



An
Bord
Pleanála

Inspector's Report

ABP-317614-23

Development

Retention permission to complete a Supermarket previously approved under ABP-308213-20; works to the Fuel Filling Station previously approved under ABP-306850-20; a two-storey building previously approved under ABP-310047-21; connections to water and wastewater infrastructure at R358 College Road; permission for pump islands, pumps and forecourt canopy, permitted under ABP-306850-20 and ABP-310047-21; and omit Condition 3 of permission Reg. Ref. No. 06/3886 (ABP PL07.221318 as extended pursuant to Reg. Ref. Nos. 12/1428, 17/1699 and 21/2091.

Location

Treanrevagh, Mountbellew, Co. Galway.

Planning Authority

Galway County Council.

Planning Authority Reg. Ref.

23177.

Applicant(s)

Cahermorris Developments Ltd.

Type of Application	Retention Permission and Permission.
Planning Authority Decision	Grant Retention Permission and Grant Permission.
Type of Appeal	Third Party versus decision.
Appellant(s)	1. Liam Madden. 2. Barry McCormack.
Observer(s)	None.
Date of Site Inspection	3 May 2024.
Inspector	Stephen Rhys Thomas.

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1.0 Site Location and Description

- 1.1. The appeal site, with a stated area of 1.27 hectares, is located in the village of Mountbellew in east County Galway. The site is part of a larger landholding that is subject to existing permissions that include, retail, a wastewater treatment plant and housing. The site is located within the 50km/h speed limit on College Road R358 which runs east from the centre of Mountbellew. The site is situated 300m east of the central village square at the junction of the N63 Roscommon Road and R358. The appeal site relates to a portion on the southern fringe of the overall development site adjacent to the R358.
- 1.2. The lands are in various stages of construction with an Aldi foodstore complete and operational, an enclosed construction compound is located to the north. South east of the site is a two-storey residential property and Mountbellew Agricultural College is located to the east of this. The Holy Rosary College secondary school is located to the west of the site. On the opposite side of the R358 to the south west are individual detached properties predominantly in residential use with some operating commercial / service uses.
- 1.3. With reference to those items that are the subject of the appeal, the two storey filling station forecourt portion of the current foodstore is complete and awaits internal fit out. The petrol filling station forecourt area is more or less complete and awaits the installation of all above ground elements such as fuel pumps and a canopy. All footpath, dropped kerbs and roads in the vicinity of the site are completed to a high standard.

2.0 Proposed Development

- 2.1. The application seeks to retain certain features and apply for a permission to complete the filling station and to omit a planning condition, the detail is as follows:
 1. Retention permission for the works carried out after 31 December 2021 and permitted by Reg. Ref. No. 20/384 (ABP-308213-20), works include; staff room, meeting room and plant room at first floor level, external plant and elevations, canopy, trolley rack, building fit-out, signage, soft and hard

landscaping, surface car park and complete the previously approved Supermarket.

2. Retain works at the Fuel Filling Station permitted by Reg. Ref. No. 19/1699 (ABP-306850-20), works include the formation of the site accesses and forecourt layout, the construction of a boundary wall and footpaths, lighting, soft and hard landscaping and all associated works.
3. Retain a two-storey building (514 sq. m. gross floor area) approved under Reg. Ref. No. 20/1799 (ABP-310047-21) this building serves the Fuel Filling Station, the building comprises (i) a retail shop (100 sq. m. net retail floor area); (ii) hot food/deli counter and seating area (126 sq. m. total floor area) to include the sale of hot and cold food for consumption on and off the premises, cold room, store, lift and ATM all at ground floor level; (iii) overflow seating, toilets, staff room, cash office and storage at first floor level and all associated works.
4. Retain connections to water and wastewater infrastructure at R358 College Road.

Permission is sought for the following:

1. Permission for the construction of pump islands, pumps and forecourt canopy, delivery set down area, service bay fit out, tank offset fill delivery points, the placement of final macadam layer and forecourt surface, main ID signage and fascia signage necessary to complete a Fuel Filling Station previously approved under permissions Reg. Ref. No. 19/1699 (ABP-306850-20) and Reg. Ref. No. 20/1799 (ABP-310047-21); and
2. Permission to omit Condition 3 of permission Reg. Ref. No. 06/3886 (ABP PL07.221318 as extended pursuant to Reg. Ref. Nos. 12/1428, 17/1699 and 21/2091. Condition 3 limits the occupation of any building or dwelling until the on site wastewater treatment plant has been commissioned.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to issue a notification to grant permission, subject to four conditions, all of which are standard or technical in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The basis for the planning authority's decision can be summarised as follows:

- Planning history is set out in detail.
- Development plan policies and objectives are highlighted.
- No requirement for an EIAR, and screened out for AA.
- In terms of roads, water services and visual impact, the development is all acceptable, grant permission.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

Uisce Éireann – connection offer.

3.4. Third Party Observations

- 3.4.1. The issues raised in the four observations to the planning application are similar to those raised in the grounds of appeal. Additional issues raised include fire and explosion risk, locating a fast food outlet near a school, overall scale of development and traffic concerns.

4.0 Planning History

4.1. Site:

PA ref 06/3886 and ABP PL07.221318 – Permission for a mixed development to include 37 houses, 9 no. apartments, 15 no. retail units, 8 no. office medical, creche, cafe and all associated services and site works. December 2007

3. (a) No construction shall begin until the planning authority confirms in writing the commencement of works to upgrade the wastewater treatment plant.

(b) No house or building shall be occupied until the planning authority confirms in writing that the wastewater treatment plant has been commissioned.

Reason: In the interest of public health.

This permission was prolonged by PA ref 12/1428, 17/1699 and 21/2091. The last duration of permission was set to expire on the 31st December 2023.

PA ref 181210 and ABP ref PL07.304043 – Permission refused for a change of plans from retail units and apartment units, to a fuel filling station with underground fuel storage tanks.

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

PA ref 19/1699 and ABP-306850-20 – Permission for a partial change of plans from retail units and apartment units to a fuel filling station. The application included a Natura Impact Statement. October 2020, relevant condition includes:

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permissions granted on the 10th day of December 2009 under appeal reference number PL 07.221318 (planning register reference number 06/3886), as extended under planning register reference numbers 12/1428 and 17/1699, and any agreements entered thereunder. This permission shall expire on the 31st day of December 2021.

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

PA ref 20/384 and ABP-308213-20 – Permission for Alterations to Blocks B & C previously permitted under Pl. Ref. No's 06/3886, 12/1428 & 17/1699. January 2021, relevant condition includes:

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permissions granted on the 10th day of December, 2009 under An Bord Pleanála appeal reference number PL 07.221318 (planning register reference number 06/3886), as extended under planning register reference numbers 12/1428 and 17/1699, and any agreements entered thereunder. This permission shall expire on the 31st day of December, 2021.

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

PA ref 20/1799 and ABP-310047-21 – Permission for a two-storey building to serve the approved fuel filling station (Reg. Ref. No. 19/1699 ABP Ref. No. ABP - 306850-20) and the provision of a delivery set down area at the west side of the forecourt. The proposed building comprises (1) a retail shop, (2) hot food/deli counter and seating area. January 2022, relevant condition includes:

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permissions granted on the 10th day of December 2009

under An Bord Pleanála appeal reference number PL 07.221318 (planning register reference number 06/3886), as extended under planning register reference numbers 12/1428 and 17/1699, and any agreements entered thereunder, and in particular, ABP-306850-20 (PA ref: 19/1699) which ties the subject permission to the fuel filling station. This permission shall expire on the 31st day of December 2021.

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

PA ref 21/2486 – Permission for alterations to Aldi store currently under construction. February 2022.

PA ref 2361219 and ABP Ref ABP-319267-24 - Construction of 39 houses and all associated site works. No decision to date.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The **Galway County Development Plan 2022 -2028** is the operative statutory plan for the area. Relevant chapters and sections include:

Section 5.10.4 Petrol Filling Stations

Policy Objective CSA 10 - Retailing and Associated Petrol Stations

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

DM Standard 21: Petrol Filling Stations

In assessing planning applications for service stations, the following considerations will be taken into account:

- The preferred location for petrol filling stations is within the 50-60kph speed limit of all settlements.

- Forecourt Store/Retail unit associated with a petrol filling station should generally not exceed 100sqm net floor area. Where an increase in this standard is sought the Sequential Approach to retail development shall apply i.e. the retail element shall be assessed similar to an application for a standalone retail development in the same location.
- Forecourt shops should be designed and sited to facilitate safe pedestrian and bicycle access, with unimpeded access for delivery vehicles. The safety aspects of circulation and parking within the station forecourt should be demonstrated fully (i.e., Autotrack Analysis, TTA and Safety Audit).
- A low wall of an approximate height of 0.6 metres shall be constructed along the frontage with allowance for two access points each 8 metres wide.
- Design and layout of service stations and forecourts should be of high-quality and integrate with the surrounding built environment. In urban centres, where the development would be likely to have a significant impact on the historic or architectural character of the area, the use of standard corporate designs and signage may not be acceptable.
- Forecourt lighting, including canopy lighting, should be contained within the site and should not interfere with the amenities of the area.
- Ancillary services such as car wash services should be sited so as not to result in queueing onto the public road network or negatively impact on neighbouring residential amenities.
- Rapid EV charging point(s) should be provided and clearly demarcated with appropriate signage, in collaboration with ESB networks.
- Service stations and associated truck parking facilities in locations at or near national roads will be assessed having regard to the Spatial Planning and National Roads Guidelines for Planning Authorities (2012).
- Proposals for new on-line or off-line motorway service facilities will be assessed in accordance with the guidance set out in the TII Service Area Policy (2014).

5.2. Natural Heritage Designations

- 5.2.1. The site is located 2.2 km south of the Carrownagappul Bog SAC (001242) and 13.4km from the River Suck Callows SPA (004097). The applicant has prepared an AA Screening Report.

5.3. EIA Screening

- 5.3.1. Having regard to nature and scale of the development, which is a combination of amendments to a permitted development and completion of a partially constructed facility, and given the built-up location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required, see appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Two third parties have appealed the notification to grant permission issued by Galway County Council and can be summarised as follows:
- Invalid application – site notices were not in accordance with the regulations, being located on a private road, on a white background not yellow, and all for three different applications. The red line boundary is incorrect and does not include wastewater or stormwater connections in the public road. Other planning applications have since been granted in the vicinity of the site and are not referenced in this application.
 - Public Health Schools – no assessment has been made of venting of fuel fumes and the proximity of a school.
 - Public Health Wastewater/stormwater –the removal of condition 3 will mean that waste will discharge to the municipal treatment system that is already over capacity. At present, there is no wastewater treatment plant on the site and this would lead to a health risk. The development should not be permitted

until the new municipal wastewater treatment plant for Mountbellew is operational.

- Flood Risk – no assessment has taken place of the hard surfaces involved with development to be retained. No assessment has been made of the pollution impacts to a large constructed lake 70 metres from the site.
- Premature Decision – the entire development is unauthorised and so a decision cannot be legally made.
- Duration of permission -the development that has been completed is different to that permitted, the entire site is unauthorised. There are no more extensions to permissions, previous permissions all expired on the 31 December 2023.
- Appropriate Assessment – the NIS screening is not robust and must take account of direct hydrological connections. AA screening cannot be carried out for works already completed and to be retained. A full NIS was submitted with PA ref 19/1699 (ABP 206850), this means that the current application should require full AA, and this can only be achieved by an application for substitute consent.
- Development Plan – Mountbellew has no settlement status in the development plan and this is because of the dysfunctional wastewater treatment plant that is over capacity, permission for more development should not be allowed.

Both appellants are highly critical of the processes deployed in all of the previous applications/permissions by both the planning authority and the Board. Both appellants raise legal and environmental issues and broadly question the administrative correctness of the planning application.

6.2. Applicant Response

The applicant's response to the appeal contains many of the issues set out in the planning application, new information can be summarised as follows:

- For clarity, works carried out before 31 December 2021 were permitted, those works carried out afterwards are now due for retention.

- Hydraulic/biological load on the municipal treatment plant has not increased when the removal of a convent and house are taken into account, Irish Water agreed with this position, most recently in relation to connection offer dated 24 March 2022.
- Neither EIA or AA is required for the development proposed and can be screened out. NIS Mitigation works required in relation to 19/1699 were carried out and the current proposals for retention do not entail mitigation measures and so can be screened out.
- No enforcement action has been taken by the planning authority to date, there is no unauthorised development on the site.
- Updated planning history includes – 23/177 permission granted for a glazed lobby, and 23/60139 permission for 35 houses. In relation to the houses, the capacity of the municipal wastewater treatment system was queried and onsite treatment facilities were accepted.

6.3. Planning Authority Response

None.

6.4. Observations

None.

6.5. Further Responses

- 6.5.1. The third party response to the other third party appeal can be summarised as generally in agreement with all the matters raised especially with regard to the municipal wastewater treatment plant deficiencies of Mountbellew.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues as they have been raised and ordered in the grounds of appeal can be dealt with under the following headings:

- Principle of Development
- Public Health
- Surface Water
- Other Matters
- Appropriate Assessment

7.2. **Principle of Development**

- 7.2.1. The site is located in the village of Mountbellew in East Galway, close to the junction of College Road with the R358. Mountbellew is not mentioned in the current development plan as a settlement with any particular designation. However, the village has a sizable population, with primary and secondary schools, an agricultural college and numerous commercial and social premises. The petrol filling station already has permission and is mostly complete, I consider that the relevant policy objective of the current statutory plan is Policy Objective CSA 10 - Retailing and Associated Petrol Stations and to guide development is DM Standard 21: Petrol Filling Stations. In that context, the development is within the 50-60kph speed limit, the retail element is exactly 100 sqm and the forecourt design is of a high quality. The only item omitted is the provision of a Rapid EV charging point(s) and this can be sought by a suitably worded condition. I am satisfied that the development meets the requirements of petrol filling stations and is acceptable at this location. Permission has already been sought and consented to on appeal, the principle and location for a petrol filling station has been accepted and this appeal seeks to retain final portions of that development and permission to install the final elements of the scheme in order to allow the premises to operate.
- 7.2.2. The appeal site has a lengthy planning history where the principle of a petrol filling station, ancillary retail and other commercial development has already been

approved, section 4.0 of my report refers. The appellants are frustrated about the number of applications on this site and the number of times permission has been extended. In addition, appellants are doubtful whether those previous permissions stand and how the current application can rely on permissions that have now withered.

7.2.3. I note that numerous permissions for development on this site have been permitted with a limited lifespan to that of the parent permission and with a date of 31st December 2021. This is the central point of the appellant's grounds of appeal that relate to the standing of the current application and the appeal before the Board. Matters are further complicated by a permission to prolong PA ref 06/3886 and ABP PL07.221318 until the 31st December 2023. This permission to extend the duration of the 'parent permission' is interesting not least because the petrol filling station does not form part of that initial proposal, it comes later, PA ref 19/1699 and PA ref 20/1799. However, all permissions that are relevant are tied back to PA ref 06/3886 by condition 2 of various Board Orders, I have set out each condition in section 4.0 above. Nevertheless, it is far from ideal the way that consent and development has progressed on this site. I do acknowledge the difficulties and obstacles encountered by the applicant in each of the applications made, and I note the frustrations exerted by the appellants. It is not the Board's role to tidy up a complicated and lengthy planning history and I note that both the planning authority and the Board accepted and validated each case as it was made. If the appellants have serious concerns about the development as it now stands, then the route to enforcement action through the planning authority is open to them.

7.2.4. The current appeal before the Board is for the completion of a development that has already been permitted. Construction works began and faltered, permissions came and went and now the applicant is attempting to regularise matters. I am satisfied that the appeal before the board is the appropriate mechanism to straighten things out and I accept that the principle of a petrol filling station and ancillary development is entirely appropriate at this location as demonstrated by the planning history of the site and the works that have already commenced and been completed to date. Furthermore, from my observations of the site, an Aldi foodstore is already in operation, works to start housing have begun and most of the groundworks to do with the petrol filling station have already been started. It is the finishing touches,

such as internal fit out of the forecourt building, the installation of dispensing pumps, signage and a canopy that now await consent. Given the foregoing, I am satisfied that the completion of the filling station is entirely appropriate at this location and permission should be granted.

7.3. Public Health

- 7.3.1. The appellants have concerns about public health and proximity to local schools. It is considered that no assessment has been made of venting of fuel fumes and the proximity of a school. In addition, appellants have concerns about the removal of condition 3 and what it will mean in terms of wastewater discharge to a municipal treatment system that is already over capacity. At present, there is no wastewater treatment plant on the site and this would lead to a health risk. The development should not be permitted until the new municipal wastewater treatment plant for Mountbellew is operational. The appellants also note that Mountbellew has no settlement status in the development plan and this is because of the dysfunctional wastewater treatment plant that is over capacity, permission for more development should not be allowed.
- 7.3.2. With reference to emissions from a fuel filling station, I am satisfied that all these matters were adequately addressed by the previous application that permitted same. Likewise, in this instance I consider that it would be beyond the scope of this forum to consider vented emissions from a fuel filling station as they are matters best dealt with outside the planning act and accompanying regulations. Any operator of a fuel filling station would be required to comply with whatever acts and regulations govern matters to do with dangerous substances such as flammable liquids and fuels and the retail of same to the public, the Dangerous Substances (Flammable Liquids and Fuels Retail Stores) Regulations, 2019 (S.I. No. 630 of 2019) may refer in this instance. In any case it is not within the Board's purview to regulate matters to do with the sale of fuels to propel vehicles, in this instance it is unwarranted to attach a condition to ensure such compliance.
- 7.3.3. I note the concerns raised by third-party appellants in terms of the capacity of the public water services to accommodate the proposed development. In this regard, the Board will note that the permitted development at the site includes the installation of a private (temporary) wastewater treatment system to accommodate the

development until such time as the Mountbellew WWTP has been upgraded. The applicant wishes to omit Condition 3 of permission Reg. Ref. No. 06/3886 (ABP PL07.221318 as extended pursuant to Reg. Ref. Nos. 12/1428, 17/1699 and 21/2091) and this is related to public health issues.

- 7.3.4. It is my understanding that Condition 3 limits the occupation of any building or dwelling until the on site wastewater treatment plant has been commissioned, note the wording of condition 3(b) as follows:

(b) No house or building shall be occupied until the planning authority confirms in writing that the wastewater treatment plant has been commissioned.

The intention of the development permitted under ABP PL07.221318, involved a temporary wastewater treatment plant discharging to the public mains pending the upgrade of the public treatment system in Mountbellew. Since this initial permission, various others have amended and extended the life of permitted development on the site, all have been linked back to the 'parent permission'. However, improvements are yet to be made to the Mountbellew WWTP despite a ten year permission issued by the Board in August 2022 for upgrades to wastewater facilities, ABP-310144-21 refers. The timeline for the delivery of municipal wastewater treatment improvements are not known to me. The applicant explains in their response to the appeal that the connection of the Aldi Store and Petrol Station have been agreed with Uisce Éireann, connection agreements have been reached and payments made. The flow rates from the developments the subject of this appeal have been accepted by Uisce Éireann and drawing number 3021 shows the connection points along College Road. In his regard I note the Connection Offer from Uisce Éireann dated 24 March 2022, confirming the feasibility of connection and setting out various terms and conditions.

- 7.3.5. I am not satisfied that it is still relevant and necessary to rely on an aspect of the overall development of these lands for infrastructure designed to accommodate a far greater volume of wastewater generated, vis a vis the housing component of the overall scheme. In addition, I anticipate administrative difficulties in referring back to an application permitted more than 17 years ago and that has been amended and extended many times since.
- 7.3.6. I am satisfied that an appropriately worded condition can be attached to this appeal that ensures that only those elements sought to be retained or for which permission

is sought, come under the umbrella of this permission. Hence, the 'parent permission' remains unchanged in my eyes and would still require onsite wastewater treatment as necessary, in that context I note a currently appeal yet to be decided that concerns 39 dwellings and a wastewater connection to the public system, ABP-319267-24 refers. I am satisfied that Uisce Éireann matters can be dealt with by way of condition in the event of a grant of planning permission.

7.4. Surface Water

- 7.4.1. Appellants are concerned that no assessment has taken place of the hard surfaces involved with the development to be retained and how this might impact flood risk. No assessment has been made of the potential pollution impacts to a large lake 70 metres from the site. I note that all previous appeals on this site did not raise any issues with regard to flood risk or the surface water management of the site. Conditions were attached to previous permissions that relate to surface water management being in accordance with the requirements of the planning authority.
- 7.4.2. In terms of designated sites, I note that the NIS that accompanied ABP-304043-19 (Change of plans from retail units and apartment units, to a fuel filling station with underground fuel storage tanks) and ABP-306850-20 (Partial change of plans from retail units and apartment units to a fuel filling station). In the case of the latter, assessment of issues that concerned the identified risk of surface water contaminated by pollutants from the fuel filling station, that could reach the Castlegar River and ultimately the River Suck were dealt with. Conclusions reached in the assessment of that appeal were that owing to the surface water management, storm water drainage and best practice construction and operational details, and the separation distance involved meant that the likelihood of significant effects on the water quality of the SPA is low. The applicant explains that the filling station component of the development has been completed and so too have the measures outlined in the NIS. I am satisfied that the final steps in the completion of this development should accord with the surface water drainage requirements of the planning authority and the matter of flood or pollution risks are simply not present in this proposal now before the Board.

7.5. Other Matters

- 7.5.1. Invalid application – The appellant has raised a number of planning application procedural issues that include the following: site notices were not in accordance with the regulations, site notices located on a private road, on a white background not yellow, and all for three different applications. The red line boundary is incorrect and does not include wastewater or stormwater connections in the public road. Other planning applications have since been granted in the vicinity of the site and are not referenced in this application. I understand the appellant's frustration with the way in which this site and adjacent lands have been developed and planned for development. However, in relation to the appeal on hand, the planning application was lodged with the planning authority and validated by them. The planning application was duly assessed, and a permission issued. I have no reason to revisit the planning application process as it was carried out with the planning authority. I am satisfied that a valid application was lodged with the planning authority and now awaits a decision on appeal with the Board. The site is outlined in red and planning notices have alerted observers and consequently the appellants to the nature and extent of development proposed. Finally, the connections to the public wastewater network are shown as within the ownership of the applicant, outlined in blue, and this is acceptable.
- 7.5.2. Premature Decision – The appellants point out that the entire development is unauthorised and so a decision cannot be legally made. I am not so certain that this is the case. The applicant has detailed how the development of the site has progressed and been interrupted over the years since the initial permission and subsequent 'amending' permissions. This represents an unfortunate sequence of events and ones that now the applicant seeks to remedy. From my observations of the site, I can see that a significant portion of the development is complete save for those elements sought for permission in this appeal, i.e. pumps, canopy and signage. I am satisfied that a decision can be made by the Board on this appeal as all relevant matters have been addressed in the documentation submitted by the planning authority and the applicant.
- 7.5.3. Duration of permission -The appellants argue that the development that has been completed is different to that permitted, and that the entire site is unauthorised. It is their belief that there are no more extensions to permissions, previous permissions all expired on the 31 December 2023. The applicant takes a different approach and

states that works were carried out in accordance with permissions and that circumstances meant that not all of the site could be completed in time. It is the applicant's contention that seeking permission for retention for those works already started is not really necessary, they are just being extremely cautious.

- 7.5.4. The Board will note that third-party appellants submit that the development has not been commenced and cannot be substantially complete by the permission expiry date. As such, it is considered that a grant of planning permission would facilitate unauthorised development. I also note the concerns raised that the permitted development is unlikely to meet current development management guidelines or current, national, regional or local planning policy and should be fundamentally reassessed.
- 7.5.5. With regard to the above, I note the relevant conditions attached to the previous grants of planning permission associated with the site. I also note that development has commenced at the site and is substantially completed. Compliance with conditions, and indeed, the extension of the duration of the grant of planning permission on the site, are matters for the Planning Authority. In that context no mention is made either by the appellants or the planning authority of any enforcement action or orders relevant to this site or any of the previous permissions. I am satisfied that those elements of the previous permissions are either completed or substantially completed within their respective timeframes. I am also satisfied that the appeal before the Board addresses the minor portion of the overall development to be completed, i.e. those elements of the filling station that will allow it to eventually operate as intended.
- 7.5.6. Issues raised by observers to the initial planning application – I note that fire and explosion risk, locating a fast food outlet near a school, the overall scale of development and traffic concerns were all raised by observers to the initial planning application. None of these issues have been revisited by the appellants and have not been raised by fresh observations to the appeal before the Board. I note that permission has already been granted for a filling station and similar concerns were assessed during those appeals, permission was ultimately granted.
- 7.5.7. A new development plan is now in place since permission was initially granted for the filling station and its ancillary retail services. I note the single issue raised about

fast food outlets and proximity to schools and the impact for children's health is something new in county development plan. The current development plan has a policy objective in place, EDU 6 Fast food outlets located close to schools refers. This policy objective seeks to give careful consideration to the appropriateness and location of fast food outlets in the vicinity of schools so as to protect the health and wellbeing of school-going children. In this respect, the village centre and all of its facilities (fast food included) are located a similar distance to the west at The Square as the proposed filling station and its ancillary retail area that is located to the east. I am satisfied that policy objective EDU 6 is adequately addressed and complied with, and no further action is required.

7.6. Appropriate Assessment

- 7.6.1. I note that appellants have raised issues with regard to the NIS (AA) screening and that it is not robust and must take account of direct hydrological connections. The appellants note that AA screening cannot be carried out for works already completed and to be retained. Finally, appellants highlight that a full NIS was submitted with PA ref 19/1699 (ABP-206850), this means that the current application should require full AA, and this can only be achieved by an application for substitute consent.
- 7.6.2. First of all, permission has been granted for urban development that has, in part, been carried out and substantially completed. Specifically, I note that a Natura Impact Statement was submitted as part of the documentation assessed by the Board under ABP-306850-20. In this regard the applicant states that NIS Mitigation works required in relation to 19/1699 (ABP-306850-20) were carried out and the current proposals for retention do not entail mitigation measures and so can be screened out. In addition, I note that subsequent appeals were subject to AA Screening to which the conclusions reached were that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site, most recently ABP-310047-21 refers. The current application seeks to permit by retention some works that were carried out after the duration of the permission had expired, namely: reference numbers ABP-308213-20, ABP-306850-20 and ABP-310047-21. This is largely due to each subsequent permission tying back timeframes to a 'parent permission' ABP reference number PL 07.221318 refers. It is unnecessary for an application for substitute consent in these limited circumstances where application for permission was accompanied by an NIS

and fully assessed with regard to designated sites and granted in the first place, and now substantially complete.

- 7.6.3. The current application seeks permission for the construction of pump islands, pumps, forecourt canopy, signage and ancillary works. All of these elements formed part of previous permissions that have already been subjected to AA Screening and/or the rigours of an NIS. In addition, I note that in this instance the planning authority carried out an AA Screening exercise and concluded that there would be no adverse affects to the integrity of designated sites.
- 7.6.4. I have considered the limited and minor scale completion of an already constructed mixed use development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The urban nature development is located on an urban and serviced site where the the closest Natura 2000 site is the Carrowmagappul Bog SAC (001242) 2.2 kilometres to the north and the River Suck Callows SPA (004097) 13.4 kilometres to the east. The site is not located within any designated site. The proposed development is not directly connected with or necessary to the management of a European site. I am satisfied that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and whilst screening concerning the need for Appropriate Assessment is required, Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required, appendix 2 of my report refers.

8.0 Recommendation

- 8.1. Having regard to the above assessment, and based on the following reasons and considerations, it is recommended that permission be granted subject to conditions.

9.0 Reasons and Considerations

Having regard to the Galway County Development Plan 2022 -2028, and the scale and nature of the proposed development, the pattern of existing and permitted development in the area, it is considered that subject to the conditions set out below, that the proposed development would not seriously injure the amenities of property

in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and visual amenity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be completed and retained in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) This Order relates to the retention works already carried out and the proposed works illustrated by drawing reference DWG 3 and entitled Proposed Site Layout to be Retained and Completed and related plans and elevations, and the connections to water and wastewater infrastructure at R358 set out within the ownership details illustrated by drawing entitled Land Registry Compliant Map and detailed in drawing number 3021 entitled Proposed Site Layout proposed Drainage and Watermain Layout.

(b) This Order does not permit or refer to the omission of Condition 3 of permission Reg. Ref. No. 06/3886 (ABP PL07.221318).

Reason: In the interest of clarity.

3. All lighting within the site shall be directed and cowled so as not to interfere with passing traffic or the adjoining residential properties.

Reason: In the interest of residential amenity and traffic safety.

4. Details including samples of the materials, colours and textures of all the external finishes to the proposed structures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

5. A comprehensive boundary/entrance treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority. This scheme shall include the following: -

(a) details of boundary/entrance treatments along the southern boundary of the site adjoining the public road, including heights, materials and finishes; and

(b) Details of boundary treatments and landscaping measures for the remainder of the site.

Upon receipt of written agreement from the planning authority the applicant shall fully implement the approved details within 6 months unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity and traffic safety.

6. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. No surface water from the proposed development, shall discharge onto the public road or adjoining properties.

Drainage details shall be submitted to and agreed in writing with the planning authority, within six months of this Order, and the developer shall submit written confirmation, accompanied by photographs, to demonstrate that said works have been satisfactorily undertaken.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

7. The road works associated with the proposed development, including the setting out of the entrances, paving and surface finishes, shall be carried out and completed in accordance with the requirements of the planning authority. Pedestrian crossing

facilities shall be provided at all junctions. Prior to commencement of development, full details of works to the public road and public realm shall be submitted to and agreed in writing with the planning authority. All works shall be carried out at the developer's expense.

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

8. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 hours to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

9. At least one Rapid EV charging point(s) shall be provided at a suitable location within the site and shall be operational prior to commencement of operation of the proposed filling station. Details of the location of this facility shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

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

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

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

11. No advertisement or advertisement structure, other than those shown on the drawings submitted with the application, shall be erected or displayed on the canopy on the forecourt building or anywhere within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

12. The hours of operation of petrol forecourt shall be between 0700 hours and 2300 hours.

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

13. The developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann, prior to commencement of development.

Reason: In the interest of public health.

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

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

15. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

16. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal

of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

17. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Stephen Rhys Thomas
Senior Planning Inspector

21 May 2024

Appendix 1 - Form 1 EIA Pre-Screening

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-317614-23		
Proposed Development Summary	Retention permission to complete a Supermarket previously approved under ABP-308213-20; works to the Fuel Filling Station previously approved under ABP-306850-20; a two-storey building previously approved under ABP-310047-21; connections to water and wastewater infrastructure at R358 College Road; pump islands, pumps and forecourt canopy, permitted under ABP-306850-20 and ABP-310047-21; Permission to omit Condition 3 of permission Reg. Ref. No. 06/3886 (ABP PL07.221318 as extended pursuant to Reg. Ref. Nos. 12/1428, 17/1699 and 21/2091		
Development Address	Treanrevagh, Mountbellew, Co. Galway		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
	Threshold	Comment (if relevant)	Conclusion

No	✓	10. Infrastructure projects, (b) (iv) Urban development which would involve 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.	The application seeks to retain works to a permitted Supermarket, Fuel Filling station, a two-storey building, connections to water and wastewater infrastructure at R358 College Road, and Permission for pump islands, pumps and forecourt canopy, Permission to omit Condition 3 of permission Reg. Ref. No. 06/3886 (ABP PL07.221318, all on a site of 1.27 Hectares outside of the business district area. The scale of development falls well below the threshold set out in the column over.	No EIAR or Preliminary Examination required.
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	✓	It is unnecessary for the submission of Schedule 7A information, considering the limited scale and nature of this urban development.
Yes		

Inspector: _____ **Date:** _____

Appendix 2 Screening the need for Appropriate Assessment

Template 1: Screening the need for Appropriate Assessment

Screening Determination

I have considered the mixed use urban development, in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located in the village of Mountbellew on an existing mixed use urban site, the nearest European Site(s) are the Carrownagappul Bog SAC (001242) 2.2 kilometres to the north and the River Suck Callows SPA (004097) 13.4 kilometres to the east.

The proposed development comprises permission to retain works to complete a Supermarket previously approved under ABP-308213-20; works to the Fuel Filling Station previously approved under ABP-306850-20; a two-storey building previously approved under ABP-310047-21; connections to water and wastewater infrastructure at R358 College Road; permission for pump islands, pumps and forecourt canopy, permitted under ABP-306850-20 and ABP-310047-21; and omit Condition 3 of permission Reg. Ref. No. 06/3886 (ABP PL07.221318 as extended pursuant to Reg. Ref. Nos. 12/1428, 17/1699 and 21/2091.

Nature conservation concerns were raised in the planning appeal and their relevance are addressed at section 7.8 of my report.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- the small scale and urban nature of the development,
- the location and long distance from nearest European sites and a lack of connections,
- taking into account the screening report prepared by the local planning authority,

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.