



An
Bord
Pleanála

Inspector's Report ABP-304130-19

Development	Amend operating hours for the depot cited by condition 7 attached to Board Order PL08.242487 to facilitate (i) all deliveries to the depot, (ii) all deliveries from the depot, and (iii) all self-service refuelling.
Location	Clashganniv, Castleisland, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/27
Applicant(s)	O'Keeffe's of Rathmore Ltd
Type of Application	Retention permission
Planning Authority Decision	Grant, subject to 3 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Peter Browne
Observer(s)	Sinead Murphy
Date of Site Inspection	July 2019
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site lies on the south-western approach to Castleisland along the Killarney Road (L-2040), where is subject to an 80 kmph speed limit. This site is situated 1 km from the town centre and 45m away from the roundabout between the Castleisland Bypass (N23) and the said local road. It lies on the western side of Killarney Road, as does an adjacent occupied dwelling house. On the opposite side of this Road lie a further four dwelling houses. However, two appear to be derelict and only one of the remaining two is presently occupied.
- 1.2. The site itself is of somewhat irregular shape, being the amalgamation of two formerly separate sites with different depths. This site extends over an area of 0.23 hectares and it has an c. 50m frontage with Killarney Road.
- 1.3. The front portion of the site is laid out as a forecourt behind a dwarf wall and it is accessed from its north-eastern corner off Killarney Road. A site office is accommodated in a portacabin adjacent to the site access and car parking spaces are formally laid out along the front of the forecourt. A pump island is sited at the rear of the forecourt. The pumps dispense kerosene, mark gas oil, diesel, and add blue.
- 1.4. The rear portion of the site is enclosed by means of security fencing and gates. The area thus enclosed accommodates, on the LHS, two rows of 4 no. tanks and an accompanying refuelling area beneath a raised canopy. Deliveries to the site, as distinct from deliveries from the site, are accommodated, on the RHS, in an adjoining yard.

2.0 Proposed Development

- 2.1. The proposal is for the retention of amended operating hours for the oil depot to facilitate the following:
 - All deliveries to the depot,
 - All deliveries from the depot, and
 - All self-service refuelling.

2.2. Under condition 7 attached to permitted application 13/399 and PL08.242487, the Board restricted the hours of operation. The applicant seeks the effective omission of this condition, in recognition of how the oil depot functions, in practise.

3.0 **Planning Authority Decision**

3.1. **Decision**

Permission was granted subject to 3 conditions:

- The second condition confirms that all the conditions attached to permitted application 13/399 remain operative except condition 7, and
- The third condition requires that all external lighting be cowled and directed away from public roads, in the interests of road safety and the avoidance of light pollution.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

See decision.

3.2.2. Other Technical Reports

- TII: Attention is drawn to Section 2.5 of the Spatial Planning and National Roads Guidelines.
- Fire Authority: No objection.
- National Roads Office: No observations.

4.0 **Planning History**

- 13/399: To demolish existing dwelling house and shed + To remove existing pump island + To construct a new pump island in new location + To construct a new concrete yard + To erect a new 2.4m high fence and new gates:
Permitted at appeal (PL08.242487), subject to 7 conditions, including the following one:

7. *The premises shall only operate between the hours of 07.30 and 19.00 Monday to Saturday and between 09.00 and 14.00 on Sundays and public holidays.*

Reason: In the interest of residential amenity.

- U035-18: Enforcement enquiry re. outstanding issue of trading outside permitted hours.

5.0 Policy and Context

5.1. Development Plan

Under the Killarney Municipal District Local Area Plan 2018 – 2024 (LAP), the site is shown as lying outside the Town Boundary to Castleisland and, under the Kerry County Development Plan 2014 – 2020 (CDP), it is shown as lying in an area zoned “Rural General”.

5.2. Natural Heritage Designations

- Stack’s to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161)
- Anna More Bog NHA (site code 000333)

5.3. EIA Screening

As the proposal pertains to the proposed retention of amended operating hours only at an oil depot, EIA provisions are not applicable.

6.0 The Appeal

6.1. Grounds of Appeal

Peter Browne of 7 Castleview Drive

- The proposal is resulting in an intensification of overall use of the site and an attendant increase in traffic generation and yet no traffic impact audit and road

safety audit have been requested by the Planning Authority or prepared by the applicant.

- The case planner states that Kingdom Oil opened the depot on the site “in the early 1960s” whereas this happened in 1967.
- A letter from a local resident is forwarded, which testifies to an increase in traffic movements at the site since the 24-hour self-service pump was installed and which expresses concern over the attendant risk to road safety. The applicant adds that “The pump installed facilitates fuel card and debit card sales for 4 products through 2 banks of 5 nozzles each...(diesel, gas oil, add blue, kerosene).”
- A site plan and photographs are forwarded upon which the achievability of sightlines is questioned.
- Attention is drawn to the applicant’s cover letter, which acknowledges that condition 7 is being breached, i.e. deliveries to the depot occur between 05.00 and 22.00, deliveries from the depot occur between 06.00 and 20.00, and self-service refuelling occurs on a 24-hour basis.
- Attention is drawn to the Board’s decision, which set aside the inspector’s recommendation of refusal on the basis that residential amenity could be protected by means of condition 7.
- Notwithstanding the two letters of support from local residents, the majority of such residents oppose the intensification of use that has occurred on the site.
- The said intensification of use if sanctioned would have a negative impact upon the town centre of Castleisland.
- The said intensification of use could cause disturbance/annoyance to local residents during anti-social hours.
- The said intensification of use has adverse implications for local walkers, who pass the site on what is known as “the short by-pass route”.

6.2. Applicant Response

- The current application seeks to reinstate the unrestricted hours of opening that the oil depot operated to prior to condition 7.
- The residents of the nearest habitable and occupied dwelling houses raise no objection to the current application. The applicant states that objection does exist within the locality but has not submitted any documentation to demonstrate the same.
- The relaxation in the hours of opening would not affect Castleisland: 95% of the fuel handled by the oil depot is for redistribution and so the self-service pump, which is sited towards the rear of the site, is only used by long standing customers, emergency services, and oil delivery lorries. Attention is drawn to the fact that the applicant also operates the Inver filling station 700m to the north of the subject site and so it would not compete with itself.
- The applicant estimates that on average 150 vehicles visit the oil depot daily and that only 4% of such vehicles would visit between 19.00 and 07.30. Furthermore, it has reviewed the sightlines available and it is satisfied that they are compliant.
- The applicant elaborates upon how the oil depot operated prior to condition 7 and how it continues to do so:
 - Oil deliveries to the depot tend to occur once or twice a week between 05.00 and 22.00. These deliveries may occur outside the conditioned hours during periods of peak demand two or three times a month.
 - Oil deliveries from the depot tend to occur between 07.30 and 18.00. However, during periods of demand, again two or three times a month, they occur between 06.00 and 20.00. Additionally, as the depot supplies stand-by generators for a range of facilities, emergency deliveries are sometimes necessary.
 - The self-service pump has been re-sited from its unsatisfactory roadside position to the rear of the site. This pump is used mainly between 07.30 and 18.00. However, two to three visits are made after these hours. It

does not dispense petrol and customers comprise the emergency services and delivery/commercial vehicle operators.

- Attention is drawn to the history of the oil depot. Thus, since the applicant acquired it, improvements have made to obviate reversing manoeuvres on the public road by delivery vehicles and roadside refuelling, with attendant traffic management and road safety gains.
- Attention is also drawn to the appellant's Emo filling station on the Tralee Road, Castleisland. Accordingly, the Board is requested to use its discretion under Section 138 of the Planning and Development Act, 2000 – 2019, to dismiss his appeal.

6.3. Planning Authority Response

- Attention is drawn to the improvements that were made to the site entrance and accompanying sightlines on foot of permitted application 13/399.
- Attention is drawn to the letters of support received from two residents of Killarney Road and to the absence of letters of objection from other residents on this Road.
- The Operations consultee's advice was received after the case planner's report was finalised. This advice, which requested that further information be sought, was not binding and so the fact that it was not taken up does not render the draft permission invalid. The view is expressed that a TIA would not find that significant traffic is generated by the site during its authorised hours of operation.

6.4. Observations

Sinead Murphy

- Attention is drawn to the archaeological interest attendant upon Castleisland and its associated potential for tourism. The applicant's oil depot on an isolated site on the southern approach to the town is at odds with its attractiveness to visitors.

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the CDP and the LAP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that the current application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) Land use, planning history, and amenity,
- (iii) Traffic, parking, and access, and
- (iv) Screening for AA.

(i) Legalities

7.2. The applicant invites the Board to exercise its discretion under Section 138 of the Planning and Development Act, 2000 – 2019, and to dismiss this appeal, as the appellant is a competitor.

7.3. I have reviewed the lodged appeal and I consider that it is based on *prima facie* planning grounds. I, therefore, conclude that the Board should proceed to assess it in the normal manner.

(ii) Land use, planning history, and amenity

7.4. Under the LAP and the CDP, the site is shown, variously, as lying outside Castleisland and in an area zoned “Rural General”.

7.5. The original oil depot operated from the northern portion of the site without any restriction in its hours of operation. Under permitted application 13/399, this depot was extended onto the southern portion of the site and redesigned to secure operational improvements, e.g. the ungated forecourt obviates the need for HGV’s to undertake reversing manoeuvres onto the L-2040 and the pump island has been re-sited from its former roadside location to the rear of this forecourt.

7.6. Application 13/399 was the subject of a draft permission from the Planning Authority, which did not seek to restrict the hours of operation. This permission was appealed

by a third party and the reporting inspector recommended refusal, partly on the grounds that the extended oil depot would, as a 24-hour operation, adversely affect the amenities of the dwelling house to the south west. The Board did not accept this recommendation and the view was taken that these amenities could be protected by means of restricting the hours of operation, i.e. condition 7.

- 7.7. The appellant draws attention to the applicant's hours of operation, which breach the restrictions imposed by condition 7. He states that the resulting intensification of use is adversely affecting the town centre and the amenities of local residents.
- 7.8. The applicant has responded by accepting that it is in breach – hence the current application – and by challenging the statement that the town centre is being adversely affected. It also draws attention to letters of support from the residents of the two occupied dwelling houses that are within the vicinity of the site.
- 7.9. The applicant has addressed the question of intensification by stating that on average 150 vehicles visit the oil depot daily and that only 4% do so between 19.00 and 07.30. It also outlines how oil deliveries to the site need for operational reasons to occur at times between 05.00 and 22.00 and, while deliveries from the site tend to be within the conditioned hours, at peak times they occur between 06.00 and 20.00. Thus, the “intensification of use” needs to be seen in the light of these points.
- 7.10. I note that the role of the planning system is not to stifle competition. I note, too, that the three filling stations in Castleisland are on Killarney Road (Inver, the applicant's other facility on this Road) and Tralee Road. These stations are located on approach roads to the town centre rather than in the town centre itself. They are no doubt in competition with one another and the applicant's subject site, insofar as the island pump offers a Diesel Card Ireland (DCI) facility.
- 7.11. Clearly, condition 7 reflects the Board's concern over residential amenity. At the application stage, the residents of the two occupied dwelling houses within the vicinity of the site submitted letters advising that they had no objection to the current application. As there are no other occupied dwelling houses near to the site, the views of these residents should be taken into consideration in assessing the question of residential amenity.
- 7.12. Taking a step back from the current proposal, I note that Killarney Road, which passes the site, formerly accommodated traffic passing through Castleisland. The

town by-pass was opened in 2010 and, in recognition of this, Killarney Road was re-designated a local road, i.e. L-2040. Accordingly, this Road is more lightly trafficked than hither to. The roundabout that forms the junction between the By-pass (N73) and the L-2040, lies to the south west of the subject site and beyond the dwelling house that is adjacent to this site to the south west. The noise generated by traffic using this roundabout and the L-2040 is the most significant factor in the make-up of the localised noise environment affecting the dwelling houses within the vicinity of the subject site.

- 7.13. Within the aforementioned context, I do not consider that traffic visiting the subject site, including traffic visiting at night time, would be readily distinguishable, except by the residents of the adjacent dwelling house to the south west. Prior to the expansion of the oil depot, a field/curtilage to another dwelling house lay between this dwelling house and the original oil depot, whereas now the yard used for deliveries to the expanded oil depot lies there. I judge that noise generated by these deliveries is likely to be distinguishable and so, if the amenities of the said dwelling house are to be protected, an acoustic barrier should be installed along the south western boundary of the site.
- 7.14. The south western boundary of the site is denoted by means of mature trees and hedging and so I am not concerned about light spillage from vehicles visiting the site at night. Likewise, the forecourt lighting that has been installed is of modern design, which minimises light spillage.
- 7.15. I conclude that in the absence of condition 7, an acoustic barrier should be erected along the south western boundary of the site, to safeguard the amenities of the adjacent dwelling house.
- 7.16. **(iii) Traffic, parking, and access**
- 7.17. The appellant states that traffic movements to and from the subject site have increased, especially as a result of the re-siting of the self-service pump and its marketing to DCI users. Concern is expressed over the implications for road safety of these movements.
- 7.18. The applicant has responded by setting out the statistical information summarised under the second heading to my report. It has also stated that the self-service pump

is only used by long standing customers, emergency services, and oil delivery lorries.

- 7.19. I note that the expansion of the oil depot has secured improvements to its access/egress and accompanying sightlines. I note, too, that the forecourt facilitates off-road turning manoeuvres and it provides formalised car parking spaces. Given the statistical information provided by the applicant, and even allowing for some uplift in the figures cited to factor-in possible future growth, I do not consider that traffic movements would jeopardise road safety.
- 7.20. I conclude that the present-day site is capable of handling satisfactorily existing and likely future traffic movements generated by the oil depot, including the self-service pump, without jeopardising road safety.

(iv) Screening for AA

- 7.21. The site is neither in or beside any Natura 2000 sites. The nearest such site is the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA. Given that the proposal pertains to the opening hours of an existing oil depot only, I consider that it is unlikely that this proposal would have any significant effects upon this or any other Natura 2000 sites.
- 7.22. Having regard to the nature of the proposal and the proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. That the proposal be permitted.

9.0 Reasons and Considerations

Having regard to the Kerry County Development Plan 2014 – 2020, the Killarney Municipal District Local Area Plan 2018 – 2024 and the planning history of the site, it is considered that condition 7 attached to the permission granted to application 13/399 at appeal PL08.242487 can be omitted, provided an acoustic barrier is erected along the south western boundary of the site, to safeguard the amenities of

the adjacent dwelling house. Additional traffic movements that would arise in the absence of condition 7 would be capable of being handled satisfactorily without jeopardising road safety. The proposal would thus accord with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Within 12 weeks of the date of this Order, the developer shall submit to and agree in writing with the Planning Authority a scheme for the south western boundary of the site. This scheme shall specify an acoustic barrier for erection along this boundary.</p> <p>Within 12 weeks of the date of the written agreement to the said scheme, the developer shall erect the barrier along the south western boundary and, thereafter, it shall be retained in-situ for the duration of the oil depot use of the site.</p> <p>Reason: In order to safeguard the residential amenities of the adjacent dwelling house.</p>
3.	<p>With the exception of condition 7, the other conditions attached to the Order granted by An Bord Pleanala, under PL08.242487, for the site shall remain operative.</p> <p>Reason: In the interest of clarity.</p>

Hugh D. Morrison
Planning Inspector

31st July 2019