



**Development**

Construction of service station with forecourt building including shop, delicatessen and restaurant with seating area and drive-thru facility (floor area of 671.7sq.m), fuel area for HGVs, 6 forecourt pumps, 3 underground fuel tanks, signage, parking area for HGVs, coaches and cars and 6 EV charging points. Proposal includes new access road onto L-92004-0 road, improvement works to existing entrance to N20 and provision of right-turning lane onto N20 as well as internal roads, including a roundabout, pedestrian facilities, landscaping and boundary treatment.

**Location**

N20 Road Kilknockan and Lackanallooha (Tds), Mallow, Co. Cork

**Planning Authority**

Cork County Council

**Planning Authority Reg. Ref.**

21/05363

**Applicant(s)**

Sirio Investment Management Ltd.

**Type of Application**

Planning permission

**Planning Authority Decision**

Refuse permission

**Type of Appeal**

First Party against Refusal

**Appellant(s)**

Sirio Investment Management Ltd.

**Observer(s)**

None

**Date of Site Inspection**

10<sup>th</sup> March 2022

**Inspector**

Mary Kennelly

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## **1.0 Site Location and Description**

- 1.1.** The site is located on the N20 in the townlands of Kilknockan and Lackanalooha, which are on the north-western outskirts of Mallow town, approx. 900m to the north of the Town Centre. It is situated on the main Cork-Limerick road, c.500m to the north of the N20-N72 Roundabout, and approx. 180m north of Beecher Street Roundabout. The N20 is a dual carriageway between the two roundabouts but changes to a single carriageway north of the second roundabout. It is a vacant site, but the eastern section was previously in use as a commercial site (Esso service station and retail outlet) with frontage to the N20, on the western side of the carriageway. It is stated in the submissions that the site has been vacant for 14 years. The western side of this section of the N20 is largely commercial in nature but the eastern side of the carriageway is largely residential. These properties are elevated above the N20 and are accessed from a local road to the east.
- 1.2.** The site area is given as 1.604ha. The site comprises two distinct sections, which are bisected by a watercourse flowing N-S along the centreline. The first is a roughly square-shaped site with frontage (and direct access) to the N20. This section is a brownfield site which is bounded to the north by commercial premises (a car sales business and a motor parts business), and to the south by a long narrow woodland area. The mature broadleaf woodland is a designated public open space. The second section (western side) is a long narrow green-field site (in agricultural use) which has road frontage to, and is bounded by, the L-92004-0. This boundary is defined by a mature treeline and hedgerow. This part of the site is elevated above the eastern section and extends southwards, almost to the roundabout junction, with the southern part of this section being bounded to the east by the woodland.
- 1.3.** The mainline railway embankment borders the L-92004-0 to the west. This is a narrow local road which terminates c.20m to the north of the site at a railway crossing (now closed) and serves a single dwelling house on the north-western boundary of the site. The southern part of this road serves a pay-and-display car park associated with Mallow Railway Station, which is located further to the south. The Hospital Stream flows southwards along the middle of the site before joining the Blackwater River, part of Blackwater River SAC (002170), approx. 1km to the south.

## 2.0 Proposed Development

2.1. It is proposed to construct a new service station on the site together with a retail shop, a delicatessen, a restaurant with drive through facilities, an internal seating/dining area and ancillary facilities with access from both the N20 and from the local road to the west (L92004-0). The main building would be located at the northern end of the site facing the N20.

2.2. The main elements of the proposal (12/06/18) may be summarised as follows:

1) Construction of a modern service station incorporating –

- Single-storey forecourt building (c.672m<sup>2</sup> - NE corner of site)
- Forecourt with canopy and 6 no. pump stations (to south of building)
- 3 no. underground fuel tanks
- 6 no. Electric vehicle charging stations
- Parking for 60 vehicles (NW corner), coaches and HGVs (SW corner)
- Signage.

2) Forecourt building comprising –

- Retail shop (100sq.m).
- Delicatessen (36sq.m).
- Restaurant (108sq.m) – Drive thru and seated
- Additional internal seating/dining area (246sq.m).
- Sale of hot and cold food for consumption on and off the premises from delicatessen.
- Ancillary space for staff/storage (87m<sup>2</sup>), toilet facilities (58m<sup>2</sup>), service yard/bin storage and external seating area.

3) New access road and access arrangements –

- Provide a new access onto the L92004 to the southwest of site
- Modify access to N20 by introducing a right-turning lane into the site

- Internal road with roundabout separating coach/HGV parking from rest of site.

4) Ancillary site development works –

- Provide pedestrian access, footpaths, pedestrian crossings
- Landscaping and boundary treatment
- Drainage

**2.3.** The application was accompanied by the following :

- Planning Statement
- Appropriate Assessment Screening Report and Natura Impact Statement
- Site Closure Report
- Flood Risk Assessment
- Traffic and Transport Assessment
- Stage 1 / 2 Road Safety Audit
- Engineering Design Report
- Outline CEMP.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to refuse permission for three reasons based on prematurity of development by reason of location within the route corridor options for both the N20 and the N72 upgrade projects and on the basis of conflict with the policies of the planning authority and the TII guidelines on National Roads in respect of provision of service areas. The reasons for refusal are as follows :-

1. The proposed development is located within the study area of the proposed N/M20 Cork to Limerick Road Improvement Scheme. It is an objective of Cork County Development Plan 2014, under TM 3:1 (a) and (b) to support the implementation of major projects including the stated N/M20 and to support and provide for improvements to the national road network including reserving

corridors for proposed routes free of inappropriate development so as not to compromise future road schemes. Having regard to the provisions of the DOECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012) and the above stated objective of the County Development Plan, the proposed development is deemed to be premature pending the determination of the road layout of the N/M20 and therefore conflicts with the proper planning and sustainable development of the area.

2. The proposed development falls within the study route corridor options of the N72/N73 Mallow Relief Road National Road Scheme. It is an objective of the Cork County Development Plan 2014, under TM 3:1 (a) and (b) to support the implementation of major projects including the N72/N73 Mallow Relief Road and to support and provide for improvements to the national road network including reserving corridors for proposed routes free of inappropriate development so as not to compromise future road schemes. Having regard to the provisions of the DOECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012) and the above stated objective of the County Development Plan, the proposed development is deemed to be premature as it could prejudice plans for the delivery of the N72/N73 Mallow Relief Road scheme and therefore conflicts with the proper planning and sustainable development of the area.
3. The proposal involves the development of a services station at the northern edge of Mallow town which, given the scale and nature of services proposed on the site, would be contrary to the DOECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012) which seeks to avoid attracting short local trips or to permit a service area becoming a destination for local customers. The development is also likely to draw trade from the town core and compromise the vitality and viability of Mallow Town which would be contrary to Objective TCR 4-9 of the County Development Plan. The development proposed therefore conflicts with the objectives of the County Development Plan and the proper planning and sustainable development of the area.



## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The Area Planner's primary report (09/07/21) raised concerns regarding the impact on the vitality and vibrancy of Mallow Town Centre, which is less than 500m away, the conflict with TII's policy for service areas as well as conflict with the national road improvement projects of the N/M20 improvement scheme and the N72/N73 upgrade.

**Retail impact** - It was noted that the site had previously been in use as a filling station and retail unit, which had been decommissioned in 2007, and that there are commercial uses to the north including a service station with a Supermacs and Papa John's Pizza (150m distant). It was further noted that permission had been refused for a drive-thru facility at that premises in 2011 on the basis of traffic hazard, unauthorised development and overdevelopment. It was considered that the use of the site as a service station would be appropriate in principle, but that the extent and scale of the additional services would be excessive given the proximity to the town centre. It was stated that the full extent of the retail floorspace as defined in the Retail Planning Guidelines was not clear, but that the 100sq.m cap as recommended in the RPG is likely to be exceeded. As such, a sequential approach should be applied to this scale of convenience retailing, and that large retail floorspaces would not be encouraged at this location. The justification for the additional services on the basis of the EV charging stations was not accepted. The attractiveness of the facility and services to local customers was raised as a concern, particularly given the ease of access from the road network and the provision of a drive-thru facility.

**Service Areas** – it was noted that the TII policy (2.8) specifically seeks to avoid service areas that would attract short, local trips in service areas along the national road network. It was considered that the range of services provided and the large scale and of such services would be likely to attract short local trips and would become a destination in its own right, which would threaten the viability and vitality of Mallow Town Centre.

**Visual impact** – the significant differences in levels to the west were noted and it was considered that the steep drops should be designed out and replaced with a sloped gradient and a more softened approach. Full details of the gabions were also required. The existing natural roadside boundary to the west should be retained and

revised plans showing the extent of cut and fill and existing/proposed levels would be required together with a street-view elevational plan showing the entire development. It was noted that a reduction in the scale of development would result in a reduction in parking on site, which would be welcomed. The impact on the adjoining residential property to the north should be addressed and the number and extent of signage should be reduced.

**Traffic/access/parking** – it is noted that the road serving the proposed car park also serves the railway station car park. The Area Engineer's comments were noted including the recommendation that traffic travelling south cannot exit the site onto the N20. The proximity of the exit onto the L92004 to the entrance to the Irish Rail carpark was of concern and the prospect of the internal road being used as a short-cut to the N20 should be prevented. FI was required in respect of the charge enabled parking spaces.

**Premature regarding road layout** – the site falls within the study area of the N/M20 Improvement Scheme, the Project Co-ordinator for which has advised that the proposal is premature pending the determination of this route. As such, the proposal would contravene Obj. TM 3:1 (a) and (b) of the CDP 2014 and that the location for a service area for this road will be determined as part of that project. The NRO recommends refusal on the grounds of prematurity in respect of both the N/M20 project and the N72/N73 project (Mallow Relief Road). It was noted that the site is located within the Planning Referral Corridor Map and that the preferred option had not yet been finalised, with the route lying just to the north of the site. Its location within 'Option B' may result in geometric realignment and junction improvements to the N20 near the development. Furthermore, the emerging preferred route for the Northern Relief Road includes an 'active travel route' which could be compromised by the proposed development.

**Impact on Irish Rail services** – issues raised by IR were noted and could be addressed.

**Services** – it is noted that the site was formerly serviced by a combined wastewater sewer. It is proposed to tie into the 225mm foul sewer to immediate south of site. IW advised that this is feasible but subject to upgrade works to Mallow WWTP, which has commenced, and due for completion by end 2022. The proposed discharge of

stormwater to the Hospital Stream includes the installation of a culvert, which will require OPW approval. The proposed culvert, swale adjacent to the N20 and attenuation system should be reviewed in light of reports from the Area Engineer and the County Ecologist. A Surface Water Management report was also required.

**Flood risk** – the eastern section of the site is in Flood Zones A and B. The proposed development would be 'less vulnerable' in terms of Zone B, but a Justification Test would be required for Zone A. A Flood Risk Assessment including a Justification Test was submitted which indicated that the development would not increase the risk of flooding elsewhere and would reduce the risk on the N20. However, given the proposal to install a culvert, it was considered that the matter would need to be reviewed.

**Contaminated land** – A site closure report was submitted which indicated that the site was free from contamination. However, the Environment Officer requested a Soil Investigation Report on this matter, together with an outline CEMP to include the potential for hazardous and non-hazardous waste from the decommissioned site.

**EIA and AA** – The need for EIA was screened out on the basis of the nature and scale of the proposed development which is well below the threshold for urban development. A Stage I Screening Report and an NIS were submitted. It was noted that the Ecologist was not in favour of culverting the stream and required an electro-fishing survey of the stream. Other issues raised in the Ecologist's report were also referenced (summarised below) wherein further information or clarification of certain matters were required.

**Recommendation** – It was considered that the proposed development was premature pending the determination of the road layout for both the N/M20 and the N73/N72 Mallow Northern Relief Road, and that significant concerns remain regarding the extent and scale of the development and its potential impacts on the vitality and viability of Mallow Town Centre. **Refusal** was recommended on these grounds.

The Area Planner's Report and Recommendation was endorsed by both the Senior Executive Planner (09/07/21) and the Senior Planner (09/07/21).

## **Other Technical Reports**

**Area Engineer's Report** – (09/07/21) – Deferral was recommended in respect of a number of items. FI was requested in respect of a variety of issues including cross sections of the site, full design calculations of the gabions, surface water management including the attenuation tank and details of the EV charging with the associated parking bays. Details of compliance with Iarnrod Eireann requirements will also be required.

**Traffic/Transport** - Reference was made to the Mallow Relief Road and an associated 'Active Travel Route' which is to be provided as a link to the train station in the vicinity of the site as part of the preferred route. It was requested that the applicant demonstrate that the proposed development would facilitate such a measure. The layout should be designed to prevent use of the internal road as a short-cut to the N20 and that traffic exiting the site towards the south is not able to do so via the N20.

**Drainage/Services** - Reference was made to the proposed swale near the N20/public footpath. It was requested that the applicant demonstrate that the swale would be safe, could withstand vehicular loading, would not interfere with the provision of services and would be accessible for maintenance. The culvert will require a S50 approval from OPW. As part of the culvert is to be loaded for a crossing point to a green field site, it will be necessary to ensure that the loading is factored into the design of the culvert. Details required.

**National Roads Office** – (07/07/21) – Proposed development is premature and should be refused.

**N/M20** – proposed development falls within the study area for this scheme. It is therefore premature as it could prejudice plans for the delivery of the N/M20. A grant of permission would be at variance with the DOECLG Spatial Planning and National Roads Guidelines (2012).

**Mallow Relief Road N73/N72** – proposed development falls with the Study Route Corridor Options for this national road scheme. It is therefore premature as it could prejudice plans for the delivery of this road scheme and would be at variance with the DOECLG Spatial Planning and National Roads Guidelines (2012). Although Option C is the emerging preferred option, the site is located within Option B

corridor, which may include geometric realignment and junction improvements to the N20 near development. It was concluded that the proposed development may impact on this road scheme and is therefore deemed to be premature.

**Environment Unit** (07/07/21) – Deferral recommended as inadequate information submitted. FI required in respect of decommissioning as Site Investigations required. A Surface Water Management Plan for both the Construction Phase and for the Operation Phase were requested and a Construction and Demolition Waste Management Plan was required.

**Ecologist** (07/07/21) – recommended deferral for several reasons including the following:

- **Culverting of stream** – objection raised but if no other alternative, applicant to submit evidence to this effect. Having consulted with IFI, the County Ecologist is of the opinion that the stream is capable of holding a resident fish population and thus, an electrofishing survey (upstream and downstream) is required.
- **Detailed habitats/species survey** – detailed surveys of both terrestrial and aquatic habitats on and in the vicinity of the site required, which should be mapped. A description of the species occurring at the site and possible implications for protected species within the zone of influence.
- **Invasive Species survey** – having regard to Japanese Knotweed and Himalayan Balsam together with an Invasive Species Management Plan including an assessment of the likely effects on the Blackwater River SAC.
- **Revised CEMP** – should provide clarification of watercourses in/in vicinity of site will be protected from contamination during site set-up/clearance. A detailed method statement is required regarding how ground water encountered during construction will be disposed of. A detailed programme of environmental monitoring during the works phase is required.
- **Contaminated land** – as there is potential for contaminated soil to be present, a hydrocarbon contamination survey is required given the hydrological connection to the SAC. Any mitigation or remediation measure required should be incorporated into the revised CEMP.

- Flood risk – there is potential for contamination of surface waters to occur in respect of the swale to be constructed on the eastern boundary of the site which could ultimately reach the Hospital Stream during the operational phase and in times of flood. An addendum to the NIS is required to address the likely impact of any flood events on the site having regard to the hydrological connectivity with the SAC. The assessment should also address any mitigation measures deemed to be required to prevent this from occurring.
- Landscape Design Plan – a number of non-native species are proposed including *Acer pseudoplatanus* and *Symphoricarpos albus*, which are considered to be invasive species. A revised plan is therefore required.

### 3.3. Prescribed Bodies

**Transport Infrastructure Ireland (28/06/21)** – will rely on P.A. to abide by official policy in respect of development on/affecting national roads. In particular, Section 2.5 of the Spatial Planning and National Roads Guidelines seeks to minimise the number of access points in the transitional speed limit zones. Furthermore, the P.A. is required to have regard to Section 2.8 of the said guidelines in respect of Service Areas. The proposed development, if granted, must be undertaken in accordance with the recommendations of the TTA and RSA.

**Irish Water (09/07/21)** – Confirmation of Feasibility issued. No objection subject to constraints outlined in COF and to conditions including the following –

Water – connection to be made to watermain at entrance to site.

Wastewater – Mallow WWTP currently undergoing upgrade and due to be complete by end 2022. Once completed, connection can be made. However, in order to complete the proposed connection, the IW sewer network will have to be extended by c.55m, which must be funded by developer as part of the connection agreement.

**Iarnrod Eireann** – due to the close proximity of the proposed development to the railway, the applicant must have regard to the Railway Safety Act 2005 and take the provisions of this Act into account in the design, construction and operation of the development. Due to the proximity of the access to the site from the local road to the Irish Rail car park, concern is expressed regarding the free flow of traffic to/from its

car park which may be impacted by HGVs and coaches using this entrance and the narrow road to access the development. Furthermore, the developer shall not undermine the railway embankment which runs beside the development. Any excavation works which infringe on the Track Support Zone will require permission and approval from Iarnrod Eireann. Public lighting (during construction or operation) shall not cause glare or in any way impair the vision of train drivers or personnel operating on track machines.

### **3.4. Third party observations**

Fourteen submissions were received by the P.A. Many of the submissions were in favour of the proposed development. Objections were raised by the neighbouring residential property immediately to the north of the site and by commercial businesses to the north on the N20.

## **4.0 Planning History**

### **4.1.1. On the subject site**

The Area Planner's Report indicates that there are no recent planning applications, with the most recent being in 2001 involving extensions and alterations to an existing service station. According to the planning reports on the file, there are records of planning permissions dating from the 1970s and 1990s which involved various alterations to a service station and garage, with a retention permission for a petrol station granted in 1991 (91/925). It is further noted that alterations were permitted to the service station shop in 1994 (94/925). However, I have not been able to view these applications/decisions.

### **4.1.2. On adjacent sites to north**

Several planning decisions have been made in respect of some of the adjacent sites to the north on the same side of the N20. These relate to a showroom premises and a further service station with shops/restaurants. These decisions are referenced in the Area Planner's report. The most relevant decisions are as follows:

### **4.1.3. Car sales premises immediately to north**

**05/2223** – permission granted for car showroom with workshop and car repairs.

### **Petrol station with shop/restaurant to north of car sales premises**

**07/9389** – Pat McDonagh - permission for retention of change of use from car sales showroom to 2 no. fast-food outlets with seating and take-away.

**08/5829** – Pat McDonagh (Costcutter) - permission granted for extension to shop for sale of alcohol for consumption off the premises.

**11/6682** – Atlantic Enterprises Ltd. - permission refused for operation of a Drive-thru facility at an existing restaurant on basis of traffic hazard, unauthorised development and overdevelopment of the site and visual impact

#### **4.1.4. Site to west (Railway lands)**

**07/9547** – permission granted for construction of a road connecting L92004 and L-1203-74 and inter alia closure of railway crossing. The decision was appealed by a third party to the Board (**PL04.228584**) and permission was granted with some modifications.

## **5.0 Policy Context**

### **5.1. Spatial Planning and National Roads (DECLG 2012)**

**5.1.1.** These guidelines set out planning policy considerations relating to development affecting national primary and secondary roads, including motorways and associated junctions, outside the 50-60 kph speed limit zones and supplement policy guidance on road related matters in other Ministerial guidelines including retail planning guidance. They aim to achieve and maintain a safe and efficient network of national roads in the broader context of sustainable development strategies, thereby facilitating continued economic growth and development throughout the country.

**5.1.2. Section 2.5 Access to National Roads** – restrictions apply to lands adjoining National Roads to which speed limits of greater than 60kph apply. In such cases, development involving the creation of additional access points or the intensification of existing access points onto the national road should be avoided. In 'Transitional zones', which are described as being subject to 60kph but before a 50kph limit is encountered, a limited level of direct access may be allowed to facilitate orderly urban development but should be subject to a road safety audit. A proliferation of



such entrances, however, which would lead to a diminution in the role of such zones, must be avoided. In respect of lands adjoining a national road within the 50kph limit, normal road safety, traffic management and urban design criteria for built up areas will apply.

- 5.1.3. Section 2.8 Service Areas** – The provision of service areas to facilitate travel on long sections of motorway and high quality dual carriageways is supported by the EU Work Time requirements in order to provide areas for rest during longer journeys and/or avail of fuel, toilet and food facilities. The guidelines relate to three different formats.
- 5.1.4. On-line Motorway Service Areas** may only be brought forward by local authorities or the NRA (now TII). These areas incorporate extensive parking and facilities that cater specifically for refuelling, refreshment and toilet need, with no hotel or extensive retail outlets. Service Area should be designed to discourage them from becoming destinations in their own right.
- 5.1.5. Off-line Motorway Service Areas at National Road Junctions** – planning authorities may consider policies in their development plans for the provision of such facilities with reference to the NRA guidance on the location and layout of such facilities. They may also consider provision for similar existing or planned privately promoted service facilities within existing towns and located in the general environs of the relevant corridor. However, a proliferation of off-line service areas at national road junctions should be avoided and a co-ordinated approach with NRA/TII is required. Furthermore, it is necessary that these facilities be designed to avoid the attraction of short, local trips, which is described as 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. Should such a service area facility become a destination for local customers, this would be contrary to Government policy of retail and town centres as set out in the Retail Planning Guidelines.
- 5.1.6. Roadside Service Facilities at Non-Motorway National Roads and Junctions** – the proliferation of such services should be avoided due to the impact on the safety and capacity of the road network and to the vitality and viability of town centres.

**5.1.7. Section 2.9 Protection of Alignments for Future National Road Projects** – Land required for future national road projects should be identified in a development or local area plan. Development objectives, including zoning, must not compromise the route selection process, particularly where road scheme planning is underway and potential route corridors or upgrades have been identified and brought to the attention of the planning authority. Inappropriate zonings are contrary to the broader public interest concerning the achievement of value for money for the taxpayer and can significantly increase the costs of land to be acquired for such projects or lead to significant material alterations to the project or even abandonment of the scheme.

## **5.2. NRA Service Area Policy (2014)**

**5.2.1.** This document sets out the policy basis on which service areas will be provided to meet the needs of road users on the national road network. The lead role for the provision of **on-line** motorway services, which are required to meet EU mandatory standards and national policy, is the TII (formerly NRA) in conjunction with the local authority for the area and a forward planning approach is advocated for the provision of private off-line services. On-line services will be provided as an integral part of roads when planning new/upgraded dual carriageways and motorways.

**5.2.2.** In respect of **off-line** services, the policy states that a proliferation of such facilities in the vicinity of junctions must be avoided, which can be achieved by a co-ordinated approach between the TII and the planning authority in drafting the development plans. Furthermore, it is stated that facilities at such service areas must be of a type which avoids the attraction of short, local trips and/or become a destination in their own right for local customers.

## **5.3. Retail Planning Guidelines (2012)**

**5.3.1.** These guidelines have five main policy objectives:

- Ensuring that retail development is plan-led
- Promoting city/town centre vitality through sequential approach to development
- Securing competitiveness in the retail sector by actively enabling good quality development proposals to come forward in suitable locations

- Facilitating a shift towards increased access to retailing by public transport, cycling and walking in accordance with Smarter Travel strategy and
- Delivering quality urban design outcomes.

**5.3.2. Section 2.3** emphasises the need to enhance the vitality and viability of city and town centres. It is stated that there is a presumption against out-of-town retail centres which would impact on the vitality and viability of city and town centres and also generate significant additional traffic with potential to impact on the national road network and the performance of junctions and interchanges.

**5.3.3. Section 2.4** introduces National Retail Floorspace Caps (which apply to net retail floor space as defined in the guidelines). The retail cap for petrol filling station shops is 100sq.m net irrespective of location (2.4.3).

**5.3.4. Retailing and Motor Fuel Stations (4.11.9)** – such shops should remain on a scale appropriate to the location and should not seriously undermine the approach to retail development in the development plan. The 100sq.m floorspace should not be exceeded and where it is proposed to exceed it, the sequential approach to retail development shall apply, and shall be assessed as if it was for a retail development without the fuel station.

## **5.4. Cork County Development Plan 2014**

### **5.4.1. Chapter 2 – Core Strategy**

**Mallow** is designated as a Hub town and is located on the intersection of the Atlantic Corridor (Cork-Limerick) and the Regional Corridor (Fermoy-Killarney) as shown of Fig. 1.2 (Chapter 1). It forms a central part of the ‘Greater Cork Ring Strategic Planning Area’, which comprises one of four main strategic planning areas, with the largest population outside of the Metropolitan area. The Strategic Aim for Mallow (CS 3-1) Network of Settlements (Higher Order Settlement) is as follows:

To grow the population of this Hub Town to 20,000, develop it as a major integrated employment centre to enable it to fulfil its role at regional and county level. The aim is to support and develop the role of Mallow as an important retail centre in the North of the County while ensuring the vitality and vibrancy of its town centre is retained and enhanced.

#### 5.4.2. Chapter 7 – Town Centres and Retail

Securing the continued vitality of town centres is a key aim of the CDP and will be advanced by policies which generally favour retailing in town centres (7.3). The retail hierarchy has in part been informed by the Joint Retail Strategy for the Metropolitan Area, which is set out in Table 7.1. The status of Mallow and Clonakilty have been enhanced in order to reflect their importance as regional retail centres within the North and West Cork Strategic Planning Areas. Mallow is classified as a 'Regional town' which performs an important regional retail function.

**TCR 4-1 Retail Hierarchy** – Facilitate a competitive and healthy environment for the retailing industry into the future which provides for adequate choice in appropriate locations whilst ensuring that future growth in retail floor space is broadly in line with the identified retail hierarchy set out in Table 7.1

**TCR 4-3 Regional Town** – Support and develop the role of Mallow and Clonakilty as important retail centres in the North and West of the County while ensuring that vitality and vibrancy of their town centres is retained and enhanced.

#### 5.4.3. Chapter 10 – Transport and Mobility

The key national roads infrastructure projects are listed in Objective TM 3-1. The M20 is listed as a 'Key NSS Project' and the N72 (Mallow Northern Relief Road) as a 'Key Regional Project'.

##### **TM 3-1 National Road Network**

- (b) Support and provide for improvements to the national road network, including reserving corridors for proposed routes, free of inappropriate development, so as not to compromise future road schemes.
- (c) Restrict individual access onto national roads, in order to protect the substantial investment in the national road network, to improve the carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network.
- (e) Prevent the undermining of the strategic transport function of national roads and to protect the capacity of interchanges in the county from locally generated traffic.

- (f) Consider the most up-to-date guidance regarding the provision of Service and Rest Areas on the National Road Network (Section 2.8 of Spatial Planning and National Roads 2012) and 'NRA Service Area Policy (Aug. 2014)
- (g) Co-operate with the NRA 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.

**5.4.4. Zoning – 'Existing Built-up Area ZU 3-1** - Normally encourage through Local Area Plans development that supports in general the primary land use of the surrounding existing built-up area. Development that does not support, or threatens the vitality or integrity of, the primary use of these existing built-up areas will be resisted.

## **5.5. Kanturk-Mallow Municipal District Area Local Area Plan 2017**

- 5.5.1.** The site is located just outside the Development Boundary for Mallow Town (Environs) and is zoned Existing Built-up Area. The core strategy for Mallow is set out in the County Development Plan as a single planning unit. However, planning policy for the town (former administrative area of Mallow Town Council) is set out in Mallow Town Development Plan 2010, while the policies for the environs of the town are set out in the Kanturk-Mallow Municipal District LAP.
- 5.5.2.** Mallow is the largest town in the Municipal District, is within the Greater Cork Ring Strategic Planning Area, is designated as a Hub Town and is earmarked for the greatest amount of growth from 11,600 to 20,000 population involving an additional 4,150 households. Two Urban Expansion Areas are provided for to absorb most of this growth, one to the Northeast of the town centre and one to the Northwest. Traffic congestion within the town centre and the absence of good quality connectivity by pedestrian and cycling modes are seen as major issues to be addressed.
- 5.5.3. Transport** – Mallow is strategically located on the N20, the N72 and has a mainline rail station. A distinction is drawn between strategic and local traffic. The N20 and N72 bisect and traverse the town and cause significant traffic congestion, which adversely affects the amenity of the town and accessibility within the town. General accessibility and connectivity for pedestrians and cyclists is also quite poor between residential areas, employment areas and the town centre and needs to be improved

in order to provide convenient routes for walking and cycling on local journeys. The Mallow Traffic and Transportation Study 2011 recommended the construction of several new roads to the north and east of the town as well as rail and river crossings in order to connect the new development areas with the town centre.

**5.5.4. Town Centre Retail** – the principal focus will continue to be in the town centre (3.2.23). A major disadvantage of the town centre retail environment is traffic congestion which adversely affects the quality of the shopping experience.

**5.5.5. Urban Design** – the planned expansion of Mallow will require a new structure of streets and spaces to connect successfully with the existing town centre (3.2.24).

**5.5.6.** Relevant policy objectives include

**MW-GO-06** – Prioritise the development of a Northern Relief Road

**MW-GO-07** – Support the delivery of the M20 and protect the route corridor as identified in the County Development Plan from inappropriate development

**MW-U-01** – Protect the corridor for the Mallow Northern Relief Road – N72 from inappropriate development.

## **5.6. Mallow Town Development Plan 2010-2016**

**5.6.1.** Although the site is just outside the boundary for this Plan, the Strategic Vision for Mallow, the Retail Strategy and the Transport Policies are relevant to the proposed development, in light of the nature of the development, the reasons for refusal and grounds of appeal.

**5.6.2. Vision for Mallow Town – Set out in Part 3** and includes the following highlights -

- Retain the compact pattern of development to date
- Preserve and enhance the Town Centre as the economic service provided to the hinterland.
- Enable Mallow to achieve its strategic ‘HUB’ status
- Protect the Town Centre from inappropriate commercial/retail development on the fringe of the centre

- Notwithstanding the proposed motorway route to the east to replace N20, it is imperative that the development strategy safeguards both proposed and existing primary transport corridors by restricting inappropriate accesses or new developments directly onto these routes
- Protect, provide and enhance appropriate expansion of strategic transport infrastructure whilst facilitating improved pedestrian and vehicular accessibility

**5.6.3. Shopping and Retail Strategy – set out in Part 7.** Relevant policies and objectives

**Obj. SR4** Protect the defined Retail Core as the primary shopping area

**Policy SR1** Protecting Vitality and Viability for the Retail Core and Town Centre

**SR1-1** **Large scale retail planning applications outside the defined retail core** shall be accompanied by a Retail Impact Assessment and shall demonstrate that the development will not have a material adverse impact on the vitality and viability of Mallow Town Centre. A large scale retail proposal is defined as one with over 400m<sup>2</sup> net comparison and 300m<sup>2</sup> net convenience retail floor space or where both types of retail floorspace are proposed, 500m<sup>2</sup> net floor area.

**SR1-2** **Retail Development shall only be considered where:**

- (a) It supports the long term strategy as set out in this Plan
- (b) It would not cause an adverse impact on the defined retail core singly or cumulatively with other existing and permitted development sufficient to undermine the quality of the centre or its role
- (c) It would not diminish the range of activities and services that a town centre can support and
- (d) It would not cause and increase in the number of vacant properties in the defined retail core

**SR1-3** **Effective links with retail core** -All retail development shall ensure the provision of effective links with the development, the retail core and the wider town centre in order to encourage commercial synergy and such provision may necessitate the provision, improvement or widening of existing footpaths where necessary.

**SR3-1 Sequential approach** – The retail core shall be the preferred location for retail uses.

**SR5-1 Commercial use** – retail use shall not normally be encouraged in commercial areas except where they involve the sale of bulky goods

**SR5-2 Petrol stations** – Retail associated with petrol filling stations shall only be permitted where the retail element is secondary to the use as a petrol filling station and the net floor area is no greater than 40sq.m

#### **5.6.4. Transport strategy** – set out in Part 4

**Obj. T5** Reserve the integrity of the existing N20 corridor and pursue the provision of a Northern Relief Route (as part of the design of the M20 ‘Link’ road) in conjunction with Cork County Council and other relevant agencies in order to enhance the connectivity of Mallow and improve local traffic.

#### **Policy T1 Strategic Transport Corridor**

**T1-1** The N20 National Primary route and the rail line shall be preserved as the ‘strategic transportation corridor’. Development proposals that adversely interfere with or conflict with the operational use of the strategic transportation corridor shall not be permitted.

The Council will support the provision of transportation links considered essential to the development of a sustainable network in Mallow and will safeguard the N20 corridor in the interest of the long term sustainable development of the town.

The Council seeks to preserve the integrity of the N20 route from inappropriate development that may compromise the safety of vehicles using the road or result in visual clutter along the road edge.

#### **5.7. Natural Heritage Designations**

Blackwater River SAC (002170) – lies approx. 1km to the south



## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. This is a first-party appeal against refusal. The grounds of appeal are set out in a 29-page document which is accompanied by 16 no. appendices. These include additional and revised details addressing matters such as flood risk, site closure (contaminated land), landscaping, stormwater, traffic issues and an addendum to the NIS that was submitted with the application.

The main points raised in response to the **reasons for refusal** may be summarised as follows:

- 6.1.2. **Spatial Planning and National Roads Guidelines** – not applicable as site is located within 50kph zone. Section 1.1 states that the purpose of the guidelines is to set policy considerations for development affecting national primary routes outside the 50-60kmh speed limit zones for cities, towns and villages. The reference to these guidelines in the reasons for refusal is therefore incorrect. It is pointed out that this policy is incorrectly relied upon in all three reasons for refusal.
- 6.1.3. **Prematurity pending preferred option for N/M20** – the preferred option is expected to be determined in Quarter 4 of 2021, which will address the issue of prematurity and therefore enable a decision to be made on the application. It is acknowledged that whilst some of the Part 1 Road Based Options identify new corridor routes which would be parallel to the existing N20, but that the options included in Part 2 reference further options which involve the retention of the N20 coupled with local improvement works to the network. However, it is submitted that once the preferred option is announced, this will provide sufficient clarity for the Board to make a decision on the proposed development. It is further submitted that should the preferred route include any option other than following the existing N20 through Mallow town, then the reason for refusal is no longer justifiable.
- 6.1.4. **Prematurity pending emerging preferred option for N72/N73 upgrade** – the emerging preferred option was published recently (July 2021) and does not encroach on the application site. Neither does the proposal interfere with the active travel corridor. It is acknowledged that the option selection process had included an option which accessed the N20 at Beecher's roundabout close to the site, it is submitted

that this has been rejected in favour of Option C which accesses the N20 approx. 1.1km to the north of the site. This option also includes an 'active travel corridor' along the disused railway that may provide an opportunity for a new pedestrian/cycle facility. This would provide links between the proposed relief road at Ballyvinter Lower and Mallow Railway Station. It is submitted that the proposed development will have no impact on this 'active travel corridor' and neither will it affect the proposed road scheme for the upgrade of the N73/N72. Furthermore, the applicant has included a cycle lane along the N20 road edge as well as a 2m footpath.

**6.1.5. Retail hierarchy** – the CDP policy objective referred to in the reason for refusal, TCR 4-9, does not apply to the site, as it relates to neighbourhood centres and large village centres. The correct retail hierarchy policy for Mallow is TCR 4-3, which refers to regional towns. This policy states that it is an objective to

“Support and develop the role of Mallow and Clonakilty as important retail centres in the north and west of the county while ensuring the vitality and vibrancy of their town centres is retained and enhanced.”

It is disputed that the proposed development would become a destination for local customers and would be likely to draw trade from the town core and compromise the vitality and viability of Mallow Town. Reference is made to the Acting Senior Executive Planner's report in which it was stated that the scale of the service provision (671.7m<sup>2</sup>) was considered excessive and inappropriate as well as the nature of the drive thru facility which it was sated raised concerns about potential intensification of the use and an increased draw of local trips. It was also noted that the Area Planner had considered that the extent and scale of services was more akin to a primary function retail use rather than an ancillary one to a service station.

**6.1.6. Retail Planning Guidelines** – the proposed development does not conflict with the Retail Planning Guidelines and will not draw trade from Mallow town centre or compromise the vitality and viability of Mallow town centre. It is submitted that the proposed convenience shop at 100m<sup>2</sup> satisfies the requirements of the RPGs with a max. size of 100m<sup>2</sup> for a service station. It is emphasised that the proposed development, which involves a drive-thru restaurant, a hot delicatessen and ancillary dining area, are not included in the net retail floor space calculation. Reference is made to a previous Board decision in Tuam, Co. Galway (PL07.247306), whereby

the Inspector had reasoned in respect of the floor area associated with the drive-thru restaurant, that an eatery in these circumstances would not be classified as a “shop” under Section 5(1) of the PDR, and hence the retail cap did not apply to this part of the development. It is therefore submitted that the proposal is in accordance with the RPGs.

**6.1.7. Impact on vitality and viability of Mallow town** – the retail offering would not compete with Mallow TC. It is a brownfield development on a site that was last used as a service station with a shop and is compatible with the zoning. The purpose is to provide a service station which caters to all road users including HGVs, coaches, cars and electric cars, for which it is proposed to provide 10 EV charging points, as well as additional EV stations to serve the remaining 50 parking spaces. The proposal provides for safe and secure parking for HGVs and coaches, of which there is a shortage along the N20. The need for a greater range of on-site amenities is due to the EV charging points as customers will have a longer dwell time. It is argued that these facilities will encourage more drivers to switch to more sustainable forms of transport. In this respect,

“It is important to recognise the fundamental role that additional retail offerings will play in facilitating the operation of new service station models and reflecting national policy objectives”

It is noted that the site is in a highly accessible location on the N20, in close proximity to Mallow Railway Station and railway carpark and is within 15 minutes walking distance of the town centre. As such it is likely to primarily serve road users travelling from Cork to Limerick who are unlikely to be visiting Mallow town centre and the drive-thru is unlikely to divert trade away from the town centre given the high-level offering of complimentary retail and restaurant services within the town core. It is further stated that the proposal is unlikely to attract pedestrian trips from the town centre.

It was concluded that the proposed development is in accordance with the Retail Planning Guidelines and with Policy Objective TCR 4-3 of the County Development Plan 2014.

**Other issues raised in the appeal addressing specific points raised in planning and technical reports**

### 6.1.8. **Ecology**

**Stream culvert** – designed as part of a response to flood risk on the site as agreed with the P.A. and OPW. Flood Risk Assessment submitted which includes a hydraulic model of the Hospital Stream and supersedes the OPW's CFRAM mapping. Justification for the design is provided together with a detailed drawing of the culvert (Sheet 03 of 03, MSS-FM-P03-Rev.A).

**Electrofishing survey** – this can be carried out as part of the Ecological Impact Assessment and could be addressed as a condition of planning permission.

**Ecological Impact Assessment** – this will be prepared prior to the commencement of development on the site. However, it is not considered to be ecologically sensitive as it is partly brownfield, and the remainder is in agricultural use. A landscape plan has been prepared which includes native species and an All-Ireland Pollinator Plan at the western edge of the site and a native hedge to the north to provide screening for the property to the north-west.

**Invasive Species Survey** – an addendum to the NIS has been submitted as Appendix 3. The approach will be informed by the findings of a targeted survey and professional guidance and the process will form part of the revised CEMP and CDWMP. Should any IAS be identified, an Invasive Species Management Plan will be prepared.

**Revised CEMP** – submitted as Appendix 4 - this has addressed issues raised in the technical reports such as protection of open watercourses from contamination during enabling works, how groundwater will be disposed of and detailed environmental monitoring. Regarding potential for site contamination, a Site Closure Report has been submitted (Appendix 5). It concluded that the site is free of contamination to the extent necessary for commercial development. Upon receipt of planning permission, further ground investigation works will be carried out to determine design information for detailed design including a hydrocarbon contamination survey. The applicant would be happy for this to be a condition of any planning permission.

**Flood risk and contamination associated with swale** – the P.A. had requested an addendum to the NIS to address the potential for contaminated surface water being washed into the swale during operational phase during times of flood. It is stated that this issue is addressed in the Addendum to the NIS.

**Non-Native species in planting proposals** – revised Landscape Design Plan 367-DD-01, Rev B and revised Planting Plan 367-DD-02, Rev B submitted at Appendix 6. This shows that the originally proposed *Acer pseudoplatanus* and *Symphoricarpos albus* have been replaced with more suitable alternatives.

#### **6.1.9. Environment**

**Surface Water Management Plan for Construction** – this has been incorporated into the CEMP which is attached at Appendix 4. Additional drawings have also been submitted.

**Construction and Demolition Waste Management Plan** – An Outline CDWMP has been submitted at Appendix 8. This plan and the Site Closure Plan address the issues raised in respect of potential hazardous and non-hazardous waste, types and quantities of materials likely to be used and an estimate of waste likely to be generated.

**Detailed Layout Drawing for Surface Water Management** – these drawings were submitted with the application and are attached to the grounds of appeal at Appendix 9 together with an Engineering Design Report at Appendix 10.

#### **6.1.10. Traffic and Engineering**

**Detailed cross sections on scaled A1 drawings** – detailed drawings were submitted as part of the application and have been with the grounds of appeal at Appendix 11. These include Cross Sections A, B and C as well as Landscape Section A-AA, B-BB and C-CC. It is pointed out that Sections A-AA and B-BB were originally included within the Landscape Design Report but have now been provided on a separate drawing.

**Gabion details as retaining feature** – it is submitted that this can be provided at compliance stage and can be addressed as a condition of permission. Typical standard details have already been provided.

**Active Travel Route – The Mallow Northern Relief Road** – this has been incorporated into the design in the form of a 3m cycle track and a 2m footpath alongside the N20, as discussed with the P.A. prior to submission of application.

**Road Safety Audit** – all measures have been incorporated into design.

**Swale design and attenuation tank** – these matters have been addressed.

**Proximity of access point to Irish Rail carpark entrance** – in response to concern regarding potential use of internal road network as short cut, refer to Proposed Traffic Routing drawing MSS-TR-P05 at Appendix 14. It is claimed that the circuitous nature of the route would discourage traffic from pursuing the internal roads as a shortcut between the local road and the N20.

**Proximity of works to rail line** – refer to Proposed Roadways – Track support Zone Offset (MSS-RA-P10) at Appendix 13. This shows that the gabion is outside the track support zone.

**EV charging points** – in response to the P.A.'s request to demonstrate where the additional charging points would be located, it is stated that the number of EV charging points have been increased from 6 to 10 Rapid Charging Points and that conduit has also been provided for the remaining 50 parking spaces to allow for additional charging stations in the future, as shown by the pink dashed line in the site layout plan (0826-P200) in Appendix 1.

#### **6.1.11. Visual and Residential Amenity**

**Steep slopes to be designed out** – in response, it is stated that a sloped gradient is not an option due to the constraints of the site. If this was to be considered it would result in a reduction in the number of parking spaces and HGV/coach spaces and could undermine the local indigenous hedging on the western boundary, the local road and the railway. The Landscape Design Report addresses the open cell retaining system which is to be softened by climbing plants and the stone's texture and natural colour would also be less intrusive than a shear-faced concrete retaining structure.

**Details regarding site levels and extent of cut and fill** – Detailed cross sections were submitted with planning application and are included at appendix 11 of the grounds of appeal.

**Street view elevational details** – these were submitted with application and again at Appendix 16.

**6.1.12. Impact on adjoining residence to northwest** – visual amenity of this property is not affected as a detached garage has been erected 5.5m from the gable of the house. Daylight/sunlight would not be affected either due to the E/W orientation of the dwelling relative to the site/proposed development. Comparative figures are

provided in respect of existing and proposed levels. It is submitted that the proposed building would be at a significantly lower level than that of the existing house and that together with existing screening between the two sites and the proposed planting plan to enhance screening on the common boundary, there would be no significant impacts on the residential amenities of the dwelling.

**Lighting** – the lux calculation is not required due to the level difference between the proposed development and the adjoining residence. It is also proposed to provide a buffer with a 1.75m holly hedge along the common boundary as shown in revised Landscaping Drawing. The layout has been designed so that HGV and coach traffic, on accessing the site from the N20, are oriented away from the dwelling in a west-southwest direction along the main spine access route and in a south-to-southeast direction through and when parking in the coach/HGV parking area.

**Hours of operation** – the hours of operation for both the filling station and the retail shop are proposed to be 24 hours a day Monday to Sunday, and for the hot food 6am to 10pm Mon-Fri and 7am to 10pm Sat and Sun. Delivery hours are given as follows:

Fuel – Articulated Lorry – Midweek between 2pm and 5pm

Ambient foods – Rigid Truck – 3 times a week – Tues/Thurs/Friday -10am-12 noon.

Chill & frozen foods – Small van – Daily before 8am

**6.1.13. Signage** – a total of 12 directional signs are proposed of which 10 are 95cm x 95cm and 2 signs measure 1.75m x 95cm. This is not considered excessive and is necessary for the safe movement of traffic within the site. In addition, it is proposed to provide one totem pole sign along the eastern boundary, a Customer Order Display sign, 2 no. Single Menu Displays and one Double Menu Digital Display, all of which are located to the rear of the building. The Convenience Shop will have a single sign on each of the front (eastern) and side (southern) elevations.

## **6.2. Planning Authority Response**

A response was submitted by the Planning Authority on 7<sup>th</sup> September 2021 which may be summarised as follows: -

- **Spatial Planning and National Road Guidelines for Planning Authorities –**

The non-applicability of this document is disputed. Although the site is located within the 50kph zone, the objectives of the policy, which seeks to protect the strategic nature of national primary routes and to limit the extent of development that would generate short trips (1.4), is relevant in principle. Furthermore, the NRDO has confirmed (03/09/21) that reference to these guidelines is correct in respect of Section 2.5 and drew attention to the policy regarding ‘Transitional Zones’ and ‘Lands adjoining National Roads within 50kph Speed Limits’. It is reiterated that the proposed development is at variance with this policy document. It is further noted that as the final routes for the N/M20 and the N72/N73 have not yet been determined, the inclusion of the statement of non-compliance with this policy in the P.A.’s reasons for refusal is valid.

- **Prematurity pending finalisation of N/M20 Route Corridor** - It is emphasised that the route for this road scheme has not been finalised. The Cork NRDO has confirmed on 3<sup>rd</sup> September 2021 as follows:

“The current National Development Plan and National Planning Framework both identify and refer to the M20 Cork to Limerick Motorway and the N72/N73 Mallow Northern Relief Road and this application continues to be deemed premature in nature until the final preferred route options are progressed through the statutory approvals process. Also, with the draft National Investment Framework for Transport Ireland (NIFTI) policy expected to be implemented in the coming months, the full NM20 study area (available on Scheme Update – N/M20 Cork to Limerick (corklimerick.ie)) continues to be reviewed with the emerging Preferred Option likely to be announced in Q1 2022.”

Thus, the Preferred Route has not been confirmed and is subject to the outcome of a public display process. The application has been determined as being premature by the N/M20 Project Office, the Cork NRDO and the P.A.

- **Prematurity pending finalisation of N72/N73 Relief Road** – It is emphasised that the route for this road scheme has not been finalised, as confirmed by the correspondence from the Cork NRDO set out above. The submission by the



Cork RDO dated 08/07/21 was referenced wherein it was stated that while an emerging preferred option has been identified, the actual preferred option will not be identified until Q4 2021. As such,

“all planning proposals will be considered in relation to all short list options as a precaution to any potential changes to the emerging preferred option....the proposed development is located within the Option B corridor which may include geometric realignment and junction improvements to the N20 near the development”

It is stated that such works may impact on the N72/N73 Mallow Northern Relief Road Scheme and the is therefore considered to be premature.

- **Contravention of retail hierarchy** – It is acknowledged that the incorrect CDP policy objective was referenced in the Reason for Refusal no. 3, which was a typing error. The correct policy objective is TCR4-3. Nevertheless, it is submitted that the remainder of the text of the reason for refusal is still valid and the objective is to seek to support and protect the core retail centre and to avoid the over-provision of retailing services in areas where it could adversely impact on the vitality and viability of the town centre and undermine the retail hierarchy. It is reiterated that the overall scale of the retail services proposed are excessive for this location on the edge of town and would be likely to adversely impact on the retail offering of the town, particularly by becoming a destination in its own right as a retail centre as opposed to an ancillary use associated with a service station.
- **Contravention of Retail Planning Guidelines** – the revised Retail Planning Guidelines (2012) defines net retail floorspace as follows:

The area within the shop or store which is visible to the public and to which the public has access including fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaries, customer service areas, and internal lobbies in which goods are displayed, but excluding storage areas, circulation space to which the public does not have access , cafes and public toilets.

The RPGs note that the 'net retail floorspace' associated with service stations should not exceed 100m<sup>2</sup> and where it does, the sequential approach to retail development shall apply. The overall gross floor area of the forecourt building is 671.7m<sup>2</sup>, of which the convenience shop is 100m<sup>2</sup> and the deli and restaurant with drive-thru facilities (combined) amount to 240m<sup>2</sup>. Thus, it is considered that the 'net retail area' encompasses at least the deli and food prep areas. It is noted that the restaurant and dining areas (246m<sup>2</sup>) are not included in the applicant's definition. Reference is made to a Board decision regarding a Section 5 referral Ref. 304519 in support of this point.

Having regard to the significant scale of the retail offering as a whole (including the shop, deli and restaurant) and to the large dining area associated with the proposal (246m<sup>2</sup>) and additional external seating area, it is considered that the proposed development would function primarily as a destination retail offering in its own right and beyond the intentions of RPGs for retail service areas as 'ancillary' to service stations. It would therefore be contrary to the provisions of the RPGs 2012.

## **7.0 Planning Assessment**

### **7.1. Introduction**

**7.1.1.** It is considered that the main issues arising from the appeal are as follows:-

- **Adoption of new Development Plan**
- **Principle of development**
- **Prematurity of development pending determination of road layout for N/M20 Cork-Limerick Motorway Scheme**
- **Prematurity of development pending determination of road layout for N73/N72 Mallow Northern Relief Road scheme**
- **Retail impact of proposed development**
- **Residential amenity impact**
- **Traffic and transport**
- **Adequacy of services.**

- **Other matters – Flood Risk**

### **Ecology**

- **Environmental Impact Assessment**
- **Appropriate Assessment**

## **7.2. Adoption of new Development Plan**

**7.2.1.** At the outset I would like to draw the Board’s attention to the fact that the planning authority adopted a new Cork County Development Plan 2022 on the 25<sup>th</sup> of April 2022 which will become **effective** from the **6<sup>th</sup> of June 2022**. Should the Board make its decision on or after 06/06/22, the statutory plan will be the **Cork County Development Plan 2022**. In the meantime, the effective Plan is the 2014 Plan.

**7.2.2.** In general, there are no significant changes in the new Plan to the policies and objectives (2014 Plan) as summarised in 5.4 above, apart from updates in respect of compliance with national policies and guidelines. The core strategy has changed with a lower population increase envisaged for Mallow of 15,351. However, the town, along with Clonakilty, is still singled out as a regional driver and is designated as one of two ‘Key Towns’, which ‘have an enhanced role within the overall retail hierarchy’. The retail policies have been strengthened in respect of protecting and enhancing town centres and promoting sustainable development patterns with a ‘Town Centre first’ approach incorporated into the policies and objectives.

**7.2.3.** The 2022 Transport policies have also been strengthened and updated. For example the N/M20 is referred to as a major national infrastructure project which has been identified in the National Development Plan and the Mallow Relief road is referred to as ‘N72/N73 Mallow Northern Relief Road’. There is a greater emphasis on integration of land use planning with transportation and the encouragement of more sustainable travel patterns with higher quality environments to promote pedestrian and cycle modes of travel. It is intended to introduce Local Transport Plans to guide future development in this respect.

### **7.3. Principle of development**

**7.3.1.** The proposed development represents the provision of a large Service Area primarily aimed at a variety of road users travelling along the N20 between the two cities of Cork and Limerick. In addition to a petrol filling station and shop (100m<sup>2</sup>), it comprises a wide range of facilities including a delicatessen, a restaurant with drive-thru facilities, internal seating and dining area, sale of hot and cold food for consumption both on and off the premises, external seating area, picnic areas and toilet facilities, as well as a very comprehensive range of parking areas for cars, HGVs, Coaches and a significant number of electric-vehicle charging points. This range of facilities is generally consistent with that required to be provided in an on-line Type 1 Motorway Service Area which is described at 2.1 of the 2014 NRA policy document as follows:

“A large scale service area providing an amenity building (including a convenience shop, restaurant, washrooms and tourist information), fuel facilities, parking and picnic area.”

**7.3.2.** The NRA Service Area policy (2014) and Section 2.8 of the Spatial Planning and National Roads Guidelines (2012) clearly indicate that the responsibility for the provision of such service areas is that of Transport Infrastructure Ireland (formerly NRA) in conjunction with the planning authority for the area, the location of which should be plan-led. The 2014 policy document also states that on-line services will be provided as an integral part of roads when planning new/upgraded motorways and dual carriageways. This approach is reinforced in the forthcoming County Development Plan (12.16.5). It is to be expected, therefore, that such a facility is likely to be included in the planning of the M20 upgrade which will pass through the Mallow environs. It is noted that the NRA 2014 policy states at 3.3.1

“Other dual carriageway schemes will also include service areas as an integral part of the roads, with the decisions as to what types and where to locate them being made at that time when the schemes are being planned. An example of this would be the M20 from Cork to Limerick, which will include service area provision as an integral part of the scheme”

**7.3.3.** As the proposal is a private development, which is being provided on the existing alignment of the national road N20 between Cork and Limerick, and given that the

plans for the upgrade of this road are being actively progressed at present, it could be argued that the provision of such a large Type 1 Service Area in this location may be premature, not only pending the determination of the final layout of the road scheme, but also pending the determination of the most appropriate location for such a service area to serve strategic traffic on this route. Notwithstanding this, it is acknowledged that the NRA Service Area Policy (2014) also makes reference to the provision of private off-line service areas, which would be similar to the on-line ones and in close proximity to the dual carriageway, and which it is stated the authority has no role in determining how such facilities should be delivered (5.2), other than its statutory consultee role. It is considered that the proposed development could conceivably fall within this category of development.

**7.3.4.** In respect of private off-line service areas, the Government policy guidance (as referenced above) sets out the following general objectives

- A forward planning approach is advocated for privately led off-line service areas which should be achieved by planning authorities in consultation with the TII/NRA in the drafting of Development Plans.
- The proliferation of such service areas/facilities in the vicinity of national roads/junctions should be avoided by ensuring a co-ordinated approach between the TII and the P.A. as part of the plan-making process.
- Facilities included in these service areas should be of a type that avoids the attraction of short, local trips and/or the locations becoming destinations in their own right for local customers.

**7.3.5.** I am not aware of any planning policies which have identified the site of the appeal as one which would be suitable for such a development at this location. Although the site is located directly adjacent to the existing alignment of the N20, the quality of the road at this location is substandard as it is single carriageway, is in close proximity to a major roundabout (which is heavily trafficked) and has multiple commercial entrances to the north of the site. There is also a similar service area with a petrol station, large convenience store, restaurant and take away (hot/cold food and alcohol) etc. located c.150m to the north. This stretch of the national road carries both local and strategic traffic and was considered unsuitable by the planning

authority for a right-turning lane exiting the proposed development. The private off-line service areas are required to be accessible by traffic travelling in both directions.

**7.3.6.** The proposed development, by reason of the scale and nature of the facilities, would replicate many of the services available at the Circle K/Supermacs/Costcutters site to the north and is likely to result in a proliferation of service facilities in this area. Furthermore, the nature of the uses proposed, particularly the drive-thru restaurant and hot/cold food takeaway elements, would be likely to attract short, local trips, due to the ease of access from the road network combined with the proximity to the built-up and residential areas of the town. Such trips are identified in Government policy (referenced above) as being inconsistent with the primary intended role for national roads in catering for strategic long-distance inter-urban and inter-regional traffic and are likely to be contrary to the policies contained in the Retail Planning Guidelines. The proposed development would also result in an intensification of the use and activities on the site, with a significant increase in right-turning vehicles, (including HGVs/Coaches), into the site from south-bound traffic on the N20, increased hours of operation, noise levels etc. These matters have the potential to adversely affect the residential amenity and road safety at this location.

**7.3.7.** In conclusion, it is considered that the proposed development, which is primarily intended as a rest area for strategic traffic on a national road, by reason of its large scale and the range and type of facilities available combined with its location close to the town centre and residential areas of Mallow town and the presence of similar facilities nearby, would give rise to an overly-intensive operation with an associated increase in traffic generation (a significant proportion of which are likely to be HGVs) on a site with direct access onto a heavily trafficked national primary road, would generate short local car-dependent trips and contribute to a proliferation of such uses on this section of the N20, and would therefore conflict with both the strategic and local planning and transportation policies for the area. The proposed development would therefore be unacceptable in principle and would be contrary to the proper planning and sustainable development of the area.

#### **7.4. Premature development pending determination of M20 road layout**

**7.4.1.** The N/M20 Cork to Limerick Improvement Scheme is described on the official website for the project as a key element in Project Ireland 2040, which comprises the

National Planning Framework and the National Development Plan (2018-2027).

Improved accessibility between urban centres of populations and regions are seen as a major enabler for balanced regional development and the N/M20 would achieve better connectivity between Ireland's second and third largest cities as well as improving safety and more efficient journey times.

- 7.4.2.** I would draw the Board's attention to the fact that the situation regarding the project has changed since the lodgement of the appeal. According to corklimerick.ie (the official website for the N/M20 upgrade), it was announced on 31<sup>st</sup> March 2022, that following a consultation process in late 2020/early 2021, a preferred transport solution has been identified, which includes active travel infrastructure for walking and cycling, improvement to public transport, new and improved safe road infrastructure and environmental integration for communities along the N20 transport corridor between Cork and Limerick. The preferred road option bypasses Mallow to the East. It generally follows the line of the N20 north of Cork and diverges to the east near Mourneabbey, crosses the Blackwater River east of Mallow and converges with the N20 north of Buttevant. This preferred solution is now on public display as part of a further public consultation exercise. The next phase of the project is the Design and Environmental Evaluation phase, which is likely to take 2 years, following which, subject to Government approval, it will be submitted to the Board in Phase 4 for approval. Thus, to be clear, the Preferred Route has been identified but not yet confirmed.
- 7.4.3.** The appellants consider that the reason for refusal will no longer be valid once this announcement has been made, as the identification of the road corridor option will provide sufficient clarity for the Board to make a decision on the proposed development. However, the first party had acknowledged that at the time that the application and appeal were made, the Road Based Options included proposals for local improvement upgrades of the existing N20 (Part 2 Road Based Options). I refer the Board to the November 2020 publication from corklimerick.ie website. Option T1 within these road-based options comprises localised on-line improvements on the existing N20 to address collision blackspots, road alignment and junction issues.
- 7.4.4.** The announcement in March 2022, which identified the preferred road based corridor option, now indicates that the road based option would bypass Mallow and therefore take the route away from the site of the appeal. Notwithstanding the anticipated

identification of the preferred road based corridor option, the planning authority contended (07/09/21) that the proposed development will continue to be deemed premature until the final preferred route options are progressed through the statutory approvals process, and that the full N/M20 Study Area will continue to be reviewed during the life of the project. It is noted that the recent announcement in March 2022 will take the project from Phase 2 (Option Selection) to Phase 3 (Design and Evaluation) following which it will enter the Statutory Processes - Phase 4.

- 7.4.5.** It is noted that the N/M20 Project is described (on the official website) as a holistic multi-modal review which includes several other elements in addition to the road corridor options. The other elements include public transport service improvements (including both rail and bus routes), active travel initiatives, improved safe road infrastructure and traffic management alternatives. I note that the Project Objectives include a wide range of issues which extend beyond the provision of a new dual carriageway corridor, such as the 'Active Travel' objectives of improving the public realm and connectivity by means of walking and cycling both within and between communities along the corridor.
- 7.4.6.** The Active Travel objectives will be achieved as a result of reduced traffic levels on the existing network, particularly a reduction in HGV traffic through communities. It is stated that bypasses of Mallow and other towns will remove strategic traffic from these communities, significantly improving air quality, reducing noise levels and further supporting public realm improvements, sustainable transport and vibrant communities. It is further stated that the project provides opportunities to reallocate sections of the existing N20 to cycling due to reduced traffic flow and the transfer of traffic to new road infrastructure, and that reduced traffic volumes on the existing N20 will make it safer to cycle. Thus, the project objectives extend well beyond the provision of a new road transport corridor to include sustainable transport and development. It is considered that this has particular relevance to the current application/appeal which is located within the Project Study Area.
- 7.4.7.** Given the holistic multi-modal approach to the N/M20 project, it is reasonable to expect that localised off-line traffic management initiatives will be required in order to achieve some of the wider project objectives as discussed above. The Mallow Town Plan, the LAP and the CDP all emphasise the constraints on the growth strategy for Mallow as a Hub posed by the traffic congestion which arises principally from the



traffic that bisects and traverses the town via the N20 and the N72. The policy objectives contained in these statutory plans seek to address the poor level of pedestrian and cycling connectivity within the town and the proposed bypass will provide opportunities to facilitate such improvements. As the site is still located within the Study Area for the project, any significant development of lands adjoining and accessed from the existing N20 could potentially undermine the achievement of many of these project objectives.

**7.4.8.** In addition, the nature of the proposed development, particularly in respect of the considerable facilities for HGV and coach parking, together with a large drive-thru facility and a significant provision of electric charging points, is such that the proposal will encourage heavy goods traffic to continue to use the N20 through the built-up area of Mallow and is likely to attract short and frequent car-based trips from the local population. This form of development is considered to be in conflict with both the wider project objectives to remove heavy traffic from the town and to improve the walking and cycling environment and connectivity by means of sustainable travel patterns between communities, and a wide range of policy objectives set out in the statutory plans for the area (as set out in 5.0 above). It is acknowledged that the applicant has proposed the inclusion of a cycle lane along the N20 past the site, but if the development continues to generate significant volumes of traffic, a large proportion of which would be HGVs, with traffic crossing over the cycle lane, it could adversely affect the safety and usability of the cycle lane.

**7.4.9.** In conclusion, I would concur with the planning authority's view that the proposed development is premature pending the final determination of the layout of the N/M20 Cork Limerick Improvement Scheme, notwithstanding the identification of the Preferred Route Option, as this route, together with the associated sustainable development project options have not been finalised.

## **7.5. Premature development pending determination of N72/N73 road layout**

**7.5.1.** The N72/N73 Mallow Relief Road project, in conjunction with the N20, is described in the Cork RDO website as forming a strategic transport corridor around Mallow, which aims to free up the town centre road network for access and local traffic, whilst enabling national and regional traffic to travel more freely. The project is currently at Phase 2 (Options Selection) stage (last update 01/07/21) and there has been no

further update since the lodgement of the current appeal. The Emerging Route Option identified is Option C, which takes the route to the north of Mallow General Hospital (and therefore away from the site). However, this option includes a proposed Active Travel Route (cycle) which would run along the dismantled railway from Ballyvinitter to the Beecher Roundabout just to the south of the appeal site. It is acknowledged that the developer has included arrangements to facilitate the Active Travel Route proposals in the vicinity of the site.

- 7.5.2.** Although the Emerging Preferred Route Option C has been identified, the actual preferred route has not yet been published. The Cork Roads Design Office responded to the appeal on 03/09/21 by stating that the proposed development continues to be premature until the final preferred route options are progressed through the statutory approvals process. Although the appeal site is located within the Option B corridor and the emerging corridor is Option C, it was stated in a previous CRDO observation (08/07/21) that all planning proposals will be considered in relation to all short list options as a precaution to any potential changes to the emerging preferred option. Option B may include a need for a geometric realignment and junction improvements to the N20 near the development.
- 7.5.3.** In conclusion, I would concur with the planning authority's view that the proposed development is premature pending the final determination of the layout of the N72/N73 Mallow Northern Relief Road Improvement Scheme, notwithstanding the identification of the Emerging Preferred Route Option, as this route, together with the associated sustainable development project options have not been finalised.

## **7.6. Retail impact of development**

- 7.6.1.** The planning authority's third reason for refusal identified concerns regarding the scale and nature of services which it considered would be contrary to the DoECLG Spatial Planning and National Roads Guidelines which seeks to avoid attracting short local trips or to permit the service area becoming a destination for local customers. This issue was discussed in Section 7.2 above, wherein it was concluded that the proposed development would be likely to attract such trips and become a destination in its own right due to the nature and scale of the services on offer, and that it would, therefore, be contrary to these guidelines, which it is considered are applicable in this instance.

**7.6.2.** The third reason for refusal also raised concerns that the proposed development would draw trade from the town core and compromise the vitality and viability of Mallow Town, which would be contrary to the retail policy objectives of the County Development Plan. It is acknowledged that the wrong policy objective was cited in the reason for refusal, as identified by both parties, in that the objective TCR 4-9 is incorrect and that the correct objective is TCR 4-3. This policy objective seeks to :

Support and develop the role of Mallow and Clonakilty as important retail centres in the North and West of the County while ensuring that vitality and vibrancy of their town centres is retained and enhanced.

These two towns are also identified in the forthcoming Plan as having an enhanced role in the retail hierarchy (9.6.2).

**7.6.3.** The main objectives of the Government's Retail Planning Guidelines are to ensure that development is plan-led; that town centre vitality is protected through the promotion of the sequential approach; that competitiveness is secured through ensuring good quality development in appropriate locations; that access is facilitated by sustainable transport modes; and that quality urban design outcomes are delivered. Government policy regarding National Roads also requires that development in the vicinity/accessed by these roads is plan-led, that the investment in these road networks is protected and that development does not undermine the policy objectives of the Retail Planning Guidelines. The statutory plans for the area (as summarised in 5.0 above) place considerable emphasis on the critical importance of protecting and enhancing the town centre/retail core of Mallow Town, in order to facilitate the ambitious growth strategy of increasing its population base and to enable it to fulfil its potential as a regionally important 'HUB town', ('Key Town' in 2022 CDP), in a sustainable manner.

**7.6.4.** The local retail policies are in line with the over-arching retail policy that seeks to ensure that established town centres are the preferred locations for new retail development, with edge-of-centre locations only being considered where no suitable alternatives exist with the town centres. This approach is strengthened and reinforced in the forthcoming development plan. Mallow has not had any significant retail development to date outside of the town centre. However, the physical environment of the town centre has suffered from the effects of traffic congestion and

poor quality pedestrian permeability. These issues were identified as threats/weaknesses in the retail assessment of the town in the Mallow Town Development Plan and informed the vision and retail strategy in the retail planning policies for the town. The CDP has designated it as a regionally important retail centre and the retail policies in the various plans seek to preserve and enhance the vitality and viability of the town centre as the main economic service provider, improve the shopping experience by upgrading the urban design and pedestrian permeability of the central area and to protect the town centre from the effects of inappropriate commercial/retail development at the edge of the centre.

- 7.6.5.** The appellant considers that the proposed development complies with the Retail Planning Guidelines and the retail policies for Mallow and the environs. It was submitted that the retail element consists of the shop which is a maximum of 100m<sup>2</sup> and therefore complies with the 100m<sup>2</sup> cap on retail shops associated with a petrol filling station. I would accept that the retail floorspace cap for petrol filling station shops is 100sq.m, but I would not accept that the nature of the proposed development could be accurately described as merely a petrol filling station.
- 7.6.6.** As stated in previous sections of this report, it is considered that the nature of the proposed development, having regard to the scale and constituent elements, is akin to a Type 1 Motorway Service Area, which could be considered as an Off-Line Service Area. As such, the proposal is not addressed under the Retail Planning Guidelines, according to 4.11.10 of the RPGs, as guidance in relation to this type of development is provided under the Spatial Planning and National Roads Guidelines (2012). As discussed previously, the TII policy in relation to such development is that they should be plan-led, (ideally as part of the motorway/national road scheme), that there should not be a proliferation of such services in proximity to the national road/motorway, and that they should not be designed such that they would attract local short trips and become a destination in themselves. As argued above, I am of the opinion that the proposed development, by reason of the scale and range of services proposed, including the large fast-food/drive-thru element, the large number of parking spaces with EV charging facilities and the considerable retail element, would attract short local trips and would become a destination in its own right. It would, therefore, have the potential to draw trade from the town centre as well as

from planned neighbourhood centres. Furthermore, the development is not planned and would lead to a proliferation of such services in this area.

- 7.6.7.** If however, this approach is not accepted, the proposal could be considered under the RPGs (4.11.9), Retailing and Motor Fuel Stations, provided that the retail shop complies with the guidance for this type of development, i.e. that the net floorspace does not exceed 100m<sup>2</sup>. The RPG states in respect of Motor Fuel Stations -

Such shops should remain on a scale appropriate to the location and should not seriously undermine the approach to retail development in the development plan. The 100sq.m floorspace should not be exceeded and where it is proposed to exceed it, the sequential approach to retail development shall apply, and shall be assessed as if it was for a retail development without the fuel station

- 7.6.8.** The planning authority is firmly of the view that the scale and nature of the retail element proposed exceeds the threshold for net retail floorspace associated with a petrol station. The RPGs note that the 'net retail floorspace' associated with service stations should not exceed 100m<sup>2</sup> and where it does, the sequential approach to retail development shall apply. It is noted that the guidelines define 'net retail floorspace' as -

The area within the shop or store which is visible to the public and to which the public has access including fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaries, customer service areas, and internal lobbies in which goods are displayed, but excluding storage areas, circulation space to which the public does not have access, cafes and public toilets.

- 7.6.9.** The planning authority noted that the gross floor area of the forecourt building is 671.7m<sup>2</sup>, of which the convenience shop is 100m<sup>2</sup> and the deli and restaurant with drive-thru facilities (combined) amount to 240m<sup>2</sup>. On this basis, it was considered that the 'net retail floorspace' would include at least the deli and the food preparation area, which would mean that the 100sq.m threshold would be breached. In support of its position, the P.A. made reference to a previous Board decision relating to a Section 5 Referral (304519), which related to internal alterations to a permitted forecourt shop at Glasheen Road, Wilton, Cork.

**7.6.10.** In this decision, (Nov. 2019), the Board decided inter alia, that the internal alterations and resultant change of use from storage to retail space constituted development and that the change of use element was not exempted development. The decision had regard to the definition of a 'shop' in Article 5(1) of the P&D Regs (2001 as amended) and to the proportion of the forecourt shop that was used for the sale of sandwiches or other food or wine for consumption off the premises. The Inspector's Report (304519) noted that the referrer had inferred from the definition of retail floorspace in the RPGs 2012 that cafes were excluded, and that the areas in use as a delicatessen and for food preparation were likewise excluded from the definition. However, the Inspector disagreed, as did the Board, and it was considered that the delicatessen and food preparation areas, including the display counters, serving counters, area behind used by serving staff (i.e. the till areas), all came within the definition of 'shop'.

**7.6.11.** The first party made reference to a different Board decision in support of its case (247306). This related to an application/appeal for new filling station, forecourt and drive-thru restaurant on the outskirts of Tuam. The Board granted permission (Feb. 2017) for a 514sq.m forecourt building which contained a shop and ancillary off-licence (96m<sup>2</sup>), and a seating area (96m<sup>2</sup>) in conjunction with a deli and food preparation area. The kitchen would also have served the drive-thru. It was considered that the range of services proposed would not bring the proposal within the scope of either a Type 1 or Type 2 Service Area (Off-line). It was further stated in the Inspector's report that the layout had clearly differentiated between the retail and non-retail uses such that the inspector was confident that the retail cap could be monitored in practice.

**7.6.12.** It is considered that the proposed development currently before the Board differs from the Tuam development. In the current case, the convenience shop, (without any publicly available circulation space associated with the entrance), is 100sq.m alone; the deli area (excluding the customer order area and food prep area) is 36sq.m alone; the food prep area for the deli is separate from the food prep area for the drive-thru; and the dining area (246sq/m) seems to incorporate most of the public circulation areas that would be associated with the shop and deli. The Wilton case, which was more recent, was more specific, as it related to a Section 5 referral, and it specified which areas/uses were taken as being part of the retail floorspace. When

this approach is applied to the case currently before the Board, it is clear that the threshold of 100sq.m is exceeded, as the deli and convenience store alone, without any circulation areas, food ordering areas and food prep areas, amount to 136sq.m.

**7.6.13.** Having regard to the significant scale of the retail offering as a whole (including the shop, deli and restaurant) and to the large dining area associated with the proposal (246m<sup>2</sup>) and additional external seating area, it is considered that the proposed development would function primarily as a destination retail offering in its own right and beyond the intentions of RPGs for retail service areas as ‘ancillary’ to service stations. It would be of such a scale that it would be likely to draw trade from the town centre and from neighbourhood centres in the locality.

**7.6.14.** If the 100m<sup>2</sup> threshold is exceeded, a sequential approach must be applied as per the RPGs. This would mean that the development would be considered under the policies relating to an ‘edge-of-centre retail facility’. In such circumstances, the developer must demonstrate that there is no alternative site that is suitable, viable and available within the Town Centre. No evidence to this effect has been provided. In addition, if it is accepted that the site can be considered under the sequential approach, an ‘Edge-of-Centre’ site must be within easy walking distance of the TC and of adjoining neighbourhoods, without having to cross major roads etc. The RPGs state (4.7)

“A site will not be well connected to a centre where it is physically separated from it by a barrier such as a major road, railway or river and there is no existing or proposed pedestrian route which provides safe and convenient connection between the site and the Town Centre”

It is clear that the site is located on the far side of the heavily trafficked N20 and the Beecher Road Roundabout which forms a significant barrier to pedestrian connectivity with the town centre. On the other side of the development, there is a mainline railway line which separates the site from the adjoining neighbourhoods. The site is, therefore, marooned by fairly impenetrable barriers and the nature of the proposed development, which would attract a significant level of HGV traffic, would compound the lack of pedestrian accessibility and would be likely to reinforce the car-based travel patterns associated with the use.

**7.6.15.** In conclusion, it is considered that the proposed development falls within the definition of an off-line motorway services area, which is not provided for in any of the statutory plans for the area and would duplicate the services available at a nearby outlet, leading to a proliferation of such facilities. It would also tend to attract car-based, short trips from the local area and become a destination in its own right. The proposal would not, therefore, comply with the TII Service Area policy for such facilities which should be plan-led and provided in a co-ordinated manner in conjunction with TII as part of a strategic network of such services. It is further considered that the scale of the retail floor space is such that it would exceed the cap for such retail services provided in association with a petrol filling station and would therefore necessitate the application of the sequential test in accordance with the RPGs. As this would represent an edge-of-centre site, which is physically separated from the town centre and neighbouring residential areas by significant barriers to permeability, the proposed development would conflict with the retail policy for the area and with the provisions of the Retail Planning Guidelines 2012.

## **7.7. Residential amenity**

**7.7.1.** I would accept that the impacts on the adjoining residence to the northwest in terms of outlook/visual amenity and effects on daylight/sunlight are unlikely to result in any significant loss of residential amenity. However, the property, which is elevated above the site, would be located c.30 metres from the service and delivery area associated with the drive-thru restaurant and would be immediately adjacent to the car parking area in the north-western corner of the development. There is a row of houses opposite the site on the far side of the N20 which are also elevated above the site. It is considered that the nature of the proposed use given the 24-hour operation envisaged, together with the activities associated with commercial deliveries, the noise associated with a drive-thru restaurant and petrol station, and the high level of HGV traffic accessing and parking on site, is likely to result in an increased level of noise and disturbance to neighbouring residents.

**7.7.2.** It is acknowledged, however, that the site is a commercial one in a commercial area and that it is located on a heavily trafficked national road, with a long established use as a service station. In these circumstances, it is considered that a refusal on the grounds of impact on residential amenity would not be justified. However, should the



Board be minded to grant permission, it is considered that conditions may be required to mitigate the impacts in terms of noise and disturbance from the activities on site.

## **7.8. Traffic and transport**

- 7.8.1.** The site is located on a national primary road, the N20, which links the cities of Cork and Limerick, which is a busy, strategic inter-urban route. The TII Spatial Planning and National Roads Guidelines 2012 (Section 2.5), state that in the case of lands adjoining national roads to which speed limits of greater than 60kph apply, additional accesses or the generation of increased traffic from existing accesses should be avoided. In respect of 'Transitional Zones', (i.e. sections of national roads on the approaches to or exit from urban centres that are subject to 60kph limits), a limited level of direct access may be permitted to facilitate orderly development. Any such proposals, however, must be subject to a Road Safety Audit carried out in accordance with NRA requirements and a proliferation of such entrances, which would undermine the role of such zones must be avoided. In terms of sites within the 50kph zone, it is stated that access to national roads will be considered in accordance with normal road safety, traffic management and urban design.
- 7.8.2.** The appeal site is located within the 50kph zone, but this gives way to the 80kph zone to the north of the Circle K/Supermacs service area. Although it is not, therefore, technically within the 'Transitional Zone' it is effectively within such a zone as it forms the approach to/exit from Mallow town. It is a long straight stretch of road with no entrances or footpath on the eastern side of the carriageway and the currently disused entrance to the site being the first one encountered on the western side beyond the Beecher Roundabout. This is consistent with the description of a 'Transition Zone' in the TII DMURS 'Advice Note 1 – Transition Zones and Gateways', which applies to speed limits of 50-60kph and where key elements used to classify such a zone include boundary type, presence of footpaths, access gates and built form. Thus, this stretch of road is one where a limited level of direct access would be considered.
- 7.8.3.** The application was accompanied by a Traffic Impact Assessment and a Road Safety Audit (Stages 1 and 2). The junctions assessed were the entrance from the N20 (J1), the access point from the local road to the West (J2) and the Beecher

Roundabout itself (J3). The TTA concluded that all three junctions would operate within capacity in the opening and design years. I note that the design of Junction 1 included a prohibition on right-turning movements for vehicles exiting the site onto the N20 and also includes a right-turning lane on the N20 for traffic entering the site. These features would help to limit the impact on the flow of traffic on the network and would result in improved safety compared with no right turn lane and no restriction on exiting the site. However, the TTA does not distinguish between the proportion of traffic that would be HGVs entering the site, and neither the TTA nor the RSA mention the fact that the road carriageway width at present is not sufficient to incorporate an additional right-turn lane. The proposed changes to the junction would necessitate significant changes to the road alignment to incorporate this additional turning lane together with a proposed cycle lane and footpath alongside the eastern development boundary. The carriageway at this point is also substandard for a national road with no hard shoulder and where the road width/alignment changes immediately to the south of the entrance to incorporate a hashed yellow section in the lead-up to the roundabout junction. The broken white line also becomes a solid line at this point and shortly afterwards, there is an additional left turning lane on the approach to the roundabout.

- 7.8.4.** I can confirm that during my site inspection, entering and exiting the Supermacs/Circle K development c.150m further to the north on this stretch of road was quite challenging, as it was difficult to get a gap in the traffic to allow safe manoeuvres across the carriageway. It is also extremely difficult for pedestrians to cross the carriageway as there is no footpath on the opposite side of the road. It is considered that the existing situation is hazardous to both vehicular users and pedestrians. In particular, I would be concerned about the potential conflict between pedestrians and large trucks entering and leaving the site which would cross the footpath and cycle lane and vehicles which would also traverse through the customer car park to access the drive-through, the convenience store, the goods service yard, as well as the proposed fuel tanks. I note that the Area Engineer was also concerned about the possible use of the two junctions within the site as a short-cut to avoid traffic queues on the N20 approaching the roundabout. Although the applicant had responded by saying this was unlikely as it was a circuitous route, I am not entirely convinced that this would be the case.

- 7.8.5.** The proposed development by reason of the nature and scale of the constituent elements of the proposed use, would introduce a significant increase in HGV traffic turning movements within this transitional zone on a busy national inter-urban road. It would also attract a combination of strategic and local traffic visiting the various elements, including the drive-thru restaurant, sit-down restaurants and convenience store, which would result in an intensification of an existing access onto a national road at a point where the design of the existing carriageway and road layout are substandard. It is considered, therefore, that the intensification of the access to the site would undermine the capacity, investment value and safety of the national road, notwithstanding the proposals to introduce a right-turning lane for south-bound traffic and restrictions prohibiting right-turning traffic exiting the site. The proposed development would therefore be contrary to the objectives of the Government policy on National Roads and to the policies and objectives contained in the current Cork County Development Plan.
- 7.8.6.** The grounds of appeal had disputed the relevance of the Spatial Planning and National Roads Guidelines (2012) in the reason for refusal. The P.A. however, in response, pointed out that the objectives of this policy seek to protect the strategic nature of national primary routes and to limit the extent of development that would generate short trips (1.4), and therefore considers it to be relevant. It was further pointed out that the NRDO has confirmed (03/09/21) the relevance to these guidelines (Section 2.5) and had drawn attention to the policy regarding 'Transitional Zones' and 'Lands adjoining National Roads within 50kph Speed Limits'. I would agree with the planning authority's view that the proposed development is at variance with this policy document.

## **7.9. Adequacy of Services**

- 7.9.1.** The site was previously served by a combined sewer. However, it is now proposed to dispose of wastewater from the development to the foul sewer and it is noted that the Mallow WWTP is currently undergoing a significant upgrade and is due to be completed at the end of 2022. IW has stated that this is acceptable but pointed out that the existing network would have to be extended by 55 metres to the south of the site to facilitate this connection.

- 7.9.2.** The proposed surface water and storm water drainage systems and associated attenuation will be designed in accordance with SUDS guidelines. It is proposed to provide a new storm sewer which would run North-South through the site and would intercept all flows generated by the development. The gravity sewer will flow through a hydrocarbon bypass interceptor, an attenuation tank and a hydrobrake flow control before linking into the existing stormwater sewer just to the south of the entrance (J1) on the N20. Stormwater flow would be attenuated to greenfield runoff rates. A return period of 100 years was used to calculate the attenuation tank sizing inclusive of climate change. There are 3 distinct surface water areas with 3no. separate attenuation systems. The stormwater will ultimately discharge to the Hospital Stream which flows down the middle of the site from North to South.
- 7.9.3.** It is considered that the proposed servicing arrangements are generally acceptable, and any outstanding matters could be addressed by means of condition, should the Board be minded to grant planning permission.

## **7.10. Flood Risk**

- 7.10.1.** A Flood Risk Assessment was submitted with the application. The FRA included hydraulic modelling for the Hospital Stream. It was found that the main part of the site, which lies on the right overbank of the stream is within Flood Zone C, but the eastern part of the site is within Flood Zone B. It is stated that the detailed assessment, which included site surveys and hydraulic modelling supersedes the CFRAM and associated flood maps, which had identified the north-eastern part of the site as being in Flood Zone A.
- 7.10.2.** It was stated that the main source of flooding for the N20 is overland flow caused by overtopping of the Mallow Plaza culvert to the north of the site. The mitigation measures proposed were to construct a linear culvert on the eastern and southern boundaries to divert surface waters to the stream; construct a further box culvert along an 80m stretch of the Hospital Stream from the northern to the southern boundaries; set the FFLs 150mm above ground level i.e. 57.35m OD and extend the wall on the northern boundary with a max. height of 0.5m. If possible, it was also recommended that the existing upstream roughening screen be upgraded also.

- 7.10.3.** Following consultations with the OPW and P.A., the FRA was updated and provided as part of the grounds of appeal (Engineering Design Report). It is stated that the agreed design solution, following liaison with the two authorities, is that the Hospital Stream will have to be culverted as part of the flood relief measures for the site. This will facilitate access between the eastern and western parts of the site as well as reducing the risk of on-site flooding. It is stated that interceptors will not be provided within the culverts as this would interfere with the flood mitigation. However, it was stated that N20 flood waters will not enter the site as they will run down the N20 to the Beecher Roundabout as at present.
- 7.10.4.** It is considered that the Flood Risk has been adequately assessed and that the proposed mitigation measures seem reasonable. Should the Board be minded to grant permission, appropriate conditions should be attached regarding the proposed mitigation measures to any such permission.

## **7.11. Ecology**

- 7.11.1.** It is noted that the P.A. Ecologist had expressed concern regarding the proposal to culvert the stream within the site. However, it was stated that if there is no alternative, this would be acceptable provided that an electrofishing survey is carried out prior to determination of the application. This was based on the P.A.'s assessment of the situation in conjunction with the IFI, as it is believed that there may be a resident fish population in the stream. The developer is agreeable to carrying out the survey, but it was envisaged that it could be carried out after the decision was made and suggested a condition requiring the survey to be undertaken prior to commencement of development. This seems to defeat the purpose of the requirement to undertake an electrofishing survey, however, as an understanding of the species present, the population dynamics and the habitat availability etc. would inform the appropriateness of the design of the scheme, including whether the proposed extensive culverting and alteration to the riparian areas along the open sections of the stream would be acceptable. This matter will be discussed further in the Appropriate Assessment section of the report.
- 7.11.2.** In addition, the P.A. Ecologist noted that there have been no ecological site visits or surveys of the site and that as there is potential for ecological habitats of some value to be present within and adjoining the site, (with the woodland and the stream), these

should also be carried out prior to a decision being made. The developer is agreeable to carrying out ecological surveys, but it was envisaged that they could be carried out as part of an Ecological Impact Assessment after the decision was made and suggested a condition requiring these matters to be addressed prior to commencement of development. Again, the purpose of the information that would be gained from such surveys and analysis would be to inform the design of the proposed development. Once permission is granted, it is likely that the options available for mitigation and avoidance measures would be rather limited.

- 7.11.3.** The P.A. Ecologist also required the submission of a revised CEMP which was required to confirm that there would be no contamination of the open watercourse during construction or site clearance. It was also required that issues such as the method of disposal of ground water encountered during construction be clarified and that environmental monitoring would be carried out. The developer submitted a revised outline CEMP with the grounds of appeal, which it is stated has addressed these issues. However, it is considered that the mitigation measures are still quite generic and not site specific. Given the lack of survey information, this is not surprising. However, the water quality required for the protection and maintenance of the freshwater habitats and species present in the environment is very high and the mitigation measures would need to be tailored to meet these requirements.
- 7.11.4.** The application was accompanied by a Site Closure Report which addressed the issues of contaminated land within the site. However, this report was dated August 2010. The P.A. Ecologist had requested that a proposed hydrocarbon survey be carried out in advance of the determination of the application. The revised CEMP addresses this issue. However, it is stated that the site is free of contamination to the extent necessary for commercial development, and that upon receipt of planning permission, it is proposed to carry out further ground investigation works, including a hydrocarbon survey, which will inform the detailed design of the project. The appellant is happy for the Board to address this by means of condition. As discussed regarding the ecological issues above, the lack of an up-to-date survey based on ground investigations in advance of a decision being made would limit the options available following a grant of permission.
- 7.11.5.** The issue of invasive species was addressed in the grounds of appeal and revised landscaping and planting plans were submitted which showed the omission of the

previously proposed *Acer pseudoplatanus* and *Symphoricarpos albus*, as requested by the Ecologist. However, the applicant has not carried out the Invasive Species Study and has advised the Board that this matter should also be addressed as a condition of any permission.

- 7.11.6.** An Addendum to the NIS was also submitted in response to the observations of the Ecologist. This is attached to the grounds of appeal at Appendix 3 and will be discussed in the Appropriate Assessment Section below.

## **8.0 Environmental Impact Assessment**

- 8.1.1.** Class 10(b) (vi) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required where an urban development involving an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere, would be developed.
- 8.1.2.** The proposal is for the development of a site with a stated area of 1.6ha which is well below the threshold for such urban development. In summary, the proposed development entails the clearance of the site and its redevelopment as a service station site with restaurants, including a drive-thru, a convenience store, a delicatessen, coach and lorry parking facilities, car parking with EV charging facilities and internal/external eating areas. It is proposed to alter and upgrade the existing entrance onto the N20 and to provide a new entrance onto the local road to the south. It is also proposed to culvert the Hospital Stream and to provide additional linear culverts along the eastern and southern boundaries which would discharge to the Hospital Stream.
- 8.1.3.** The site is located within the built-up area of an existing town and is approx. 1.3km distant from any European sites or other sites of conservation interest. Having regard to the nature and scale of the proposed development and to its location within the environs of Mallow town, on serviced and zoned lands, 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.

## **9.0 Appropriate Assessment**

### **9.1. Compliance with Articles 6(3) of the EU Habitats Directive**

- 9.1.1.** The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 9.1.2.** The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and, therefore, is subject to the provisions of Article 6(3).

#### **Background to the application**

- 9.1.3.** The application is accompanied by an Appropriate Assessment Stage 1: Screening Report and a Stage 2: Natura Impact Statement (NIS), both prepared by McCutcheon Halley Planning Consultants and dated May 2021, and is supported by additional information submitted as an Addendum to the NIS with the Grounds of Appeal (August 2021). It is considered that the Stage 1 AA Screening Report was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European sites within a possible zone of influence of the development.
- 9.1.4.** It contains a description of the proposed development, the project site and the surrounding area. It outlines the methodology used for assessing potential impacts on the habitats and species within the European Sites that have the potential to be affected by the proposed development. It predicts the potential impacts for the sites having regard to their conservation objectives, it assesses in-combination effects



with other plans and projects and it identifies any residual effects on the European sites and their conservation objectives.

- 9.1.5.** The site is not located within any designated European site. The submitted Screening Report identified one European site within a 15km radius of the site. It is stated that the distance between the appeal site and the Blackwater River SAC, is c.800m at its closest point and 1.3km hydrologically, via the Hospital Stream which flows through the subject site. The Hospital Stream is also known as the East Baltydaniel Stream (EPA mapping). A number of streams were identified that flow in the direction of Blackwater River SAC including a stream (Leaslands Stream) located c.1km to the south of the appeal site that flows into the SAC near the confluence with the Hospital Stream.
- 9.1.6.** The Hospital Stream flows through the site and discharges to the Blackwater River c. 460m downstream of the Railway Bridge, which is c. 1.3km south of the appeal site. This stream has been modified to the north and to the south of the site with a culvert at Mallow Plaza (to the north) and a further culvert at Beecher Roundabout to the south. It forms part of the Blackwater Munster sub-catchment. The main channel of the Blackwater River is also designated as a Salmonid River. It was established that there is a source-pathway-receptor link with the Blackwater River SAC, and as such is within the zone of influence of the proposed development. However, no hydrological or ecological links were established between the site and any other European site. On this basis and by reason of the distances involved, all other European sites were therefore screened out.
- 9.1.7.** Direct impacts were ruled out. As there was no evidence of any otter present in the vicinity of the site, and due to a lack of suitable habitat, any potential impacts on this species were not considered further. Issues that were examined focussed on water quality impacts via surface water drainage. The discharge of surface water was to the Hospital Stream during construction and operation would have the potential to reach the European site as the project site is upstream of the Blackwater River SAC and the stream discharges to the SAC approx. 1.3km from the project site.
- 9.1.8.** The AA Screening Report identified the potential for surface water runoff from construction activities to be contaminated with sediments and from the operation of the project with hydrocarbons, which in the absence of mitigation, could potentially

cause impacts on the qualifying interests of the SAC, alone or in combination with other plans and projects. The submitted Screening Statement concluded that significant effects on the Blackwater River SAC cannot be ruled out as there is potential for indirect negative impacts by way of surface water contamination.

- 9.1.9.** Having reviewed the documents and submissions I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development alone, or in combination with other plans and projects on European sites.

### **Stage I - Screening for Appropriate Assessment**

- 9.1.10.** The project is not directly connected with or necessary to the management of a European Site and, therefore, it needs to be determined if the development is likely to have significant effects on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

#### *Description of Site and Surroundings*

- 9.1.11.** The site is located approx. 400m to the northwest of Mallow Town Centre and is situated on the N20, just to the north of the Beecher Roundabout. The western side of the national road is predominantly commercial in use with the mainline rail line running parallel to the site to the west towards Mallow Train Station, which is located to the west of the roundabout. There are some car showrooms to the north and beyond this is Mallow Plaza, which is a service station with restaurants, including hot food take-aways and a convenience store. The subject site is vacant and is partly brownfield and partly greenfield. The eastern section of the site, which adjoins the N20, was a former service station which has been decommissioned. The remainder of the site is in agricultural use and is separated from the eastern side by the Hospital Stream which flows North-South in the centre of the site. The western boundary is defined by mature hedgerows and tree lines along the roadside boundary with a local road. There is an area of broadleaf woodland immediately to the south of the eastern section of the site, which is designated as public open space.

### *Brief Description of the Development*

- 9.1.12.** The applicant provides a description of the project in Section 4.1 of the Screening Report. The development is also summarised in Section 2 of this Report. In summary, the proposed development entails the clearance of the site and its redevelopment as a service station site with restaurants, including a drive-thru, a convenience store, a delicatessen, coach and lorry parking facilities, car parking with EV charging facilities and internal/external eating areas. It is proposed to alter and upgrade the existing entrance onto the N20 and to provide a new entrance onto the local road to the south. It is also proposed to culvert the Hospital Stream and to provide additional linear culverts along the eastern and southern boundaries which would discharge to the Hospital Stream. The forecourt infrastructure includes the fuel tank design, leak detection/warning system, forecourt storm drainage system and hydrocarbon interceptors.
- 9.1.13.** A new surface water drainage network will be provided for the operational phase. This will be completely separate from the wastewater sewer and will be designed in accordance with SUDS guidelines, including attenuation and controlled release of treated water at greenfield rates to the Hospital Stream. Following a comprehensive flood risk assessment and consultation with the OPW and the planning authority, it was decided to culvert the stream as part of the flood relief measures. The CEMP sets out various phases of the construction stage, identifies potential environmental impacts and control measures. The proposed surface water drainage during construction includes mitigation measures based on best practice measures to ensure only clean water is discharged in order to protect water quality of the Hospital Stream and of groundwater during construction. The development will discharge foul water to the Mallow Wastewater Treatment Plant.
- 9.1.14.** Taking account of the characteristics of the proposed development in terms of its location and the scale and nature of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
- Construction related uncontrolled surface water related pollution during site clearance, earthworks arising from dust, sediments and hydrocarbons or an accidental pollution event.

- Contamination of surface water from hydrocarbons during the operational phase affecting surface water quality.

Habitat loss/fragmentation and/or the disturbance of habitats and species can be ruled out on the basis of distance from a European site and the lack of any suitable habitats within the site to support species for which the sites have been designated.

### *European Sites*

The development site is not located in or immediately adjacent to a European site. In determining the extent of potential effects of the development, the applicant took a precautionary approach in using a 15km radius around the development footprint as a potential zone of influence. It is considered that the potential for connectivity with other European Sites at distances greater than 15 km can be ruled out. There was only one site included in the applicant's screening exercise which was the Backwater River SAC. The source-pathway-receptor model of impact prediction was employed.

A summary of the European Site within the possible zone of influence of the proposed development is presented in the table below.

- Blackwater River SAC (002170), which is designated for a range of habitats and species, is located approx. 1.3km hydrologically distant from the site. The Hospital Stream flows through the centre of the site and flows into the Blackwater River approx. 1.3km to the south. The AA Screening Report identifies a hydrological connection to the Blackwater River SAC by means of the Hospital Stream.
- The AA Screening Report submitted by the applicant ruled out direct impacts in terms of loss or damage to any Qualifying Features of habitats or species on the basis of the distance from the European sites.
- In terms of indirect impacts, it concluded that the risk of surface water contamination arises from construction activities such as sediment laden surface water and hydrocarbons or oils from spillages, as well as from the operation and use of the proposed development once constructed.
- I would accept and that there is the possibility that surface water runoff containing dust and/or contaminants arising from the construction and use of the proposed development could reach the SAC and have effects on the qualifying interests of the site. Siltation could arise from run-off associated

with the extensive earthworks, site clearance and from culverting of the stream. Hydrocarbon-contaminated water could be released during site clearance and earthworks at the former service station site.

- There is a risk that in the operational phase, hydrocarbon-contaminated water could be washed into the swale on the eastern boundary which could make its way to the stream during times of flooding in the area.
- The potential risk to qualifying interests of the SAC from non-native species has been identified as 'medium'.
- The potential for effects on QIs of this Natura 2000 site cannot, therefore, be screened out and Stage II Appropriate Assessment is required in respect of the Blackwater River SAC (002170).

#### *In combination effects*

- 9.1.15.** The in-combination effects are addressed in section 6.1.4 of the NIS document. This included a review of the Cork County Development Plan 2014, the Kanturk Mallow LAP 2017, The River Basin Management Plan and existing planning applications. It was noted that neither the CDP nor the LAP contain any policies or plans for the area that would interact with the proposed project in any significant way. A review of the planning permissions in the area highlighted no recent planning permissions in the vicinity. In-combination effects have been adequately considered by the applicant. I am satisfied that the proposed development in combination with other permitted developments and plans in the area, which in themselves have been screened for AA, would not be likely to have a significant effect on any European Site.

#### *Mitigation measures*

- 9.1.16.** No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

#### *Screening Determination*

- 9.1.17.** The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site no. 002170 in view of the site's Conservation

Objectives and Appropriate Assessment (and submission of a NIS) is therefore required.

**Stage II - Appropriate Assessment of Implications of the Proposed Development.**

9.1.18. The following is an assessment of the implications of the project on the relevant conservation objectives of the European site using the best available scientific knowledge in the field (NIS). All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are examined and assessed. I have relied on the following guidance:

- DoEHLG (2009) Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities, Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service, Dublin
- EC (2021) Assessment of plans and projects in relation to Natura 2000 sites - Methodological Guidance on Article 6(3) and Article 6(4) of the Habitats Directive 92/43/EEC.

The following site is subject to appropriate assessment

<b>Blackwater River SAC (Site Code 002170)</b>	
<b>Conservation Objectives and Qualifying Interests / Special Conservation Interests</b>	<b>Potential Impacts</b>
<p><u>CO</u> – To maintain or restore the favourable conservation condition of the Annex I habitats and/or the Annex II species listed as Special Conservation Interests for this SAC.</p> <p><u>Qualifying Interests/Species of Conservation Interest:</u>                      Estuaries [1130], Mudflats and sandflats not covered by seawater at low tide [1140], Perennial vegetation of stony banks [1220], Salicornia and other annuals colonising mud and sand [1310], Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330],</p>	<p><u>Direct Effects:</u>                      No direct effects due to separation distance.</p> <p><u>Indirect Effects:</u>                      Potential for indirect effects from surface water discharge associated with the proposed development in the absence of site specific mitigation measures.</p>

<p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410], Watercourses of plain to montane levels with <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3620], Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0], Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0], <i>Margaritifera margaritifera</i> (Freshwater pearl mussel) [1029], <i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092], <i>Petromyzon marinus</i> (Sea Lamprey) [1095], <i>Lampetra planeri</i> (Brook Lamprey) [1096], <i>Lampetra fluviatilis</i> (River Lamprey) [1099], <i>Alosa fallax</i> (Twait Shad) [1103], <i>Salmo salar</i> (Salmon) [1106], <i>Lutra lutra</i> (Otter) [1355], and <i>Trichomanes speciosum</i> (Killarney fern) [1421]</p>	
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- 9.1.19.** The qualifying interests are set out in Table 5.1 of the NIS together with a conclusion as to whether the proposed development is likely to have a potential impact on the particular QI and the rationale for the decision. The potential impacts on key habitats and species are identified and considered with respect to threats, pressures, current and favourable range and overall conservation status. Five freshwater species and one habitat were selected for further consideration, namely, Freshwater Pearl Mussel, White-clawed crayfish, Sea Lamprey, Brook Lamprey, Atlantic Salmon and Watercourses of plain to montane levels with *Ranunculus Batrachion* vegetation. The remaining Qualifying Interests of the site were ruled out on the basis of being limited in distribution to estuarine or coastal reaches of the SAC or at a significant distance from the site and will not be impacted due to the relatively small scale of the development. Others, such as Otter were considered unlikely to be present due to the location of the site and an absence of any suitable habitat on the site.
- 9.1.20.** I have also set out the qualifying interests above and have examined the Natura 2000 data forms as relevant and the Conservation Objectives document for the site available through the NPWS website. I would generally agree with the rationale for selecting the features of conservation interest as set out in Table 5.1 of the NIS.

### *Identification of likely effects*

- 9.1.21.** The Blackwater River SAC has been designated for the protection of a range of riparian, estuarine and coastal habitats and species associated with the River Blackwater and its tributaries. NPWS publications highlight the specific attributes and targets for the various qualifying interests in the SAC. This European site is located approx. 1.3km to the south of the site. There is a direct hydrological pathway from the development to the SAC, via the Hospital Stream, which discharges directly to the Blackwater River, thereby connecting the site to the SAC. Thus, a potential pathway via surface water exists to the European site. Pathways via land and air are ruled out due to distances involved.
- 9.1.22.** The NIS (6.1.1) identifies the specific elements of the project which are likely to give rise to effects on the environment. The main aspects of the proposed development that could adversely affect the conservation objectives of the European site include:
- Construction works involving site clearance, earthworks and construction of the culverts have the potential to generate pollutants, which could enter the Hospital Stream and potentially cause impacts on the qualifying interests of the SAC. Culverting of the stream involving instream works which could give rise to direct and indirect emissions of pollutants during construction. Sediment or surface water contaminated with cement, hydrocarbons or other pollutants could be discharged to the Hospital Stream, and ultimately to the Blackwater River, which would have the potential to affect water quality and cause impacts on the qualifying interests of the SAC.
  - During the operational phase, treated surface water will be discharged to the Hospital Stream following attenuation and release at greenfield run-off rates. There is a possibility that failures or leakages in the proposed surface water drainage system, including the underground systems under the proposed forecourt, could give rise to discharge of hydrocarbons to the stream. The release of hydrocarbons could have the potential to affect water quality via the surface water drainage via the Hospital stream which could potentially cause impacts on the qualifying interests of the SAC.



- Foul drainage will be discharged to the Municipal WWTP for Mallow, which is currently being upgraded. The AER for the existing plant is compliant with the ELVs for the discharge licence. However, there is evidence of deterioration in water quality downstream of the wastewater treatment plant outfall and there is uncertainty regarding whether the cause is related to the operation of the plant. Notwithstanding this, the plant is currently being upgraded from 10,500PE to 22,000PE and is due for completion by the end of 2022. On this basis, it is unlikely that the proposed development would give rise to any deterioration in water quality by reason of wastewater discharge.

**9.1.23.** In response to concerns raised in the P.A.'s planning and technical reports, the first party has provided an Addendum Report to the NIS which addresses issues of flood risk and invasive species.

*Invasive species*

**9.1.24.** No field surveys or ecological surveys have been carried out on the site, and as such, it is not clear whether any invasive species are present within the site or along the riparian edge of the stream. However, it is noted that the planning authority was concerned about the presence of Japanese Knotweed and Himalayan Balsam in the wider area. The P.A. Ecologist considered that prior to determination of the case, an invasive species survey should be carried out and that the potential impacts for the spread of these species in the general area and on the qualifying interests of the SAC should be established. The NIS Addendum Report submitted with the grounds of appeal (9/08/21) acknowledged that the SAC is at 'medium risk' from such invasive species. However, no such survey has been carried out. It is submitted by the appellant that it will be informed by a targeted survey and professional guidance, which will be carried out after determination of the scheme and will form part of the revised CEMP and CDWMP. It will be informed by the best practice guidelines of Invasive Species Ireland, IFI and TII. Mitigation measures are also set out in the Addendum Report.

*Increased risk of contamination during times of flood*

**9.1.25.** The planning authority's concern was that the proposed swale alongside the eastern boundary of the site, which is intended to divert surface water back towards the Hospital Stream, could potentially convey contaminated surface water to the stream,

should contaminated water get washed into the swale during times of flood etc. It was therefore requested that the developer assess the likely impacts of a flood event on the site during operation of the development having regard to the hydrological connectivity with the SAC. The response to the flood risk issue contained in the Addendum to the NIS referred to the Flood Risk Assessment carried out as part of the planning application and does not appear to include any further information (from the FRA) on this issue. The Flood Risk Assessment (as amplified in the grounds of appeal) had concluded, on the basis of site surveys and hydraulic modelling, that in the event of a flood, the flood waters would run down the N20 and would not enter the site as they would continue towards the Beecher Roundabout as they currently do and would not present an increased risk of flooding to the site.

*Adequacy of information*

- 9.1.26.** The introduction of sediment or dust and/or hydrocarbons into the surface water drainage system, which could arise during earthworks and culverting of the stream during construction, or from accidental leaks during the operational phase, or from floodwaters (containing hydrocarbons) entering the swale, would be likely to have an adverse effect on the sensitive freshwater species and habitats, should it reach the SAC. Sedimentation would increase turbidity and reduce the oxygen available to fish species. Impacts include delayed maturation, embryo malformation, suppressed gene expression. Freshwater pearl mussels, being filter feeders are particularly sensitive to sedimentation as they require well-oxygenated and silt-free substrate. Any increased sediment load could cause the substrate to clog, which would deprive them of oxygen and potentially cause death. Aquatic flora would also be adversely affected by sedimentation and the presence of hydrocarbons, which would reduce light and oxygen availability.
- 9.1.27.** The P.A. Ecologist and the IFI were opposed to the culverting of the stream due to the impacts on the habitats and free flow of water/passage of fish within the watercourse, arising from both construction and operation of the development. It was stated that the most important issues are to maintain a high water quality and a stable hydrological regime within the watercourse in terms of the conservation objectives for the SAC. It was suggested that in the event that it could be demonstrated, following an electrofishing survey, that the culverting would not be likely to have a significant impact on the fish species and habitats within the stream,

this element of the proposed development may have been deemed acceptable. The appellant is not willing, however, to carry out such a survey in advance of a decision being made. In the absence of information that would be gained from an electrofishing survey regarding the habitat availability, water quality and population dynamics, etc. it is not possible to come to a view on whether the proposed culverting would have an adverse effect on the water quality and hydrological regime of the watercourse. Such information would provide confidence regarding the likely effects on sensitive freshwater species for which the site has been designated. Given the importance of maintaining a high water quality and a stable hydrological regime to the achievement of the conservation objectives for the SAC, it is considered that a reasonable doubt remains regarding the potential impacts from the proposed development on the integrity of the SAC.

**9.1.28.** Similarly, the potential for hydrocarbons to be released during site clearance and the extensive groundworks during the construction phase, which could make their way to the stream was highlighted by the P.A. Ecologist. In addition to constructing culverts, the proposed project includes extensive reprofiling of the site and construction of significant retention structures including gabions and riparian planting alongside the open section of the watercourse. Re-profiling of the southern banks of the stream is proposed. However, the appellant has declined to carry out site investigation works including a hydrocarbon contamination study of the former service station site until after a decision has been made. Reliance is placed on the findings of the Site Closure Report which was carried out in 2010. The assessment of the risks involved in this element of the proposed development cannot be made, therefore, on the basis of the best and most up-to-date scientific information available. The mitigation measures must be linked to any significant effects that have been identified, and these can only be defined once the impacts have been fully described and assessed.

**9.1.29.** The potential for floodwaters, which could be contaminated with hydrocarbons, to be washed into the swale and make their way to the watercourse has not been fully addressed in the grounds of appeal. The appellant has placed reliance on the findings of the flood risk assessment which had concluded that the site would not be at risk of flooding and that the floodwaters would flow down the N20 past the site towards the Beecher Roundabout. The response did not state how the design of the scheme would prevent floodwaters from washing over the site and entering the

swale and thereby potentially reaching the watercourse without going through one of the hydrocarbon interceptors. Thus, there is not enough information to be confident that hydrocarbon-contaminated surface waters would not compromise the sensitive habitats of the freshwater species for which the site is designated.

**9.1.30.** The introduction of invasive non-native species would also threaten the habitats of some of the qualifying interests of the site. The Site Synopsis for the European site includes one of the main threats to the site as the invasion of non-native species. Although I would accept that this generally relates to terrestrial species within woodland areas, no ecological surveys have been carried out within the site and it is not clear whether there are any invasive species present within the site. It is acknowledged that this issue is not likely to be central to maintaining the integrity of the SAC, but it is nevertheless a further matter which undermines confidence in the conclusions of the NIS.

**9.1.31.** It is considered, therefore, that aspects of the proposed development could result in impacts which would adversely affect the integrity of Blackwater River SAC in view of the conservation objectives of this site.

#### *Mitigation measures*

**9.1.32.** The Draft Construction and Environmental Management Plan, which was revised and expanded in the submissions with the grounds of appeal, has included detailed mitigation measures to be employed, including:

- Best practice mitigation measure will be employed to prevent silt and other contaminants entering watercourses. The project design will also comply with SUDS, will include petrochemical interceptors and silt interceptors.
- During construction, all stormwaters will be discharged through a mobile oil filter separator system until construction has reached a stage where surface water can be discharged through the two proposed interceptors. Runoff will then be directed into the surface water attenuation chamber, which will discharge via a hydrobrake flow control device into the existing stream network, and ultimately into the Blackwater River.
- Surface water protection measures will be required during site clearance and construction to ensure no contamination of waters by silt or hydrocarbons,

especially along the Hospital Stream bank. These include use of silt curtains, dewatering, silt sumps etc. The method statements will be drawn up in consultation with the supervising ecologist. Consultation will take place with the OPW and Inland Fisheries Ireland prior to the commencement of works.

- Installation of instream structures, including the design of the culverts and the post works flow patterns and channel structure, will require input from qualified fisheries/aquatic ecologists with experience in such works. Prior to the commencement of works, the specialist advisors will be required to visit the watercourse to assess the existing channel structure, fish holding features, substrate composition, flow patterns etc. Where feasible, such structures will be incorporated into the channels following completion of works.
- Best practice methods of management, storage, segregation and disposal of hazardous and non-hazardous waste, including waste oils and fuels, soil contaminated with waste oils/fuels etc.
- A comprehensive storm water drainage system has been designed for the site during the operational phase which will include channelling and diverting of surface waters to attenuation chambers and release at greenfield rates of treated surface waters to the Hospital Stream. The drainage network includes a sub-surface infrastructure beneath the forecourt including fuel storage tanks fitted with the latest equipment and automatic leak detection warning systems. The design of the drainage system incorporates hydrocarbon interceptors.
- The proposed development incorporates several flood mitigation measures including culverts along the eastern and southern boundaries and along the northern section of the stream, as well as a surface water drainage network based on SUDs. The FRA also established that the site is located outside the 0.1% AEP flood extent and that the ground levels of the site will be above the maximum flood water levels around the site.
- The developer has not undertaken an invasive species survey but is willing to do so following a grant of planning permission. It is therefore uncertain whether any invasive species are present on the site.

- Environmental monitoring of surface water and groundwater will be undertaken in accordance with the CEMP, which will be agreed in advance of construction with the planning authority.

**9.1.33.** The design of the proposed development, including the proposed surface water drainage system combined with the range of proposed mitigation measures during both construction and operational phases of the development are unlikely to give rise to any significant deterioration in water quality, which is identified as a specific attribute/target for several qualifying interests. Notwithstanding this, the proposed range of mitigation measures is quite generic and will be informed by further detailed surveys, including a hydrocarbon contamination survey, after determination of the application. As a result, there is the potential for significant effects to be identified after the decision is made. However, effective mitigation measures need to be linked to the significant effects that are identified, and in the case of the proposed project, will only be fully defined once the impacts have been fully described and assessed, following the investigative studies/surveys. Furthermore, the appropriateness of installing culverts along the Hospital Stream and reprofiling of the banks of the open section of the stream, has not been established based on the outcome of an electrofishing survey. In addition, no detailed ecological surveys of the site, including the treeline along the western boundary, have been conducted and there is no information on whether there are any invasive species on the site or within the stream.

**9.1.34.** It is considered that the absence of an invasive species study and the failure to specifically address the flood risk associated with floodwaters entering the swale are not issues that would be fatal to the integrity of the European site. These matters could be addressed by means of condition, should the Board be minded to grant permission. However, the absence of scientific evidence based on an electrofishing survey and a detailed and an up-to-date hydrocarbon contamination survey of the brownfield lands represent a level of reasonable scientific doubt which would make it difficult to exclude any potential adverse impacts on the sensitive freshwater species and dependent habitats for which the site is designated. The mitigation measures must be based on a sound understanding of the species and habitats concerned as well as being designed to address the specific impacts that have been identified. Given that the freshwater species and dependent habitats require a high water

quality and a stable hydrological regime to be maintained in order to achieve the conservation objectives for the SAC, it is considered that a reasonable scientific doubt remains regarding the potential impacts from the proposed development on the integrity of the SAC.

- 9.1.35.** I am not satisfied, therefore, that the measures outlined fully address any potential impacts on the Blackwater River SAC arising from the proposed development and that this conclusion can be made on the basis of objective scientific information. It is not entirely clear, based on the information available, that the mitigation measures applied will eliminate the risk to the overall site integrity and as such, that there is no reasonable doubt remaining as to the absence of adverse effects.

#### *Cumulative and In-Combination Effects*

- 9.1.36.** The proposed development is located in an urban area on zoned and serviced lands. The cumulative impacts of the development in combination with other plans including development plans, local area plans and River Basin Management Plans and projects, including existing and permitted development in the vicinity of the site have been assessed. I am satisfied that the other permitted developments and plans in the area, which in themselves have been screened for AA, would not be likely to have a significant effect on any European Site.

- 9.1.37.** Following the appropriate assessment and the consideration of mitigation measures in respect of the proposed project, however, I cannot ascertain with confidence that the project, either individually or in combination with other plans or projects, would not adversely affect the integrity of Blackwater River SAC in view of the conservation objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

#### **Appropriate Assessment Conclusion**

- 9.1.38.** The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the Blackwater River SAC. Consequently, an appropriate assessment was required of the implications of the project on the qualifying features of those sites in light of its conservation objectives.

**9.1.39.** It is considered that on the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of the European Site No. 002170, in view of the site's conservation objectives. In such circumstances the Board is precluded from granting permission.

**9.1.40.** This conclusion is based on:

- The Conservation Objectives to restore and/or maintain the favourable conservation condition of the Freshwater Pearl Mussel, the White-clawed crayfish, Sea lamprey, Brook Lamprey, Atlantic Salmon and Watercourses of plain to montane levels with floating river vegetation for which the attributes/targets include achievement of high water quality and a stable hydrological regime.
- A full and detailed assessment of all aspects of the proposed project, including proposed mitigation measures, on the integrity of the European site is not possible due to the absence of adequate scientific evidence based on ecological site surveys and site investigations to inform a sound understanding of the species and habitats present and an accurate identification of the likely impacts.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.

**9.1.41.** A reasonable scientific doubt therefore remains as to the absence of adverse effects on the integrity of Blackwater River SAC.

## **10.0 Recommendation**

I recommend that planning permission should be refused for the reasons and considerations as set out below.



## 11.0 Reasons and Considerations

1. Having regard to the peripheral location of the site on the outskirts of Mallow Town, to the nature, range and scale of facilities to be provided including a petrol station with a retail shop which exceeds the 100 square metre retail floorspace cap for motor fuel shops and drive-thru and sit-down restaurants, to the extent of car parking to be provided including provision for HGV and Coach parking, to the presence of a similar service area in the vicinity of the site and to the lack of appropriate links to the town centre, the proposed development would constitute an off-line Motorway Services Area which would conflict with the DoECLG Spatial Planning and the National Roads Guidelines for Planning Authorities which requires such facilities to be plan-led and to be designed to avoid the attraction of short car-based trips from the local area. The proposed development would also conflict with the retail policy objectives of the Cork County Development Plan for the regionally important retail centre of Mallow Town, as the scale of the retail offering at this location would detract from the vitality and viability of the Town Core and would, therefore, conflict with the objectives of the Retail Planning Guidelines for Planning Authorities which requires that such applications be assessed against a range of criteria including the sequential test and that this test be carried out in a realistic and defensible manner. The proposed development would, therefore, conflict with the objectives of the County Development Plan and with the proper planning and sustainable development of the area.
2. The site of the proposed development is located within the study area of the proposed N/M20 Cork to Limerick Road Improvement Scheme. Having regard to the provisions of the Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012) and to Policy Objective 3:1(a) and (b) of the Cork County Development Plan 2014, which seek to support major projects to improve the national road network including reserving corridors for proposed routes free of inappropriate development in order that future road schemes are

not compromised, the proposed development is premature pending the final determination of the road layout of the N/M20 Cork Limerick Improvement Scheme, notwithstanding the identification of the Preferred Route Option for this route. The proposed development is, therefore, contrary to the proper planning and sustainable development of the area.

3. The site of the proposed development is located within the study route corridor options of the proposed N72/N73 Mallow Northern Relief Road National Road Improvement Scheme. Having regard to the provisions of the Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012) and to Policy Objective 3:1(a) and (b) of the Cork County Development Plan 2014, which seek to support major projects to improve the national road network including reserving corridors for proposed routes free of inappropriate development in order that future road schemes are not compromised, the proposed development is premature pending the final determination of the road layout of the N72/N73 Mallow Northern Relief Road Improvement Scheme, notwithstanding the identification of the Emerging Preferred Route Option for this route. The proposed development is, therefore, contrary to the proper planning and sustainable development of the area.
  
4. On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of the European Site No. 002170 or any other European site, in view of the site's conservation objectives. This conclusion is based on the failure to carry out a detailed assessment of all aspects of the development project, using the best scientific knowledge, by reason of the failure to carry out adequate baseline studies and having regard to the potential for discharge of contaminated water to the Hospital Stream, which is hydrologically connected

to the Blackwater River SAC. In such circumstances, the Board is precluded from granting permission.

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Mary Kennelly  
Senior Planning Inspector

18<sup>th</sup> May 2022