



An
Bord
Pleanála

Inspector's Report ABP-313962-22

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| Development | Remove an existing building and construct a new two storey petrol filling station and licenced forecourt convenience store and all associated site works including new boundary treatments and landscaping. |
| Location | Leinster Express Business Park, Dublin Road, Portlaoise |
| Planning Authority | Laois County Council |
| Planning Authority Reg. Ref. | 2271 |
| Applicants | Portlaoise Service Station |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | Third Party |
| Appellants | Petrogas Group Limited |
| Date of Site Inspection | 19 th December 2022 |
| Inspector | Dolores McCague |

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1.0 Site Location and Description

- 1.1.1. The site is located at the Leinster Express Business Park, Dublin Road, Portlaoise c 1.75km from the town centre. It fronts a busy regional road, the R445, part of the old Portlaoise to Dublin Road, which now joins the M7 c2.4km to the northeast. The site is located at the southern side of the road, within the 50 kmph speed limit. On the opposite side of the road, c800m to the west, is the Applegreen filling station. St Fintan's Psychiatric Hospital, The Midlands Prison and Midland Regional Hospital Portlaoise are located along this road, between the subject site and the town centre.
- 1.1.2. The site is a rectangular in shape with the short axis fronting the road. It is occupied by an existing building complex, which comprises a 'home and garden centre' at the front, behind which are a number of commercial units which face east, and, at the back there is a block which faces to the rear. This section of the road is characterised by similar large warehouse type buildings. There are several other commercial developments in the immediate vicinity including, to the north-east, a filling station which it is proposed to relocate to the subject site. On the opposite side of the road are a car showrooms and an hotel. The area is otherwise predominantly residential.
- 1.1.3. A surface water culvert near the north-eastern boundary, on the adjoining land is a watercourse flowing north-west to the Triogue river. The site is at risk of flooding.
- 1.1.4. The site is given as 0.61ha.

2.0 Proposed Development

- 2.1.1. The development description is to remove an existing building and to construct a new two storey petrol filling station (PFS) and licenced forecourt convenience store comprising of retail shop, delicatessen area, toilets, stores, ATM, seating area with full off licence to ground floor, staff facilities with canteen, offices spaces, plant space and external plant to first floor, new forecourt with canopy, pump islands, signage, illuminated roadside totem signage, services area, carwash, underground fuel storage tanks, EV charging, carparking, fuel offloading point; relocate site entrance and all associated site works including new boundary treatments and landscaping.
- 2.1.2. The existing development is given as - comparison 175 sq m, workshop 468 sq m and four commercial units of 538 sq m.

2.1.3. The new building is to comprise:

Ground floor 192 sq m net retail sales area (NRSA),
Ancillary deli, seating, storage and toilet facilities 498 sq m,
First floor offices, staff rooms, staff toilet and a training room 136 sq m, and
PFS (petrol filling station) with EV charging point.

2.1.4. Accompanying the application are:

Architectural Report.

Engineering - Proposals for Foul and Surface Water Drainage, Water Supply and Roads.

Quantitative Retail Assessment.

Traffic and Transport Assessment.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority (PA) decided to grant permission subject to 18 conditions including:

6 runoff.

9 operation to avoid nuisance.

10 advertisements.

11 LED lighting.

12 construction waste management.

14 boundary treatment and landscaping.

15 road tie-in.

16 electrical and telecommunications services shall be laid underground;
landscaping.

17 applicant to liaise with LCC Roads re. delivery of a new roundabout at the junction of the Dublin Rd and Colliers Lane.

18 Development Contribution.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There are two planning report on the file, the first, which recommends further information, includes:

- Flood risk – the site is within the source protection area and partially falls within the AFA 1000 year flood outline – flood zone B. Given the nature of the proposed development and the context of the site being an existing developed site, not considered pertinent.
- Natura 2000 sites – the nearest is River Barrow and River Nore SAC (site code 002162) c8.5km south east, no material impact likely.
- Zoned general business – petrol station acceptable in principle.
- Retail Impact - the existing service station adjacent has a NRSA (net retail sales area) of 130 sqm. That proposed has a NRSA of 160.11 sqm; it exceeds the 100 sqm cap. The sequential test is not required as the existing development of 130sqm is permitted and has been in operation for over 20 years; before the 2005 or 2021 RPGs (Retail Planning Guidelines) were issued. The net effect of the proposal would be an increase of only 30.11 sqm in the catchment area and the proposal would be located within an established neighbourhood. A different location would create longer and more unsustainable journeys. Sufficient retail spend will be available in the catchment area to accommodate the proposed development. The proposal should not be regarded as a material contravention of the County Development Plan in that the proposal is for the replacement of an existing use on a nearby site, the existing operation has been in use for over 20 years and is permitted, the existing development has been operating successfully and has not detracted from Portlaoise Town Centre or other retail units in the catchment. The increase of 30.11 sqm is negligible.
- Re. definition of net retail floor space – further information.
- Re. concerns of observer regarding the existing service station and that there is no proposal for it's removal; noting application ref 22/126 for change of use

from convenience store to motor sales show room and permission to alter the existing building.

- Design – the building is well-articulated, benefits from stepped roof lines and contains an appropriate mix of high-quality materials to ensure visual interest.
- Residential amenity – zoned general business, the rear boundaries adjoin existing residential development. It involves relocation of a use from 57m away, and the existing site contains commercial development. The units would be operational 24 hours a day and 7 days a week with up to 30 full-time and part-time employees. The building is sufficiently removed from existing residential to ensure that there would be no over-shadowing or over-dominance. Further information regarding compactors.
- Drainage – foul effluent will be discharged to the public foul network. An existing 225mm diameter foul drainage pipe is to be diverted. Surface water run-off will be discharged to a watercourse following on-site attenuation. Potable water will be sourced from the public network. Further information is required.
- Traffic Access and Parking - further information is required.
- AA screening – AA not required.

3.2.2. Other Technical Reports

3.2.3. Roads Design, 29th March 2022 – further information – bicycle parking, accessibility audit, stage 1 & 2 Road Safety Audit, public lighting report.

3.2.4. Municipal Engineer, 4th April 2022 – further information - stage 1 & 2 Road Safety Audit. Road opening licence required.

3.2.5. Waste Enforcement Section, 5th April 2022 – pay-to-use compactors for household waste disposal are proposed to the rear of the site. The location may be within 25-35m of houses in Carrick Hill. The short duration but sharp beeping noise emitted could become a nuisance for residents. Further information – characterise the noise emitted from the proposed pay-to-use compactors – duration, intensity (dBa) and necessity and well as any mitigation measures to be put in place for evening and night-time operation of the units.

3.2.6. Waste Management & Environmental Protection, 4th April 2022 - conditions.

3.3. Prescribed Bodies

3.3.1. IW, 15th March 2022 – further information.

3.3.2. IW, 28th March 2022 – further information.

Re. impact on IW's drinking water source. The proposed development has the potential to impact on IW drinking water source. It is a requirement of the Water Framework Directive that waters used for the abstraction of drinking water are protected so as to avoid deterioration in quality. Therefore further information is requested in relation to the following matters. The applicant shall provide details of measures to be taken to ensure that there will be no negative impact to IWs drinking water source during construction and operational phases of the development.

Re. proposal to build over or in vicinity of IW infrastructure. IW records indicate the presence of public water / wastewater infrastructure which may be impacted by the proposed development. In order to assess the feasibility of a connection to public water/ wastewater infrastructure further information is requested as follows:

The applicant is required to engage with IW through the submission of a Pre-Connection Enquiry (PCE) in order to determine the feasibility of connection to the public water / wastewater infrastructure.

Pending the outcome of any feasibility assessment, proposals for the applicant to build over or divert existing water / wastewater services shall be agreed with IW prior to works commencing.

Re. retention - existing unauthorised structure has been built over an existing IW asset and applicant is seeking to regularise by seeking retention. IW records indicate the presence of public water / wastewater infrastructure located in close proximity to and / or under an existing unauthorised structure / development. The existing unauthorised structure for which retention is being sought has been built over an existing IW asset. Further information to be submitted as follows:

A CCTV Structural Integrity Survey completed by a competent contractor in line with WRC (Water Research Centre UK) manual of sewer classification. This is to determine if there are risks associated with the built over pipe that may be a consequence of the building activity and to ascertain the condition of the infrastructure to industry standard. A Structural Integrity Technical Report assessing

the loads imposed on the built over pipe and confirmation of access to allow review of the risk to pipe from structures built in the zone of influence of the pipe.

Developers are required to dispose of storm water to outlets other than to IW network.

Impact on Asset, discharge of stormwater – it is IWs policy to minimise surface water inputs to combined sewers and to limit new inputs to sewers – further information.

Feasibility of connection, impact on asset, distance to connection point etc.

Impact on Asset, designs submitted with planning application are unclear. Further information – pre-connection enquiry.

Feasibility of Connection – applicant has not engaged with IW prior to submitting application - further information – pre-connection enquiry.

Distance to connection point - further information – pre-connection enquiry.

3.3.3. IFI, 16th March 2022:

The site of the proposed development is adjacent to a culvert which feeds directly into the Triogue_030, which ultimately flows into the River Barrow SAC. The Triogue's ecological status is poor and it is at risk of not reaching good ecological status by 2027. Among the significant pressures on this water body is diffuse urban run-off.

The storage, management and conveyance of materials on site must not permit any deleterious matter to reach adjacent surface water systems either directly or indirectly. There must be no run-off of fuels, oils, concrete or materials from the site.

Pollution from diffuse urban sources including garage forecourts can contain suspended solids, toxic metals, hazardous chemicals and microplastics. In addition, car wash wastewater contains phosphates, detergents, surficants, oils, silts / sediments, plastics and metals from tyres and cars. These pollutant levels must be reduced to an acceptable level before being allowed to discharge into surface waters.

The proposed silt trap and petrol interceptor, at the refuelling slab, must be serviced at regular intervals to maintain optimum operational efficiency. Servicing records should be kept and made available to authorised persons upon request.

Fuels, oils or other hazardous substances stored on site must be kept in covered and lockable bunded containers. Waste oils, empty oil containers and other

hazardous wastes should be disposed of in accordance with the requirements of the Waste Management Acts.

Where temporary diesel or petrol driven pumps are required, they should be sited within bunded units. Servicing, including refuelling of plant and equipment, shall only be undertaken on the proposed impermeable hard standing areas.

The applicant and/or contractors should have in place an emergency plan for the containment of fuel spills or spills of other hazardous and / or toxic substances. During construction the contractor should nominate a responsible person to oversee environmental monitoring and housekeeping, and ensure that guidelines and good practice are being adhered to on site.

3.4. Further Information

3.4.1. FI requested 6th April 2022 – 7 points:

- Retail impact assessment – based on 160 sqm which includes the retail space of 138.37 sq m and off-licence space of 21.69 sqm only. The definition of net retail floor space requires the inclusion of other components of the layout to include checkouts, area in front of checkouts serving counters and areas used by serving staff.
- Stage 1&2 Road Safety Audit.
- Accessibility Audit.
- Public Lighting.
- IW.
- Third Party submission.
- Re. relocation of existing pay-to-use compactors.

3.4.2. Further information, submitted 16th May 2022, includes:

Letter of Response, including IW confirmation of feasibility dated 6th December 2021.

Quantitative Retail Assessment.

External Lighting Design.

Accessibility Audit.

Revised drawings.

3.5. Further Reports

3.5.1. Water Services, 31st May 2022 – no objection.

3.5.2. Roads Design, 2nd June 2022 - conditions including:

- Stage 3 road safety audit.
- Ensure that no damage occurs to the public roadway.
- No debris or construction materials on the public roadway.
- Road opening licence.
- No surface water onto the existing roadway.
- All external lighting shall be cowled away from the public roadway.
- Public lighting to be LED.
- The applicant shall pay a contribution of €80,000 as a contribution towards the construction of a roundabout upgrade on the junction of Dublin Road / Colliers Lane. This contribution is necessary to ensure that a roundabout is constructed to the current standards and also to ensure safe access to this proposed development.
- The roundabout shall be constructed by Laois County Council and be operational prior to the opening of this development.
- Following the grant of permission the applicant shall liaise with the Roads Design Department of Laois County Council to identify and agree boundary locations and any temporary access arrangements to facilitate the construction of the roundabout.
- The applicant shall pay a contribution of €15,000 to Laois Co Co, in order for the Local Authority to complete a survey and report of the existing surface water drainage system in Kilminchy to ensure that this additional proposed development does not cause an exceedance into the capacity of the lake or the existing drainage network. This is to confirm that this development does not overload or negatively impact the existing drainage system. This survey and report shall be carried out prior to any development starting on this development. To this end, the applicant must receive approval from the Road Design Laois County Council prior to starting work on this development.

3.5.3. Municipal Engineer, 2nd June 2022 – no comments and no objection.

3.5.4. The second planning report, 7th June 2022, which recommends permission, includes: satisfied with responses.

3.5.5. Roads Design 9th June 2022 - conditions including:

- Stage 3 road safety audit.
- Ensure that no damage occurs to the public roadway.
- No debris or construction materials on the public roadway.
- Road opening licence.
- No surface water onto the existing roadway.
- All external lighting shall be cowled away from the public roadway.
- Public lighting to be LED.
- The applicant shall liaise with Roads Department of Laois County Council regarding the delivery of a new roundabout at the junction of the Dublin Road/Colliers Lane. Such liaison shall provide for the following:
 - i) to identify and agree boundary locations and boundary treatments between the development site and the (altered) public road.
 - ii) to identify and agree arrangements, including temporary access arrangements, to facilitate construction of the roundabout.
 - iii) to identify and agree any interim arrangements, in circumstances where the permitted development becomes operational before the new roundabout is in place.

3.6. **Third Party Observations**

3.6.1. Third party observations on the file have been read and noted, and are reflected in the grounds of appeal.

4.0 **Planning History**

09/688 retain change of use to garage and retain signage and all associated site works, granted, (details provided which include - two of the units towards the rear –

condition no 3 opening hours 8 to 18 hours Monday to Saturday excluding bank holidays.

UD 09/134 alleged unauthorised development and alleged unauthorised commercial activity.

20/351 – place a portable pay to-use compactors for the acceptance of residual and food waste and a portable pay to-use compactor for mixed recyclables; temporary permission granted, (details provided).

Pre-planning meetings 01- 07-2021 and 02-12-2021.

Site to east, related development - **22/126** - change use from convenience store to motor sales show room and for permission to alter the existing building. The development will consist of modifications to existing building internally and modifications to existing façade, removal of existing forecourt canopy and existing underground tanks and to upgrade existing totem sign, to add new customer handover space to rear with canopy over, new boundary treatments and all associated site works, granted 8th August 2022.

5.0 Policy Context

5.1. Development Plan

5.1.1. Laois County Development Plan 2021-2027 applies.

Zoned - General Business (volume 2 maps: 2.2 and 2.10) - objective - to provide for and improve commercial activities. The purpose of this zone is to provide for commercial activities and acknowledge the existing/permitted retailing. Any specific development proposal must have due regard to the location of the site within the wider town context and be in accordance with the proper planning and sustainable development of the area.

Portlaoise is designated a key town. The 2016 population of 22,050 is projected to increase to 26,366 by 2027.

Other relevant provisions:

Overarching Core Strategy Policy Objective - CS 08 Review the Local Area Plans for Portlaoise and Mountmellick. During the transition period between adoption of this county development plan and the adoption of the Local Area Plans for Portlaoise and

Mountmellick, the objectives (including zoning objectives), policies and standards in this county development plan shall apply. The Local Area Plan for Portlaoise will be supported by a Local Transport Plan (LTP) prepared concurrently in consultation with the National Transport Authority and Transport Infrastructure Ireland. The LTP will provide the strategic rationale for the development of any transport infrastructure objectives.

Section 7.2 refers to retail development. It provides for the focus of retail development to be in Portlaoise and provides for additional floorspace requirements over the plan period including 7,798 m² of convenience floorspace. It refers to a strategic policy framework, in accordance with the provisions of the Retail Planning Guidelines, for the spatial distribution of new retail development in the county.

DM TC 3 Petrol Filling Stations - applications for filling stations should have regard of the Retail Planning Guidelines for Planning Authorities (DECLG, 2012) and the Spatial Planning and National Roads Guidelines for Planning Authorities (NRA/TII, 2012) also take account of the following: 1) Be located within urban areas within speed limits; 2) Access to filling stations will not be permitted closer than 35 metres to a road junction; 3) Frontage on primary and secondary routes must be at least 20 metres in length; 4) All pumps and installations shall be set back at least 5 metres from the roads; 5) A wall, of a minimum height of 0.5 metres, must separate the forecourt from the public footpath; 6) All external lighting should be cowled and directed away from the public roadway to prevent traffic hazard; 7) A proliferation of large illuminated projecting signs will not be permitted at filling stations - Generally only one such sign will be permitted; 8) Turbo-drying or car washing facilities will be located so as not to interfere with residential amenities; 9) Petrol filling stations can include an associated shop (no more than 100 sq.ms. (net retail floorspace) that provides for the sale of convenience goods; 10) An undue concentration of filling stations shall not be permitted, as in the past oversupply has led to closures with resulting unsightly derelict filling stations; 11) Late night opening will only be permitted if it does not impact adversely on nearby residences; and 12) A landscaping Plan will form part of any Planning application.

5.2. Portlaoise Local Area Plan 2018-2024

5.2.1. Relevant provisions include:

Zoned - General Business Objective: To provide for and improve commercial activities. Purpose: To provide for commercial activities and acknowledge existing/permitted retailing. This zoning may also be suitable for uses such as institutional / educational subject to compliance with all relevant planning criteria. Any specific development proposal must have due regard to the location of the site within the wider town context and be in accordance with the proper planning and sustainable development of the area.

TCR O8: Guide retail development, in accordance with the sequential approach to sustain and strengthen the town centre.

TCR P1: Encourage retail development within the existing town centre. Proposals which would undermine the vitality and viability of the town centre will not be permitted. The sequential approach to retail development set out in the "Retail Planning - Guidelines for Planning Authorities, 2012" will be strictly enforced.

Per the zoning, convenience retail of less than 100 sq m, will normally be acceptable and convenience retail of more than 100 sq m will not normally be acceptable.

5.3. Retail Planning Guidelines for Planning Authorities, 2012

- 5.3.1. Guidelines to ensure that the planning system continues to play its role in supporting competitiveness and choice in the retail sector commensurate with promoting the vitality and viability of city and town centres.

Key points:

- Retail development must follow the settlement hierarchy of the State and retail development should be appropriate to the scale and function of the settlement or part of the settlement in which it is located as designated by the NSS, relevant regional planning guidelines and development plan core strategies.
- Enhancing the vitality and viability of city and town centres in all their functions through sequential development is an overarching objective in retail planning.
- A range of caps on the size of convenience and retail warehouse stores is required to ensure both competitiveness in the retail sector and strong city and town centres. Five key policy objectives must guide planning authorities in addressing retail development issues in their development planning and development management functions, namely:

- Ensuring that retail development is plan-led;
 - Promoting city /town centre vitality through a 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 the Smarter Travel strategy; and
 - Delivering quality urban design outcomes.
- There should be a general presumption against large out-of-town retail centres in particular those located adjacent or close to existing, new or planned national roads/motorways.

The Guidelines set a floorspace cap for petrol filling station shops at 100 m² net, irrespective of location.

Floorspace caps apply to new retail stores or extensions to existing stores which will result in an aggregate increase in the net retail floorspace of the convenience element of such retail stores. In this regard, while some stores may retail convenience goods only, in other cases, stores may retail convenience and comparison goods. In these mixed comparison / convenience retailing stores described above, there is therefore no cap on the amount of non-grocery or comparison space delineated for the relevant store, for example on the planning application drawings.

5.4. The Planning System and Flood Risk Management

5.4.1. The subject site is in zone B.

5.4.2. The guidelines state:

Flood Zone B – this is where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1000 and 1% or 1 in 100 for river flooding and between 0.1% or 1 in 1000 year and 0.5% or 1 in 200 for coastal flooding).

Key Messages - the key principles of a risk-based sequential approach to managing flood risk in the planning system are set out in this chapter. They are:

- Avoid development in areas at risk of flooding;
- If this is not possible, consider substituting a land use that is less vulnerable to flooding.
- Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.
- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.

Exceptions to the restriction of development due to potential flood risks are provided for through the use of a Justification Test, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

Zone B - Moderate probability of flooding. Highly vulnerable development, such as hospitals, residential care homes, Garda, fire and ambulance stations, dwelling houses and primary strategic transport and utilities infrastructure, would generally be considered inappropriate in this zone, unless the requirements of the Justification Test can be met. Less vulnerable development, such as retail, commercial and industrial uses, sites used for short-let for caravans and camping and secondary strategic transport and utilities infrastructure, and water-compatible development might be considered appropriate in this zone. In general however, less vulnerable development should only be considered in this zone if adequate lands or sites are not available in Zone C and subject to a flood risk assessment to the appropriate level of detail to demonstrate that flood risk to and from the development can or will adequately be managed.

Highly vulnerable development includes development where there is a potentially significant source of pollution in the event of flooding.

5.5. Natural Heritage Designations

- 5.5.1. The nearest Natura site is River Barrow and River Nore SAC (site code 002162) downstream, c8.5km straight line distance to east.

5.6. EIA Screening

- 5.6.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real

likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of the third party appeal includes:

Public notices refer to the 'removal' of an existing building on the site. This is not a recognised wording in planning legislation and should state 'demolition'. The notices are legally flawed.

The development materially contravenes the Portlaoise LAP 2014-24 as the proposed shop will be 160 sq m – in excess of 100sq m, and not normally acceptable. The fact that it is replacing an existing filling station on a different site is irrelevant.

There is no guarantee that the intended change of use of the original filling station to car and van showrooms will happen, and the Board cannot impose any conditions to regulate the original filling station. Two concurrent applications would be needed.

The 160 sq m floor area exceeds the 100 sq m cap, and no sequential test has been carried out. Although stated as 160 sq m, the filling station kiosk is 33 sq m and circulation area 59 sq m and, per the definition of retail floor space, should have been included. The true net retail area is 252 sq m, 1.5 times the cap. It is entirely inappropriate.

Accessing a filling station from a roundabout is a highly unorthodox and unusual arrangement. Given its scale it is likely that it will become a destination and likely to generate significant traffic movements, giving rise to concerns about queuing back onto the roundabout. A previous Board decision to refuse a filling station on a roundabout is referenced, PL 11.241616, (R445 at the junction with Block Rd).

No justification is provided, given that there are already two filling stations in situ, within a relatively close distance on either side of the road. While it is the intention that one of these stations will be closed, why is such a large filling station required?

An analysis of the piecemeal erosion and loss of existing industrial development has not been provided.

6.2. Applicant Response

6.2.1. The Planning Partnership have responded on behalf of the first party to the grounds of appeal. The response includes:

The new building would have a total floorspace of c794 sq m including 192 sq m NRSA and ancillary deli, seating, and toilet facilities total c498 sq m. at ground floor. The re-development of an existing petrol filling station (PFS) and Licensed Forecourt Convenience Store on the subject site is being proposed to achieve the following key objectives:

1 - for reasons of traffic safety, the subject site offers an improved location for vehicular access, in the context of planned road upgrades (an approved Part 8 Local Authority own development) to be implemented, that aim to alleviate congestion and current associated traffic conflicts on Dublin Road.

2 - the space available on the subject site, once the demolition of the hardware store and workshop buildings is complete, provides the opportunity to develop a new PFS and Licensed Forecourt Convenience Store offering what will provide consumers with a much-improved experience in terms of site access, new and more diverse facilities, such as Electric Vehicle Charging points, more modern facilities; all in keeping with the direction of travel of the fuel forecourt market.

3 - the existing PFS will be demolished, and the existing Forecourt Store building will be converted into a vehicle showroom, subject to a separate and concurrent application, which will allow for a more harmonious and efficient integration of on-site uses with the existing Ford motor vehicle dealership located at the rear of the site. (ref 22/126).

The Laois County Development Plan 2021-2027 came into effect on 8th March 2022 during the process of the application but not materially affecting its consideration.

Quantitative Retail Assessment is summarised.

It involves a net retail sales area (NRSA) increase of 16 sq m.

The current NRSA of the existing permitted Forecourt Convenience Store is some 175 sqm and this exceeds the cap of 100 sqm in the RPGs. Therefore, further to their client's instructions and pre-planning advice they submitted a Quantitative Retail Assessment. Conclusion – there will remain an under-provision of

convenience retail floorspace serving the available convenience retail spend in the identified subject site catchment area in the design year (2023/24). Around 15.4% of the convenience retail spend, projected to be available within the catchment, will remain uncatered for in the design year.

They draw the Board's attention to:

The established and existing retail convenience offer as serves the neighbourhood catchment is 'materially enhanced and modernised' rather than expanded to the detriment of the future of Portlaoise Town Centre.

The changing and emerging patterns of convenience retailing and business models, backed up by market research, which challenge the traditional consideration of petrol filling stations as supplementing convenience offer rather than undermining retail offer.

The nature of the objection and the objector who might be seen to seek to restrict competition.

The objector's global market share is contrasted with the applicant's local focus.

The well-spaced convenience store, in response to concerns of cramped conditions since Covid 19.

6.2.2. Responding to the grounds:

It is acknowledged that the word 'remove' is used but the intention of the proposed development is clear. A legal case is referred to.

Re. material contravention - the Development Management Guidelines, 2007 are quoted:

In deciding whether any development would materially contravene the plan, the authority should consider whether there would be a departure from a fundamental provision of the plan or whether the development – alone or in conjunction with others – would seriously prejudice an objective of the plan. If the answer is “no”, there is no statutory prohibition on the granting of permission.

Where the development would not seriously prejudice an objective of the plan, would not be necessarily opposed by local interests and is positively aligned with wider plan objectives, no material contravention occurs.

Re. that there is no guarantee that the existing filling station will be demolished if the proposed development is permitted; a planning application has been submitted for change of use to motor sales show room.

Submissions under the subject application and the change of use to motor sales show room make clear the link between the two proposals.

The land on which the two proposed developments are located are owned by the same owner. The planning pack OS map clearly indicates by blue line, the ownership and control over the co-existing land parcels, such as to enable the local authority to potentially impose by condition the cessation of the existing convenience store on first operation of the proposed convenience store.

Responding to the size of the forecourt store – that it exceeds 100sqm, requires a sequential assessment, the stated NRSA of 160 sq m is misleading, and the true extent is 252 sqm, and that it is an entirely unreasonable and inappropriate retail development. Large areas of non-standard stores such as convenience offers, associated with petrol filling stations, represent area not attributable to the calculation of 'retail impact'. Checkouts etc, referred to, are not solely for the sale of convenience goods, rather they are for the purchase of fuel and deli products more often than convenience goods alone or in combination. The third party would be fully aware of this scenario as it bases its business model along such blended uses and successfully presents a significant and potentially dominant market share in this regard. Competition is encouraged in the Retail Planning Guidelines. A revised Quantitative Retail Assessment was provided as further information. The net retail floorspace of 192 sqm used, is intentionally overcalculated, as opposed to net retail sales area. The requirement for a sequential site assessment, where the proposal results in the nullification of a pre-existing petrol filling / service facility, including a convenience outlet, is not deemed necessary and where the catchment population served presents suitable capacity for convenience floor space.

Traffic – regarding direct access from a roundabout, and that the size will result in it becoming a destination generating further traffic movements, and resulting in queuing at the roundabout. They commissioned an independent Roads Engineer to undertake a stage 1 & 2 Road Safety Audit and an Accessibility Audit as further information. The traffic is currently on the road network and the realignment of the road presents safety benefits. The importance and role of a service station is a markedly changing role within Market Town's of the size of Portlaoise. They serve

local catchments rather than becoming a destination source of traffic. Downey's (existing) provides shared trip movements and active transportation benefits associated with proximate residential development and neighbourhood shopping functions of Kilminchy neighbourhood centre.

Responding to need being questioned – given the existence of two existing filling stations and the need for such a large facility; if granted there would still be two filling stations. The proposed development is justified by road safety benefits, consolidation, regeneration and employment benefits associated with the improved use of under-utilised urban lands, additional beneficial services e.g. 6 EV charging points, meeting modern requirements. The only material difference is a net retail sales area (NRSA) increase of 16 sq m. in the new forecourt store. The proposed development does not materially challenge the status quo in the retail catchment.

Re. Loss of Industrial Development – the regenerative benefits that the proposals will bring will increase the attractiveness of the area, where no employment generating businesses are being displaced.

The lands are zoned general business. Lands associated with the Midway Service Station ref. 17/538 are zoned enterprise and employment; the Applegreen permission (ABP 300994, at Midway) is referred to, and their use of their floorspace is critiqued.

Emerging and Changing Patterns of Forecourt Retailing – referring to a KPMG (Ireland) Fuel Forecourt Retail Market Report, 2020. The document is attached to the response and referred to as presenting more up to date and emerging statistics than the 2012 Retail Planning Guidelines. It states that there is a transition away from traditional Petrol Filling Stations offering convenience goods for sale, towards retail outlets offering fuel for sale. There will be further transition with the reduction in fossil fuels and the necessity to adapt.

They summarise the document, referring to the impact of COVID on human interaction. Fuel now represents only 50% of the reason to visit the forecourt and will continue to fall; margins on convenience retailing are considerably higher than on fuel; new and innovative services are being offered. Forecourt retailer response – retailers need to change – to focus on performance, on cost reduction, revenue optimisation and diversification, and on customer experience; and to pursue strategies that prevent them becoming obsolete.

Quoting from the Retail Planning Guidelines for Planning Authorities:

Retailing is dynamic, it should be noted that new forms of retailing may evolve which are inadequately described by current terminology and should be assessed on their merits.

Retail development must follow the settlement hierarchy of the State and retail development should be appropriate to the scale and function of the settlement or part of the settlement in which it is located as designated by the NSS, relevant regional planning guidelines and development plan core strategies.

They state that the nature and form is appropriate to the scale and function of the area of Portlaoise as it provides a complementary neighbourhood shopping function to road users and the active transportation population catchment locally.

Retailing and Motor Fuel Stations - such shops should remain on a scale appropriate to the location, and their development should only be permitted where the shopping element of the station would not seriously undermine the approach to retail development in the development plan.

As supported by the Quantitative Retail Assessment, the scale is appropriate.

As retailing is dynamic, it should be noted that new forms of retailing may evolve which are inadequately described by current terminology, and should be assessed on their merits.

Emerging trends present the opportunity for the Board to assess the development on its merits.

Net Retail Floorspace – 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 concessionaires, 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 customer toilets.

Blurred functions associated with roadside and or neighbourhood retail services challenges the standard calculation of net retail floorspace.

Net retail floorspace is not easily applied to a multi-functional or non-standard form of retailing. The display of goods footprint is 51 sq m, the off-licence an additional 15.77 sq m, and shared circulation 96 sq m, sales kiosk 24.04 sq m, and entrance lobby 18 sq m, all utilised by blended users of the deli-counter, fuel sales and washroom facilities. These floor areas are not solely for convenience retail customers.

Retail assessments are undertaken on the basis of net retail sales area as opposed to net retail floorspace. Large areas of non-standard stores such as convenience offers associated with petrol filling stations, represent area not attributable to the calculation of 'retail impact'.

The motives of the third party highlight the emergence of a highly competitive retail forecourt sector, the existing trading patterns of the current store, which has operated locally for over 22 years, supports a local, neighbourhood catchment, without impacting on the core retail strategy of Laois County Council.

7.0 Assessment

7.1. I consider that the main issues which arise in relation to this appeal are as follows: appropriate assessment, material contravention / principle of the development, retail need, traffic, drainage & flood risk, and other issues, and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development, redevelopment of a serviced brownfield site, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.3. Material Contravention / Principle of Development

7.3.1. The grounds of appeal states that the proposed development materially contravenes the Portlaoise LAP 2014-24 as the proposed shop will be 160 sq m – in excess of the 100sq m threshold and not normally acceptable.

7.3.2. The applicant response refers to the Development Management Guidelines, 2007 regarding material contravention:

In deciding whether any development would materially contravene the plan, the authority should consider whether there would be a departure from a fundamental provision of the plan or whether the development – alone or in conjunction with others – would seriously prejudice an objective of the plan. If

the answer is “no”, there is no statutory prohibition on the granting of permission.

The applicant response states that where the development would not seriously prejudice an objective of the plan, would not be necessarily opposed by local interests and is positively aligned with wider plan objectives, no material contravention occurs.

- 7.3.3. The Portlaoise Local Area Plan 2018-2024 zones this area ‘General Business’. Per the zoning, convenience retail of less than 100 sq m, will normally be acceptable and convenience retail of more than 100 sq m will not normally be acceptable.
- 7.3.4. The Local Area Plan has been superceded by the Laois County Development Plan 2021-2027, wherein the subject site is zoned general business - objective - to provide for and improve commercial activities; to provide for commercial activities and acknowledge the existing/permitted retailing. The zoning similarly distinguishes between convenience retail of less than 100 sq m, and of more than 100 sq m floor area.
- 7.3.5. In my opinion a development not substantially in excess of the threshold in the plan, or where the development substitutes for an existing development and would not seriously prejudice an objective of the plan, would not materially contravene either the local area plan or the county development plan. Therefore, in my opinion, notwithstanding the use of the term ‘materially contravenes’ in the grounds of appeal, the Board is not constrained by the provisions of Section 37(2) of the Planning and Development Act 2000 as amended.
- 7.3.6. Subject to detailed considerations including retail need the proposed development is acceptable in principle.

7.4. Retail Need

- 7.4.1. As pointed out in the grounds of appeal, the proposed development is in excess of the 100sq m threshold for retail associated with filling stations and therefore not normally acceptable. The appellants consider that the fact that it is replacing an existing filling station on a different site is irrelevant.
- 7.4.2. I am persuaded by the applicant’s response that the fact that it is replacing an existing filling station on a different site, in such close proximity, is relevant. Other

considerations include the changing format of filling station services and customer requirements post COVID for more spacious and less cramped conditions. I am also convinced by the argument that the outlet will serve a local residential area. The area north of the Dublin Road has been a focus of residential development over the past decade or more and it's convenience retail needs are, at least in part, served by outlets along the Dublin Road. The county development plan provides for additional floorspace requirements over the period to 2027, including 7,798 m² of convenience floorspace. Portlaoise is to be the focus of retail development.

- 7.4.3. I am satisfied that conditions can be imposed to ensure that the proposed development will replace the existing filling station and its retail area, and that the proposed development will not impact adversely on the town centre of Portlaoise, or otherwise conflict with the retail policies of the county development plan or local area plan. Retail need should not be a reason to refuse or modify the proposed development.

7.5. Traffic

- 7.5.1. The grounds of appeal questions the need for the filling station, given that there are already two filling stations in situ, within a relatively close distance, on either side of the road, or the need for such a large filling station, notwithstanding the intention that one of these stations will be closed. It states that accessing a filling station from a roundabout is a highly unorthodox and unusual arrangement. Given its scale it is likely that it will become a destination and likely to generate significant traffic movements, giving rise to concerns about queuing back onto the roundabout. A previous Board decision to refuse a filling station, on a roundabout, is referenced.
- 7.5.2. The replacement of an existing filling station, close by, on the same side of the road, appears to me to offer sufficient justification of the need for the proposed development.
- 7.5.3. The provision of a roundabout at the front of the site, from which access will be gained, supports the planning authority in providing an improved junction between Colliers Lane and the Dublin Road. The proposed development has been assessed by Roads Design and the Municipal Engineer who are satisfied with the access arrangements.

7.5.4. The location c2.4km from the M7 ensures that it will not become a destination which impacts on the use of the motorway.

7.5.5. I consider that traffic should not be a reason to refuse or modify the proposed development.

7.6. **Drainage & Flood Risk**

7.7. Surface Water

7.7.1. The existing and proposed foul and storm water drainage in the area are shown on drawing number 20.112.240 Rev PL01, submitted to the planning authority on the 16th February 2022.

7.7.2. An existing 1400mm storm culvert runs parallel to the north eastern boundary within adjoining lands. It is proposed to provide a surface water system to connect with this culvert in the public roadway at the north-eastern corner of the site. A proposed drain is shown collecting surface water from the yard at the rear, running along the car wash area (with silt trap), and along the proposed roadway (near the western boundary), then north east, where two petrol interceptors and an underground attenuation system are to be located in the north eastern part of the site, with final discharge to the culvert.

7.7.3. The proposed car wash is to be provided with rainwater harvesting and water recycling.

7.8. Foul Sewerage

7.8.1. A foul water sewer which currently runs parallel to the north-eastern boundary within the site is to be diverted south westwards across the site and along the proposed roadway to an existing manhole in the public road, at the south-western corner of the site.

7.8.2. Drawing number 20.112.240 Rev PL01, shows a finished floor level for the proposed service station building of 104.40, which is the same as the finished floor level of the existing building, but lower than the cover level of some of the service manholes within the site.

7.9. Risk of Flooding

7.9.1. The site is at risk of flooding. The development plan zoning map shown the flood risk, and the flood map for Portlaoise Local Area Plan 2018-2024, show the risk as 1 in 1000 or greater, which, per the document 'The Planning System and Flood Risk Management', is Zone B.

7.9.2. The Flood Risk Management guidelines state in relation to Zone B.

The site is not within the source protection area for Portlaoise water supply as defined on map 10.4 of the development plan.

There is a moderate probability of flooding. Highly vulnerable development, such as hospitals, residential care homes, Garda, fire and ambulance stations, dwelling houses and primary strategic transport and utilities infrastructure, would generally be considered inappropriate in this zone, unless the requirements of the Justification Test can be met. Less vulnerable development, such as retail, commercial and industrial uses, sites used for short-let for caravans and camping and secondary strategic transport and utilities infrastructure, and water-compatible development might be considered appropriate in this zone. In general however, less vulnerable development should only be considered in this zone if adequate lands or sites are not available in Zone C and subject to a flood risk assessment to the appropriate level of detail to demonstrate that flood risk to and from the development can or will adequately be managed.

Highly vulnerable development includes development where there is a potentially significant source of pollution in the event of flooding; considered inappropriate in Zone B.

7.9.3. The proposed development of a filling station with a car wash, includes multiple structures below ground level, such as fuel tanks, and petrol and sediment interceptors, which makes this a development which is a potentially significant source of pollution in the event of flooding. Notwithstanding that there is existing development on the site, the proposed change of use from a less vulnerable development, to a development which is a potentially significant source of pollution in the event of flooding, requires consideration of the flood risk presented.

7.9.4. This issue was not raised in the application documents; it is not raised in the grounds of appeal; and was mentioned only in passing in the planner's report. The Board may consider therefore that natural justice requires that the applicant be allowed to respond.

7.9.5. In my opinion, because of the additional risk posed by the proposed development, notwithstanding the less vulnerable development existing on the site, flood risk is a reason to refuse permission.

7.10. **Other**

7.10.1. It is stated that the public notices are legally flawed, because they refer to the 'removal' of an existing building on the site; not a recognised wording in planning legislation and should state 'demolition'. The notices are intended to inform the public. I am satisfied that the public were informed that the existing building would be removed / demolished and would no longer be on the site. I don't see this as invalidating the application.

8.0 **Recommendation**

8.1.1. In accordance with the foregoing I recommend that the proposed development be refused, for the following reasons and considerations.

9.0 **Reasons and Considerations**

The site is in an area which is at risk of flooding. The proposed development which is a potentially significant source of pollution in the event of flooding, would, in the absence of detailed mitigation measures and detailed justification of the risk, be contrary to the proper planning and sustainable development of the area.

Planning Inspector

2 March 2023

Appendices:

Appendix 1 Photographs

Appendix 2 Laois County Development Plan 2021-2027, extracts.

Appendix 3 Portlaoise Local Area Plan 2018-2024, extracts.

Appendix 4 Retail Planning Guidelines for Planning Authorities, 2012, extracts.

Appendix 5 The Planning System and Flood Risk Management, Guidelines, extracts.