



Development

1. Construction of a single storey extension (103.6m²) to existing service station building giving a total new floor area of (245m²). This increased service building will include retail area of (100m²) (including off-licence of 10m²), new café / food use seating area at (47m²), new deli counter (32m²) and back of house area (49m²).
2. Relocation of main entrance door.
3. Addition of exit door within glazed screen at south facing elevation.
4. Additional shop signage.
5. Ancillary site works to include removal of two brush wash pads, relocation of 4 car parking line marking all with associated site works and alterations.

Location

Texaco Service Station, Shanganagh Road, Shankill, Co. Dublin.

Planning Authority	Dún Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D18A/1105
Applicant(s)	Valero Energy (Ireland) Ltd.
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party v. Decision
Appellant(s)	Valero Energy (Ireland) Ltd.
Observer(s)	None.
Date of Site Inspection	29 th May, 2019
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located at Shanganagh Road, Shankill, Co. Dublin, approximately 600m north of the Shankill Shopping Centre and 1.0km north of Shankill Village Centre, where it occupies a position to the west of the R119 Regional Road, immediately south of the junction with Broomfield Court. The surrounding area is predominantly characterised by conventional housing development, although the prevalence of mature hedgerows and tree planting serves to provide a somewhat sylvan quality to the locality. The site itself has a stated site area of 0.236 hectares, is irregularly shaped, and is presently occupied by a service station which encompasses a canopy-covered forecourt area with an associated shop / retail unit (including ancillary off-sales) in addition to a car wash facility, car parking, and associated circulation & storage areas etc. It is bounded by residential development to the north and west with a pedestrian link from the Shanganagh Road to the Seaview housing estate alongside the southern site boundary serving to separate the property from further housing to the south.

2.0 Proposed Development

- 2.1. The proposed development involves the construction of a single storey extension (floor area: 103.6m²) to the side of an existing service station building and the reconfiguration of the internal layout of the structure to provide for a retail area of 100m² (including an off-licence of 10m²), a new café / food use seating area of 47m², a new delicatessen counter (32m²) and a 'back-of-house' area (49m²). Associated works will include the relocation of the main entrance door, the addition of an exit door within the south facing elevation, additional shop signage, and ancillary site works such as the removal of 2 No. brush wash pads, the relocation of car parking, and associated site works and alterations.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 28th January, 2019 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following reason

- The proposed deli/café use on this site, by reason of its scale relative to the existing forecourt shop, would result in a new ancillary use to the principal petrol station use on the site and would, therefore, give rise to an unacceptable intensification of uses on the site. The proposed deli/café use would be contrary to Policy RET3: Retail Hierarchy of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022, which seeks to promote the viability and vitality of existing main retail centres including the Shankill Shopping Centre and Shankill Village Neighbourhood Centre and would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

Details the site location, planning history and applicable policy considerations before proceeding to analyse the various components of the proposed development, with particular reference to the individual uses proposed. With regard to the retail aspect of the proposal, it is stated that the principle of a petrol station with an associated forecourt shop on site has been established by reference to the planning history, including PA Ref. No. D09A/0725 (the parent permission for the existing development). In relation to the proposed off-licence, whilst it is acknowledged that such a use is not listed as either 'permitted in principle' or 'open for consideration' within the applicable land use zoning set out in the Development Plan, given the relatively small scale and location of the use with the forecourt shop, and noting that the existing off-licence was permitted under PA Ref. No. D16A/0241 / ABP Ref. No. PL06D.246815, it is accepted that this use will be ancillary to the primary retail function of the service station and thus is acceptable. With regard to the proposed delicatessen and café use, it is noted that such 'restaurant' uses are 'open for consideration' provided they are compatible with the overall policies and objectives of the land use zoning and are consistent with the proper planning and sustainable development of the area. In this respect the report notes the proximity of the site to the Shankill Shopping Centre and Shankill Village Centre and states that due to the excessive size of the proposed delicatessen and café, and the resulting intensification of uses on site, the inclusion of such uses would be contrary to Policy

RET3: 'Retail Hierarchy' of the Development Plan which seeks to promote the viability and vitality of the existing main retail centres. It is further stated that a cafe / deli of the scale proposed would be more appropriately sited within Shankill Village or the Shankill Shopping Centre and that any food / beverage offering provided by the service station should be ancillary to the forecourt shop and should not constitute a separate use. The report subsequently concludes by recommending a refusal of permission.

3.2.2. Other Technical Reports:

Drainage Planning, Municipal Services Department: Recommends that the applicant be requested to submit alternative proposals for the disposal of surface water which include a reasonable effort to incorporate SUDS measures appropriate to the scale of the proposed development, for example, a green roof.

Transportation Planning: States that the Development Plan includes a six-year objective to upgrade the Shanganagh Road from Killiney Hill Road Roundabout to the roundabout at St. Anne's Church and that these works are presently at design stage. Moreover, it is noted that the aforementioned road improvement works will result in the widening of Shanganagh Road into the site of the redeveloped service station. It is further noted that bicycle parking should be provided on site in accordance with the requirements of the Development Plan. The report subsequently recommends that further information be sought in respect of the foregoing issues.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

4.1. On Site:

PA Ref. No. D05A/1347. Was refused on 7th March, 2006 refusing Texaco (Ireland) Limited permission for the demolition of existing filling station, and construction of a new filling station to provide for shop with cafe area, incorporating seating area for

in-shop dining, forecourt, canopy, pump islands, underground tanks, car parking, service compound, together with ancillary works.

- The proposed development would exacerbate an already unacceptable drainage arrangement and would give rise to conditions that would be prejudicial to public health.
- The proposed restaurant use on this site, zoned "objective 'A', to protect and improve residential amenity", by reason of its scale and its proximity to existing residential properties, would seriously injure the amenity and depreciate the value of residential property in the vicinity.

PA Ref. No. D06A/0644 / ABP Ref. No. PL06D.220285. Was refused on appeal on 12th March, 2007 refusing Texaco (Ireland) Limited permission for the demolition of the existing petrol filling station and construction of a new petrol filling station to provide for retail shop with ancillary food bar, forecourt, canopy, pump islands, underground tanks, car washing facilities car parking, service compound and plant house, together with ancillary works.

- The site of the proposed development lies partly within the reservation for the proposed realignment of Shanganagh Road, which is an objective of the current Dun Laoghaire-Rathdown County Development Plan as a six year road proposal. Development of the kind proposed would, therefore, be premature pending the determination by the road authority of a road layout for the area.

PA Ref. No. D09A/0725 / ABP Ref. No. PL06D.236032. Was granted on appeal on 21st July, 2010 permitting Benjamin Marbach permission for the demolition of existing forecourt shop (70.13m²) to facilitate the construction of a new forecourt shop which will include (101m² retail area) toilets, offices, store area, off-licence and ATM cash machine facility.

PA Ref. No. D10A/0663. Was granted on 4th February, 2011 permitting Benjamin Marbach permission for the retention of increased floor area (14.7m²) to facilitate customer toilets and store area to previously granted forecourt shop (planning reg. ref. D09A/0725).

PA Ref. No. D14A/0617. Was granted on 23rd January, 2015 permitting Benjamin Marbach permission for the retention of a Portacabin used as an office and a steel container used as additional storage.

PA Ref. No. D14A/0653. Was granted on 23rd January, 2015 permitting Gerard, Cheryl & Benjamin Marbach permission for a new single storey extension to front, side and rear of existing forecourt shop consisting of staff and customer toilets, food preparation area and service counter, storage area, food consumption area and extended shop area together with all ancillary site works.

PA Ref. No. D16A/0241 / ABP Ref. No. PL06D.246815. Was granted on appeal on 27th October, 2016 permitting Gerard Marbach, Cheryl Marbach and Benjamin Marbach permission for full off-licence for alcohol sales at Riverside Service Station.

PA Ref. No. D18A/0199. Was refused on 30th April, 2018 refusing Cheryl Marbach and Benjamin Marbach permission for a new single storey extension to front, side and rear of existing forecourt shop consisting of staff and customer toilets, food preparation areas and service counter, cold storage area, staff facilities, food consumption area and extended shop area together with all ancillary site works.

- The proposed deli/café use on this site, by reason of its scale relative to the existing forecourt shop, would result in a new ancillary use to the principal petrol station use of the site and would, therefore, give rise to an unacceptable intensification of uses on the site. The proposed deli/café use would be contrary to Policy RET3: Retail Hierarchy of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022, which seeks to promote the viability and vitality of existing main retail centres including the Shankill Shopping Centre and Shankill Village Neighbourhood Centres. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- The proposed development, by reason of its height, scale and proximity to the western boundary of the site, would be visually overbearing on the adjoining residential properties and No. 22 Seaview Park in particular. The proposed development would therefore seriously injure the residential amenity and depreciate the value of No. 22 Seaview Park and as such would be contrary to the Objective 'A' zoning of the site, to protect and/or improve residential

amenity. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. National and Regional Policy:

- 5.1.1. The 'Retail Planning, Guidelines for Planning Authorities, 2012' impose a floorspace cap of 100m² of net retail area as regards petrol filling station shops, irrespective of location, however, they also state that it is a matter for the relevant joint or multi-authority retail strategies and development plans to decide how and / or where floorspace caps should apply to particular cities and towns and their environs where these locations are traversed by local authority boundaries. Section 4.11.9: 'Retailing and Motor Fuel Stations' of the Guidelines further states:

'Convenience shops are part of the normal ancillary services provided within motor fuel stations. In rural areas, they can have a very important function as the local shop or small supermarket. However, such shops should remain on a scale appropriate to the location, and their development should only be permitted where the shopping element of the station would not seriously undermine the approach to retail development in the development plan.'

The floorspace of the shop should not exceed 100m² net; where permission is sought for a floorspace in excess of 100m², the sequential approach to retail development shall apply, i.e. the retail element of the proposal shall be assessed by the planning authority in the same way as would an application for retail development (without petrol/diesel filling facilities) in the same location.

In considering applications for development, attention should also be given to the safety aspects of circulation and parking within the station forecourt'.

5.2. Development Plan

5.2.1. Dún Laoghaire Rathdown County Development Plan, 2016-2022:

Land Use Zoning:

The proposed development site is located in an area zoned as 'A' with the stated land use zoning objective 'To protect and-or improve residential amenity'.

Other Relevant Sections / Policies:

Chapter 8: Principles of Development:

Section 8.2: Development Management:

Section 8.2.6: Retail Development:

Section 8.2.6.1: Assessment of Retail Development Proposals

Section 8.2.6.5: Fast Food Outlets/Takeaways

Section 8.2.6.6: Off-Licences/Betting Shops

Section 8.2.6.7: Petrol Stations

5.3. Natural Heritage Designations

5.3.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000), approximately 2.4km northeast of the site.
- The Dalkey Islands Special Protection Area (Site Code: 004172), approximately 4km northeast of the site.
- The Ballyman Glen Special Area of Conservation (Site Code: 000713), approximately 4.3km southwest of the site.

N.B. This list is not intended to be exhaustive as there are a notable number of other Natura 2000 sites in excess of the aforementioned distances yet within a 15km radius of the application site.

5.4. EIA Screening

5.4.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed café / deli is designed to form an integral part of the filling station and will not be a separate ancillary use as has been stated by the case planner. The food counter area will be centrally located within the building with the seating area to the side. Moreover, there is only one access point to the building.
- The extension to the existing building previously approved under PA Ref. No. D14A/0653 only provided for a very small restaurant offering with a limited seating area and, therefore, would be unable to compete with other filling stations in a very competitive market. In this respect it is emphasised that most modern filling stations would have at least one food offering in order to attract custom and thus it is imperative that the subject premises be permitted to modernise and improve in order to compete on an equal footing.
- It is considered that the subject proposal represents a reasonable compromise between the extension previously approved under PA Ref. No. D14A/0653 and that refused by PA Ref. No. D18A/0199.
- The overall scale of the proposed development, when taken in combination with the existing premises, is modest when compared to other modern filling stations.
- The Planning Authority's concerns as regards the potential impact of the proposed development on Shankill Village and the Shankill Shopping Centre are very much subjective and are unsupported by any evidence.
- No submissions were received from the owners of the Shankill Shopping Centre or any other retailers / café / restaurant operators within Shankill Village as regards the proposed development.

- The Board is referred to the accompanying 'health-checks' of Shankill Shopping Centre and Shankill Village as follows:

- *Shankill Shopping Centre:*

The Shankill Shopping Centre had been vacant for approximately 10 No. years and until recently only contained two occupied units (a pharmacy and a take-away outlet) within a refurbished building. However, in 2018 permission was granted on appeal (PA Ref. No. D17A/0426 / ABP Ref. No. PL06.249380) for a discount foodstore and other ancillary development, including a two-storey café, in order to form a neighbourhood centre as per the applicable land use zoning. This development is under construction and upon its completion it will comprise a very strong and robust neighbourhood centre in terms of its viability and vitality. The discount foodstore will draw customers to the site on a daily basis and the ancillary uses will be supported by same as well as generating their own custom.

The Planning Statement which accompanied PA Ref. No. D17A/0426 noted a population catchment of 92,026 No. persons within a 10-minute drive-time which demonstrates a significant population base.

- *Shankill Village:*

The village comprises a single street and includes a small convenience supermarket where food and drinks can be purchased, a public house (with an associated food offering), a restaurant, a takeaway, and another smaller convenience store. The street itself is attractive with hard landscaping, street furniture, tree planting, dedicated car bays, lighting, and floral displays etc.

It is considered that by any reasonable measurement of an urban village, Shankill Village provides for a range of food / beverage offerings and thus is robust in terms of its overall vitality and viability.

Therefore, it is unlikely that either of the aforementioned centres would be materially affected by the small scale and nature of the proposed food offering.

- The proposed restaurant use is very specific to the filling station market with the food / beverage offering firmly aimed at passing motorists who require a quick and convenient food stop before continuing their journey. In its publication entitled 'Quick Service and Food-To-Go Insights, 2015', Bord Bia has labelled such food outlets as 'quick service' offers – a term given to food that can be prepared and served quickly (typically referring to food sold in a restaurant or store with preheated or precooked ingredients). That report further notes that quick service offers are distinguished in the food service market by:
 - Counter service (as opposed to table service).
 - Limited menus sold in large quantities, low price points against other channels.
 - Systematised operation requiring low skill levels and culinary expertise on the part of staff.

Accordingly, such food offers do not generally compete with sit-down, table service offers provided in town centres which are aimed at those looking to enjoy a relaxing meal / dining experience. The proposed use is therefore distinct from the neighbourhood centre aim to *'meet the local day to day needs of surrounding residents'*.

The Bord Bia report also notes that quick service food is further segmented into two additional tiers:

- Traditional fast food – with relatively lower price points and mainstream offerings.
- Fast casual – with higher price points, more innovative offerings and an enhanced aesthetic.

It is the latter of these uses which is proposed as part of the subject proposal. Permission has not been sought for hot food for consumption off the premises (i.e. a take-away). This is an important distinction as the former does not tend to attract the same volume of customers as the latter.

- By way of precedent, the Board is referred to its determination of ABP Ref. No. PL91.300054 wherein permission was granted for a service station / retail

services building which included a convenience shop (100m² net retail floor area) and a delicatessen offering hot & cold food sales with a 60m² seating area and ancillary kitchen, stores, toilets etc. at Parkway, Old Dublin Road & the R445 Regional Road, Limerick. In their assessment of that proposal, the reporting inspector noted that the third-party appellant had raised concerns that the development in question would not comply with the Limerick City Development Plan and would, if permitted, undermine the Parkway District Centre (c. 220m distant from the application site). The inspector subsequently noted that they had considered this issue ‘very carefully’ as follows:

‘The Retail Planning Guidelines place a cap of 100m² on retail floorspace associated with petrol stations. The Board will note that the proposed development complies with this floorspace cap. In addition, it is notable that the proposed development is located on lands where the provision of a petrol filling station is normally permitted in principle. The proposed development, therefore, is considered to adequately comply with the zoning objective of the site, and therefore, the policy requirements of the relevant development plan’.

It is considered that similar criteria apply with regard to the subject proposal; the retail floorspace cap is not breached and a filling station is open for consideration with the land use zoning.

- The proposed development, by reason of its modest size and ‘quick-serve’ nature, will not impact on nearby retail centres and, when consideration is given to large size of the site, the previous approval of a smaller extension, and its compliance with the relevant zoning objective, represents proper planning and sustainable development of the area.

6.2. Planning Authority’s Response

- The modest restaurant previously permitted under PA Ref. No. D14A/0653 as part of a wider redevelopment of the subject site comprised a small food preparation area and a service counter with a combined floor area of c.12m² in addition to a seating area of c. 25m² (amounting to approximately 20% of the gross floor area of the extended forecourt building). It is considered that the scale of the permitted restaurant use is proportional to the principle use of

the site as a petrol service station and is ancillary to its established retail use i.e. a forecourt shop with a net floor area of c. 100m².

- The proposed deli and café / food use seating area, by reason of their excessive scale relative to the forecourt shop, and notwithstanding the proposed open plan and shared entrance arrangement with the shop area, are not considered to be ancillary to the existing retail use. In this regard it should be noted that the gross floor area of the proposed restaurant use (79m²) equates to almost one third of the forecourt building as extended (245m²). Similarly, the net floor area of the proposed restaurant use will also equate to almost one third of the net floor area of the extended forecourt building (147m²).
- The proposed development site is zoned as '*A: To protect and / or improve residential amenity*' and is located within walking distance of Shankill Village and Shankill Shopping Centre which are zoned '*NC: To protect, provide for and / or improve mixed use neighbourhood centre facilities*'. In this regard it should be noted that the Shankill Shopping Centre is presently being redeveloped to provide for a discount foodstore, pharmacy, medical centre, creche and a cafe. Furthermore, Shankill Village comprises a wide range of neighbourhood centre uses, including retailing and restaurants. The subject site is located within the walking catchment of both these centres.
- Policy RET3 of the County Development Plan requires the Planning Authority to have regard to the '*GDA Retail Planning Strategy, 2008-2016*' and the '*GDA Regional Planning Guidelines, 2010-2022*' in defining the retail hierarchy of the county and the role of retail centres. Policy RET3 also states that it is Council policy to promote the viability and vitality of its existing main retail centres while continuing to protect and improve the amenity of surrounding areas. Table 3.2.1 sets out the retail hierarchy for the county and states that the overall strategy for established neighbourhood centres is to promote the mixed-use potential of such centres as appropriate, subject to the protection of local amenities, and to allow limited incremental growth in retail floorspace in response to population levels.

- Sections 4.49 & 4.50 of the ‘GDA Retail Planning Strategy, 2008-2016’ (yet to be reviewed) recognise that petrol stations have been continually evolving as a retail option over the past number of decades and the essential local retail service that such operations can provide where they may be the only shop or in some instances the only shop opening outside of regular hours. The Retail Planning Strategy also states that in addressing the changing nature of petrol station shops, it is important to take into account the primary role of the shop as fuel sales, the traffic implications arising from any expansion in retail use, the impact of any expansion on other shops and the need locally for such expansion, as well as the impact on adjoining properties and the local environmental generally.

Section 4.51 of the Retail Planning Strategy differentiates between general petrol stations and the services provided by motorway / dual carriageway service stations. The latter caters for road users who wish to rest, refuel and refresh during their journeys and include for associated cafes, small convenience shops and rest areas. The Strategy states that the provision of service facilities should only serve motorway users and retail units on those sites should only provide for the retail sale of basic convenience goods and snacks / food to cater for immediate needs.

- With respect to the planning precedents referenced in the grounds of appeal, the Board is advised as follows:

PA Ref. No. D11A/0278:

Condition No. 2 of that grant of permission states:

‘The combined floor area of the proposed self-service food area and food preparation area . . . shall be reduced in size to provide a maximum of 75m², and permanently retained as such; this reduction shall result from an overall reduction in the floor area of the proposed forecourt building by a minimum of 25m². Revised drawings shall be submitted to and agreed in writing by the Planning Authority prior to the commencement of development.

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

It should also be noted that the decision of the Local Authority to grant permission for PA Ref. No. D11A/0278 was appealed by a third party as well as the applicant (with respect to Section 49 development contributions). Whilst the third-party appeal was withdrawn, the inspector's report with regard to the first party appeal stated that the provision of a 75m² café remained excessive for a petrol station that was remote from the local neighbourhood centre and situated on a local distributor road. The inspector thus recommended that it would be more appropriate if the food preparation and self-service area were to be reduced to 55m² to allow seating for 10 No. persons.

PA Ref. No. D15A/0531:

In that instance the permitted development, which was located on lands zoned as '*NC: To protect, provide for and / or improve mixed-use neighbourhood centre facilities*', did not include for a restaurant use. A forecourt shop with a retail floor area of 100m² was proposed.

- Having regard to the scale of the proposed restaurant use, which would not be ancillary to the forecourt shop and would result in a new use ancillary to the principal use of the premises as a petrol station, and the applicable land use zoning objective, it is considered that the proposed development would be contrary to Policy RET3: '*Retail Hierarchy*' of the Development Plan which seeks to promote the viability and vitality of existing main retail centres, including the Shankill Shopping Centre and the Shankill Village Neighbourhood Centre.
- Notwithstanding the health-checks undertaken by the applicant, the proposed intensification of use on site, and specifically the introduction of a restaurant use, within the walking catchment of Shankill Village and Shankill Shopping Centre, presents a real and substantial threat to the viability of similar uses within those centres.

6.3. Observations

None.

6.4. Further Responses

6.4.1. Response of the Applicant to the Circulation of the Planning Authority's Submission:

- The Planning Authority has referred to the smaller extension permitted under PA Ref. No. D14A/0653 and notes that the food offering and seating area proposed as part of that application equated to approximately one-fifth of the floor area of the filling station and was thus considered to be of a scale proportionate to the principle use of the premises with its ancillary retail use. This would appear to be a reference to the rationale for the decision to grant permission for that proposal and the applicant has no issue with same.
- In response to the assertion by the Planning Authority that the scale of the proposed delicatessen and seating area is excessive relative to the forecourt shop and cannot be considered as ancillary to same, it is submitted that there are no planning guidelines as regards the scale of ancillary food operations within filling stations whilst the development management standards set out in the County Development Plan similarly do not specify any particular targets or ratios.
- The fact that the gross floor area of the proposed development equates to approximately one third of the extended construction whilst the net floor area of the proposed restaurant is almost one-third of that of the forecourt building serves to highlight that the subject proposal is very much of an ancillary nature.
- The Board is referred to its approval of ABP Ref. No. PL91.300054 and the fact that the floor area of the food offer / restaurant in that instance equated to approximately one-third of the overall floor area. This is considered to be entirely reasonable and consistent with other modern filling stations around the country, including the proposed development.
- Whilst the Planning Authority has sought to argue that the subject site is located within walking distance of Shankill Village & Shankill Shopping Centre, and that it is Council policy to protect these centres, its response has failed to counteract any of the points raised in the grounds of appeal, including the fact that the Shankill Shopping Centre is presently the subject of a

substantial mixed-use redevelopment that includes a discount foodstore, café, medical centre and crèche etc. Furthermore, it is reiterated that Shankill Village is very robust as regards the sale of food / beverages and thus is unlikely to be materially affected by the small scale 'quick-serve' food offer proposed.

- It is accepted that the Greater Dublin Area Retail Planning Strategy, 2008-2016 sets out a number of key planning considerations for the assessment of proposals for the expansion of service / filling stations and in this regard the Board is requested to note the following:
 - The application site is large enough to accommodate the parking requirements and internal traffic movements associated with the proposed development.
 - A commercial analysis undertaken by the applicant has indicated that there is a need for a food offer at this location in order to compete with other fuel operators in the area.
 - The case planner has accepted that the proposed development will not impact on the residential amenity of adjacent properties.
 - No environmental issues have been raised by the Local Authority.
- Whilst the Greater Dublin Area Retail Planning Strategy, 2008-2016 differentiates between 'general' petrol stations and motorway / dual carriageway service stations (with retail units in the latter to only provide for the retail sale of goods at basic convenience level and snack / food for immediate needs), the relevance of highlighting this distinction in the subject instance is questionable given that it is commonplace for petrol stations to include a food offering as part of their overall operation.
- The only precedent referenced in the grounds of appeal was the development approved under ABP Ref. No. PL91.300054 at Parkway, Old Dublin Road & the R445 Regional Road, Limerick, which is considered to be of relevance to the subject proposal as it is owned by the same applicant, is not within a designated retail centre, and was recently approved on appeal by the Board.

- The table listing a number of permitted filling stations or extensions to same within the Dún Laoghaire-Rathdown area was included in the grounds of appeal in order to highlight the general scale of modern-day filling stations relative to the subject proposal.

- *PA Ref. No. D11A/0278:*

Whilst the inspector's report on appeal recommended that the proposed floor area should be reduced from 75m² to 55m², that appeal was withdrawn and thus the condition imposed by the Council limiting the food area to 75m² was retained. In this regard, it should be noted that the scale / size of the subject proposal at 79m² is very similar.

- *PA Ref. No. D15A/0531:*

Although the Council has argued that this development was located within a neighbourhood centre and did not include a restaurant, the key point raised by the inclusion of the table in the grounds of appeal concerned overall scale and floor areas.

- It is reiterated that the application site is eminently suitable for a relatively modest extension that will improve the offering to customers and will enable the subject premises to compete effectively with other filling stations.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Impact on retail centres
- Overall design and layout
- Impact on residential amenity
- Appropriate assessment
- Other issues

These are assessed as follows:

7.2. The Principle of the Proposed Development:

7.2.1. The proposed development involves the extension and reconfiguration of an existing service station building to provide for a new retail shop unit (including an off-licence) in addition to a delicatessen area with an associated a café / food use seating area (and ancillary 'back-of-house' facilities / services). In this regard, I propose to assess the individual 'use' components as follows:

7.2.2. The Proposed Retail / Shop Unit:

7.2.3. Section 4.11.9: 'Retailing and Motor Fuel Stations' of the 'Retail Planning, Guidelines for Planning Authorities, 2012' imposes a floorspace cap of 100m² with regard to the net retail area of petrol filling station shops. The term 'net retail floorspace' is defined as the area within the shop which is visible to the public and to which the public has access including 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, however, it specifically excludes storage areas, circulation space to which the public does not have access, cafes, and customer toilets.

7.2.4. In the subject instance, the proposed development provides for a stated net retail floorspace of 100m² (including the proposed off-licence) as shown outlined in blue on Drg. No. P3069-A001. Given that the proposed delicatessen and seating areas would likely be more akin to a café / restaurant use and thus can be excluded from the calculation of the net retail floorspace (as has previously been held by the Board in its determination of similar development proposals), the proposed retail development would accord with government guidance.

7.2.5. Therefore, having regard to foregoing, the relevant land use zoning, the planning history of the site, and the established use of the property as a service station with an ancillary retail component, I am satisfied that the retail aspect of the subject proposal is acceptable.

7.2.6. The Proposed Off-Licence:

7.2.7. By way of background I would advise the Board that up until 2005 it was accepted that the definition of a shop extended to include the sale of alcohol for consumption

off the premises i.e. use as an off-licence, however, the effect of the Planning and Development Regulations, 2005, was the introduction of a provision whereby a retail unit selling alcohol for consumption off the premises, other than in accordance with a wine retailer's off-licence and where such sales were subsidiary to the main retail use, would no longer accord with the definition of a shop within the meaning of the Regulations. Consequently, a change in the use of a shop to an off-licence would no longer be considered to be exempted development and would therefore require planning permission. In effect, the sale of alcohol for consumption off the premises (other than in accordance with the amended Regulations) was deemed to constitute development within the meaning of the Act.

- 7.2.8. The subject proposal includes for the allocation of 10m² of the floor area of the reconfigured retail unit for the sale of alcoholic beverages (as outlined in red on Drg. No. P3069-A001). In this respect it is apparent that the off-sales element of the proposed development will be ancillary and subordinate to the main retail use of the premises and thus accords with the definition of a *'Part Off-Licence'* as set out in Section 8.3.12: *'Definition of Use Classes'* of the Development Plan (i.e. *'A building where the main use is the sale of convenience retail goods to members of the public and contains a subsidiary area of the premises which is licensed and used for the display and sale of intoxicating liquor, including wines, beers and spirits, for consumption off the premises'*).
- 7.2.9. In terms of the overall principle of the proposed off-sales, I note that the proposed development site is located in an area zoned as 'A' with the stated land use zoning objective *'To protect and-or improve residential amenity'* wherein use as a *'Part Off-Licence'* is *'open for consideration'* pursuant to Table 8.3.2 of the Development Plan. Moreover, it is of relevance to note that the existing premises on site already includes for an established off-licence given that permission was previously granted on appeal under PA Ref. No. D16A/0241 / ABP Ref. No. PL06D.246815 for a small (6.2m²) off-licence element as a subsidiary use within the main retail unit.
- 7.2.10. Accordingly, having regard to the land use zoning and planning history of the site, the established use of the site for retail purposes (including some ancillary off-sales), and the relatively minor increase in the scale of 'off-sales' proposed, in my opinion, this aspect of the proposed development would seem to represent a complementary

and ancillary extension of the overall retail use on site and thus is acceptable in principle.

7.2.11. The Proposed Delicatessen / Café Use:

7.2.12. With regard to the proposed delicatessen counter (32m²) and the café / food use seating area (47m²), in my opinion, the inclusion of such facilities within motor fuel stations has become increasingly commonplace and is generally accepted as an ancillary component in the normal operation of such premises. Indeed, permission was previously granted on site under PA Ref. No. D14A/0653 for a redevelopment of the existing service station which included for the provision of a comparable 'quick-service' food offering comprising a food preparation area and service counter (c.12m²) in addition to an associated seating area of c. 25m². Whilst I would acknowledge that the overall floorspace dedicated to the deli counter and seating area in the subject proposal is noticeably greater than that previously approved, I would not consider the overall scale and size of this aspect of the development to be excessive or of such a scale as to provide for a new destination more akin to a 'traditional' restaurant / café. It is my opinion that the scale and 'quick-serve' nature of the food offering proposed within the service station is such that the development will mainly attract local and passing trade and will not serve to encourage custom from within a wider catchment. Therefore, subject to the inclusion of suitable conditions in order to protect the residential amenity of neighbouring properties, I am amenable to the proposal as submitted.

N.B. Although the terms 'delicatessen' and 'food use seating area' are not set out in Table 8.3.2 of the Development Plan, they are perhaps comparable to 'restaurants' and 'tea rooms / cafés' and thus can be held to be 'open for consideration' on lands zoned as 'A' with the stated land use zoning objective '*To protect and-or improve residential amenity*'.

7.3. Impact on Retail Centres:

7.3.1. In its assessment of the subject proposal, the Planning Authority has determined that the overall scale of the proposed food offering (i.e. the delicatessen and the café seating areas) could not be considered as being ancillary to the principle use of the subject premises as a service station / retail outlet and thus would give rise to an unacceptable intensification of use on site which, when taken in combination with its

proximity to the Shankill Shopping Centre and Shankill Village Centre, would be contrary to Policy RET3: '*Retail Hierarchy*' of the Development Plan which seeks to promote the viability and vitality of the existing main retail centres. It has been further stated that a cafe / deli of the scale proposed would be more appropriately sited within one of the nearby retail centres and that the scale of any food / beverage offering provided by the service station should be ancillary to the forecourt shop and should not constitute a separate use.

- 7.3.2. In response to the foregoing, the applicant has sought to emphasise that the proposed deli / café element of the proposed development will function in an ancillary capacity to the principle use of the premises as a service station (with associated retailing) and that the modest scale of this aspect of the proposal is reflective of same. Further reference has been made to the fact that the provision of such services is consistent with other modern filling stations throughout the country and it is imperative that the subject premises be permitted to modernise and improve in order to compete on an equal footing in a very competitive market. From a practical perspective, it has also been asserted that the food counter will be positioned centrally within the wider unit (behind a retail area) and that there will only be one access point to the forecourt building. In addition, it has been emphasised that the proposed 'quick service' food offering (typically referring to food sold in a restaurant or store with preheated or precooked ingredients) is very specific to the filling station market in that it is aimed at passing motorists who require a quick and convenient food stop before continuing their journey and thus is not directly comparable to more traditional sit-down, table-service operations such as those provided in town centres. In this regard, it has been submitted that the proposed development will not compete directly with the wider food / beverage offerings within the nearby robust retail centres of Shankill village and the Shankill Shopping Centre.
- 7.3.3. Having considered the available information, on balance, I am inclined to concur with the applicant that the overall scale of the deli / café is such that it will function in an ancillary capacity to the main service station whilst the 'quick service' nature of the food offering proposed is typical of a limited operation that is unlikely to compete with the more expansive range of services available in nearby centres. Accordingly, I would suggest that the proposed development is not comparable to a 'destination' café / restaurant and thus is unlikely to detract to any significant extent from the

vitality or viability of the main retail centres contrary to the intent of Policy RET3: 'Retail Hierarchy' of the Development Plan.

7.4. **Overall Design and Layout:**

- 7.4.1. The overall design and layout of the subject proposal is conventional and typical of comparable developments as regards construction, external finishes, corporate branding, and signage etc.
- 7.4.2. It can be satisfactorily accommodated on site and will not impinge on the existing wayleave to the rear of the property.

7.5. **Impact on Residential Amenity:**

- 7.5.1. Having regard to the site location in a built-up urban area zoned as 'A' with the stated land use zoning objective 'To protect and-or improve residential amenity', the planning history and established use of the site as a service station with an ancillary retail component (including an off-licence), the overall scale, design and positioning of the proposed development, including its separation from adjacent housing, and the 'quick-service' aspect of the proposed food offering, I am satisfied that the proposed development will not give rise to any significant detrimental impact on the residential amenity of neighbouring property, subject to the imposition of suitable conditions as regards hours of operation etc.

7.6. **Appropriate Assessment:**

- 7.6.1. Having regard to the nature and scale of the proposed development, the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

7.7. **Other Issues:**

7.7.1. **Traffic Implications:**

- 7.7.2. Given the location of the proposed works on site, the proposal will not impinge on any future road widening / improvement works to be carried out pursuant to the Council's objective to upgrade Shanganagh Road.

- 7.7.3. In addition, there is sufficient space for car parking on site to accommodate the demands arising from the proposed development whilst the provision of bicycle parking can be addressed by way of condition in the event of a grant of permission.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be granted for the proposed development for the reasons and considerations, and subject to the conditions set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the planning history and established use of the site, the provisions of the current development plan for the area, and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not adversely affect the character of the area, would be acceptable in terms of traffic safety and convenience 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, 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 floorspace (as defined in Annex 1 of the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April, 2012) associated

with the petrol filling forecourt shop, including the off licence area, shall not exceed 100 square metres.

Reason: To comply with national policy as set out in the Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April, 2012.

3. The off-licence use permitted under this application shall be a subsidiary use within the main retail unit. The floor area of the off-licence display shall not exceed 10 square metres at any one time.

Reason: In the interest of clarity.

4. The use of the deli / food service area and the associated café / food use seating area shall be ancillary to the main use of the premises as a shop and no change of use of this area shall take place without a prior grant of planning permission. No fast food take-away shall operate from this unit.

Reason: In the interests of the residential amenities of property in the vicinity.

5. The operating hours of the extended forecourt shop, including the deli / food service area, shall be restricted to between 0700 hours and 2200 hours Monday to Friday, between 0800 hours and 2200 hours on Saturdays and between 0900 hours and 2200 hours on Sundays and Bank Holidays.

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

6. 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 the planning authority for written agreement.

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

7. 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.

8. 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.

9. 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.

10. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

11. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

Reason: In the interest of visual amenity.

12. Prior to the commencement of development, details of the following shall be submitted to, and agreed in writing with, the planning authority.

- a) The provision of a covered bicycle parking facility for 5 number bicycles.

Reason: In the interest of traffic safety.

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

Reason: In the interests of public safety and residential amenity

14. 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.

Robert Speer
Planning Inspector

7th June, 2019