- Ardmore Head SAC (Site Code 002123). – c. 7 km south of the site.
- Helvick Head SAC (Site Code 000665). – c. 9 km north-east of the site.
- Glendine Wood SAC (Site Code 002324) – c. 14 km. north-east of the site.

Special Protection Areas (SPAs):

- Helvick Head to Ballyquin SPA (Site Code 004192). – c. 4 km. south of the site.
- Dungarvan Harbour SPA (Site Code 004032). – c. 7 km north-east of the site.
- Blackwater Estuary SPA (Site Code 002170). – c. 9km. south -west of the site.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development will plug a gap that currently exists in HGV fuelling stations along the N25 freight corridor connecting Rosslare Europort to Cork City.
- Freight transport by HGV holds the largest share of all transport modes for the movement of goods across the island of Ireland. Of critical importance to the health and safety of all road users is the provision of appropriate facilities

for drivers to refuel, rest and recuperate in order to ensure safe working conditions for all drivers.

- The proposed development will not increase trip generation or act as a destination in its own right.
- The planning authority have assumed that there will be an increase in trip generation as a consequence of the proposed development. The Traffic Impact Assessment (TIA) prepared by O'Connor Sutton Cronin refutes this finding.
- The National Planning Framework (NPF) states that accessibility between each city should be on a par with accessibility to Dublin and that key future growth enablers for our metropolitan areas include strategic road projects that improve accessibility to cities and to strategic national economic assets such as Ports. Key 'Future Growth Enablers' for Waterford set out in the NPF include 'enhanced regional connectivity through improved average journey times by road to Cork, Limerick and ports within the region'. Therefore, the N25 is seen as a critical regional connection that requires investment for the region to grow.
- The Draft Southern Regional Spatial and Economic Strategy (SRSES) states that a Regional Transport Strategy will be prepared. Key elements to be included in this strategy include (i) *Improvements to Strategic Transport Corridors linking our region's cities, ports, airports and other regions* and (ii) *Policies and actions to co-ordinate the efficient movement of freight and goods through the region and to the ports and airports*. The provision of a petrol filling station for private vehicles and HGV's where there is a demonstrable need would represent key infrastructural investment to drive the development of the southern region cities and connections to Rosslare Port.
- A strategic goal of the South East Regional Planning Guidelines 2010-2022 is 'To progress towards an accessible region with efficient and fully integrated transport systems'.
- A petrol station is 'open for consideration' on lands zoned for agriculture in the current Waterford County Development Plan 2011-2107.

- The Waterford County Development Plan stipulates that any development that requires direct access onto a National Route in an area where the maximum speed limit applies will not be permitted (except in exceptional circumstances). However, the location of new National Road access points for residential, commercial, industrial or other development uses are open for consideration in built up area where speed limits of 50-60 km/h apply.
- Previous reasons for refusal of planning permission by the planning authority and the Board at this location related to interference with the free flow of traffic on the N25 and the potential to create a serious traffic hazard. The current proposal provided for a 320m road upgrade, widening, realignment and construction of a new roundabout. These works will enhance the operation and safety of the junction at Kiely's Cross.
- The TIA prepared by O'Connor Sutton Cronin identified several road safety risks to the existing 5 arm junction at Kiely's Cross (viz. the lack of a right turning lane in both directions on the N25 esp. at the R673; late breakthrough and overshooting of the R673; lack of appropriate side road staggering). The current proposal included the upgrade and widening of the N25, creation of a new priority junction with the R6732, the L2023 and the L6090 and the creation of a new roundabout access from the R673. The realignment works and creation of a new roundabout junction of the R673 would necessitate a reduction in the speed limit to 60km/h. All of these works will combine to create significantly improved road safety conditions for motorists passing Kiely's Cross.
- The provision of the service station responds to the needs of HGV drivers using the N25 route on a 70km stretch of road that is significantly under-resourced in terms of the provision of stations that can provide an acceptable standard of service to HGVs and other large vehicles. As such the proposed development does not contribute to a '*proliferation of service area facilities*' nor will it be located on a section of national road/and or associated junctions, where the maximum speed limit will apply. Accordingly, the proposed development is not contrary to national policy on the provision and location of petrol stations as set out in the *National Road Guidelines for Planning Authorities, 2012*.

- The *National Road Guidelines for Planning Authorities, 2012* allow for development in 'exceptional circumstances' where a less restrictive approach can be adopted in the case of development of 'national and regional strategic importance'. In light of policies contained in the National Planning Framework and the Southern Regional Spatial and Economic Strategy the proposed development should be considered of national and regional strategic importance.
- In the absence of a motorway linking Waterford City region and Cork City region and considering the role that N25 performs in linking Rosslare Europort with Waterford and Cork, the N25 absorbs exceptionally high volumes of traffic (particularly HGV's and LGV's) and performs the role of a motorway until such time as a motorway is constructed. It is considered remiss of the planning authority not to make provision for a service area such as that now being proposed given the lack of such a facility along a route that is of critical importance to the county, regional and the national transport network.
- The scale of the proposed retail and restaurant elements of the current proposal is significantly smaller than that previously proposed. The current proposal includes provision for 92 sq.m. convenience store and a 184 sq.m. food court (2 outlets). This represents a 148% reduction on the floor area of the food/retail elements compared to the 2016 proposal.
- The visual vulnerability designation of the site and visual impact of the proposed development has been cited by the planning authority in their reasons for refusal of the current proposal. This reason was not given in the decision by the planning authority in their previous decision in 2016. This inconsistency is puzzling. Furthermore, the previous proposal was located within an area designated as visually vulnerable while buildings in the current proposal have been setback (c. 50m from the N25 road frontage) and are outside the visually vulnerable designation. This setback helps to mitigate the visual impact of the proposed buildings on the visually vulnerable designated lands to the north of the site.
- The site is adjacent to a scenic route. The visual qualities of the area will not be compromised by the proposed development. The development will be set

into a moderate slope where the surrounding topography rises to the northeast. This slope means that views (from the scenic route) of visually vulnerable designated areas are only available to the northwest of the site. Given that the development will be located to the south of the scenic route, views to the north and northwest of the site will not be impacted on by the proposed development..

- Reason for Refusal No. 2 as cited by the planning authority refers to adverse impacts of the proposed development on the amenities of residential property in the vicinity of the site. In the context of lands zoned for agriculture in the vicinity of a National Primary route it is considered that impacts on the residential amenities of one-off rural dwellings arising from noise and light from the proposed development should not be considered as a valid reason for refusal of planning permission.

6.2. **Planning Authority Response**

No response received.

6.3. **Observations**

- 6.3.1. **T.I.I.** - A submission dated 14th, November 2018 states that the Authority concurs with the decision of the Waterford City & County Council, noting in particular the provisions of official policy referred to in the Councils decision notice. The submission also refers to the planning history of the site outlined in the submitted grounds of appeal (notably Reg. Ref. 16/660) and includes for the benefit of the Board a copy of the submission dated 17th, November 2016, from T.I.I. to the planning authority in respect of the latter proposal.
- 6.3.2. The November 2016 submission set out objections to the development then being proposed. Briefly, these were (i) development at variance with national policy – adverse impact on national road at point where maximum speed limit applies, (ii) generation of significant high volumes of right turning movements on the N25 – endanger public safety by reason of a traffic hazard, (ii) not convinced that the proposed mitigation measures such as improvements to the N25/R673 junction etc.

would offset the adverse impact on safety and efficiency issues relating to the use of the N25, (iv) scale of development would create a distraction for other road users.

The November 2016 submission also highlights that that the T.I.I. Service Area Policy (2014) with respect to service areas only addresses the major inter-urban network and other dual carriageways, in order to address the lack of facilities for drivers on these newly constructed routes. The Authority has no plans for involving itself in the provision of service areas on the single carriageway network. It is the opinion of the Authority that a deficiency in relation to services does not exist on the single carriageway network as these routes pass through or in close proximity to a significant number of urban towns and villages. Furthermore, the *Spatial Planning and National Roads Guidelines (2012)* state that a proliferation of service area facilities along rural sections of national roads and/or associated junctions, where the maximum speed limit applies, would create significant safety risks and affect the level of service available to road users, as well as impacting on the viability and vitality of existing urban settlements.

7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issues of environmental impact and appropriate assessment also need to be addressed. The issues can be dealt with under the following headings:

- Roads & Traffic
- Visual Amenity
- Residential Amenity
- Environmental Impact Assessment
- Appropriate Assessment

7.1. **Roads & Traffic**

- 7.1.1. The submitted grounds of appeal seek to justify the proposed development based on the need for a facility of the nature currently being proposed arising from the predominance of freight transport by HGV in the movement of goods across the country combined with a gap in HGV stations along the N25 freight corridor between Rosslare Europort and Cork City. There is currently a 70km stretch of road that is significantly under-resourced in terms of stations that can provide an acceptable standard of service for HGV's.
- 7.1.2. The grounds of appeal quote provisions in support of improving accessibility throughout the state together with regional policies in favour of improving strategic transport corridors linking regional cities, ports and airports etc. contained in the National Planning Framework, the South East Regional Planning Guidelines 2010-2022 and the Draft Southern Regional Spatial and Economic Strategy. The appeal seeks to rely on these provisions to bolster arguments in favour of the proposed development.
- 7.1.3. Planning permission for developments of a similar nature to the current proposal have been refused on the site on three previous occasions, including one Board decision in August 2010 (Appeal No. 24.235956). These decisions deemed the location of the site with access onto and off a National Primary Road (N25) where maximum speed limit applies as being unacceptable. The previous proposals were also deemed to be contrary to Development Plan policy and to policy contained within the *Spatial Planning and National Roads Guidelines for Planning Authorities, 2012*.
- 7.1.4. The grounds of appeal seek to distinguish the current proposal from previous decisions. In this regard, it is pointed out that the current proposal involves the rerouting and realignment of the R673 including the creation of a new junction between the R673 and the N25. The proposed facility will be accessed off a newly created roundabout on the realigned R673. It is proposed to upgrade a 320m section of the N25 and to amalgamate the existing junction of the L6090 and the R673 and the junction of the L2023 and the N25 to provide for a new single junction on the N25 to serve both these local roads.
- 7.1.5. The Traffic Impact Assessment (TIA) that accompanied the planning application identified road safety risks associated with the existing 5 arm junction on this section

of the N25. The proposed road improvement works have merit in that they will reduce the multiplicity of junctions onto the N25 along this section of road. The provision of access to the proposed facility via a roundabout on the R673 is also preferable to the provision of direct access to the proposed facility from the N25. However, in my opinion, this revision does not satisfactorily overcome the problem identified in the Board's previous reason for refusal which related to the additional traffic turning movements generated by the proposed development. It is these additional movements that would interfere with the safety and free flow of traffic on the heavily-trafficked N25.

- 7.1.6. The TIA states that the N25 is currently operating well within its capacity limit and that the proposed development will mainly cater for pass-by trips that would already be on the road network. It is stated that the facility will not function as a destination in its own right. However, I consider that even if this scenario is correct, the proposed facility will generate significant additional traffic turning movements into and out of the appeal site than would not occur in the absence of the facility. This intensification of vehicle (including HGV's) turning movements onto and off the N25 presents the problem. This problem arises irrespective of whether or not the movements are directly from the carriageway of the N25 or indirectly via a short section of the reconfigured R673.
- 7.1.7. The planning authority, in refusing planning permission for the proposed development, state that the proposed development would be contrary to the *Spatial Planning and National Roads Guidelines, 2012*. which seeks to direct such development to appropriately zoned service centres. The decision of the planning authority in this matter has been supported by T.I.I. in their submission to the Board dated 14th, November 2018.
- 7.1.8. In order to reduce safety risks, road injuries and fatalities the Guidelines (quoted at Section. 5.2 above) caution against the creation of new accesses and junctions onto National Primary Roads particularly where speed limits in excess of 50-60 kmh apply. The Guidelines stipulate that Development Plans should seek to maintain the capacity and efficiency of national roads.
- 7.1.9. The Guidelines allow for a less restrictive approach to development onto National Primary roads in 'exceptional circumstances'. However, 'exceptional circumstances'

are only catered for in the context of the process of reviewing or varying a Development Plan. Furthermore, the approach should only be followed to facilitate developments of National and Regional Strategic importance which must be in accordance with the National Planning Framework, Regional Guidelines and other Guidelines issued by the Minister.

- 7.1.10. The grounds of appeal suggest that the proposed development complies with the requirements of the Guidelines insofar as (i) a maximum speed limit designation of 60kmh would be more appropriate along the section of the N25 to be reconfigured as part of the proposed development and (ii) the proposed development meets the 'exceptional circumstances' criteria stipulated in the Guidelines.
- 7.1.11. The grounds of appeal suggest that 'exceptional circumstances' apply in this instance because there is a clearly identified need on the N25 for a facility of the nature being proposed. Furthermore, policies contained in the National Planning Framework and the Draft Southern Regional Spatial Strategy support the upgrade of infrastructure and improvements to the connectivity between cities and ports etc
- 7.1.12. Notwithstanding the fact that the Applicant has identified a demand along a 70 km stretch of the N25 for a facility of the nature being proposed, on the basis of the submitted documentation, I consider that the Applicant has not demonstrated that the facility would be of National or Regional strategic importance as required by the Guidelines. Furthermore, the Applicant has not submitted details in respect of the availability (or otherwise) of alternative (potentially more suitable sites) to cater for the proposed development.
- 7.1.13. The Guidelines are clear that 'exceptional circumstances' can only be provided for as part of the process of reviewing or varying a Development Plan. This is not the case in the current instance. In this regard, as has been pointed out by the planning authority, the proposed development is not 'plan led'
- 7.1.14. On balance, I agree with the conclusion of the planning authority as expressed in Reason No. 1 of their notification of decision to refuse planning permission for the proposed development.

7.2. **Visual Amenity**

- 7.2.1. The submitted grounds of appeal argue that the proposed development will not be unduly visually prominent in the rural landscape. It is submitted that while the site

adjoins a scenic route designation, it is not in fact within the scenic route. In this regard, it is pointed out that the design and layout of the current proposal has been carefully considered in order to ensure that all of the proposed buildings are located outside the scenic route and visually vulnerable landscape designation as defined in the *Waterford Scenic Landscape Evaluation*. As a consequence of the sloping topography of the north-eastern portion of the site and surrounding lands it is argued that the proposed development will not impinge on views of amenity value (notably those to the north-east of the site) and will not detract from the scenic amenities of the area.

- 7.2.2. The proposed development involves the construction of a number of large and visually prominent structures (buildings up to 7.4 m in height, petrol pump canopy 6m high and internally illuminated totem sign 9m high) on a substantial (5.9 ha,) site in an otherwise relatively undeveloped scenic rural area. The visual impact of the proposed development will be compounded by the proposed modifications to the road network in the vicinity of the site and by the fact that the facility will be internally illuminated in the evening and at night (operating 24/7 365 days of the year). Notwithstanding the fact that the proposed buildings will be setback c. 50m from the carriageway of the N25 and while it may be possible to mitigate the visual impact of structures and buildings by means of appropriate landscaping and boundary treatment, I consider that the proposed measures will not satisfactorily screen the proposed development from view.
- 7.2.3. The submitted grounds of appeal focus attention on the scenic views to the north and north-west of the site available when travelling along the N25. In this regard, the submitted grounds of appeal suggest that the views through the site to the east and north-east are less worthy of protection. I do not share the applicant's opinion in this matter. When travelling along the N25 in a northerly direction (towards Dungarvan) the views to the north and north-west are undoubtedly more open and panoramic than those available through the site to the east and north-east. Nonetheless, views of the site itself and views through the site to the north and north-east are readily available within the field of vision from the scenic route.
- 7.2.4. On balance, I consider that the proposed development by reason of its nature, height and overall scale will constitute a visually obtrusive feature in an otherwise relatively unspoiled and scenic rural landscape.

- 7.2.5. The grounds of appeal refer to the fact that the planning authority in citing scenic amenity designations affecting the site in Reason No. 2 of their current decision have not followed the precedent established in their previous reasons for refusal of planning permission for a similar development on the appeal site in 2016 (Reg.Ref. 16660).
- 7.2.6. I note that Reason No. 2 of the precedent planning authority decision under Reg. Ref. 16660 essentially followed a precedent set by the Board in its decision in 2010 on Appeal No. 24.235956.
- 7.2.7. The current scenic amenity designations affecting the appeal site are the same as those that were in place in 2010 and 2016. In this regard, there appears to be some merit to the appellants claim. Nonetheless, I note that the precedent Board decision in 2010 (followed by the planning authority in 2016) did, in fact, refer to the fact that the developments then being proposed would result in injury to the amenities of property in the vicinity by reason of a number of matters including visual obtrusion.

7.3. Residential Amenity

- 7.3.1. The planning authority have cited the fact that the proposed development would have a negative impact on the residential amenities of the area in Reason No. 2 of their decision to refuse planning permission.
- 7.3.2. The submitted grounds of appeal argue that in the context of a rural area, where land is zoned for agricultural use and adjoins a national primary road, the protection of the residential amenities of one-off rural housing from adverse impacts arising as a consequence of the use of land for a class of development linked to the use of the national primary road and appropriate for the area does not constitute a valid reason for refusal of planning permission.
- 7.3.3. I acknowledge the merits of the appellant's argument in relation to the potential for conflict between the protection of the residential amenities of sporadic rural housing development and facilitating the use of rural lands in accordance with their primary zoning objective ('To provide for the development of agriculture and to protect and improve rural amenity'). However, in the current instance the potential conflict is between the protection of the residential amenities of existing dwellings and a proposed use (albeit one 'open for consideration' under the terms of the current

Development Plan) is not a use normally permitted in principle on lands zoned for agriculture.

7.3.4. Other than the house proposed for demolition, there are two houses located in close proximity to the site. Both houses appear to be occupied. These houses benefit from established residential amenities notwithstanding (and in part, at least, because of) their rural location. Given the proximity of these houses to the appeal site, it seems clear that the proposed development, by reason of its nature, scale and hours of operation (24/7 365 days per year), would have a seriously detrimental impact on the established amenities of these dwellings resulting from noise nuisance, light overspill from both the facility itself and from trucks and other vehicles entering and exiting the site. Furthermore, the proposed reconfiguration and realignment of the R673 will result in the Public House to be retained on site and the existing dwelling on the opposite side of the R673 being accessed via a newly created cul-de-sac section of the old R673. Thus, all traffic to and from the Public House will be routed past the entrance to this house.

7.3.5. Notwithstanding the fact that the houses neighbouring the appeal site are located in an area zoned for agriculture, I consider that the residential amenities of the houses are entitled to a reasonable degree of protection. In these circumstances, I consider that a refusal of planning permission for the proposed development on grounds of injury to amenities of houses in the vicinity of the site is warranted.

7.3.6. **Environmental Impact Assessment**

Notwithstanding the proximity of the proposed development to designated Natura 2000 sites and to a scenic route and a visually vulnerable area as designated for the purposes of the Waterford County Council *Scenic Landscape Evaluation, 1999*, the nature of the proposed development would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.4. **Appropriate Assessment (Screening)**

- 7.4.1. The completed planning application form submitted to the planning authority states that the site does not lie within a Natural Heritage Area, a Special Area of Conservation or a Special Protection Area for birds.
- 7.4.2. Neither an Appropriate Assessment Screen nor a Natura Impact Statement were submitted with the application or appeal.
- 7.4.3. The planning authority conducted a screening for appropriate assessment and concluded that, on the basis of the submitted information, it was not possible to determine if the proposed development, either individually or in combination with other plans or projects, would likely have an effect on a Natura 2000 site. (notably the Blackwater River (Cork/Waterford) SAC).
- 7.4.4. There are 7 designated European Sites within 15km of the site. These are:

Special Areas of Conservation (SACs):

- Blackwater River (Cork/Waterford) SAC (Site Code 002170). – c. 1km north-west of the site.
- Ardmore Head SAC (Site Code 002123). – c. 7 km south of the site.
- Helvick Head SAC (Site Code 000665). – c. 9 km north-east of the site.
- Glendine Wood SAC (Site Code 002324) – c. 14 km. north-east of the site.

Special Protection Areas (SPAs):

- Helvick Head to Ballyquin SPA (Site Code 004192). – c. 4 km. south of the site.
- Dungarvan Harbour SPA (Site Code 004032). – c. 7 km north-east of the site.
- Blackwater Estuary SPA (Site Code 002170). – c. 9km. south -west of the site.

- 7.4.5. The Blackwater River (Cork/Waterford) SAC (002170) is the nearest European site to the appeal site. This site is located c. 1km to the north-west of the appeal site.

- 7.4.6. Map 8 accompanying the NPWS Site Conservation Objectives for the Blackwater River (Cork/Waterford) SAC identifies the section of the SAC adjacent to the appeal site as being a significant catchment area for the freshwater pearl mussel (*Margaritifera margaritifera*).
- 7.4.7. Included among the Conservation Objectives set for the Blackwater River (Cork/Waterford) SAC (002170) are '1029 – Freshwater Pearl Mussel *Margaritifera margaritifera* – To restore the favourable conservation condition of the freshwater pearl mussel'
- 7.4.8. An examination of the information available on the EPA website for Appropriate Assessment shows that the appeal site is not located within the catchment of the Blackwater River (Cork/Waterford) SAC. The proposed buildings, structures and location of the outfall from the on-site effluent treatment unit are located on the southern side of the N25 and connect to a watercourse (forming part of a separate catchment area) that flows in a southerly direction away from the SAC. Accordingly, on the basis of the absence of a pathway between the source and receptor, I am satisfied that the site can be 'screened out' from likely significant effects on the Blackwater River (Cork/Waterford) SAC.
- 7.4.9. I am satisfied that the other sites within 15km of the appeal site can be 'screened out' on the basis that significant effects on these European sites can be ruled out as a consequence of the separation distance from the appeal site to the European sites or the location of the European sites outside the drainage catchment area of the appeal site.

7.5. **Appropriate Assessment Screening Conclusion**

- 7.5.1. It is reasonable to conclude that on the basis of the information available on the file, which I consider adequate to issue a screening determination, that the proposed development, individually or in combination with other plans and projects would not be likely to have a significant effect on European Site No. 002170 (Blackwater River (Cork/Waterford) SAC) or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a Natura Impact Statement) is not therefore required.

8.0 Recommendation

- 8.1. I recommend that planning permission for the proposed development be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

- (1) The proposed development, which is not plan led, would be contrary a Development Plan objective as set out in the Waterford County Development Plan 2011-2017, as varied, which seeks to protect the carrying capacity of National roads and associated junctions in the interest of road safety (Objective INF 1) and would be contrary to the *Spatial Planning and National Roads Guidelines for Planning Authorities, 2012* which seeks to direct such development to appropriately zoned service centres. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- (2) Notwithstanding the realignment and road improvement works to the N25 and R673 proposed as part of the proposed development and the proposed relocation of the access to the site via the R673, it is considered that the proposed development would endanger public safety by reason of a traffic hazard because the site is located along the heavily-trafficked National Primary Road N25 at a point where the maximum speed limit applies and traffic turning movement into and out of the site via the junction of the N25 and R673 would interfere with safety and the free flow of traffic on the public road. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- (3) It is considered that the proposed development, by reason of its nature and scale, would constitute a visually obtrusive feature in the landscape on a site adjacent to a designated 'visually vulnerable landscape; and scenic route. Furthermore, the proposed development would adversely impact on the amenities of nearby dwellings by reason of noise nuisance, traffic movements and lighting requirements on a 24 - hour cycle, 365 days a year.

The proposed development would, thereby, seriously injure the visual amenities of the area and the residential amenities of houses in the vicinity of the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Paddy Keogh
Planning Inspector
26th, February 2019