



An  
Bord  
Pleanála

## Inspector's Report ABP-310047-21.

<b>Development</b>	Construction of a two-storey building to serve the approved fuel filling station ABP-306850-20 refers.
<b>Location</b>	Treanrevagh, Co. Galway.
<b>Planning Authority</b>	Galway County Council.
<b>Planning Authority Reg. Ref.</b>	20/1799.
<b>Applicant(s)</b>	Cahermorris Developments Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	First Party Multiple Third Party
<b>Appellant(s)</b>	Cahermorris Developments Ltd Rocktop Consulting Ltd. Deirdre Naughton & Sean Farrell
<b>Observer(s)</b>	Ursula Duggan. Peter Kitt John Cunningham Tony McCormack
<b>Date of Site Inspection</b>	10/12/2021.
<b>Inspector</b>	A. Considine.

## 1.0 Site Location and Description

- 1.1. The subject appeal site is located within the town of Mountbellew in east Co. Galway. The site lies approximately 300m to the east of the junction of the R358, also known as College Road, and the N63 junction where it turns from a west to east direction from the M17 to the west, to a south to north direction from Mountbellew to Roscommon. College Road extends east from the centre of the town and its character comprises a number of one-off houses, St. Marys National School to the east and St. Marys Church to the west of the road. Immediately to the east of the subject site is Mountbellew Agricultural College while the Holy Rosary College is located to the west. The fire station is located across the road from the Holy Rosary College. Also, to the east, and fronting onto the public road, there is a large detached two storey house.
- 1.2. The subject site comprises a small part of a larger holding which has been the subject of a number of planning applications, including appeals to the Board, over the past 14 years. The wider landholding extends to the rear of Holy Rosary College and towards the N63 to the west. Having undertaken a site inspection, I can confirm that works have commenced at the site including the clearing of a building which was located to the southern area of the site, and as noted on submitted plans, as well as the creation of the entrance to the site and the construction of the permitted retail unit and the fuel filling station. The works are at an early stage, and I note that the wider site remains substantially undeveloped.
- 1.3. The site has a stated area of 0.2574 hectares, and forms part of the larger landholding which extends to 7ha in total. Permission has been granted of a large mixed-use scheme which includes both commercial and residential developments. The extant permission on the site relates to a large-scale mixed-use scheme which was initially granted permission on the 10<sup>th</sup> day of December 2007, following an appeal to ABP, PL 07.221318 (PA ref: 06/3886) refers. The layout of the permitted mixed-use scheme sought to locate the commercial element to the south of the site and fronting onto College Road with the residential element being located towards the northern area of the site. Permission to extend the duration of the grant of planning permission was granted under PA ref: 12/428 and PA ref: 17/1699. The parent permission for the overall development site will expire on 31 December 2021.

## 2.0 Proposed Development

2.1. Permission is sought, as per the public notices for the construction of a two-storey building (554 sqm gross floor area) to serve the approved fuel filling station (Reg. Ref. No. 19/1699 ABP Ref. No. ABP - 306850-20) and the provision of a delivery set down area at the west side of the forecourt and all ancillary and associated works. The proposed building comprises

- (1) a retail shop (100 sqm net retail floor area);
- (2) hot food/deli counter and seating area (162 sqm total floor area) to include the sale of hot and cold food for consumption on and off the premises, cold room, store, lift and ATM all at ground floor level;  
and
- (3) overflow seating area, toilets, staff room, cash office and storage at first floor level. Gross floor space of proposed works: 554 sqm.,  
all at Treanrevagh, Co. Galway.

2.2. The application included a number of supporting documents including the relevant plans, particulars and completed planning application form.

2.3. The Board will note that following a request for further information, the applicant included an area of car parking associated with the retail development permitted under ABP-308213-20 within the subject application site. This area increased the proposed development site area to 0.31ha and includes 20 previously permitted car parking spaces. The submitted plans describe this car parking area as an 'overflow parking for building servicing forecourt', and is only accessible from the forecourt, and the proposed retail building the subject of this appeal, via foot. Vehicular access to this area will only be available over the permitted road network within the site and to the north of the permitted Block B retail unit.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to grant planning permission for the development subject to 10 conditions, which include the following:

3. 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 the 10th day of December 2009 under appeal reference number PL 07.221318 (planning register reference number 06/3886), as extended under planning register reference numbers 12/1428 and 17/1699, and any agreements entered thereunder. This permission shall expire on the 31st 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.

4. 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.

6. The developer shall facilitate the preservation, recording and protection of archaeological materials of features that may existing 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 operations (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 consider appropriate to remove.

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

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history, third party submissions, national policy and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report.

3.2.2. The initial planning report notes the planning history of the site and submits that ‘the proposed development to provide retail and deli unit is sufficiently different from the current live application under appeal (alterations to buildings on lands to the north of the subject site) and therefore can be assessed as a separate permission to 20/384.’ The Board will note that PA ref. 20/384 refers to ABP-308213-20 which was granted permission by the Board in January 2021. The initial report raised concerns in relation to 4 issues including the net retail floorspace, parking provision, lighting arrangements and details of the proposed extractor fans/ducts required to serve a reduced deli/food preparation area. Further information in relation to these issues was sought on the 28<sup>th</sup> January 2021.

3.2.3. Following the receipt of the response to the FI request, the subsequent Planning Officers report noted the revised floor plans submitted by the applicant. The report further noted the applicants submission in relation to the car parking, lighting and extraction system proposed to serve the development. The report considers that all matters were adequately addressed and that the principle of the mixed-use development on the site has been established having regard to previous ABP decisions. Ultimately, and subject to a condition restricting hours of operation, the Planning Officer concludes that the proposed development is acceptable and recommends that planning permission be granted for the development.

3.2.4. This Planning Report formed the basis of the Planning Authoritys decision to grant permission.

#### **3.2.5. Other Technical Reports**

None.

#### **3.2.6. Prescribed Bodies**

None.

#### **3.2.7. Third Party Submissions**

There are seven submissions from third parties noted on the PA file. The issues raised in these submissions are summarised as follows:

- Impact of the development on the town centre given the scale of the retail floor area proposed.
- Roads and traffic issues
- Environmental impacts including issues relating to the ventilation stack and noise associated with the mechanical plant.
- Residential amenity impacts including light spillage into private amenity spaces and into existing houses. Due to the height of the building, there will be overlooking of neighbouring houses.
- Non-compliance with the 'No Fry Zone' as the site is within 135m of a secondary school. The town is already well served by fast foot outlets and hot foot counters and there is no necessity for another.
- Issues raised with the incremental changes to developments at the site over the past 3 years. It is noted that the original application for the petrol filling station did not include any retail element.
- It is requested that the conditions relating to no construction until the WWTP upgrading works are commenced be included in any decision to grant.
- No confirmation letter from Irish Water has been submitted.

### **4.0 Planning History**

The following is the relevant planning history pertaining to the subject site, presented in chronological order:

**PA ref: 04/3713:** Outline permission granted for a development 46 no. semi-detached dwellings.

**ABP ref: PL07.221318 (PA ref: 06/3886):** Permission granted mixed development to include:

- (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 (ii) 15 no. retail units (iii) 8 no. office medical (iv) creche (v) 9 no. apartments, in 5 no. two storey blocks and 37 no. houses comprising of 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 (Gross floor area 12119 sqm)

In terms of the above, the following is noted:

**Block A** included 6 no. retail units (82.5-89.4m<sup>2</sup> and Unit 4 at 282.4m<sup>2</sup>) at ground floor level and 6 x 2-bed apartments (70-75m<sup>2</sup>) at first floor level. Proposed retail unit 4 is provided over two floors.

**Block B** included a large (shopping) retail unit at ground floor level (1860m<sup>2</sup>) and 2 office units (303-398m<sup>2</sup>) at first floor level.

**Block C** included 2 retail units (122-125m<sup>2</sup>) at ground floor level and 2 office units (94-125m<sup>2</sup>) at first floor level.

**Blocks E & F** included 6 retail units (82.5-154.6m<sup>2</sup>) and a Café/Rest (155.4m<sup>2</sup>) at ground floor level with 4 office units (116-154m<sup>2</sup>) at first floor level of Block E and 3 x 2-bed apartments (70-75m<sup>2</sup>) at first floor level of Block F.

**PA ref: 12/1428:** Extension of duration of permission ref no. PL07.221318 (06/3886) granted.

**PA ref: 17/699:** Extension of duration of permission ref no. PL07.221318 (06/3886) granted. This permission shall expire on the 31st day of December 2021.

**ABP-304043-20 (PA ref: 181210):** Permission refused for a change of plans from retail units and apartment units, to a fuel filling station with underground fuel storage tanks. The Board refused permission for the following reason:

1. 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.

**ABP-306850-20 (PA ref: 19/1699):** Permission granted for partial change of plans from retail units and apartment units to a fuel filling station.

Condition 2 of the Boards decision states as follows:

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 the 10th day of December 2009 under appeal reference number PL 07.221318 (planning register reference number 06/3886), as extended under planning register reference numbers 12/1428 and 17/1699, and any agreements entered thereunder. This permission shall expire on the 31st 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.

The Board will note that this grant of planning permission has resulted in the full omission of previously permitted Block A which included 6 no. retail units and 6 x 2-bed apartments.



**ABP-308213-20 (PA ref: 20/384):** Permission granted for alterations to Blocks B & C previously permitted under PA ref: 06/3886, 12/1428 and 17/1699.

Condition 2 of the Boards decision states as follows:

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 the 10th day of December 2009 under An Bord Pleanála appeal reference number PL 07.221318 (planning register reference number 06/3886), as extended under planning register reference numbers 12/1428 and 17/1699, and any agreements entered thereunder. This permission shall expire on the 31st 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.

The amendments permitted under this application primarily relate to the relocation of the buildings on the site and a re-configuration of associated car parking. I note that Block A appears on the submitted site layout plans under this application and no details of the permitted fuel station are indicated.

**PA ref: 21/2091:** The Board will note that an application to extend the duration of permission of the parent permission at the site (which includes the current proposed development site) was lodged with Galway County Council on the 11<sup>th</sup> of November 2021. A decision on this application to extend the duration of the permission is due for decision on the 14<sup>th</sup> of January 2022.

The Board will note that the application form indicates that the development has commenced on the site, and it is expected that the development will be complete by 31<sup>st</sup> December 2023. The extension of duration, therefore, is sought for a period of 2 years. The details of substantial works carried out or which will be carried out pursuant to the permission before expiration of the appropriate period is stated to be 'Phase 1 of the residential and the retail & commercial phase'.

Having undertaken a site inspection I can confirm, and I refer the Board to the attached photographs on file, that works have commenced on the retail unit and the fuel filling station. I was advised that the tanks for the fuel filling station are to be installed next week (13<sup>th</sup> – 17<sup>th</sup> December).

## 5.0 Policy and Context

### 5.1. Retail Planning Guidelines 2012

- 5.1.1. The aim of the Guidelines is to ensure that the planning system continues to play a key role in supporting competitiveness in the retail sector for the benefit of the consumer in accordance with proper planning and sustainable development. The RPGs further provide that the planning system should not be used to inhibit competition, preserve existing commercial interests, or prevent innovation.
- 5.1.2. In terms of Retail Policy Context, Section 2.4.3 sets the shop floorspace cap for petrol filling stations at 100m<sup>2</sup> net irrespective of location. Chapter 4 of the Guidelines deals with Retailing and Development Management, where section 4.11.9 Retailing and Motor Fuel Stations states as follows:

Convenience shops are part of the normal ancillary services provided within motor fuel stations. In rural areas, they can have a very important function as the local shop or small supermarket. However, such shops should remain on a scale appropriate to the location, and their development should only be permitted where the shopping element of the station would not seriously undermine the approach to retail development in the development plan.

The floorspace of the shop should not exceed 100 M<sub>2</sub> net; where permission is sought for a floorspace in excess of 100 M<sub>2</sub>, the sequential approach to retail development shall apply, i.e. the retail element of the proposal shall be assessed by the planning authority in the same way as would an application for retail development (without petrol/diesel filling facilities) in the same location.

In considering applications for development, attention should also be given to the safety aspects of circulation and parking within the station forecourt.

Motor fuel facilities ancillary to large convenience goods stores located in or adjacent to town centres often provide healthy competition in this sector of the market without adversely affecting town centres. It is not axiomatic, however, that all large convenience goods stores formats should have ancillary fuel facilities, particularly where the objective of planning policy is, wherever

possible, to fit large convenience goods stores on sites within or on the edge of town centres. It will often be difficult to find a site at this type of location with acceptable road access which is sufficiently large to allow both a full-sized store and a fuel station. Consequently, retailers should not seek to claim that they are unable to assemble sites within a town centre or on the edge of one, simply because they face difficulty in assembling a site capable of accommodating a large convenience goods stores and a fuel station.

## **5.2. Development Plan**

- 5.2.1. The Galway County Development Plan 2015 – 2021, is the relevant policy document relating to the subject site. Mountbellew is designated as an “Other Village” in the Galway County settlement hierarchy. Section 2.6.6 of the 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.
- 5.2.2. The plan further notes that 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. The Board will note the inclusion of conditions in all of the permitted development applications noted above, which require that no construction shall begin until the PA confirms in writing the commencement of works to upgrade the WWTP, while no house or building is to be occupied until the PA confirms in writing that the WWTP has been commissioned.
- 5.2.3. 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.
- 5.2.4. Section 4.21 of the Plan deals with Petrol Filling Stations and in particular, the retail element which accompanies such developments. The Plan states as follows:

In Ireland, petrol stations and associated shops are largely interdependent on each other for their business survival. In the smaller towns and villages of the

County they can often provide a valuable solitary retail service to local communities. In such instances it therefore may be acceptable to provide a wider range of products across a generous floor area. Conversely, a substantial number of petrol stations and associated shops are located on the outskirts of the larger towns of the County.

Hence, in these cases, it may be necessary to limit the product range and amount of customer floor area provision in order to safeguard the health of existing retail services in the relevant town centres. Having regard to the aforementioned, the Council will consider proposals on an application-by-application basis. Furthermore, the Retail Planning Guidelines (2012) state that the floorspace of an associated shop should not exceed 100m<sup>2</sup> and that the sequential approach should be applicable to any proposal for floorspace in excess of this threshold.

- 5.2.5. Objective R10 – Retailing Associated with Petrol Stations is also relevant, and states as follows:

Consider development proposals for shop facilities accompanying petrol stations on their individual merits, having regard to the Retail Planning Guidelines for Planning Authorities (2012) and subject to traffic implications.

- 5.2.6. DM Standard 22: Parking Standards.

### **5.3. Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is the Carrownagappul Bog SAC (Site Code: 001242) which is located approximately 2km to the north of the site and the River Callows Suck SPA (Site Code: 004097) is located approximately 11.6km to the north of the site.

### **5.4. EIA Screening**

- 5.4.1. The subject appeal does not relate to a class of development which requires mandatory EIA.
- 5.4.2. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required.

The proposed development is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.

5.4.3. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.4.4. Having regard to:

- (a) the nature and scale of the development, and
- (b) the location of the development, although close to, but outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that 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. This is a multiple third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development and a first-party appeal against the decision of the Planning Authority to include conditions 3, 4 and 6 in the decision to grant planning permission.

6.1.2. The Board will note that initially, 4 third party appeals were submitted to the Board. 2 of these were returned to the appellants and invalidated due to an insufficient fee and missing documents. In this regard, two valid third-party appeals are noted from the following:

- Rocktop Consulting Ltd.
- Deirdre Naughton & Sean Farrell

6.1.3. The issues raised in the third-party appeals are summarised as follows:

- The proposed development is linked to a permission which has not commenced and cannot be substantially complete by the permission expiry date of the 31<sup>st</sup> December 2021.
- The Board in dealing with the application for the filling station considered it a variation to the grounding permission and the current proposed development can only be considered as a variation.
- A grant of planning permission would be permitting and facilitating unauthorised development.
- The original permission was applied for in 2006 and the late-stage piecemeal applications which attempt to change the nature of the permitted development by stealth are inappropriate.
- It is unlikely that the permitted development meets current development management guidelines, or current national, regional or local planning policy and requires a fundamental reassessment.
- As Natura Impact Assessment has been undertaken as part of the variation application, it is submitted that it is inappropriate to grant any further development until the potential impacts from the overall development are reassessed.
- The veracity of the extended permissions is in doubt in terms of AA and EIAR requirements.
- There is no capacity in the wastewater treatment system to facilitate the proposed development and a final date for the upgrading works does not exist.

- Questions are raised with regard to the planning applications being made at the site.
- There is little synergy between the application site and the village core and the development is contrary to the 'Town Centre First' approach. More retail to that already permitted on the site would impact negatively on the village centre.
- The proposed retail element of the petrol station should have been applied for together. It is submitted that there is already a substantial retail element to the overall development.
- The proposed development is contrary to the settlement hierarchy, general objectives and development management objectives of the CDP and there is no justification for a development of this scale at Mountbellew given the position of the settlement in the settlement hierarchy.
- The application warrants a traffic impact assessment.
- Issues raised in terms of the PAs assessment of the proposal and the linking of the application to the parent permission which is due to expire likely before ABP make their decision.
- Roads and traffic issues raised including inadequate parking to serve the development. The proposed retail building to serve the fuel filling station is dependent upon parking associated with the supermarket, which may never be built.
- The development in many respects is a large take-away / restaurant at a distance from the village / town centre.
- Concerns raised regarding the combined impact of the three back-to-back commercial entities on the adjacent residential property due to the proximity of the buildings to the residential property and impacts on both front and rear gardens.
- The scale of the development is out of proportion with development in a village and it submitted that the granting of such out of scale development has been refused in other similar settings.

- The site is located adjacent to a secondary school and the No Fry Zone has been ignored.
- The 16-year permission is due to expire and does not support the viability of the village.
- Irish Water issues
- Construction has been carried out on the site in breach of planning conditions which state that no construction shall begin until the planning authority confirms in writing the commencement of works to upgrade and WWTP. A 10-year permission for the WWTP was only granted on the 8<sup>th</sup> April 2021<sup>1</sup>. Construction of the WWTP as required in the condition, has not begun.

Both third-party appeals request that permission be refused.

6.1.4. In addition to the two valid third-party appeals, the first-party submitted an appeal against the inclusion of three conditions including conditions 3, 4 and 6. The grounds of appeal are summarised as follows:

6.1.5. Condition 3 of the PAs notification of intention to grant permission states as follows:

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 the 10th day of December 2009 under appeal reference number PL 07.221318 (planning register reference number 06/3886), as extended under planning register reference numbers 12/1428 and 17/1699, and any agreements entered thereunder. This permission shall expire on the 31st 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.

- It is submitted that the condition is unnecessary as it duplicates condition 1.
- The applicant has served a commencement notice and is implementing permission ref. 06/3886.

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<sup>1</sup> The Board will note that this decision was appealed to the Board – ABP-310144-21 refers. No decision has issued as yet.



- The condition is a replica of ABPs condition no. 2 relating to the permitted filling station (October 6<sup>th</sup> 2020) and modifications to Blocks B & C (January 26<sup>th</sup> 2021). There is a difference between these decisions and the current application as they relate to changes to the permitted plan and the current application is for a building to serve the filling station. This is not recognised in the Council's decision.
- The reason for the condition does not relate to the proposed development and may be *ultra vires*.
- The condition does not provide clarity with respect to the overall development as claimed.
- The life of permission ref. 06/3886 as extended will expire on the 31<sup>st</sup> of December 2021. The condition states that 'this permission shall expire on the 31<sup>st</sup> of December 2021', and it is unclear if this relates to the original permission or the current application.
- If it relates to the previous decision, it is unnecessary and if it refers to the current it is manifestly unreasonable due to the limited time.
- The proposed development is not a change in the approved plans and is not represented as such in the application documents. It is a standalone application for permission to construct a building to serve the approved fuel filling station and should not be tied to the life of the original permission.

6.1.6. Condition 4 of the PAs notification of intention to grant permission states as follows:

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.

- The condition is unnecessary as the Boards previous decisions already require the developer to enter into connection agreement(s) with IW. Condition 4 is therefore unnecessary and should be omitted. (The Board will note that there was a misprint in the references cited in the appeal document – 19/1799 referred to as opposed to 19/1699.)

6.1.7. Condition 6 of the PAs notification of intention to grant permission states as follows:

The developer shall facilitate the preservation, recording and protection of archaeological materials of features that may existing 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 operations (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 consider appropriate to remove.

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

- The condition duplicates a planning condition in two existing grants of permission on this site where the developer has already submitted and agreed the relevant details with the PA.
- The PA has confirmed compliance and therefore there is no justification for the attachment of the condition.

6.1.8. The appeal concludes requesting that the Board confirm the Councils decision to grant permission and uphold the appeal by omitting conditions 3, 4 and 6. The appeal includes a number of enclosures.

## 6.2. Planning Authority Response

None.

## 6.3. Observations

6.3.1. There are 4 no. observations noted from the following:

- Mr. John Cunningham

- Mr. Peter Kitt
- Ursula Duggan
- Mr. Tony McCormack

6.3.2. The issues raised are summarised as follows:

- Proximity of development to secondary school in terms of the no-fry zones near schools.
- Issues relating to noise, litter and anti-social behaviour associated with fast food outlets in the residential area which includes a nursing home.
- Trees were cut down outside the development site, damaging the streetscape.
- Venting of steam and fat vapours from cooking of fast food will have a negative effect on the quality of life of residents, students and staff in the school.
- Traffic issues including vulnerable users of the new centre which has opened across from the site entrance.
- Water services issues.
- Procedural issues raised and it is submitted that adequate consideration was not given to the various issues raised by third parties, and that the grant of permission does not deal with the issues raised.
- The proposed development is not suited to the current location.
- It is evident that the retail unit serving the filling station is in excess of 100m<sup>2</sup> which would have a negative implications for the economy of Mountbellew.
- The original application of residential properties and the current fuel filling station, supermarket/retail unit are incompatible.
- The stretching of the planning permission over 15 years with numerous applications have induced local fatigue and resulted in fewer objections to the incremental stealthy changes to the overall master plan.

#### **6.4. First Party Response to Third Party Appeals**

- 6.4.1. The First Party has submitted a response to the Third-Party appeals. The initial section of the response deals with the First-Party appeal against 3 conditions and it is submitted that a site visit will confirm that the new priority access junction at R358 College Road serving the overall development has been built. In addition, it is submitted that the developer intends to build Blocks B and C, the fuel filling station and the private wastewater treatment system serving the lands in accordance with the approved plans prior to the expiry of the life of the permission in December 2021. It is submitted that the pace of progress has been considerably affected by the requirements to make applications to modify various elements of the originally approved scheme, which has resulted in appeals to the Board. The pandemic is also noted as a delaying factor.
- 6.4.2. With regard to the response to the Third-Party appeals, the submission is summarised as follows:
- The identity of the appellant in the Rocktop Consulting Limited is unclear and the appeal should therefore be considered invalid. It appears that Mr. Fogarty is fronting this appeal on behalf of his clients.
  - It is submitted that the appeal may be vexatious, and the Board is invited to dismiss.
  - In relation to the WWTP issues, the original permission authorises the construction of a temporary on-site private system to serve the proposed development pending a future connection into the new/upgraded Mountbellew WWTP.
  - Development has commenced on the site and the applicant has submitted and agreed compliance details with the PA and IW in respect of the relevant conditions attached to relevant permissions. The proposed building to serve the approved filling station is a standalone application.
  - It is accepted that the entire mixed-use development authorised under PA ref 06/3886 will not be completed within the limited time remaining on that consent. The applicant has agreed compliance details in respect of the

following elements and will complete these works before the permission expires on the 31<sup>st</sup> December 2021.

- Supermarket
  - Fuel Filling Station
  - Block C (Offices over Retail Units)
  - Roads and services infrastructure.
- The project design team has been instructed to prepare an application for permission for a residential development on the northern portion of the site.
  - The Council, as the competent authority with respect to AA concluded that the development was acceptable and would not have a likely significant effect on any EU site, their qualifying interests or conservation objectives.
  - In response to the FI request, it was necessary to rely on some of the surplus car parking within the permitted car park at Blocks C and D to meet the parking requirements of the Council. These will be complete within the life of the permission.
  - The location of the site has been deemed acceptable for the commercial development as evidenced in the recent Board decisions. There is no conflict with Objective SS6 of the current CDP.
  - The proposed development meets and accords with the Retail Planning Guidelines and Section 4.21 of the Plan.
  - The proposed development is not contrary to the development management standards as claimed in the Third-Party appeal.
  - The proposed design has been deemed acceptable by the PA.
  - It is not agreed that the additional parking spaces within the supermarket car park are disconnected from the filling station, shop and hot food counter and seating area. Signage will be used and the car parking will be reserved for customers and managed accordingly.
  - With regard to issues in relation to residential amenity, it is submitted that the PA considered such impacts. It is further noted that the Board decisions

indicate that the principle of a mixed-use development has been established on the site.

- It is not accepted that the development will have the adverse impact claimed in the appeal, as the only new works proposed relate to the building to serve the filling station.
- The Council did not ignore the appellants submission in respect to a no-fry zone, they just don't agree. The document referred to is not planning guidance within the meaning of Section 28 of the Act.
- There is no basis to support the contention that the applicant's development proposals represent 'development by stealth' as alleged.
- It is acknowledged that there is fatigue arising from the number of applications, but it is submitted that the company is fully committed to the development site. the amendments to the original development were necessary to address particular requirements of future occupiers.
- It is rejected that construction has commenced in breach of a condition in the grant of planning permission no. 06/3886. Non-compliance with conditions is not a matter for the Board.

6.4.3. There are a number of enclosures with the First Party response to the Third-Party appeals.

## **7.0 Assessment**

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the planning history of the site and wider landholding, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Compliance with National Guidelines & Standards, the Development Plan & General Development Standards

3. Traffic & Parking
4. First-Party Appeal
5. Other Third-Party Issues

The Board will note that I propose to deal with Appropriate Assessment under a separate heading below in Section 8.0 of this report.

## **7.1. Principle of the development**

- 7.1.1. Permission is sought for the construction of a two-storey building to serve the approved fuel filling station (ABP-306850-20 refers). The proposed building will comprise a retail element as well as a hot foot / deli with sit in area. The Board will note that permission was originally granted for the construction of Block A on the subject site of the fuel filling station under ABP ref: PL07.221318 (PA ref: 06/3886). Block A included a two-storey building with an overall floor area of 1,165.58m<sup>2</sup>, which included 6 retail units with a combined floor area of 684.7m<sup>2</sup>, as well as 6 x 2-bedroom apartments at first floor level.
- 7.1.2. In terms of the principle of the proposed development and having regard to the planning history associated with the subject site therefore, I consider that the principle of the proposed retail building, with associated hot food / deli counter, can be considered acceptable.
- 7.1.3. At the outset, I would note the submission of the first-party, that the current proposed development should be considered as a standalone application, unlinked to the parent permission at the site and that this position is argued by the third-party appellants. This matter will be addressed further below.

## **7.2. Compliance with National Guidelines & Standards, the County Development Plan & General Development Standards:**

- 7.2.1. The Board will note that the third-party concerns relating to the proposed development include the potential impact of the development on the village, given the distance of the site from the core of Mountbellew. I also note the concerns raised with regard to the proposed hot foot/deli counter and seating area and reference is

made to the 'No-Fry-Zone' adjacent to schools being implemented by local authorities across the country.

7.2.2. In terms of the Retail Planning Guidelines, I note that the aim of the Guidelines is to ensure that the planning system continues to play a key role in supporting competitiveness in the retail sector for the benefit of the consumer in accordance with proper planning and sustainable development. The RPGs further provide that the planning system should not be used to inhibit competition, preserve existing commercial interests, or prevent innovation. I further note that Section 2.4.3 of the guidelines set the shop floorspace cap for petrol filling stations at 100m<sup>2</sup>.

7.2.3. The proposed building, following the submission of the response to the PAs further information request, has a stated floor area of 514m<sup>2</sup> with the following breakdown:

<b>Ground Floor: 264.1m<sup>2</sup></b>	<b>First Floor: 254.3m<sup>2</sup></b>
Retail Area: 100m <sup>2</sup>	Storage: 140m <sup>2</sup>
Deli seating Area: 95.1m <sup>2</sup>	Admin/Cash Office: 22.6m <sup>2</sup>
Deli Service Area: 30.9m <sup>2</sup>	Staff Room/Toilet: 55.2m <sup>2</sup>
Toilets: 13.8m <sup>2</sup>	Lobby / Sluice: 33.5m <sup>2</sup>
Lobby/Lift/ATM: 24.3m <sup>2</sup>	

The Board will note that the amended building occupies 40m<sup>2</sup> less than the original building sought on the site.

7.2.4. The proposed layout of the building provides for a single entrance which will serve both the shop area and the deli counter and seating area. I note that the retail floorspace proposed accords with the 100m<sup>2</sup> cap detailed in the Retail Planning Guidelines 2012 and I am generally satisfied that the retail proposal is in accordance with the RPGs. I further note the level of permitted retail development on the site, including that contained within the now omitted Block A.

7.2.5. In terms of the Galway County Development Plan requirements, I note the provisions of Objective R10 - Retailing Associated with Petrol Stations which states as follows:



Consider development proposals for shop facilities accompanying petrol stations on their individual merits, having regard to the Retail Planning Guidelines for Planning Authorities (2012) and subject to traffic implications.

- 7.2.6. With regard to the proposed 'hot food/deli counter and seating area' proposed as part of the proposed development, I note the third party concerns due to the proximity of the site to the secondary school. I would note that the description of this element of the scheme is not described in the public notices as a fast-food takeaway, rather a hot food / deli associated with the petrol station. I consider that this element of the development is subsidiary to the main retail use of the building. I further note that the food offer is likely to be aimed at car borne / short stay customers. While I acknowledge the proximity to the school, I do not consider this element to represent a fast-food takeaway. A condition to ensure that this element does not operate as a 'fast-food' outlet could be included in any grant of permission to avoid any doubt.
- 7.2.7. Having regard to the above, I am satisfied that the development would not have an adverse impact on the vitality and viability of the retail offer of Mountbellew, and if permitted, would adequately accord with the requirements of the RPGs. I propose to address, in particular, the inclusion of Condition 3 of the PAs notification of decision to grant permission as it relates to the duration of the permission and tying it to overall development which is due to expire on 31st December 2021, further below.

### **7.3. Traffic & Parking**

- 7.3.1. The Board will note that the site area associated with the proposed development was increased following the PAs request for further information. The purpose of the increased site area was to incorporate 20 car parking spaces permitted as part of the permission associated with ABP-308213-20 (PA ref: 20/384) for revisions to Blocks B and C which included the re-configuration of associated car parking layout. This is due to the fact that the original proposed site (current appeal site) provided for 8 parking spaces at the permitted pumps and an additional 10 spaces, including 1 accessible space.
- 7.3.2. In terms of parking standards, the Galway County Development Plan, DM Standard 22, sets out the requirements for the development. I note the calculations for parking as submitted by the applicant in response to the PAs further information request and

in particular, the commentary with regard to the classification of the non-retail element of the development. In acknowledging the nature of the food offer as being subsidiary to the main retail offer, I do not accept that the non-retail element should be considered as a 'takeaway' in the normal sense of the word, and I note that the applicant indicates the same. In this regard, the required parking provision for the development is as follows:

Shop 100m <sup>2</sup>	=	6 spaces required
Deli / restaurant area	=	11 spaces

As such, I am satisfied that the proposed parking provision is adequate to accommodate the development as proposed. I further accept that there will be overlap in the use of the parking spaces for customers purchasing fuel and food.

#### **7.4. First Party Appeal**

- 7.4.1. The First-Party has appealed the inclusion of 3 stated conditions in the PAs decision to grant permission for the proposed development. These conditions include Conditions 3, 4 and 6.
- 7.4.2. Condition 3 seeks to tie the PAs grant of planning permission to the parent permission which expires on the 31<sup>st</sup> of December 2021. The reason for the inclusion of this conditions is noted as being in the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission. The First Party notes that the condition is a replica of the Boards condition 2 attached to the previously permitted filling station but suggests that the current application differs from the previous application which sought changes to a permitted development. It is submitted that the current application should be considered as a standalone application whereby permission is sought for the construction of a building to serve the permitted filling station. It is further submitted that the condition lacks clarity with regard to the inclusion of the expiry date.
- 7.4.3. I have considered this matter very carefully and I can understand the position of the applicant. However, I would not agree that the subject appeal does not explicitly relate to the grant of permission for the filling station, and as such, it is wholly appropriate that if permission is granted, it is tied to that permission. In this regard, the Board will note that the grant of permission for the fuel filling station is connected

to the parent permission for the overall site. While I accept that the time is limited, in the current circumstance, whereby the permission for the filling station expires on the 31<sup>st</sup> day of December 2021 and following my site visit on the 10<sup>th</sup> of December 2021, I can confirm that while work on the filling station is under way, it is most unlikely to be constructed within the next 23 days which include the Christmas period.

- 7.4.4. In this regard, I consider that the inclusion of Condition 3 of the PAs decision to grant permission is both appropriate and reasonable. I would suggest that the condition might be amended to attach any grant of permission for the two-storey building to serve the fuel filling station the subject of this appeal, to the Boards previous grant of planning permission, ABP-306850-20 (PA ref: 19/1699) refers, in the interests of clarity. Any grant of planning permission in this instance should be required to comply with the relevant conditions attached to that decision, ABP-306850-20 (PA ref: 19/1699), which includes condition 2 which states that this permission shall expire on the 31<sup>st</sup> day of December 2021.
- 7.4.5. The Board will also note that the First-Party has lodged an application to extend the duration of the permission of the parent permission at the site for a further period of two years, which includes the current proposed development site. This application was lodged with Galway County Council on the 11<sup>th</sup> of November 2021 and a decision on this application to extend the duration of the permission is due on the 14<sup>th</sup> of January 2022. The inclusion of the PAs condition 3 will connect the subject application to the parent permission should the duration be extended by the PA, which I consider to be both appropriate and acceptable.
- 7.4.6. With regard to Condition 4, which states that no construction shall begin until the PA confirms in writing the commencement of works to upgrade the WWTP, the First-Party notes the Boards previous decisions which require the developer to enter into a connection agreement with IW. I would agree with the first party in this regard and note that the original grant of planning permission includes the installation of a temporary private on-site WWTP to accommodate the development until such time as the Mountbellew WWTP has been upgraded. I consider this to appropriate and recommend that in the event of a grant of planning permission, the PAs condition 4 should be omitted.

7.4.7. With regard to Condition 6, which relates to the preservation, recording and protection of archaeological materials or features within the site, the First-Party submits that this condition duplicates a planning conditions in two existing grants of permission on the site. It is indicated that the developer has already submitted and agreed the relevant details with the PA, and therefore, that there is no justification for the attachment of the condition.

7.4.8. I would note that as construction works have commenced on the site, which comprised part of the wider development site covered by an archaeological condition. I further note that the previous archaeological conditions attached to permissions for the development of the site appear to have been complied with to the satisfaction of the Planning Authority. As such, I would agree with the First-Party that the inclusion of this condition is unnecessary. Should the Board be minded to grant permission in this instance, I am satisfied that the PAs condition 6 can be omitted.

## **7.5. Other Third-Party Issues**

### **7.5.1. Unauthorised Development**

The Board will note that third-party appellants submit that the development has not been commenced and cannot be substantially complete by the permission expiry date of the 31<sup>st</sup> of December 2021. As such, it is considered that a grant of planning permission would facilitate unauthorised development. I also note the concerns raised that the permitted development is unlikely to meet current development management guidelines or current, national, regional or local planning policy and should be fundamentally reassessed.

With regard to the above, I note the relevant conditions attached to the previous grants of planning permission associated with the site. I also note that development has commenced at the site. Compliance with conditions, and indeed, the extension of the duration of the grant of planning permission on the site, are matters for the Planning Authority.

### **7.5.2. Water Services Capacity**

I note the concerns raised by third-party appellants in terms of the capacity of the public water services to accommodate the proposed development. In this regard, the

Board will note that the permitted development at the site includes the installation of a private (temporary) wastewater treatment system to accommodate the development until such time as the Mountbellew WWTP has been upgraded.

I am satisfied that this is acceptable. I am further satisfied that Irish Water matters can be dealt with by way of condition in the event of a grant of planning permission.

## **7.6. Conclusion**

- 7.6.1. Having regard to the information available on the file, together with the planning history associated with the subject site, I am satisfied that the principle of the proposed building to serve the approved filling station, to include a retail shop and hot food/deli counter and seating area, is acceptable.
- 7.6.2. I have noted the first-party appeal with regard to the inclusion of three conditions, and I would conclude that the inclusion of condition 3 is both necessary and appropriate. I consider that conditions 4 and 6 can be omitted.
- 7.6.3. With regard to the third-party appeals, I am satisfied that the Board can consider the appeal within the requirements of the Planning and Development Act and Regulations. I am further satisfied that the non-retail offer is not proposed as a 'takeaway' in the context of 'no-fry zone' objectives described by third-parties. In addition, I am satisfied that the proposed development is acceptable in terms of roads and traffic.

## 8.0 Appropriate Assessment

- 8.1.1. The site is not located within any designated site. The closest Natura 2000 site is the Carrowmagappul Bog SAC (Site Code: 001242) which is located approximately 2km to the north of the site and the River Callows Suck SPA (Site Code: 004097) is located approximately 11.6km to the north of the site.
- 8.1.2. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.
- 8.1.3. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site.
- 8.1.4. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.
- 8.1.5. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:
- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
  - Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

- 8.1.6. The Board will note that a Natura Impact Statement (NIS) was not submitted as part of documentation for permission for the proposed development to assess the likely

or possible significant effects, if any, arising from the proposed development on any European site. I do note however, that a NIS was submitted as part of previous applications for the site including the fuel filling station, ABP-306850-20 refers. As such, the Board has previously considered the potential effects arising from the development of this site.

## **8.2. Consultations and Observations**

- 8.2.1. I note that third-party submissions raised concerns in terms of AA.
- 8.2.2. The PA concluded that no issues relating to AA arise with regard to the proposed development.

## **8.3. Screening for Appropriate Assessment:**

- 8.3.1. The purpose of AA screening, is to determine whether appropriate assessment is necessary by examining:
  - a) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and
  - b) the likely effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives and considering whether these effects will be significant.
- 8.3.2. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site. There are 12 Natura 2000 Sites occurring within a 15km radius of the site. I am satisfied that following 11 sites can be screened out in the first instance, as they are located outside the zone of significant impact influence because the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and therefore, I conclude that no significant impacts on the following sites is reasonably foreseeable. I am satisfied that the potential for impacts on the following 7 Natura 2000 sites can be excluded at the preliminary stage:

Site Name	Site Code	Assessment
Carrownagappul Bog SAC	001242	<p>Site is located entirely outside the EU site and therefore there is no potential for direct effects.</p> <p>No habitat loss arising from the proposed development.</p> <p>No disturbance to species.</p> <p>No pathways for direct or indirect effects.</p> <p><b>Screened Out</b></p>
Curraghlehagh Bog SAC	002350	
Shankill West Bog SAC	000326	
Derrinlough (Coolkeenleanode) Bog	002197	
Camderry BOC SAC	002347	
Lough Lurgen Bog /Glenamaddy Turlough SAC	000301	
Lough Corrib SAC	000297	
Ballygar (Aghrane) Bog SAC	002199	
Aughrim Aghrane Bog SAC	002200	
Lisnageeragh Bog and Ballinastack Turlough SAC	000296	
Levally Lough SAC	000295	

8.3.3. I consider that the following Natura 2000 site, located within 15km of the subject site, can be identified as being within the zone of influence of the project, for the purposes of AA Screening, as follows:

- River Suck Callows SPA (Site Code: 004097)

#### 8.4. Qualifying Interests for Natura 2000 Sites within Zone of Influence

8.4.1. The subject development site is located at the development boundary of the village of Mountbellew, in Co. Galway. The site is located within the speed limit of the village, on College Road (R358) and in an area where there is a mix of uses including residential – in the form of large one-off houses on large sites to the east – a school, church and fire station. The site is not located within any designated site and currently comprises in part, a construction site. The site does not appear to contain any of the habitats or species associated with any Natura 2000 site.

8.4.2. The following table sets out the qualifying interests for the identified Natura site:



European Site	Qualifying Interests
<b>River Suck Callows SPA</b> <b>(Site Code: 004097)</b>	A038 Whooper Swan <i>Cygnus cygnus</i> A050 Wigeon <i>Anas penelope</i> A140 Golden Plover <i>Pluvialis apricaria</i> A142 Lapwing <i>Vanellus vanellus</i> A395 Greenland White-fronted Goose <i>Anser albifrons flavirostris</i>

### **River Suck Callows SPA (Site Code: 004097)**

- 8.4.3. The River Suck Callows SPA is a linear, sinuous site comprising a section of the River Suck from Castlecoote, Co. Roscommon to its confluence with the River Shannon close to Shannonbridge, a distance of approximately 70 km along the course of the river. The river forms part of the boundary between Counties Galway and Roscommon. The site includes the River Suck itself and the adjacent areas of seasonally-flooded semi-natural lowland wet callow grassland. The River Suck is the largest tributary of the River Shannon.
- 8.4.4. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the above mentioned species. The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds. The River Suck Callows SPA is an important site for wintering waterfowl including the nationally important Greenland White-fronted Goose flock which congregates mainly in the middle reaches of the river. Four other species occur in populations of national importance, i.e. Whooper Swan, Wigeon, Golden Plover and Lapwing.
- 8.4.5. The River Suck Callows SPA is of considerable ornithological importance, in particular for the presence of nationally important populations of five species. Of note is that three of the species that occur regularly, i.e. Whooper Swan, Greenland White-fronted Goose and Golden Plover, are listed on Annex I of the E.U. Birds Directive. Part of the River Suck Callows SPA is a Wildfowl Sanctuary.

## 8.5. Conservation Objectives:

8.5.1. The Conservation Objectives for the relevant designated site are as follows:

European Site	Conservation Objectives
River Suck Callows SPA (Site Code: 004097)  Located approx. 11.6km to the east of the site	<p>The NPWS has not identified site-specific conservation objectives for the site. the overall aim of the Habitats Directive is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</p> <p>To acknowledge the importance of Ireland's wetlands to wintering waterbirds a second objective is included as follows:</p> <p>To maintain or restore the favourable conservation condition of the wetland habitat at River Suck Callows SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.</p>

## 8.6. Potential Significant Effects

8.6.1. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 1.8km from the boundary of any designated site. As such, there shall be no direct loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies within the environs of a developed environment. No qualifying species or habitats of

interest, for which the designated sites are so designated, occur at the site and the site is noted as being located outside the foraging range for the SCI species. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the construction works proposed, there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 sites have been designated.

- **Water Quality:** The proposed development relates to the construction of a building to serve the permitted fuel filling station on the site. The development will connect to the permitted temporary on-site WWTP associated with the overall parent permission for the wider site. I note the information included in the NIS prepared for the previous application on the site (for the permitted fuel filling station) and I would conclude that the likelihood of any effect on water quality within the SPA is very low, unlikely and insignificant.

Having regard to the scale of the proposed development together with the nature and extent of extant permission at the subject site and the wider landholding, I am generally satisfied that the proposed development is acceptable and that if permitted, is unlikely to impact on the overall water quality of any Natura 2000 site in proximity to the site.

## **8.7. In Combination / Cumulative Effects**

- 8.7.1. In the absence of any assessment of potential in-combination effects by the applicant, I have undertaken an examination of developments in Mountbellew in the past 5 years, which may act in combination with the subject application in terms of cumulative effects. It is noted that the Mountbellew WWTP is currently at capacity and incapable of accommodating any additional loading however, it is also noted that a 10-year permission for the upgrading of the wastewater treatment plant in Mountbellew is currently with the Board. In addition to the extant permission on the subject site and the adjoining landholding, I did not note any significant planning applications which might be considered as working in combination with the subject proposal which would give rise to any cumulative effects in terms of AA.

Given the nature of the proposed development, being the construction of a retail / food building to serve the permitted fuel filling station, I consider that any potential for in-combination effects on water quality in any European Site can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in River Suck Callows SPA (Site Code: 004097) via rivers and other surface water features are also subject to AA.

#### **8.8. Mitigation Measures**

No site-specific mitigation measures are noted for the proposed development.

#### **8.9. Conclusion on Stage 1 Screening:**

- 8.9.1. I have considered the proposed development, and have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances. In addition, I have had regard to the source-pathway-receptor model between the proposed works and the European Sites.
- 8.9.2. Having regard to the information submitted, the nature of the development proposed, I consider reasonable to conclude that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site, the River Suck Callows SPA (Site Code: 004097), or any other European site, in view of the site's Conservation Objectives.

#### **9.0 Recommendation**

I recommend that planning permission be granted for the proposed development for the following stated reason and subject to the following stated conditions.

#### **10.0 Reasons and Considerations**

Having regard to the pattern of permitted development in the area, to the provisions of the Galway County Development Plan 2015-2021, and to the layout and design as submitted, the Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or

visual amenities of adjoining properties 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.

## 11.0 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 10<sup>th</sup> day of March 2021, 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. 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 the 10<sup>th</sup> day of December 2009 under An Bord Pleanála appeal reference number PL 07.221318 (planning register reference number 06/3886), as extended under planning register reference numbers 12/1428 and 17/1699, and any agreements entered thereunder, and in particular, ABP-306850-20 (PA ref: 19/1699) which ties the subject permission to the fuel filling station. This permission shall expire on the 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. The site shall be used as a retail unit ancillary to the approved petrol filling station and no part shall be used for the sale, display, or repair of motor vehicles in strict accordance with the details submitted to the Planning

Authority on the 10<sup>th</sup> day of March 2021. Hours of operation shall be between 0700 hours and 2300 hours.

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

4. 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.

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A. Considine

Planning Inspector

12<sup>th</sup> December 2021