



An
Bord
Pleanála

Inspector's Report ABP-304070-19

Development	Retention of a 24 hour fuel card dispensing pump and all associated site works
Location	Abbeyleix Road, Portlaoise, Co.Laois.
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	1921
Applicant(s)	Dunne's Service Station
Type of Application	Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	John Kelly
Observer(s)	None.
Date of Site Inspection	30 May, 2019
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located on the western side of the Abbeyleix Road to the south of the town centre of Portlaoise. The site is currently occupied by a service station, operated under the brand of Emo Oil, and comprises forecourt fuel sales, canopy and forecourt shop. There is a car wash area located to the rear (west) of the forecourt building. The building itself contains the standard retail and food sales areas with a small seating area. There is a house located within the site boundary and to the north west of the forecourt building which is accessed via the forecourt area. To the rear of the forecourt building there is a car wash area and additional parking.
- 1.2. The site is bounded to the north and south by residential development. To the west, the site adjoins GAA playing fields that are served by floodlights and access to these playing pitches is via an access to the north of the appeal site. Lands to the east of the Abbeyleix Road are primarily in residential use and Portlaoise golf club is also located on the eastern side of the road.
- 1.3. The stated area of the appeal site is 0.485 ha.

2.0 Proposed Development

- 2.1. The development which is the subject of appeal comprises the retention of a pump island on the forecourt that operates as a 24 hour automated pump. This pump island is located closest to the road of the three pump islands located on the forecourt.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission 4 no. conditions that are standard in nature and scope. None of the conditions relate to operating hours of the rest of the filling station use on site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer notes the location of the site on lands zoned general business and the content of submissions received. Report concludes that the development does not have a negative impact on residential amenity or traffic safety and a grant of permission consistent with the Notification of Decision issued is recommended.

3.2.2. Other Technical Reports

Road Design – No objection.

Environment – No objection.

Waste – No objection.

Fire Officer – No objection.

3.3. Prescribed Bodies

TII – Response stating that TII has no observations to make on the application.

3.4. Third Party Observations

Objection from a third party, the contents of which can be summarised as follows:

- That HGV/ truck refuelling pumps are not suitable at this location.
- That the existing access arrangements present a safety issue for pedestrians, cyclists and other vehicles.
- That the site does not comply with development plan policy.

4.0 Planning History

The following planning history is of relevance to the appeal:

Laois Co. Co. Ref. 18/128 - Permission granted for the retention of a 40,000 litre underground fuel tank to the rear of the site in place of the 25,000 litre tank granted permission under Ref. 16/559.

Laois Co Co. Ref. 16/559 – Permission granted by the Planning Authority for the renovation and extension of existing service station to include single storey extension to accommodate delicatessen and seating area, toilets, store room, office, canteen, enlarged retail area, alterations to site boundaries, relocation of 2 no. existing car washes, relocation of sign, installation of two new 25,000 litre fuel storage tanks, increased parking provision and new signage.

Laois Co Co. Ref. 87/12 – Permission granted to Paul Dunne for the erection of a grocery shop and filling station and canopy over fuel pumps.

5.0 Policy and Context

5.1. Development Plan

The appeal site is located on lands that are zoned ‘*General Business*’ under the provisions of the *Portlaoise Local Area Plan, 2018-2024*. A ‘petrol station’ is identified as a normally acceptable use on lands that are zoned ‘*General Business*’.

Policy DM30 of the *Laois County Development Plan, 2017-2023* relates to petrol filling stations.

5.2. Natural Heritage Designations

The site is not located within or close to any identified European site.

5.3. EIA Screening

Having regard to the nature and scale of the development, the location of the site on lands that are zoned for development and serviced by public water and waste water drainage and the separation of the site from the nearest sensitive receptors 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 following is a summary of the main issues raised in the third party grounds of appeal:

- That there is no objection in principle to a service station but the operation of pumps on a 24 hr basis is unsuitable for a residential area.
- That there is no reference in this application or other applications for previously granted permissions for 24hr HGV refuelling facilities.
- That permissions granted by the council for other service stations including appeal to the Board, were granted subject to conditions relating to operating hours. 06.00 to 23.00 hrs. in the case of Ref.17/538.
- If the Board considers it appropriate to grant permission, a condition relating to the hours of operation would be appropriate. Currently the facility opens at 05.00 and runs the 24 hr. pump.
- That the site entrance is located immediately adjoining the Abbey Court residential estate and result in a traffic hazard. Under Policy DM30 of the county plan it is stated that access to filling stations will not be permitted closer than 35 metres from a road junction.'
- The development plan states that a wall of minimum height 0.5 metres must separate the filling station from the road. There is no such wall in the case of the appeal site.

6.2. Applicant Response

The following is a summary of the main issues raised in the first party response to the grounds of appeal:

- That the filling station on site has been in operation since 1963.
- The site is located in an area zoned for general business and is in compliance with the zoning.
- The un manned card pump on site has been in operation since 1999. This pump is used during normal hours as well as out of hours and is part of the contract of operation between the owners and the oil company.
- That, as noted by the appellant, the N77 is a busy road and there is therefore significant traffic / background noise.
- That the site entrance and exit points are properly engineered and include a ghost island on the N77. The entrance is at a location where the speed limit is 50 km/hr. It is noted that neither the Road Design section of the council, nor TII have no objection to the application.
- That the Stop sign within the Abbey Court Estate was constructed in 2005 long after the filling station and shop was established. The housing access presumably took into account the location of the filling station.
- The golf course was also opened after the filling station.
- That the site opens at 05.30 and closes at 22.00 which is in line with the planning applications cited.

6.3. **Planning Authority Response**

No response on file.

7.0 **Assessment**

7.1. The main issues in the assessment of the subject appeal are considered to be as follows:

- Principle of use and land use zoning,
- Impact on residential amenity,

- Traffic safety and access,
- Appropriate assessment.

7.2. Principle of Use

- 7.2.1. The appeal site is located on lands that are zoned General Business under the provisions of the Portlaoise LAP, 2018-2024. Under this land use zoning objective, a petrol station is identified as a normally acceptable use and the principle of the retention of fuel sales on the site is therefore considered to be acceptable.
- 7.2.2. It is noted that the existing filling station use of the site is a long established one. In this regard the first party states that the site has been in this use since 1963 and that the 24hr pump island which is the subject of the current application has been in use since 1999. It is not possible to verify these dates on the basis of the information presented, however the planning history of the site which is on file indicates that the site has been in use as a filling station since the 1980s.

7.3. Impact on Residential Amenity,

- 7.3.1. The third party appellant contends that the retention of the 24 hr fuel sales use is inappropriate in a residential area and that the retention of the use would have a negative impact on residential amenity. With regard to location and the site being within a residential area, I do not consider that this is an entirely accurate description of the site location. The site fronts a busy N77 national road which connects Portlaoise town centre with the N7 motorway to the south and, as referenced above, is a long established use in this location. The southern boundary of the site is characterised by a c.2.0 metre high boundary wall to the access road that leads to the Abbey Court residential development and the separation distance between the pump island which is the subject of the current appeal and the boundary of the closest residential property located to the south is approximately 45 metres. To the north, the closest building to the site contains a plaster moulding business (McCabe Plaster Moulding) and beyond that there is access to the GAA grounds to the west. Residential development on the eastern side of the road is separated from the site by the busy N77 and the closest dwellings are c.60 metres from the pump island

which is the subject of the current application. In view of these separation distances, and also having regard to the busy nature of the N77 and significant background noise generated by the road, I do not consider that the impact of the use of the 24 hour fuel card dispensing pump is such that it is likely to have a significant adverse impact on residential amenity by virtue of noise or other disturbance.

- 7.3.2. I note the comments of the third party appellant with regard to the absence of any limitations on the hours of operation of the facility and to the fact that other recent permissions granted by the Board have included such restrictions on operating hours. Specifically, reference is made to the granting of permission for a new filling station at Togher, Portlaoise which was permitted subject to conditions including restrictions on operating hours despite being considered to be located outside of a residential area. The reference of the case referred to is Laois County Council Ref. 17/538 and Board Ref. ABP-300994-18 and details are attached with this report. As noted by the third party appellants, Condition No.8 attached to the Board decision in this case requires that the operating hours of the facility would be between 06.00 and 23.00 hours.
- 7.3.3. In the case of the appeal site I do not consider that the use of a single pump island on a 24 hour basis by customers using fuel cards would be such as to have a significant impact on residential amenity. The information presented by the first party indicates that the remaining uses on the site including the forecourt shop and other pumps commence operation at 05.30 and close at 22.00. I also note the fact that none of the permissions granted by the council, including the most recent permission for the extension of the forecourt building and other works permitted by the council in March 2017 (Laois County Council Ref. 16/559), include any conditions restricting the hours of operation of other elements of the facility. In the event of a grant of permission, the Board may however consider it appropriate that a condition restricting the hours of operation of the other elements of the filling station activity on the site other than the pump island which is the subject of the current application to 06.00 to 22.00 hrs.

7.4. Traffic Safety and Access,

- 7.4.1. The third party appeal submission notes the fact that the site access is located immediately adjoining the Abbey Court residential estate and contends that the relative location of the accesses would result in a traffic hazard. The appeal submission also notes the fact that under Policy DM30 of the county plan it is stated that access to filling stations will not be permitted closer than 35 metres from a road junction.
- 7.4.2. Access to the forecourt area is via two entrances off the N77 and access into the site for south bound traffic is facilitated by a filter lane on the south bound side of the N77. The speed limit in operation at the site is 50 km/hr. The access to the Abbey Court development to the south is located immediately adjoining the southern access into the appeal site, and this access serves the c.25 residential units located within the Abbey Court development.
- 7.4.3. I note the provisions of Policy DM30 of the Laois County Development Plan with regard to the location of entrances to filling stations and the desirability of maintaining a separation of 35 metres between existing residential accesses and new filling stations. The circumstances of the subject case are however in my opinion different to those covered by Policy DM30. Most significantly, the circumstances of the current case are that the filling station use was in existence prior to the construction of the Abbey Court development. In addition, the current application is not for the construction of a new filling station as provided for in Policy DM30, but for the retention of a 24 hour use within part of an existing filling station that would result in an increased use of the existing access.
- 7.4.4. From an inspection of the site, I would agree with the contention of the first party that the access and exit points to the appeal site are properly engineered. I would also note that the site operates an entrance and exit arrangement whereby vehicles exiting the Abbey Court estate access road would not generally be in immediate proximity to vehicles exiting the appeal site which would do so via the northern site access. On the issue of traffic safety I would also note the fact that the Road Design Section of the council do not have any objections to the development, that the volume of traffic generated by the Abbey Court residential development is limited and that the potential for conflicts between residential traffic generated by Abbey

Court and the additional night time traffic generated by the retention of the 24 hour pump would also be limited. The site is located within an urban area where the 50 km /hr speed limit applies.

- 7.4.5. The first party appeal notes the fact that the development plan states that a wall of minimum height 0.5 metres must separate the filling station from the road and that there is no such wall in the case of the appeal site. This is correct, however I consider that the roadside boundary treatment of the appeal site incorporating a grass verge and setback of c.8 metres between the forecourt and road edge is appropriate and such as not to impact negatively on traffic safety.

7.5. **Other Issues**

- 7.5.1. Signage erected on site appears to be generally consistent with previous permissions granted on the site. The Notification of Decision issued by the Planning Authority includes conditions relating to advertising and the cowling of external lighting. In the event of a grant of permission, it is recommended that a condition specifying that no additional signage would be erected should be attached. The application does not provide for any additional lighting and it is not considered necessary that a condition relating to lighting would be attached to any grant of permission.

7.6. **Appropriate Assessment.**

- 7.6.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

- 8.1. Having regard to the above, it is recommended that permission is granted based on the following reasons and considerations and subject to the attached conditions.

9.0 Reasons and Considerations

Having regard to the General Business zoning objective of the site, to the established use of the site as a filling station and to separation of the site from surrounding residential uses and pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained 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. 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.

3. No advertisement or advertisement structure other than those shown on the drawings submitted with the application shall be erected or displayed on the canopy, on the forecourt building or anywhere within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

4. Other than the 24 hour dispensing pump the retention of which is authorised by this permission, the hours of operation of the rest of the facility shall be between 0600 and 2300 hours from Monday to Sunday inclusive. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of the amenities of property in the vicinity.

Stephen Kay
Planning Inspector

21st June, 2019