



An
Bord
Pleanála

Inspector's Report

ABP-304216-19

Development

Construction of a petrol filling station including shop with internal ATM, off-licence, café and sandwich bar and ancillary spaces, external forecourt with canopy over three pump islands and underground storage tank; car parking, vehicular access, signage and all associated site development, ancillary and boundary works.

Location

Castlecomer Road, Co. Kilkenny

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

18716

Applicant

Inver Energy Ltd.

Type of Application

Permission

Planning Authority Decision

Grant with Conditions

Type of Appeal

Third Party

Appellant

Circle K Ireland Energy Group Ltd.

Date of Site Inspection

14th, August 2019

Inspector

Paddy Keogh

1.0 Site Location and Description

- 1.1.1. The site of the proposed development which has a started area of 0.219 hectares is a greenfield site located on the western side of the Castlecomer Road (R712 - speed limit 50 kph) immediately south of the roundabout at the end of the N77 Ring Road. The site is located on the northern periphery of Kilkenny City – c. 2 km. north of the city centre. The roundabout serves traffic travelling around the north and east of the city.
- 1.1.2. The site is substantially enclosed by a post and wire fence. The Castlecomer Road (to the east of the site) contains a central meridian with a cycle lane and footpath on either side). The road divides into two separate carriageways as it approaches the roundabout in order to facilitate right hand turning movements.
- 1.1.3. There are further greenfield lands immediately to the north of the site. Glenbawn, a well established housing estate, is located to the east of the site on the opposite side of the Castlecomer Road. A cul-de-sac serving five houses and a Co. Council depot is located to the west of the site. This cul-de-sac is a remnant of the old Castlecomer Road.

2.0 Proposed Development

- 2.1. The proposed development involves the construction of a petrol filling station to include the following:
 - Single storey commercial buildings (c. 211.4 sq.m.) incorporating a shop (100 sq.m. including an internal ATM and off-licence (3 sq.m.), café and sandwich bar (c. 52.2 sq.m.) and ancillary spaces (c. 59.2 sq.m.)
 - External forecourt area with canopy over three pump islands and underground storage tanks
 - 17 car parking spaces
 - Vehicular access to and from the Castlecomer Road with revised Road markings and signage
 - 1 no. 24m high totem sign (to north-east of the site)
 - 3 signs (on the north, east and west elevations of the forecourt canopy)

- 3 no. pairs of advertising signs on the north, east and south-east elevation of the building)
- All associated works

Documentation on file indicates that the applicants (Inver Ltd.) are the prospective purchasers of the site. There is a letter from Mr. Sean Byrne (the owner of the site) consenting to the making of the planning application and a letter from Kilkenny Co. Council consenting to the carrying out of works on lands owned by the council around the site, namely the road network.

3.0 Planning Authority Decision

3.1. Decision

Notification of a decision to grant planning permission for the proposed development, subject to 13 conditions was issued by the planning authority per Order dated 23rd, March 2019.

3.2. Planning Authority Reports

3.2.1. Planning Reports

A report from the planning authority Senior Planner dated 21st, March 2019 (following the receipt of 10 items of further information requested by the planning authority) includes:

- The site is zoned '*General Business*' in the Kilkenny City & Environs Development Plan 2014-2020 ('the Development Plan'). The stated objective of this zoning is 'To provide for general development. The proposed development is compatible within this zoning.
- The site is not located within an Architectural Conservation Area and there are no Protected Structures on or in proximity to the site.
- There are no recorded monuments on or in the vicinity of the site.

- The site is located a significant distance (in excess of 350m) from the Rover Barrow & River Nore Special Area of Conservation (SAC) and is also beyond its zone of impact. There are no anticipated impacts on the SAC.
- Plans exist for the construction of a future road from the roundabout to the north of the site to connect with the Freshford Road (the subject of Judicial Review proceedings). Roads Design Office have confirmed that the proposed development will not impact upon these plans.
- The proposed development complies with Development Plan policy (Section 11.16) in relation to the location of petrol stations (out of town locations within the speed limits).
- Concerns have been expressed concerning the fact that there are already two existing petrol stations located on the Castlecomer Road. However, retail competitiveness is not a concern for the planning authority. No Sequential Test is required in relation to the proposed shop which does not exceed 100 sq.m. in area.
- Satisfactory responses have been received from the applicant in relation to all 10 matters raised in the planning authority request for further information viz. details of proposed footpath along the western boundary of the site; the proposed line of reflective bollards has been extended 4m to the north and 4m to the south to prevent U-turn manoeuvres; details of the proposed cycle track traversing the proposed entry and exit has been provided; details of hard and soft landscaping and boundary treatment for the site; revisions to the design, location and illumination of signage; clarification of hours of operation as between 06.00 hours and 23.00 hours; revisions to surface water drainage arrangements including the provision of a petrol interceptor; electric vehicle charging point to be provided in the future if demand for same emerges.
- Preparation and submission of an EIAR not deemed to be necessary in light of the nature, size and location of the proposed development.

The recommendation of the Senior Planner is reflected in the planning authority decision.

3.2.2. Other Technical Reports

Environmental Health Officer – Report dated 13th, November 2018 indicates no objection to the proposed development subject to conditions.

Assistant Chief Fire Officer – Report dated 14th, November 2018 indicates no objection to the proposed development subject to conditions.

Senior Executive Engineer (Road Design) – Report dated 13th, December 2018 recommends that the applicant be request to submit further information in relation to (i) footpath along the site boundary to the road to the western side of the site (ii) extension of line of proposed traffic bollards further to the south and (iii) clarify details of the proposed cycle track traversing the entrance and exit to the site. Report dated 12th, March 2018 (following receipt of further information) indicates no objection to the proposed development subject to conditions.

Environment Section – Report dated 19th, December 2019 recommends that the applicant be requested to review the proposed surface water drainage design so that surface water drainage is passed through a petrol interceptor. Report dated 20th, March 2019 (following receipt of further information) indicates no objection to the proposed development subject to conditions.

3.3. Prescribed Bodies

Irish Water – Report dated 14th, November 2018 indicates no objection to the proposed development subject to conditions.

3.4. Third Party Observations

3.4.1. Three observations objecting to the proposed development were received by the planning authority. These were received from two local residents (Dr. Brian Deegan and Sean & Mairead Delaney). The matters raised in these objections include:

- Two petrol stations already on the Castlecomer Road. No requirement for a third.
- The proposed development will have negative impact on the residential impacts of the area as a consequence of hours of operation, light, air and noise pollution.

- The submitted drawings do not adequately indicate existing and permitted residential development in the vicinity of the site.
- The impact of the drainage of any surface water into the River Barrow and River Nore Special Area of Conservation (SAC) should be adequately considered.
- The proposed development will create undue traffic volumes at this location and will give rise to traffic congestion.
- No landscaping plan has been submitted.
- Proposed signage will detract from the visual amenities of the area.

3.4.2. A third observation was received from the appellant (Circle K Ireland). The matters raised in this objection and reflected in the submitted grounds of appeal.

4.0 Relevant Planning History

There is no record of planning history on the appeal site

5.0 Policy Context

5.1. **Kilkenny City & Environs Development Plan 2014-2020** ('the Development Plan')

- 5.1.1. The site of the proposed development is zoned 'M2' – 'General Business'. The stated objective of this zoning is 'To provide for general development'
- 5.1.2. Petrol stations, retailing and coffee shops/cafes are all permitted in principle within this zoning under the provisions of the Development Plan.
- 5.1.3. Section 11.16 of the Development Plan states:

The most suitable location for petrol filling stations and associated commercial developments is on the outskirts of the city and within urban speed limits. They will not be permitted at locations where because of their appearance, noise, fumes etc. they would be injurious to the amenities of the area, nor will they be permitted in areas where there are traffic hazards or where traffic hazards might be likely to arise.

- 5.1.4. Section 11.16 further states:

A petrol station may include the following: petrol pumps, gas dispenser, storage tanks, hose pipes and other vehicle services i.e. car washing, oil, water and air. It may also include the sale of goods related to the motor trade, a cash kiosk and a canopy over the pumps and provision of minor repairs, oil and tyre changes. Ancillary retail uses may be permitted such as small convenience type shops with a floor area generally not exceeding 100 sq. m. of sales space. However, planning applications for the provision of such shops shall be applied for specifically. The layout of the station forecourt should be arranged to allow dedicated car parking for those shopping at the shop.

5.1.5. The Development Plan contains a strategic roads objective to continue the N77 Ring Road around the northern and western boundary of the city.

5.1.6. Roads Objective 10L states:

To widen the Castlecomer Road to provide for two lanes south bound and one lane north bound carriageway.

5.2. Spatial Planning and National Roads Guidelines, 2012

5.2.1. Section 2.9 states:

A proliferation of service area facilities along rural sections of national roads and/or associated junctions, where maximum speed limit applies, would create significant safety risks and affect the level of service available to road users, as well as impact on the viability and vitality of existing urban settlements. In general, sufficient road side facilities on the non-motorway national road network, which also passes through or is in close proximity to a significant number of urban towns and villages where such facilities can be provided for in a sustainable manner.

5.2.2. Section 2.5 sets out details of 'Required Development Plan Policy on Access to National Roads'. In relation to 'Lands Adjoining National Roads within 50 kph Speed Limits' this section states:

Access to national roads will be considered by planning authorities in accordance with normal road safety, traffic management and urban design criteria for built up areas.

5.3. Natural Heritage Designations

- 5.3.1. The site of the proposed development is located c. 0.35 km east of the River Barrow and River Nore Special Area of Conservation (SAC) (Site Code 002162).
- 5.3.2. The site is located C. 0.35 km from the River Nore Special Protection (SPA) (Site Code 004233).

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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

- 6.1.1. The submitted grounds of appeal include:
 - The proposed development has the potential to impact negatively on residential amenity in the vicinity of the site as a consequence of general disturbance, noise and light pollution and excessive traffic generation and the creation of traffic hazard.
 - The zoning of the site in the Development Plan for business use appears to be entirely arbitrary in the context of the surrounding residential lands. Only part of the site is zoned for business use. The balance of the site is zoned agriculture.
 - The extent of new traffic movements generated by the proposed development in the vicinity of the site will contribute to the undermining of residential

amenity in the vicinity of the site and will give rise to potential traffic hazards. The lack of pedestrian connectivity to the site has been compounded by the applicant's response to the request for further information from the planning authority which provides for a reduction in the width of the proposed footpath along the western boundary of the site.

- The potential for traffic hazard associated with the proposed development would be contrary to Development Plan policy as set out at Section 11.16 of the Development Plan.
- It is requested that the Board consider the proposed road access and road layout together with the design of the proposed footpath along the western boundary of the site in accordance with the *Design Manual for Urban Roads and Streets* (DMURS). It is submitted that the lack of dedicated facilities for pedestrian crossing of the road adjoining the western boundary of the site is contrary to DMURS.
- The design of the proposed petrol station effectively turns its back on the houses to the west of the site. There remains no pedestrian access to the site from the rear and this boundary is defined by a 1.95 m high retaining wall.
- The appeal site is located c. 589 m from the Castlecomer Road roundabout on the N77 and adjacent to a national road which is the subject of a future road improvement scheme. Section 2.2 of the submitted Traffic and Transport Assessment acknowledges that the proposed petrol station is intended to serve traffic using this national road. There are already two service stations on the Castlecomer Road which adequately serve motorists in the Castlecomer area. In this regard, the proposed development is contrary to national policy as set out in the '*Spatial Planning and National Roads Guidelines, 2012*'.
- The proposed 'Kilkenny Northern Ring Road Extension' comprises Phase 1 of the city's western by-pass. This phase comprises c. 1.5 km of carriageway that will connect the Castlecomer Road at Junction 10 with the Freshford Road (R693). The decision of the Board to grant this scheme in 2014 has been the subject of legal challenge and referred to the Courts of Justice of the European Union (CJEU). Alternative route alignments are a central tenet of those appealing the road scheme decision. It is possible that the road scheme

may not be permitted in its current detail and could change to accommodate parts of the appeal site or adjoining lands. It is submitted that the proposed development would be premature pending the decision of the CJEU.

- Road Development Objective 10L of the Development Plan seeks '*To widen the Castlecomer Road to provide for two lanes south bound and one lane north bound carriageway*'. It is unclear how the proposed development meets with (or at least does not compromise) this specific road objective.

6.2. Applicant Response

6.2.1. A submission from the applicant's agent dated 9th, May 2019, in response to the submitted grounds of appeal, includes:

- The third party base their appeal on a number of inaccurate and unsubstantiated statements throughout their appeal, all of which have been dealt with comprehensively in the planning application (and in the current submission)
- The appellant is a petrol filling station operator that operated the nearest petrol filling station to the subject site which is located on the Castlecomer Road c. 1 km to the south of the appeal site.
- The Board should question the reasoning and validity of the appeal pursuant to Section 138 of the '*Planning & Development Act, 2000*', as amended ('the Act') and dismiss the appeal. It is submitted that the sole purpose of this appeal is vexatious on the basis of concerns of the impact of the proposal on the value of the appellant's property.
- All of the issues raised in the submitted grounds of appeal have been adequately addressed by the planning authority in their assessment of the proposed development.
- The appellant states that the general business zoning of the site in the Development Plan is arbitrary. However, no rationale to substantiate this claim has been provided.

- The grounds of appeal include no evidence to support the assertion that the proposed development will result in injury to the amenities of neighbouring residential property.
- The Lighting Study submitted as further information to the planning authority clearly demonstrates that the proposed development will not result in injury to surrounding residential amenity as a consequence of light overspill and pollution.
- The separation distance between the proposed development and the nearest houses (12 m to the nearest permitted house to the west of the site and 30 m to the nearest house to the east of the site) is appropriate in order to protect residential amenity.
- Traffic movements generated by the proposed development will not result in injury to the residential amenities of the area as a consequence of noise nuisance. Any impact will be minimal in its nature and will not materially alter the existing background noise or air pollution levels at this location.
- The subject site is well connected in terms of pedestrian and cycling connectivity. The new Castlecomer Road contains a dedicated and separated off-road cycle path and footpath that enables easy access for non-car users to the subject site. The reduction in width of the footpath to the western boundary of the site (which leads nowhere) from which the site cannot be accessed was to reflect and address the further information request from the planning authority. The section of the former Castlecomer Road to the west of the site will remain as a cul-de-sac containing a footpath along its western side facilitating easy access via the proposed new footpath along the south of the site to the proposed development. This approach is entirely in accordance with the approach advocated in the *Design Manual for Urban Roads and Streets* (DMURS) as it maximises facilities for pedestrian and non car based access to the site.
- The proposed access arrangements into and out of the proposed development are entirely in accordance with avoiding a traffic hazard on the new Castlecomer Road.

- Notwithstanding the fact that the location of the appeal site is within 85m of the N77 Castlecomer roundabout, the development will not impinge in any way on the operation and functioning of this road and roundabout.
- The section of the *‘Spatial Planning and National Roads Guidelines (2012)’* quoted by the appellant refers to rural sections of roads and associated junctions where maximum speed limits apply. This is clearly not the case in the current instance where the appeal site is located within an urban area and a speed limit of 50 kph applies.
- The Development Plan recognises that the most suitable locations for petrol filling stations and associated commercial developments is on the outskirts of the city and within urban speed limits.
- The location of the proposed development will in no way impact on the capacity of the N77 nor its future extension to the north-west of the appeal site. There is no potential for the new road (from the N77 junction to Freshford) to be re-routed in a manner that would in any way impact on the subject site. To claim that the proposed development is somehow premature pending the decision of the CJEU on the new road is without any grounds.
- Objective L10 of the Development Plan to widen the Castlecomer Road would not be compromised in any way by the proposed development as the carriageway is in excess of 20m wide at this location.

6.3. Planning Authority Response

- 6.3.1. A submission from the planning authority per letter dated 8th, May 2019 indicates no objection to the proposed development subject to conditions.

7.0 Assessment

I consider that the key issues arising out of the current application and appeal can be addressed under the headings as set out below. The matter of Appropriate Assessment also needs to be addressed.

- Procedural Matters
- Zoning
- Residential Amenity
- Roads & Traffic
- Other Matter (EV Charging Point)

7.1. Procedural Matters

- 7.1.1. The applicant, in their response to the submitted grounds of appeal, highlight the fact that the appellant is the operator of an existing petrol station located on the Castelcomer Road which will be in competition with the proposed development. The applicant suggests that the sole basis of the appeal is vexatious. Accordingly, the applicant request the Board to consider dismissing the appeal pursuant to the Board's powers under Section 138 of the Act.
- 7.1.2. Notwithstanding the reasonableness or otherwise of the applicants concerns in relation to the bone fides of the current appeal which has been lodged by a neighbouring petrol station which will be in competition with the proposed development, if permitted, I am satisfied that the grounds of appeal have raised a number of legitimate planning concerns and matters in relation to the proposed development. Accordingly, I consider that it would be unwarranted for the Board to exercise its powers pursuant to Section 138 of the Act in this instance.

7.2. Zoning

- 7.2.1. The site of the proposed development is zoned 'M2' – 'General Business'. The stated objective of this zoning is 'To provide for general development'

- 7.2.2. As has been highlighted by the applicant's agent, in a submission in response to the submitted grounds of appeal, all of the components of the proposed development (including retailing, coffee shops/cafes and petrol stations) are permitted in principle within this zoning under the provisions of the Development Plan.
- 7.2.3. The submitted grounds of appeal state that a portion of the site is not included within the 'General Business' zoning. I note that immediately adjoining lands to the north and south of the subject site are unzoned in the Development Plan. This assertion is refuted by the applicant. On the basis of the submitted documentation, it appears that the appeal site is contained entirely within the 'General Business'. Insofar as any fraction of the site might encroach onto the non-zoned lands, I consider that such encroachments is de minimus in nature in terms of the overall development. In any event, the encroachment area, if any, does not contain any buildings or other structures.
- 7.2.4. The submitted grounds of appeal query the rationale behind decision by the planning authority to zone the lands for 'General Business'. In the context of the current appeal, I consider that it would ultra vires the powers of the Board to look behind the rationale for this zoning and believe that consideration of this matter would be unwarranted.
- 7.2.5. The proposed development is for a petrol filling station and ancillary services of a generic nature and generic design typical of such facilities in many urban areas. The proposed development does not include facilities for the accommodation of large scale heavy goods vehicles or articulated lorries and is not of the scale or nature of an off-line Motorway Services Station. As has already been noted all of the components of the proposed development are permitted in principle with the zoning for the site. In the circumstances outlined, I see no objection to the proposed development on grounds of zoning.
- 7.2.6. The submitted grounds of appeal point out that there are already two petrol stations on the Castlecomer Road (one of which is operated by the appellant) and argue that the area is already adequately served with petrol filling stations. In my opinion, an overconcentration of any particular service only becomes a pertinent planning issue in circumstances where the provision of a particular activity reaches saturation point in a given area and within a given land use zoning to the detriment of the provision of

a desirable and reasonable mix of activities within a given land use zoning. On balance, having regard to the location of the appeal site in the context of a city the size of Kilkenny, I consider that the provision of petrol filling stations in the general area has reached saturation point. Competition between different commercial entities is not a matter for determination under planning legislation.

7.3. Residential Amenity

- 7.3.1. Section 11.16 of the Development Plan stipulates that petrol filling stations '*...will not be permitted at locations where because of their appearance, noise, fumes etc. they would be injurious to the amenities of the area...*',
- 7.3.2. The submitted grounds of appeal argue that the proposed development would be contrary to the provision of Section 11.16 by reason of its appearance, noise nuisance, light and air pollution. It is submitted that, as a consequence of these impacts, the proposed development would result in injury to the amenities of residential property in the vicinity of the site.
- 7.3.3. It has been submitted by the applicant, in response, that the proposed development would not generate noise nuisance in excess of established ambient noise levels in the area.
- 7.3.4. I note that the nearest dwelling to the east of the site is c. 30m away and on the opposite side of the Castlecomer Road which is a busy route carrying traffic entering and leaving the city via the N77. Given this configuration of development I consider that normal activities typically associated with the operation of a petrol filling station are unlikely to have a significant impact on the amenities of houses to the east of the site. The nearest dwellings to the west of the site are located c. 12 m. away. The design of the proposed development incorporates a high wall along the western boundary which will help to attenuate noise associated with the normal operation of the proposed facility. Furthermore, I note that the proposed development does not include a car wash facility which might generate noise nuisance in terms of the operation of compressors, power hoses etc. The station will also be unsuitable to service articulated trucks which typically might give rise to nuisance as a consequence of engine noise etc. Thus, on balance, I consider that the proposed development is unlikely to injure the residential amenities of property in the vicinity of the site as a consequence of noise nuisance.

- 7.3.5. It has been submitted on behalf of the applicant, in response to the grounds of appeal, that the proposed development will not result in injury to the amenities of the area as a consequence of light overspill. In this regard, the contents of the Lighting Study (and changes to the proposed signage) requested by the planning authority and submitted by the applicant as further information are highlighted.
- 7.3.6. I note that the further information submitted to the planning authority includes changes to the location (relocation of a sign originally proposed along the western elevation of the forecourt canopy) and changes to the illumination of proposed signage in order to protect the amenities of houses to the west of the site. The submitted lighting Study also demonstrates that lighting beneath the forecourt canopy will not result in any significant light overspill into areas outside the confines of the site itself. Subject to the modifications proposed in the further information submitted to the planning authority, I consider that the proposed development will not result in injury to the amenities to the residential property in the vicinity of the site.
- 7.3.7. The grounds of appeal do not include any evidence in support of the assertion contained therein that the proposed development will injure the amenities of the area as a consequence of air pollution. Having regard to the nature and scale of the proposed development I do not consider that the proposed development will result in air pollution in excess of the normal emission associated with motor transport or other facilities of this nature.
- 7.3.8. The submitted grounds of appeal argue that the design of the proposed development turns its back on existing houses to the east of the site and will present a blank façade (high wall) when viewed from this direction. I note that the proposed facility follows a relatively generic design typical of similar facilities. I accept that the facility will present a blank façade along its western elevation. Nonetheless, this boundary is reasonable will setback form the nearest residential properties and is separated from such properties by a the old Castelcomer Road that now terminates in a cul-de-sac. No houses face directly onto the western façade of the proposed petrol filling station. In these circumstances, I consider that the design of the proposed facility is acceptable. Furthermore, I consider that the proposed signage arrangements (as modified per further information received by the planning authority on the 26th, February 2019) are acceptable in terms of their design and impact on the visual amenities of the area..

7.4. Roads and Traffic

The submitted grounds of appeal argue that the proposed development is contrary to the provisions of the *'Spatial Planning and National Roads Guidelines 2012'* (*the Guidelines*) in circumstances where the proposed development is located c. 589m from a roundabout junction onto the N77. The grounds of appeal specifically cite Section 2.9 of the Guidelines which stipulates that *'A proliferation of service area facilities along rural sections of national roads and/or associated junctions, where maximum speed limit applies, would create significant safety risks and affect the level of service available to road users, as well as impact on the viability and vitality of existing urban settlements'*. However, as has been highlighted by the applicant's agent, in response this provision in the guidelines relates to 'rural sections of national roads'. The current proposal relates to a Regional Road that is situated within an urban (not a rural) area. Furthermore, I note the provisions of the Guidelines at Section 2.5 which relates to Development Plan Policies on Access to National Roads. In relation to 'Lands Adjoining National Roads within 50 kph Speed Limits' this section states that *'Access to national roads will be considered by planning authorities in accordance with normal road safety, traffic management and urban design criteria for built up areas'*. The Guidelines, therefore, allow for consideration of petrol filling station (subject to specified safeguards) even in the case of lands adjoining national roads where a 50 kph speed limit applies. The appeal site adjoins a Regional Road not a National Road. In these circumstances, I consider that there is no impediment to consideration of the proposed development based on the provisions of the Guidelines.

- 7.4.1. The appellant argues that traffic generated as a result of the proposed development will result in the generation of a traffic hazard. No substantial grounds in support of this claim have been proffered in the grounds of appeal.
- 7.4.2. I note that contents and conclusions of the Transport Assessment Report and Road Safety Audit Stage1/2 submitted with the application to the planning authority. The Transport Impact Report demonstrates that the additional traffic volumes and traffic turning movements into and out of the site can be satisfactorily accommodated without any serious adverse impact in terms of traffic disruption or hazard to the

surrounding road network and without any significant effect on the operational performance of the local road network. The Road Safety Audit identified two potential problems associated with the access arrangements for the proposed development (mistaken use of the exit only route from the proposed petrol station as an entrance route and lack of clarity in relation to how an existing cycle track to the front of the site will be accommodated). Recommendations to address both these issues are set out in the Road Safety Audit. The applicant has indicated that these recommendations will be incorporated into the final development scheme. Subject to the incorporation of these measures into the final design scheme I consider that the proposed development can be satisfactorily accommodated at this location and would not give rise to the generation of a traffic hazard.

- 7.4.3. The submitted grounds of appeal state that it is unclear how the proposed development can comply with the requirements of Road Development Objective 10L of the Development Plan which seeks '*To widen the Castlecomer Road to provide for two lanes south bound and one lane north bound carriageway*'. The applicant's agent, in response, argues that the requirements of this road objective would not be compromised in circumstances where the section of Castlecomer Road adjacent to the site is in excess of 20m wide.
- 7.4.4. It appears that any future plans for the widening of Castlecomer Road are at an early stage. No design yet has been prepared by the planning authority in respect of this road objective. I consider that, as has been highlighted on behalf of the applicant, there is ample carriageway width along the section of the Castlecomer Road carriageway (together with adjoining margins) to accommodate any future road widening requirements. Any pinch points and potential impediments to the widening of the road are located significantly further to the south of the section of the road adjacent to the appeal site (as the road approaches Kilkenny City).
- 7.4.5. The submitted grounds of appeal argue that the proposed development would be premature pending the decision of the CJEU in respect of the 'Kilkenny North Ring Road Extension'. This phase comprises a c. 1.5 km carriageway that will connect the Castlecomer Road at Junction 10 with the Freshford Road (R693). Alternative route alignments are a central tenet of the grounds of appeal of the Board 2014 decision to approve this scheme.

- 7.4.6. I note that the decision of the CJEU in the Preliminary Reference from the Irish High Court in this case (C-461-17) was made in was made on 7th, November 2018. This decision found shortcomings in the manner in which Appropriate Assessment had been conducted by the Board. The High Court subsequently issued (30th, January 2019) an order of certiorari quashing (simpliciter) the Board's decision in relation to the Kilkenny Road (Holohan & Others v An Bord Pleanala [2014 No. 476 JR]).
- 7.4.7. The current position in relation to the Kilkenny Road, therefore, is that no permission for the road exists. The matter will likely be the subject of a fresh application. The CJEU decision cited matters relating to failure by the Board to consider the conservation of species and habitats outside the site of the proposed development, failure to give adequate reasons for rejecting scientific expert opinion etc. However, the High Court (in implementing the decision of the CJEU) did not make any findings in relation to the selected route per se.
- 7.4.8. Having regard to the configuration of the appeal site in relation to the roundabout junction on the N77 it is difficult to see how any future proposal for a revised road alignment for the Kilkenny North Ring Road Extension would impinge on the appeal site (without also passing through area already developed for housing to the west of the site. In the circumstances outlined, I consider that a refusal of planning permission for the proposed development on grounds of prematurity pending a revised proposal for the Kilkenny North Ring Road would be unwarranted.

7.5. **Other Matter (EV Charging Point)**

- 7.5.1. I note from the documentation on file that the planning authority explored the possibility of providing an electric vehicle charging point on the site as part of the proposed development. The applicant indicated that it is not proposed a charging point in the initial phase of the operation of the proposed development, but that such a facility might be provided at some stage in the future.
- 7.5.2. In light of well publicised government policy and time targets in relation to the promotion of electric vehicles (and reduce dependence on fossil fuels) I consider that a requirement that the proposed development include an electric charging point from the outset of operation is reasonable and appropriate. Thus, I consider that an appropriately worded condition requiring such provision should be attached to any grant of planning permission that issues from the Board.

7.5.3. This matter has not been raised in the submitted grounds of appeal. The Board may, therefore, consider that the matter constitutes a new issue in the context of the current appeal. On balance, I consider that the matter falls within the normal range of matters for consideration in the context of an appeal of this nature. Accordingly, I consider that it need not be treated as a new issue.

7.6. Appropriate Assessment Screening

7.6.1. The River Barrow and River Nore SAC (Site Code 002162) is located c. 0.35 km to the west of the appeal site. There is no water connection between the appeal site and this SAC. The River Nore SPA is located c. 0.35 km to the west of the appeal site.

7.6.2. Having regard to the nature and scale of development proposed which will be served by public water supply and sewer connections and to the nature of the receiving environment, no appropriate assessment issues arise and it is considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European site.

8.0 Recommendation

8.1. I recommend that planning permission for the proposed development be granted for the reasons and considerations and subject to the conditions as set out below.

9.0 Reasons and Considerations

Having regard to the zoning of the site for 'General Business' in the Kilkenny City & Environs Development Plan 2014-2020 (within which zoning all elements of the proposed development are permitted in principle) and to the design, nature and scale of the proposed development and to the established character and pattern of development in the vicinity of the site it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of property in the vicinity of the site, would not seriously injure the visual or other amenities 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 as amended by the further plans and particulars submitted on the 26th day of February 2019, 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 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.

- (3) An Electric Vehicle Charging Point shall be provided at a suitable location within the site and shall be operational prior to the commencement of operation of the proposed petrol filling station. Details of the location of this facility shall be submitted to and agreed to in writing with the planning authority prior to the commencement of development.

Reason: In order to provide for an appropriate standard of development.

- (4) Details of the colour and materials of all external finishes to the proposed development shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. In particular,

Reason: In the interest of visual amenity.

- (5) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

- (i) There shall be no discharge of any trade effluent from the development, under than under than in compliance with a discharge licence issued under the Local Government (Water Pollution) (Amendment) Act, 1990.
- (ii) Clean surface water only shall be discharged to the surface water drainage system. All surface water shall pass through a suitably sized petrol interceptor prior to discharge into the public water drainage network.
- (iii) An emergency '*spill kit*' shall be kept on site to deal with any accidental spillage of oil, petrol or diesel. The spill kit shall contain, at a minimum, absorbent pads, containment booms, disposable bags, gloves, goggles and warning tape. The use of bioremediation in the form of booms, powder etc. shall also be available at all times.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

- (6) All tank and drum areas shall be rendered impervious to the materials stored therein. In addition, tank and drum storage areas shall be bunded either locally or remotely to a volume not less than 110% of the capacity of the largest tank or drum within the bunded area. Drainage from the bunded area shall be diverted for collection and safe disposal.

Reason: In the interest of the protection of the environment.

- (7) Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material, including any materials containing asbestos materials in the existing structures to be demolished, in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

- (8) The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management and dust suppression and management measures.

Reason: In the interest of public safety and residential amenity.

- (9) Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1500 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

- (10) Opening hours of the proposed facility shall be between the hours of 06.00 and 23.00 hours daily only, unless prior planning permission has been obtained to vary these hours. Deliveries to the retail unit shall only occur between these hours.

Reason: In the interest of residential amenity.

- (11) (a) The applicant shall carry out a stage 3 Road Safety Audit for the completed development.

(b) Details of proposed sign SUP-002 – Cycle Lane Sign shall be reviewed (directional arrow and text may be misleading in its current format).

(c) No traffic or machinery associated with the proposed development shall block the free flow of traffic along the Castlecomer Road or the cul-de-sac road bounding the site to the west and shall not block any neighbouring vehicular entrances.

Details in relation to the above matters shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: IN the interest of pedestrian and traffic safety.

- (12) Signage shall be provided in accordance with the scheme as modified in the further information documentation received by the planning authority on the 26th, day of February 2019. No additional signs or advertising structure shall be erected within the curtilage of the site or attached to the external facades of any buildings or other structures within the site in such a manner as to be visible from outside the site unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

- (13) The site shall be landscaped in accordance with the landscaping and boundary treatment details received by the planning authority on 26th, February 2019. If within a period of five years from the date of planting any tree, shrub or hedge is uprooted, removed, destroyed or dies replacement planting of a tree, shrub or hedge of a similar species shall be planted.

Reason: In the interest of visual amenity.

Paddy Keogh
Planning Inspector

12th, December 2019