



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306850-20

#### Development

Partial change of plans from retail units and apartment units, previously granted under Planning reference Nos 06/3886, 12/1428 and 187/1699 to a fuel filling station with underground fuel storage tanks, associated PipeWorks, overground filling points together with an additional access, site layout adjustments, changes to elevations and internal layout to adjoining retail units / offices, a main ID sign and associated services. The application included a Natura Impact Statement and A pre-development Archaeological report.

#### Location

Treanrevagh, Mountbellew, Co. Galway.

#### Planning Authority

Galway County Council

#### Planning Authority Reg. Ref.

191699

#### Applicant(s)

Cahermorris Developments Ltd.

#### Type of Application

Permission.

#### Planning Authority Decision

Grant Permission subject to conditions

<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Peter Kitt, Una Rafferty, Niall & Kathleen Duggan Mountbellew District Development Association Deirdre Naughton & Sean Farrell John Cunningham Tony McCormack
<b>Observer(s)</b>	Geraldine Kitt. Mountbellew Heritage & Tourism Network Ltd.
<b>Date of Site Inspection</b>	5 <sup>th</sup> March 2020.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. This appeal relates to a site within the town of Mountbellew Bridge in east Co Galway. The site extends to 7 hectares in area, is irregular in shape and is currently in the initial stage of development for a large-scale mixed-use scheme. The site is located within the 50km/h speed limit on College Road R358 which runs east from the centre of Mounbellew. The site lies circa 300m east of the central town square formed by the intersection of the N63 Roscommon Road and R358. The site extends northwards and also includes a right of way linking west to the N64. The appeal relates to a portion on the southern fringe of the overall site adjacent to the R358. There is a single storey dwelling on the site adjacent to the road front with an area of hardstanding and footpath and grass verge along the road frontage. Adjoining to the south east side is a two-storey residential property and Mountbellew Agricultural College is located to the east of this. Bellew Grove House, a substantial detached two storey over basement 19<sup>th</sup> century house and The Holy Rosary College secondary school are located to the west of the site. On the opposite side of the R358 to the south west are individual detached properties predominantly residential also with some commercial / service uses.
- 1.2. The extant permission on the site relates to a large scale, mixed use scheme which was granted permission on appeal under PL 07.221318 and 06/3886. The commercial element of the scheme focused on the southern end of the site fronting college road while the residential element was towards the northern part of the site. The lifetime of the initial permission was subsequently extended in 2012 (12/428) and 2017 (17/1699) and is due to expire on 31 December 2021.

## 2.0 Proposed Development

- 2.1. The proposal as described in public notices involves permission for partial change of plans from retail units and apartment units, previously granted under Planning Reference No.s 06/3886, 12/1428 and 17/1699, to a fuel filling station with underground fuel storage tanks, associated pipework, overground filling points together with an additional access, site layout adjustments, changes to elevations

and internal layout to adjoining retail units / offices, a main ID site and all associated services.

2.2. Cover letter submitted with the application outlines that the proposal involves minor changes to the façade of the proposed supermarket (Block B), the replacement of a commercial unit with a fuel filling station and the proposal provides for an additional access to the site from College Road.

2.3. The application is accompanied by a number of documents setting out the detail of the proposal including :

- Design Brief Patrick J Newell, Consulting Engineers.
- Natura<sup>1</sup> Impact Statement by McCarthy Keville O Sullivan,
- Report on Pre-development testing, Richard Crumlish.
- Traffic and Transport Assessment Trafficwise.
- Stage 1 Road Safety Audit Atkins
- Lighting report DiaLux

2.4 I note that supplementary correspondence submitted to the local authority by Patrick J Newell Consulting Engineers on behalf of the first party outlines issues with regard to the removal of public notices and includes dated photographs to demonstrate first party efforts to ensure that public site notices would remain in place.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1 By order dated 13<sup>th</sup> February 2020 Galway County Council decided to grant permission and 16, largely standard, conditions were attached. Notably no development contribution condition applied.

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<sup>1</sup> I note Cover page of Natura Impact Statement is entitled Nature Impact Statement, evidently a typographical error.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

3.2.1.1 Planner's initial report considers that concerns expressed during the course of the previous application regarding impact on Natura 2000 sites have been addressed. Details with regard to water supply are also satisfactory. Having regard to the time lapse since the original planning permission, development contributions should be assessed. A request for further information sought a schedule of floor areas to enable assessment of the appropriate contributions. A contextual street elevation was also requested. Further liaison with roads section advised to address issues with roads safety audit and traffic and transport assessment.

3.2.1.2 Final planner's report recommends permission subject to conditions. With regard to development contributions, and on the basis that the proposal does not include any new building such contributions would not apply. Permission was thereby recommended.

### **3.2.2. Other Technical Reports**

3.2.2.1 Senior Engineer Infrastructure and Operations indicates no objection subject to liaison with roads section to resolve issues raised in road safety audit and submission of a construction management plan.

## **3.3. Prescribed Bodies**

3.3.1 Transport Infrastructure Ireland notes reliance on the Planning Authority to abide by official policy in relation to development on/affecting national roads,

## **3.4. Third Party Observations**

3.4.1 Thirty-seven third party submissions to the local authority object to the development and many raise common concerns, also subsequently raised in the third-party appeals. I have summarised the grounds of objection as follows.

- Date of erection site notice erection is disputed. Site notice on white background.
- Validity of the application is questioned.

- Negative impact on established residential amenity. Noise / lights and disturbance.
- Health and safety hazard.
- Proximity to school and college – exacerbation of parking issues, traffic congestion and hazard.
- Environmental hazard.
- Fast food outlet in proximity to school.
- Need for development is disputed.
- Proposal is substantially a proposal which has previously been refused by the Board.
- Development concept is flawed and out of date.
- Negative impact on character of College Road and impact on commercial life of Mountbellew.
- Application documentation is inadequate. Proposal should be assessed in its entirety and not just the petrol station element. No strategic policy framework to support the scheme which is contrary to retail policy.
- Negative impact of proposal on town centre. Retail impact assessment required.
- Road safety audit notes risk regarding school pick up / drop off.
- Trees removed on roadfront.
- Nature Impact Statement misleading<sup>2</sup>.
- Flooding
- Environmental impact and impact on flora and fauna including negative impact on common lizard.

#### 4.0 Planning History

**304043-19 18/1210** The Board refused permission for partial change of plans from retail units and apartment units, previously granted under planning reference numbers 06/3886, 12/1428 and 17/1699, to a fuel filling station with underground fuel

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<sup>2</sup> Cover page of Natura Impact Statement is entitled Nature Impact Statement, evidently a typographical error.

storage tanks, associated pipeworks, overground filling points together with changes to elevations and internal layout to adjoining retail units/offices and also for a main ID sign sand all associated services including a Natura Impact Statement.

Refusal was for the following reasons.

“The Board considered that the change of use from retail units and apartments to a fuel filling station would generate additional traffic over and above the permitted use. The Board noted that the site was restricted in nature in terms of turning movements and was proximal to the junction of the access road for the overall permitted development and the regional road. It is considered that the proposed development would lead to a pattern of conflicting traffic movements at the junction that would be prejudicial to public safety, particularly to vulnerable road users in the area. The Board considered that the proposed development would, therefore, endanger public safety by reason of pedestrian and traffic hazard and would be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to grant permission, the Board reviewed the Traffic Impact Assessment and the Safety Audit Report received by the planning authority on the 24<sup>th</sup> day of August, 2018 and considered that the proposed fuel filling station would have a very different traffic impact than the permitted retail and residential Block A granted under planning appeal number PL 07.221318 (planning register reference number 06/3886). The Board is not satisfied, based on the information submitted by the developer, that the increased traffic arising from the change of use would not endanger public safety through conflicting traffic movements at and proximal to the junction of the main access road for the permitted mixed-use development and the regional road, in an area where there are vulnerable road users including school children and pedestrians.”

**PL07.221318** (Planning Authority reg. ref. 06/3886): Planning permission was granted for (a) the demolition of existing two storey convent/school building, detached house and out buildings (b) the construction of a mixed use development consisting of 1 cafe/restaurant, 15 no. retail units, 8 no. office medical, creche, 9 no. apartments, in 5 no. two storey blocks and 37 no. houses comprising 11 no. three bedroom, 24 no. 4 bedroom and 2 no. six bedroom houses (c) all associated external and site development works including the installation of a temporary on-site proprietary effluent treatment system, bin stores, car parking and ESB substation.

The proposal includes temporary onsite wastewater treatment system with discharge to public mains.

Condition no. 3 of the decision states: 3(a) No construction shall begin until the planning authority confirms in writing the commencement of works to upgrade the wastewater treatment plant. (b) No house or building shall be occupied until the planning authority confirms in writing that the wastewater treatment plant has been commissioned. Reason: In the interest of public health

**PL 07.221318 06/3886** was extended in 2012 (12/1428) and again in 2017 (17/1699). Expiry date is 31<sup>st</sup> December 2021.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The Galway County Development Plan 2015 – 2021 refers.

5.1.1.1 Mountbellew is designated as an “other village” in the Galway County settlement hierarchy. Section 2.6.6 of the development plan states that these villages have strong settlement structures and have the potential to support additional growth, offering an alternative living option for those people who do not wish to reside in the larger key towns and do not meet the housing need requirements for the rural area. The wastewater treatment facilities in some of these towns/villages require investment and therefore it is considered that their inclusion at this level in the hierarchy will provide a plan-led approach to securing this investment in the future.

5.1.1.2 Objective SS 6, Development of Other Villages seeks to protect and strengthen the economic diversity of the smaller towns, villages and small settlements throughout



the County, enabling them to perform important retail, service, amenity, residential and community functions for the local population and rural hinterlands.

5.1.1.3 Section 4.21 of the development plan refers to Petrol Filling Stations, although largely refers to the accompanying retail element.

5.1.14 DM Standard 11: Petrol Filling Stations: Petrol filling stations will be subject to the following requirements: a) Location The preferred location for petrol filling stations is within the 50-60kph speed limit of all settlements. b) Road Frontage & Access, in general a minimum road/street frontage of 30 meters shall be required. This may be reduced where the development can demonstrate compliance with the required sight distances for various road categories at the entrances/exits of the proposed development. • A low wall of an approximate height of 0.6 metres shall be constructed along the frontage with allowance for two access points each 8 metres wide; • The pump island shall generally be not less than 7 metres from the footpath/road boundary. c) Lighting and Signage • All external lighting should be directed away from the public road and a proliferation of large illuminated signs will not be permitted; • No signage cluster shall be permitted. d) Car Wash • Any car wash proposals will require a discharge licence. e) Permissions, • All petrol filling station applications including improvement or extension will require Autotrack Analysis, TTA and Safety Audit & compliance with DM Standard 21: Building Lines.

## 6.0 Natural Heritage Designations

6.1 The site is located 2km south of the Carrownagappul Bog SAC (001242) and 11.6km from the River Callows Suck SPA (004097).

## 6.2 EIA Screening

6.2.1 Having regard to nature and scale of the development and the built-up location of the site 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.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

7.1.1 There are a total of six third party appeals by the following:

- Brendan McGrath and Associates on behalf of Tony McCormack, Tuam Road, Mountbellew. – Owner of existing petrol filling station on Tuam road 1.5km east of the site.
- John Cunningham, Mongford Hill, Mountbellew.
- Sean Lucy & Associates on behalf of Deirdre Naughton & Sean Farrell, 7 Oaks College Road, Mountbellew. (Residents of the house adjoining the site)
- Mountbellew District Development Association (Incorporating Tidy Towns Committee)
- Úna Rafferty Newtown Mountbellew, Vice Principal of St Mary's National School. Niall & Kathleen Duggan, 9 Treanrevagh, Mountbellew.
- Dolan & Associates, on behalf of Peter Kitt, College Road, Mountbellew.

7.1.2 The third-party appeals raise a number of common issues which I have summarised as follows:

- Description of the proposal is inadequate. Proposal replaces a mixed-use component of the original scheme with a supermarket and petrol station. It is not clear if the large car park beside Block B to serve the supermarket and other retail units is part of the scheme. Not clear if Block F which is part of the original permission is to be built. Proposal with regard to Blocks C and E also unclear. Masterplan should have accompanied the application to show phases of intended development .
- There is no planning justification for the scale of development now proposed. Mountbellew does not feature in the core development strategy other than to

accommodate some of the residual population growth allocated to non-selected settlements and the general countryside. In January 2020, the northern and western regional assembly adopted a regional spatial and economic strategy which came into immediate effect. Mountbellew falls within category of other rural area.

- Serious adverse impact on the commercial life of the village. An existing petrol filling station and two other small supermarkets in the villages (Cunningham's Costcutter and Supervalu), two butchers, a vegetable shop and post office in the village and convenience retail outlet in Moylough 5km away. The combined floor areas of all existing shops would not match the floor area of the proposed supermarket. Mountbellew is on the 5<sup>th</sup> tier of county settlement hierarchy. Scale of retail provision is not justified. Shop exceeds 100sq.m.
- Adverse impact on the character of college road and adjacent areas
- Traffic hazard. Note two fatalities on this stretch of road. A sizable proportion of vehicles on college road exceed the speed limit. Survey shows more than 60% above speed limit.
- Permission is defective. No financial conditions. No specification for the treatment of the part of the road frontage which is part of the site but not part of the development description (Block E) and does not clarify the extent of the development to be carried out on foot of this decision.
- Application should be considered de novo
- Health and safety concerns. Benzene exhaust fumes. Impact on adjacent schools.
- Negative impact on residential amenity in terms of disturbance light pollution, devaluation of property and privacy impacts particularly regarding adjacent dwelling.
- A number of vulnerable road users in the vicinity.
- Negative impact on Mountbellew Lake which lies within 100m.
- Unauthorised removal of trees from College Road.
- Utility infrastructure challenges. Electricity and wastewater.

- Traffic monitored on college road on Friday 6<sup>th</sup> and Saturday 7<sup>th</sup> September 2019 when neither Holy Rosary College nor Agricultural College did not have students or teachers in attendance. Therefore, not a true reflection or normal traffic activity.
- Hours of operation. Potential for anti-social behaviour.
- Site notice invalid. Level of detail incomplete.
- Nature Impact Statement misleading<sup>3</sup>.
- Inappropriate location for filling station.
- Fast food outlet adjacent to school
- No provision for refuse storage / collection.
- No provision for recharging electric vehicles.
- Road Safety Audit phase 1 /2 required,
- Discussions between road section and applicant not transparent.
- Extension of durations inappropriate.
- Concerns with regard to phasing and timeframe of implementation
- Planning Authority failed to take account of third-party submissions.

## 7.2. Applicant Response

7.2.1 The first party response to the appeals by John O Malley, Kieran O Malley and Co Ltd and includes a number of enclosures including site layout drawings and a revised lighting plan by Patrick J Newell, Consulting Engineers, and a letter from Petrocourt Forecourt Design and Engineering Services which confirms that the proposed forecourt layout is in compliance with the Dangerous Substances Regulations 2019 and the Design, Construction modification maintenance and decommissioning of filling stations (also known as the blue book). The submission addresses the various grounds of appeal and is summarised as follows:

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<sup>3</sup> Cover page of Natura Impact Statement is entitled Nature Impact Statement, evidently a typographical error.

- Following most recent Board refusal 304043-19 (18/1210) the applicant and the design team carefully considered the Board's decision regarding pedestrian safety and traffic hazard.
- The proposed development incorporates a new access, modified forecourt layout and the application is supported by a Traffic and Transport Assessment and Roads Safety Audit.
- Omission of the approved ghost island in accordance with DMURS.
- Provision of access junction entry treatments on the R358 College Road incorporating traffic calming and pedestrian priority measures. Raised entry ramps with pedestrian crossings enable continuity of the footpath. Ramps with pedestrian crossings provided on main access road. The layout of the forecourt is oriented at 90 degrees to the previous layout to facilitate the efficient movement of vehicles and safe pedestrian movement.
- Changes to approved plans and elevations improve the visual appearance of the building and internal rearrangement of the floor plan.
- Regarding fuel storage tanks and landscaping and boundary details. Drawings attached by Patrick Newell Consulting Engineers sets out proposals.
- Regarding assertions that the application details are inadequate. Notices capture the substance of the proposed development. Submitted drawings comply with the Regulations.
- Regarding public safety. Removal of right turn lane is in accordance with DMURS which is current best practice for road design.
- Vehicle sweepth path analysis for fuel delivery vehicle shows access and departure from site and this manoeuvre will not impede access to pump islands or car parking spaces.
- Car parking provision is adequate.
- Retail space is already approved at Block B.
- Regarding impact on dwelling adjacent to the east, drawings submitted with the appeal response demonstrate arrangements with regard to boundary treatment. East boundary treatment provides for retention of existing stone boundary wall and

construction of a new 2m high wall to screen the forecourt from the northwest corner of the adjoining garden. A native hedge is to be provided to the footpath to College Road.

- Regarding hours of operation the original permission does not include any condition in relation to hours of operation.
- Additional traffic noise will be minimal. Allegations regarding impacts arising from air emissions and odour unfounded given regulation of filling stations.
- Lighting scheme is designed to avoid overspill. Any CCTV cameras will be directed within the site and angled to avoid views of the appellant's property.
- Concrete slab area adjacent to the eastern boundary is reserved for fuel deliveries and there is no proposal for a car wash.
- Details of fuel storage tank location are provided. Location of vents can be revised to address appellant's concerns.

### **7.3. Planning Authority Response**

7.3.1 The Planning Authority did not respond to the appeals.

### **7.4. Observations**

7.4.1 Observations are submitted by Geraldine Kitt, Mountbellew, Carmel Haverty, Tuam Road, Mountbellew, Teresa McCormack, Tuam Road, Mountbellew and Mountbellew Heritage and Tourism Network. The observers support the grounds of appeal citing objection to the proposed development on grounds of environmental impact, traffic safety, need not substantiated, noise, air quality and anti-social behaviour. The concentration of educational uses within the area warrants a rezoning of lands to protect and allow for future expansion. Negative impact on vulnerable road users noting in particular unique circumstances where Ability West and Brook House which cater for people with special needs are proximate to the site.

Concerns also expressed with regard to the adverse impact on Donager House and grounds at a critical level of conservation.

## 7.5. Further Responses

7.5.1 In response to the first party response to the appeal a number of submissions were received by the Board as follows: Dolan and Associates on behalf of P Kitt, Geraldine Kitt, Brendan McGrath and Associates on behalf of Tony McCormack, Mountbellew District Development Association, Deirdre Naughton & Sean Farrell, and J Cunningham. Submissions reiterate objection to the proposed development and are summarised as follows:

- Concerns regarding the grant of permission in the absence of full details reiterated. Significant additional information provided and revised plans should be dismissed.
- Small retail units as previously permitted are more appropriate.
- Provision of second entrance likely to compound traffic problems. ~Failure to address cyclists.
- Marked extent and strength of local opposition from the community.
- Health and safety concerns and proximity to dwellings and schools reiterated.
- Traffic concerns remain. Concerns with regard to R358 not addressed.
- Noise and Environmental Pollution
- Reiterate contention regarding failure to comply with legislation regarding public notices both regarding display and description of development.
- Nature of petrol forecourt ancillary to supermarket material issue and relevant consideration. Development is edge of centre in the context of the retail planning guidelines.
- County Development Plan superseded by the Regional Spatial and Economic Strategy 2020. Mountbellew not selected as a growth centre.
- TIA confirms that there is a speeding problem on the road fronting the site.
- Health and Safety concerns arising from dangerous substances.

- Inappropriate removal of trees
- Failure to consider environmental concerns.
- No provision for electric cars.
- Inaccuracies on drawings regarding adjacent dwelling. Two living room windows look directly onto the site.
- Concerns regarding servicing and infrastructure remain.
- Hazards of exposure to benzene and petroleum outlined in a number of peer reviewed documents enclosed with submission.
- Impact on heritage

## 8.0 **Assessment**

8.1 I note that as the proposal is essentially the same proposal as that previously refused by the Board ABP304043 (July 2019) therefore the key issue arising relates to the question of the extent to which the Board's reason for refusal has been addressed. As noted above the previous appeal was a first party appeal and the Board confirmed the Council's decision to refuse. The Board's refusal reason was solely on traffic grounds. I note that a number of the third-party submissions also raise wider planning issues which, in the interest of justice, also need to be addressed.

8.2 On the issue of procedural matters, I note that a number of third parties contradict the circumstances of the site notice display. I note that the first party also submitted evidence to demonstrate efforts to ensure that site notice was maintained on the site despite interference. Having considered the matter I note based on the quantity of third-party submissions it is evident that the local public were well informed of the application on the site. As regards the colour of site notice as the application was made outside the six month of the making of the first application a yellow background notice was not required and a white background was appropriate. On the issue of the validity of the application in terms of the description as "a change of



plan”, I note the potential for some degree of confusion however the validity of the application was accepted by the local authority and notably it is the second such application on the site. As regards the adequacy of the plans and particulars and the uncertainty with regard to a masterplan and phasing details for the development of the overall site, I consider that such overview would be helpful however I consider that the plans and particulars as submitted enable assessment of the proposal on its merit. Having considered the details of the application and appeal, the planning history and having visited the site I propose to deliberate on the planning merits of this appeal under the following broad headings:

- Principle of Development
- Traffic and Servicing
- Appropriate Assessment
- Other Matters

### **8.3 Principle of Development**

8.3.1 I note that in the assessment of the previous appeal ABP-304043-19 the reporting Inspector noted the significant length of time since the granting of the permission for a mixed use development on the site by the Board in 2007 and noted the extent of policy changes and indeed perspective in the meantime. However the nature of the development now proposed involves the replacement of permitted block A Gross Floor Area 1165.58sq.m (Retail units 1-6 (684.7sq.m) and first floor apartments 1-6 (2bed)(480.88sq.m) with a petrol filling area comprising 4 pumps, a canopy bicycle parking and car parking and amendments to block B, which are minor in the context of the permitted development. Thus, the development now under consideration involves the replacement of a more substantial two storey retail and residential building, with a petrol filling area. I note that the third parties indicate that previous reporting inspector incorrectly stated that there is no fuel filling station within the village of Mountbellew when indeed there is one on the Tuam Road circa 1.5km from the site. I note that the relevant local policy documents and the Retail Planning

Guidelines 2012 provide that the planning system should not be used to inhibit competition, preserve existing commercial interests, or prevent innovation. As regards the issue of retail impact of the supermarket as this is not part of the current appeal and has been permitted by the extant permissions on the site, it is not appropriate to revisit this issue de novo. Similarly, the evolved context of the village of Mountbellew in terms of strategic policy, the County core strategy and regional spatial and economic strategy whilst notable and informative must be considered in the context of the extant permission on the site. In the light of the foregoing and having regard to the planning history on the site I consider that principle of the proposed development is acceptable subject to detailed considerations. In the event that the Board were to consider a grant of permission it is appropriate that the duration of such permission is tied to the overall development which as noted above is due to expire on 31<sup>st</sup> December 2021. As regards third party concerns with regard to the phasing and delivery of the overall permission on the site, I note that this proposal is set as a change of plan and submitted layout indicates that the remaining part of the overall sites will be carried out in accordance with the extant permission.

#### **8.4 Traffic and Servicing**

##### **8.4.1 The Board's previous reason for refusal was as follows:**

“The Board considered that the change of use from retail units and apartments to a fuel filling station would generate additional traffic over and above the permitted use. The Board noted that the site was restricted in nature in terms of turning movements and was proximal to the junction of the access road for the overall permitted development and the regional road. It is considered that the proposed development would lead to a pattern of conflicting traffic movements at the junction that would be prejudicial to public safety, particularly to vulnerable road users in the area. The Board considered that the proposed development would, therefore, endanger public safety by reason of pedestrian and traffic hazard and would be contrary to the proper planning and sustainable development of the area.”

The Board considered that the proposed fuel filling station would have a very different traffic impact than the permitted retail and residential Block A granted under planning

appeal number PL 07.221318 (planning register reference number 06/3886) and the Board was not satisfied, based on the information submitted by the developer, that the increased traffic arising from the change of use would not endanger public safety through conflicting traffic movements at and proximal to the junction of the main access road for the permitted mixed-use development and the regional road, in an area where there are vulnerable road users including school children and pedestrians.

8.4.2 The current application is accompanied by a traffic and Transport Assessment by Traffic Wise, dated September 2019. The assessment is informed by Traffic Counts carried out on Friday 6<sup>th</sup> and Saturday 7<sup>th</sup> September 2019 as well as an automatic traffic counter in place from Thursday 5<sup>th</sup> to Wednesday 11<sup>th</sup> September 2019 inclusive. The current layout differs from that previously refused by the Board most significantly in that it is proposed to provide two separate vehicular access points to the forecourt. The current proposal also notes that the proposed main site entrance is to be modified having regard to DMURS. The assessment provides a review based on the TRICS database of the forecast traffic generation of the permitted development versus the proposed development. Estimates of the incremental difference in traffic generation between the permitted and proposed development for weekday and Saturday scenario is set out in table 5.13. It is asserted that the increase in traffic flow are not likely to have a significant impact on the carrying capacity of the existing receiving road network. The estimated increases on the adjoining College Road are in the order of 1.1% in the weekday morning peak hour, 0.9% in the weekday evening peak hour and 1.0% in the Saturday retail peak hour which is not considered significant in terms of the carrying capacity of the existing road network.

8.4.3 It is noted that the existing permitted development site is serviced by a single ghost island priority junction providing direct access to the regional road R358. The proposed filling station will be served by simple priority access directly from R358 at the eastern end of the site frontage. It is noted that the permitted development

includes a right turn lane however based on current best practice as outlined in in DMURS it is not proposed that this right turn lane will not be implemented.

8.4.4 The application is also accompanied by a road safety audit by WS Atkins Ireland Ltd on behalf of Trafficwise Ltd. which outlines that in considering the question of a right turn lane the designers noted that a right turn or deceleration lane might encourage higher mainline through traffic speeds on College Road which would be undesirable in the vicinity of the nearby Holy Rosary College. I note the other issues identified within the Road Safety Audit including kerbed buildout, boundary treatment blocking sight to vulnerable road users, impact of school pick up and drop of. In relation to the kerbed buildout, this is remote from the site and not a matter to be addressed within the scope of this application. Trees along the site frontage have in the meantime been removed and as regards school pick up / drop this is a wider traffic management issue.

8.4.5 PICADY modelling analysis forecast traffic flow scenarios which demonstrate that the proposed junction will operate satisfactorily up to and including design year 2035. It is outlined that the impact for the proposed development is not likely to be significant on the receiving road network which is designed to cater for such development. The modified permitted access and proposed new access on college Road incorporate the existing footpath and a raised crossing. It is proposed that the road level at the entrance will be raised so as to maintain the footway / cycleway at a constant grade. A detailed traffic management plan to be implemented at construction phase.

8.4.6 I consider that there would be adequate capacity on the adjoining road network for the proposed development. On balance I consider that the proposed development will not result in traffic congestion traffic hazard or obstruction of road users and is acceptable on traffic safety grounds.

8.4.7 As regards wastewater I note that the governing permission included condition 3 which requires that no construction begin until the planning authority confirms in writing the commencement of works to upgrade the wastewater treatment plant. I note that the Board in decision ABP301973-18 approved the CPO for Irish Water to

facilitate the implementation of the project that will entail the provision of a new Wastewater Treatment Plant at a greenfield site adjacent to Mountbellew Co-op Livestock Mart. The project will also include the construction of a pumping station and storm water tank at the existing Mountbellew WWTP located adjacent to the Casltegar river. The existing WWTP will be decommissioned and demolished. I note that the previous reporting inspector ABP304043-19 noted that while the upgrade of the Mountbellew WWTP is not necessarily imminent it is now more likely than in 2007 when the Board granted the parent permission on the site. On this basis a provisional condition was deemed appropriate and I would concur that this is the appropriate course.

## **8.5 Design and Impact on the Amenities of the Area.**

8.5.1 As regards the proposed design and layout I note the third-party comments with regard to the loss of a strong streetscape to College Road arising from substitution of the permitted Block with the forecourt and forecourt canopy. Whilst I acknowledge that the loss of strong urban definition is regrettable, I nevertheless consider that in the context of the site whereby adjacent properties are largely setback from the road frontage the proposal is acceptable.

8.5.2 As regards impact on residential amenity in terms of noise and disturbance I consider that any impacts arising can be appropriately mitigated in terms of boundary landscaping and treatment and subject to normal good site management and operation. I consider that in light of the proximity to residential properties a condition restricting hours of operation is appropriate. As regards health and safety concerns expressed with regard to exposure to benzene and petroleum, I note submissions of the First Party outlining the commitment to operation within the relevant standards and regulations including the Dangerous substances Regulations. Submission by Petrocourt, forecourt design and Engineering Services which outlines that the proposed the layout is in compliance with relevant setback requirements. As regards issues raised with regard to the potential impact of the proposal in terms of fast food and convenience giving rise to unhealthy lifestyle choices in close proximity to a number of educational institutions, such matters are well beyond the remit of the Board in terms of the limited nature of the current

appeal and in any case the such societal and cultural choices can not be resolved through the development management process.

8.5.3 As regards the cultural and heritage impact of the development and in particular the impact on Dowager House to the northwest, I consider that in the context of the separation distance involved and in light of the permitted development on the larger site the proposed filling station does not have a negative visual impact and is acceptable.

8.5.4. As regards the matter of provision of electric vehicle charging points as part of the proposed development in light of government policy and targets in relation to the promotion of electric vehicles and reduction of dependence on fossil fuels, I consider that a requirement to provide an electric charging is appropriate and an appropriately worded condition requiring such provision should be attached to any grant of permission that issues from the Board.

## **8.6 Appropriate Assessment**

8.6.1 I note that the application is accompanied by a Natura Impact Statement by McCarthy Keville O Sullivan Planning and Environmental Consultants. I am satisfied that the information submitted is sufficient to enable the Board to Carry out an Appropriate Assessment. The NIS provides a detailed description of the proposed

development, the receiving environment and best practice measures to be implemented during the construction and operational phases.

8.6.2 The following sites Natura 2000 sites are noted within a 15km radius of the appeal site:

- Carrownagappul Bog SAC 1.8km
- Curraghlahanagh Bog SAC 5.1km
- Shankill West Bog SAC 5.7km
- Derrinlough Coolkeenleanode Bog SAC 8km
- Camderry BOC SAC 9.4km
- Lough Lurgeen Bog /Glenamaddy Turlough SAC 10km
- Lough Corrib SAC 10.7km
- Ballygar (Aghrane) Bog SAC 11.8km
- Aughrim Aghrane Bog SAC 1.3km
- Lisnageeragh Bog and Ballinastack Turlough SAC 14.5km
- Levally Lough SAC. 14.6km
- River Suck Callows SPA 11.6km

8.6.3 All of the above SAC sites can be screened out on the basis of lack of hydrological connectivity and nature of the receiving environment. The River Suck Callows Spa which is 11.5km from the site and 17km surface water distance is screened in for further assessment. The appeal site is outside the foraging range for the SCI species and given the distance no disturbance or habitat loss or displacement will occur. There is however potential for hydrological connectivity via the Castlegar river. A tributary of the Castlegar River runs to the north of the site and ultimately discharges to the River Suck. The potential risk of surface water contaminated by pollutants from the fuel filling station reaching the Castlegar River and ultimately the River Suck is considered.

8.6.4 Applying the precautionary approach a potential indirect pathway exists for impact on the wetland habitat of the River Suck Callows SPA arising from any potential deterioration in water quality. This NIS concludes that this is not likely due to the

storage tank specification, surface water treatment and range of best practice measures. The NIS states that no adverse effects on the integrity of the SPA is anticipated and there is no potential for significant effect.

8.6.5 The characteristics of the proposed development for surface water management storm water drainage and best practice construction and operational details are explored. It is considered that the subject to these measures and the distance involved, 17 km in terms of source pathway connector route between the appeal site and the designated site, the likelihood of significant effects on water quality of the SPA is low. I am satisfied that the identified risks are not likely and are not significant. I am satisfied that the proposed development itself would not be likely to have significant effect on any Natura 2000 site.

8.6.6 It is considered that the proposed development would not adversely affect the integrity of the conservation objectives of the designated site. Therefore it is reasonable to conclude on the basis of the information on the file, which I consider reasonable in order to carry out a Stage 2 Appropriate Assessment, that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of the European Site No 004098 River Suck Callows SPA or any other European site in view of the site's conservation objectives.

## **8.7 Recommendation**

8.7.1 In light of my assessment as set out above, I recommend that planning permission be granted for the reasons and considerations set out below.

1. Having regard to –

- (a) The planning history on the site, the pattern of existing and permitted development in the area, it is considered that subject to the conditions set out below, the proposed development would not seriously injure the amenities of property in the vicinity would not adversely impact on the visual amenity or character of the area 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.

### **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 the 17th day of January 2020 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

- 2 Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permissions granted on 10<sup>st</sup> day of December 2009 under appeal ref PL07.221318, planning register reference number 06/3886 as extended by 12/1428 and 17/1600, and any agreements entered thereunder. This permission shall expire on 31<sup>st</sup> day of December 2021.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

- 3 No construction shall begin until the planning authority confirms in writing the commencement of works to upgrade the wastewater treatment plant.  
No building shall be occupied until the planning authority confirms in writing that the wastewater treatment plant has been commissioned.

Reason: In the interest of public health.

4. The road works associated with the proposed development including the setting out of the entrances, paving and surface finishes shall be carried out and completed in accordance with the requirements of the planning authority. The recommendations of the Traffic and Transport Assessment and Road Safety Audit shall be implemented. Pedestrian crossing facilities shall be provided at all junctions. Prior to the commencement of development full details of works to the public road and public realm shall be agreed in writing with the Planning Authority. All works shall be carried out at the applicant's / developer's expense.

Reason: In the interest of traffic safety and orderly development.

5. 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 filling station. Details of the location of this facility shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

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

6. The site shall be used as a petrol filling station and no part shall be used for the sale, display, or repair of motor vehicles.

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

7. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard the developer shall –
- (a) Notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

- (b) Employ a suitably qualified archaeologist who shall monitor all site excavations and other excavation works, and
- (c) Provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authorities considers appropriate to remove.

In default of any of these requirements the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

- 8. 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.

- 9. The hours of operation of petrol forecourt shall be between 07:00 hours and 23:00 hours.

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

- 10. Details of the materials. Colours and textures or all external finishes shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

- 11. The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

12. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services, and shall be agreed in writing with the Planning Authority prior to commencement of development.

**Reason:** In the interests of public health and to ensure a proper standard of development.

13. All service cables associated with the proposed development (such as electrical, television, telephone and public lighting cables) shall be run underground within the site.

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

14. A waste management plan including the provision for the storage, separation and collection of all waste, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the permitted use.

**Reason:** In the interest of public health and the amenities of the area.

15. 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.

16. 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 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.

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Bríd Maxwell  
Planning Inspector

8<sup>th</sup> September 2020