



An
Bord
Pleanála

Inspector's Report ABP-308204-20

Development	Drive-thru provision at restaurant and change of use of service access route to a drive-thru laneway
Location	Motor Services Area, Junction 14 of M8 Motorway, Gortore and Moorepark, Fermoy, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	20/5358
Applicant(s)	McDonalds Restaurants of Ireland Limited
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Amber Oil David Ryan
Observer(s)	An Taisce
Date of Site Inspection	10 th November, 2020
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The Fermoy motorway service area is located to the north of Regional Road R636 and east of the M8 motorway just off Junction 14 of the motorway. It provides fuel pumps, a retail/restaurant unit, a McDonalds outlet, and parking. It is sited approximately 3km to the north-east of the town of Fermoy and less than 2km to the south-west of the village of Kilworth. Moorepark research facility is located on the opposite side of the regional road. The McDonalds outlet is located at the southern end of the service area

2.0 Proposed Development

- 2.1. The proposed development would comprise the provision of a drive-thru facility at an existing McDonalds restaurant and the change of use of an existing service access route to a drive-thru laneway. It would also include directional road marking, a goal post height restrictor at the entrance to the laneway, two new customer ordering points with canopy tops, three double digital menu boards, one single digital menu board, change of use of a service layby to a parking bay adjacent to the west elevation of the building, 'Pay' and 'Collection' graphics added to the Pay and Collection windows along the west elevation, and a 15" digital marketing screen installed in the Collection window along the west elevation.
- 2.2. Details submitted with the application included a Planning Report, a Traffic and Transportation Assessment, and a letter from the owners of the motorway service area permitting the making of the application. The application placed referred to the significance of the development in the context of Covid-19.

3.0 Planning Authority Decision

3.1. Decision

On 21st August 2020, Cork County Council decided to grant permission for the proposed development subject to two conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site's planning history, the policy context, reports received and third party submissions. It was considered that survey results submitted with the application demonstrated that the existing restaurant facility serves as a destination in its own right and that, in light of the survey results, the provision of a drive-thru would not result in a material increase in local trips that would serve to undermine the vitality and viability of similar offerings in the town centre of Fermoy. It was further stated that impacts on the retail environment resulting from Covid-19 cannot be ignored and that there is a need to help business operators to diversify their offering so as to remain viable. It was submitted that the planning authority may wish to consider temporary permission to allow further consideration of the impacts once the pandemic had passed. On the issue of traffic impact, the considerations of Transport Infrastructure Ireland were acknowledged. There was no objection to the minor elevational changes and signage arising from the proposed development. A grant of temporary permission for a three year period was recommended.

The Senior Planner concurred with the Planner's recommendation.

3.2.2. Other Technical Reports

The Area Engineer submitted that the proposal would have an adverse impact on the vitality and viability of Mitchelstown and Fermoy and that it would increase the number of car trips. It was further submitted that the operation of a fast food outlet is at odds with national health objectives on rising obesity and the need to move away from the 'fast' dining experience. A refusal of permission was recommended.

The Environment Section had no objection to the proposal.

3.3. Prescribed Bodies

Transport Infrastructure Ireland submitted that it had no observations to make.

3.4. Third Party Observations

Objections to the proposal were received from David Ryan and Amber Oil. The grounds of the appeals reflect the main concerns raised.

4.0 Planning History

ABP Ref. PL 04.244411 (P.A. 14/6188)

Permission was granted by the Board for a motorway service area, including a filling station and restaurant with a take-away facility. Condition 2 of the permission omitted the drive-thru facility associated with the restaurant in order to prevent an undue impact on the vitality and viability of nearby town centres and in order to improve the layout of the facility.

P.A. Ref. 17/5555

Permission was refused by the planning authority for provision of a drive-thru facility ancillary to the existing restaurant and a change to the car parking layout within the motor service area. The proposal was refused for one reason relating to the planning authority not being satisfied about the adverse impact on the vitality and viability of Fermoy and Kilworth and the impact on the adjoining national road/motorway and junction.

5.0 Policy Context

5.1. Cork County Development Plan 2014

Greenbelt

The motor service area lies within the Fermoy Town Greenbelt.

Landscape

The site is located within an area classified as High landscape value.

Town Centres and Retail

Objectives include:

TCR 2-1: Town Centre

- a) Maintain, strengthen and reinvent the role of town centres as dynamic attractive and inclusive environments and enhance their mixed use character by encouraging the retention and development of general office, retail, housing, office based industry, community, civic and entertainment uses ...

- e) Support proposals for development involving evening and late night commercial, retail or entertainment uses within, or immediately adjacent to, the defined town centres or local service centre, where it can be demonstrated that the development will enhance the character and function of the area;

TCR 4-6:

Support the vitality and viability of the Ring and Larger towns and to ensure that such centres provide an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas.

TCR 4-10:

To support, promote and protect villages, local centres, and corner shops which provide an important retail service at the local level.

Transport and Mobility

Objectives include:

TM 3-1: National Road Network

...

- e) Prevent the undermining of the strategic transport function of national roads and to protect the capacity of the interchanges in the County from locally generated traffic.
- f) Consider the most up-to-date guidance in relation to the provision of Service and Rest Areas on the National Road Network (Section 2.8 of the Department of the Environment Community Heritage and Local Government 'Spatial Planning and National Roads Guidelines' (2012) and 'NRA Service Area Policy' (August 2014).
- g) Cooperate with the National Roads Authority to identify the need for service areas and/or rest areas for motorists along the national road network and to assist in the implementation of suitable proposals for provision, subject to normal planning considerations.

5.2. **Appropriate Assessment**

Having regard to the nature, scale, and location of the proposed development, the nature of the receiving environment, and proximity to the nearest European sites (Blackwater River SAC), it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

5.3. **EIA Screening**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 **The Appeals**

6.1. **Grounds of Appeal by Amber Oil**

The grounds of appeal may be synthesised as follows:

- The proposal will have an adverse impact on the viability and vitality of Fermoy and Kilworth. Having regard to the proximity to Fermoy and Kilworth and convenient accessibility on a high quality road network, the proposal is likely to draw additional trips from nearby settlements and therefore undermine the vitality and viability of these settlements, particularly their town centres. The Planning Officer noted the existing facility is a destination in its own right. There is a very high level of vacancy within Fermoy. The implications of the pandemic and changes in retailing are likely to result in an even higher vacancy rate. The proposal will have a detrimental impact on existing food establishments in Fermoy and Kilworth.
- There is a failure to address the previous reasons for refusal and concerns with the assessment of the planning application.
 - It has not been adequately demonstrated that the proposal would not have an adverse impact on the vitality and viability of Fermoy and Kilworth and it therefore contravenes objectives TCR 2-1, TCR 4-6 and TCR 4-10 of the Cork County Development Plan. There have been no changes in

circumstances sufficient to change the Board's previous position. In fact, it may be more imperative for the Board to maintain its position given the changing and challenging circumstances. The applicant's survey is not a robust survey and the drive-thru will likely attract new customers who have not visited the unit. A range of indicators should have been assessed, not only customer views and behaviour.

- The drive-thru will result in an intensification of use and will lead to an increase in local vehicular trips where there is no pedestrian connectivity between the site and Fermoy and Kilworth. It will encourage unsustainable travel patterns and will result in a misuse of strategic road infrastructure. The Planning Officer noted the existing facility is a destination in its own right and the proposal will increase the number of local trips, reinforcing it as a destination in its own right contrary to national planning guidelines. The validity of using the Junction 8 service area as a comparative is questioned having regard to the different site contexts and locations.
- The Covid-19 pandemic should not be accepted as a reason to approve the proposed development. A drive-thru is not required to maintain a viable business. The facility already provides a take-away service.
- The proposal will have a negative impact on traffic and transport. It will lead to an increase in trip generation and an increase in the number of vehicles to the service area whose sole purpose for their journey will be to go to McDonalds. A drive-thru is an inappropriate use of motorway infrastructure/resources. The facility cannot be used by buses or coaches. It will lead to unsustainable travel movements.
- There are concerns with the temporary nature of the planning authority's consent. It is unclear what impacts the planning authority can consider in three years time that should not have been considered on this occasion as no additional surveys or reports have been requested of the facility once operational. A period of three years is sufficient to cause irrevocable damage to Kilworth and Fermoy centres.

6.2. Grounds of Appeal by David Ryan

The grounds of appeal may be synthesised as follows:

- The proposal demonstrates a blatant disregard for planning policy included in the Cork County Development Plan and the Retail Guidelines.
- Given the location of the proposal, the vitality and vibrancy of Fermoy and Kilworth would be adversely affected and there would be an unacceptable shift in trading patterns.
- The primary purpose of the motorway service area is to provide for rest and refreshment for motorway users, not as a convenient local amenity and service.
- There are serious concerns regarding the significant volumes of traffic for sole purpose trips that would be generated, adding pressure on the surrounding road network and presenting safety concerns.
- The adverse effects will occur with immediate effect irrespective of a temporary permission for three years. The use of a temporary permission should not be seen as a mechanism to address a fundamental breach of planning policy.
- There is a fully functioning 'socially distanced' restaurant in operation at the services area which provides a safe means to address motorway user needs.
- The issues raised in earlier refusals of permissions have not changed nor has planning policy on which they were based.

6.3. Applicant Response

The applicant's response to the appeals may be synthesised as follows:

Response to Appeal by Amber Oil

- Based on empirical evidence presented in the applicant's survey results, it is anticipated that the provision of a drive-thru facility will not result in a material

increase in local trips that would impact on the vitality and viability of the local towns.

- In their consideration of referenced precedent cases, both local authorities and the Board have had regard to NRA policy and local policy and it has been concluded that offline motorway service areas with drive-thru facilities would not have an adverse impact on the adjacent road network or the vitality and viability of nearby towns and villages.
- The applicant's Traffic and Transport Assessment and the surveys carried out demonstrate that the scheme will not significantly increase the number of trips to the site and, thus, will not have a material impact on the capacity and operation of the national and local road network.
- Having regard to the nature and scale of the scheme, the drive-thru could not reasonably be considered a contravention of Objective TCR 2-1.
- Having regard to the location and the nature and scale of the scheme, the drive-thru could not reasonably be considered a contravention of Objective TCR 4-6.
- Regarding Objective TCR 4-10, given the low number of restaurant and fast food offerings in Kilworth and Fermoy, it is not reasonable to consider that the scheme will impact on the viability of similar businesses in the locality.
- With regard to Objective TM 3-1, the scheme will not interfere with the implementation of any road project and will not result in a significant increase in local trips to and from the site. Thus, it will not have a material impact on the capacity and operation of the surrounding road network. TII's submission is noted.
- The proposal has taken on a new significance given the current circumstances presented by Covid-19 whereby businesses must adapt operations to encourage social distancing. The proposal will offer customers an alternative means to attend McDonalds without entering the premises. All viable options to facilitate the continued operation of a business must be considered.

- The proposal would result in a minor increase in traffic to the roundabout at the entrance to the service area. The impact would be minimal on the adjacent national road network.
- The rationale for granting a temporary permission is understandable, particularly given the Covid-19 pandemic. In considering a future application for continuation of the use, it is open to the planning authority to request any information which would assist with their consideration of the potential impact of the scheme. Any future application would include details of the number of vehicles using the drive-thru facility.

Response to Appeal by David Ryan

- As demonstrated by the Traffic and Transport Assessment, the scheme will not result in a significant increase in local trips from Kilworth and Fermoy. Based on the applicant's survey results, the proposal would not impact on the vitality and viability of the local towns.
- The applicant fails to see how the proposal could be considered a contravention of Objectives TCR 2-1, TCR 4-6 and TCR 4-10 of the Development Plan.
- With regard to Objective TM 3-1, the scheme will not interfere with the implementation of any road project and will not result in a significant increase in traffic. It will not have a material impact on the capacity and operation of the surrounding road network.
- The proposal will allow for required social and physical distancing in the interests of health and safety.
- The rationale for granting a temporary permission is understandable, particularly given the Covid-19 pandemic.

The response includes a submission addressing roads and traffic issues raised by the appellants.

6.4. **Planning Authority Response**

I have no record of any response to ten appeal from the planning authority.

6.5. **Observations**

An Taisce submitted that the need to curtail car-based development is even greater since 2015 with the failure to implement “Smarter Travel” policy. It is also stated that there is no basis for seeking to justify the proposal as a Covid-19 measure and permitting the development would worsen the public health impact. It is considered that the Council should be seeking to make towns like Fermoy and villages like Kilworth more attractive locations. A refusal of permission is recommended.

7.0 **Assessment**

7.1. When considering the relevant planning matters relating to the proposed development a number of questions are required to be addressed as follows:

What is the function of a motorway service area?

Whom will a drive-thru facility serve?

What impact will this facility have on neighbouring settlements?

What impact will this facility have on the road network?

7.2. In my review of the considerations offered by the planning authority and the applicant, it appears evident that no attempt has been made to address the first question when considering this proposed development.

7.3. I note the following from relevant National Roads Authority (now Transport Infrastructure Ireland) policy documentation:

Spatial Planning and National Roads Guidelines for Planning Authorities 2012

The presence of long sections of motorways and high quality dual carriageways on the network of national roads and EU work time requirements under Directive 2002/15/EC and Regulation SI 561/2006, support the provision of service areas for road users who wish to rest during longer journeys and/or avail of fuel, toilet and food facilities ...

... facilities proposed for inclusion in service areas should be of a type that avoids the attraction of short, local trips, a class of traffic that is inconsistent with the primary intended role for motorways and other national roads and associated junctions in catering for strategic long-distance inter-urban and inter-regional traffic. Furthermore, to permit a service area to become a destination for local customers would be contrary to Government planning policy on retail and town centres as set out in Retail Planning Guidelines 2005. The consequence of this would be to threaten the viability of businesses in cities, towns or other local centres. (Section 2.8)

NRA Service Area Policy 2014

The provision of areas allowing drivers to park and rest at regular intervals along the dual carriageway network will be a key contributor to the reduction in fatigue related accidents.

The key needs of road users to be addressed by service areas include:

- *Areas for commercial vehicles to park allowing drivers take their mandatory break and rest periods (including overnight parking);*
- *Areas for all road users to park and rest in order to reduce fatigue;*
- *Access to facilities for road users including:*
 - *fuel stations*
 - *toilets*
 - *showers*
 - *convenience shops*
 - *restaurant/food outlets*
 - *tourist information*
 - *play areas for children (Section 1.3)*

7.4. I also note that Section 1.4 of the latter policy document reiterates the reference in the *Spatial Planning and National Road Guidelines for Planning Authorities* to avoiding the attraction of short, local trips and permitting a service area becoming a destination for local customers to protect town centres.

- 7.5. The function of a motorway service area is clear. It is for road users who wish to rest during longer journeys and/or avail of fuel, toilet and food facilities. The services being provided at such locations are to get people out of their vehicles to avail of these facilities. Otherwise it is to allow them to park and rest. A 'drive-thru' facility runs counter to this purpose. Its outcome is to encourage people to stay in their cars, avail of a fast food service and most likely then to either park up, eat the food in the car and move on or move on and continue eating while driving. There is a clear health and safety purpose for motorway service areas. A 'drive-thru' conflicts with that purpose.
- 7.6. The next question is whom will a drive-thru facility serve? Of course, such a facility will serve motorway users. But it evidently will not serve them well as it counters the outcome which such service areas seek to deliver. While not much credence could reasonably be given to the applicant's very limited survey of customers at McDonalds at the existing motorway service area, what is very striking is that almost one in four people surveyed came from the local area. If this was in any way representative of the customer base of the existing facility it is very clear that this facility has become a significant attractor of short, local trips. One must then ask why would one be wishing to reinforce and/or enhance this local customer base to the detriment of the purpose of the motorway service area and, more importantly, to the detriment of services available within towns and villages in the locality?
- 7.7. The above observation subsequently addresses the third question. This facility detrimentally impacts on the neighbouring settlements. It has become a significant destination in itself for locals. It clearly draws potential town and village customers away from these neighbouring settlements, undermining their viability, and thus undermining their service role. By providing the facility proposed this development will reinforce and expand the level of service available and it will clearly reinforce and likely increase short trips from the local area. Such an outcome is contrary to a true understanding of sustainable development which seeks to protect the retail base of town and village centres. It clearly runs counter to the provisions of the *Spatial Planning and National Roads Guidelines for Planning Authorities*. This guidance requests that facilities proposed for inclusion in service areas should be of a type

that avoids the attraction of short, local trips, a class of traffic that is inconsistent with the primary intended role for motorways and associated junctions in catering for strategic long-distance inter-urban and inter-regional traffic and which is contrary to Government planning policy on retail and town centres as set out in the Retail Planning Guidelines 2005.

7.8. By achieving this counter purpose and developing and reinforcing short, local trips, the final question posed is answered. By reinforcing short, local trips the primary role of the motorway service area is distorted with consequential impacts for the road network. Such a facility, as an integral part of a significant destination for those in the local area, will reinforce, and most likely add to, the number of local trips to the motorway service area via the motorway itself, as well as attracting trips along the regional road in the vicinity of the motorway junction. This is clearly inconsistent with the primary intended role for motorways and their associated junctions and contrary to the guidance set out in the *Spatial Planning and National Roads Guidelines for Planning Authorities*.

7.9. Further to the above, I note that the Board previously adjudicated on the proposal for a motorway service area at this location under Appeal Ref. PL 04.244411 which included a drive-thru facility. Condition 2 attached with the permission was as follows:

2. *The proposed drive-through facility associated with the restaurant shall be omitted from the proposal. Revised drawings showing this amendment shall be submitted to and agreed in writing with the planning authority prior to commencement of development.*

Reason: *In order to prevent an undue impact from the proposal on the vitality and viability of nearby town centres and in order to improve the layout of the facility itself.*

7.10. There have been no material changes in circumstances since the making of the Board's previous decision. The service access route continues to function as a service access. Public policy and guidance have not changed, i.e. the understanding on what the function of a motorway service area is remains. There is no reason to change the Board's previous decision on this issue. I would suggest that the details provided with the application have reinforced the need to curtail development such

as that proposed in order to stymie further growth of this motorway service area as a local service centre which functions to the detriment of nearby towns and villages.

7.11. Based upon the considerations above, it is reasonable to conclude that the proposed development would not be consistent with Cork County Development Plan objectives which seek to:

- maintain and strengthen the role of town centres (TCR 2-1);
- support the viability of the Ring and larger towns (TCR 4-6),
- support and protect the retail service at the local level in villages (TCR 4-10), and
- prevent the undermining of the strategic transport function of national roads, protect the capacity of the interchanges from locally generated traffic, and have due regard to the most up-to-date guidance in relation to the provision of Service and Rest Areas on the National Road Network (TM 3-1).

7.12. Finally, I note the emphasis placed on Covid-19 by both the applicant and the planning authority. It is my submission to the Board that customers can safely get out of their vehicles, make their way from the car park and avail of the take-away service at the established facility. A need for the proposed drive-thru cannot reasonably be defended which is based upon the requirement for members of the public to adhere to social distancing in accordance with guidance addressing the pandemic.

8.0 Recommendation

8.1. I recommend that permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

The objectives of Cork County Development Plan 2014 seek to:

- maintain and strengthen the role of town centres (Objective TCR 2-1),

- support the viability of the Ring and larger towns, which include Fermoy (TCR 4-6),
- support and protect retail service at the local level in villages, which include Kilworth (TCR 4-10), and
- prevent the undermining of the strategic transport function of national roads, protect the capacity of the interchanges from locally generated traffic, and have due regard to the most up-to-date guidance in relation to the provision of Service and Rest Areas on the National Road Network (Objective TM 3-1).

Furthermore, the provisions of the *Spatial Planning and National Roads Guidelines for Planning Authorities*:

- acknowledge the function of motorway service areas for road users who wish to rest during longer journeys and/or avail of fuel, toilet and food facilities,
- seek facilities for inclusion in service areas to be of a type that avoids the attraction of short, local trips, a class of traffic that is regarded as inconsistent with the primary intended role for motorways and other national roads and associated junctions in catering for strategic long-distance inter-urban and inter-regional traffic, and
- seek to restrict a service area from becoming a destination for local customers due to it being contrary to Government planning policy on retail and town centres as set out in Retail Planning Guidelines 2005 and the consequence this has by threatening the viability of businesses in cities, towns or other local centres.

It is considered that the proposed development, constituting a significant additional retail service for the established restaurant facility within the motorway service area, would:

- reinforce and likely expand the restaurant facility as a destination for local customers, drawing potential town and village customers away from neighbouring settlements and undermining the viability of such settlements,
- increase the attraction of short, local trips to the motorway service area as a result,

- by its nature, run counter to the health and safety purpose of the motorway service area, and
- likely add to the number of local trips to the motorway service area via the motorway itself, and
- attract additional trips along the regional road in the vicinity of the motorway junction.

The proposed development would, thus, conflict with the Cork County Development Plan objectives and the provisions of the *Spatial Planning and National Roads Guidelines for Planning Authorities* and would, therefore be contrary to the proper planning and sustainable development of the area,.

Kevin Moore
Senior Planning Inspector

18th November 2020