Derry City and Strabane District Council Planning Committee Report

COMMITTEE DATE: 12th May 2015

APPLICATION No: A/2014/0487/F

APPLICATION TYPE: Full

PROPOSAL: Relocation of existing sub-standard filling station, including shop, ancillary storage, carwash, vehicle parking, bunkering and landscaping. (Amended scheme to previously approved A/2012/0327/RM)

LOCATION: Land adjacent to Broadbridge Primary School, Coolfinny Road, Eglinton

APPLICANT: Maxol Oil Ltd

AGENT: Clarman & Co

ADVERTISEMENT/STATUTORY EXPIRY: 08.10.2014/29.10.2014

REASON FOR PRESENTATION TO COMMITTEE: More than 5 objections received

RECOMMENDATION: Approve

Details of the planning application, including the plans, can be accessed at the Planning Portal weblink.

1. Description of Proposed Development
   Relocation of existing sub-standard filling station, including shop, ancillary storage, carwash, vehicle parking, bunkering and landscaping. (Amended scheme to previously approved A/2012/0327/RM).

2. Site and Surrounding Area (Site visit date, Description of Site and surrounding area)
   Flat gradient site adjacent to Broadbridge Primary School. The north east boundary (Coolafinney Road) is defined by a continuous band of trees with a pedestrian footway immediately adjacent. The north western boundary (shared boundary with Broadbridge Primary School) is defined by intermittent vegetation, the remaining boundaries are undefined. The recently realigned A2 Dual carriageway/Clooney Road runs along the southern boundary of the site. At present the facility is under construction with the majority of the shop and forecourt completed.
   The site lies outside the development limits of any settlement as defined by the Derry Area Plan 2011.

3. Site Constraints (Flood Plain, ASSI etc)
   No specific site constraints
4. Neighbour Notification Report (Can print from MIS reports and attach)

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6. Relevant Site History

A/2009/0472/O- Relocation of existing sub-standard filling station, including shop, ancillary storage, car wash, vehicle parking and landscaping. Approved 9/11/12
A/2012/0327/RM- Approval
These approvals are extant and works have commenced on site.

7. Policy Framework

Derry Area Plan 2011
PPS1 General Principles
PPS 3 Access, Movement and Parking
PPS 5 Retailing and Town Centres
PPS21 Sustainable development in the Countryside
A Planning Strategy for Rural Northern Ireland (PSRNI) as the site is outside any settlement limits. Policy IC15 of the PRSNI (not superseded by PPS21) provides the policy context for this application.
Supplementary guidance contained in DCAN 12- Planning Control for hazardous Substances and DCAN 15- Vehicular Access Standards

8. Consultee Responses, Internal/External

Transport NI- Conditions and Informative provided for DOE consideration
Environmental Health- & EHD Petroleum Licensing Inspectorate
Northern Ireland Water- Informatives
NIEA Historic Monument Unit - was not consulted in respect of this application. The reason is that an assessment of archaeological potential was carried out in accordance with policy BH3 OF PPS6 at outline stage. This assessment covered a larger area than is covered by the application and no archaeological remains were discovered. I therefore consider it unnecessary to further consult NIEA.

DOE Minerals Unit - on behalf of the local offices, DoE Planning- Minerals Unit consults with the Health and Safety Executive Northern Ireland re: the distance a development proposal is located from a major hazard installation, and BGE(NI) re: proximity of the development to the northwest gas pipeline. Minerals Unit calculates the requirement for hazardous substance consent. The following responses were received:

Minerals Unit - carried out an aggregate sum using the information provided on the P1A form and advises that hazardous substance consent is not required in this case.
HSENI - is a statutory consultee for certain developments within the consultation distance of major hazard installations. The major hazard installation in this case is identified as the gas pipeline which is in close proximity to the site. HSENI recommends that the Department contact the pipeline operator before deciding the case; the pipeline operator is BGE(ni) and Minerals unit contacted BGE(NI) on behalf of the local office (see below). The HSENI response received in respect of the current application is in consideration of the amendments now proposed to the earlier approved applications. As the alterations to the shop floor area do not exceed 250sqm, HSENI does not advise against the development.
BGE(NI) advises that the development falls outside the permanent wayleave (7m either side of the pipeline) and the proposed amendment to the development will not compromise the safety and integrity of the pipeline in this location.

9. Representations Consideration
19 objections including a petition, were received in respect of the application. It is important to note planning permission has already been granted for a filling station and car wash under A/2012/0327/RM and many of the issues raised were considered as part of that application. Nevertheless the planning authority must consider all objections placed before them. The issues raised have been summarised and addressed below:

Need for hazardous substance consent:
Under application ref: A/2009/0472/O the Department consulted the Health and Safety Executive NI (HSENI). HSENI advised that hazardous substance consent was not required for the quantity of LPG to be stored on site. HSENI also stated that on the basis of the information provided with the outline application they did not advise against the development. Whilst recognising that the application proposed the siting of flammable material storage beside a primary school, it was not in the power of HSENI to advise against this. They suggested that advice be sought from the Petroleum Licensing Officer of the DCC, which the Department did. No objection was raised by the Petroleum Licensing Officer.

Under the current application (ref: A/2014/0487/F) comment was sought from Health and Safety Executive for Northern Ireland (HSENI) and BGE(Northern Ireland). Having considered the amendments proposed under this application, against the initial proposal, HSENI does not advise against the development as the shop floor area is not increased above 250sqm. BGE(NI) has assessed the proposal in relation to its proximity to the North West gas pipeline. A 7m wayleave is established either side of the pipeline and the proposed development falls outside this permanent wayleave. The proposed amendments will not compromise the safety and integrity of the pipeline in this location. Minerals Unit having considering the information provided in form P1A (quantities of substances to be stored on site) advises that hazardous substance consent is not required.

Health and safety issues:
Tyres exploding when being inflated
Petrol fumes – childhood leukaemia and respiratory disorders
Negative impact on general school environment - as this is not specific in nature it is difficult to comment.

Acoustic fencing has not been provided in accordance with condition 3 - this matter was investigated by the enforcement team and whilst at the time of the objection there was a breach of the condition, this has now been resolved and the applicant is in compliance with the condition of the previous approval.

Negative impact on amenity space used by children- no specific amenity issue raised so it is difficult to comment.

Risk of explosion-The premise is subject to a license issued by the Council under the Petroleum (Consolidation) Act (Northern Ireland) 1929 in workplaces that store and dispense petrol. The premises are also regulated under the Health and Safety at Work (Northern
Noise pollution on classrooms and external amenity space – Environmental Health Department have been consulted in respect of the proposal and the previous approval. The applicant of a planning application is obliged to demonstrate that the likelihood to cause detrimental impact on amenity of ‘sensitive receptors’ through noise pollution is addressed through the incorporation of noise mitigation measures recommended by an acoustic consultant employed on behalf of the applicant. This department advises the Planning Service of such noise mitigation measures that need to be implemented to protect amenity based on the acoustic consultant’s noise assessment and findings. This department advised the Planning Service that it was satisfied that the information submitted by the applicant’s consultant in relation to Planning Application A/2012/0327/RM demonstrated that noise generated from plant, activity at the commercial unit and traffic could be controlled to acceptable levels provided the necessary noise mitigation measures were incorporated into the site development.

A daytime and evening target noise level was determined at the classroom façade and was based on a background noise survey carried out by acoustic consultants, FR Mark Associates within the school grounds. The target level determined would ensure compliance with BB93 the Design Guide for schools which recommends that the maximum ambient noise levels in classrooms should not exceed 35 dB LAeq 30 mins and that the maximum ambient noise levels in external playing areas should not exceed 55dB LAeq 30 mins.

The current Noise Impact Assessment report prepared by Envest Environmental concludes that the HGV parking area will increase the noise levels above acceptable levels resulting in the requirement for further mitigation measures along the common boundary with the school. The current report is recommending less mitigation measures than the FR Mark Associates Noise report which outlined the requirement for both Acoustic fencing and densely landscaped embankments.

The Noise Assessment report from acoustic consultancy Envest Environmental Ltd included a noise impact assessment to assess the potential additional noise impact of the provision of additional Heavy Goods Vehicle (HGV) parking on the site. The report included proposed mitigation measures recommended in relation to the noise impact of vehicle activities in the HGV/lorry parking area. Reference was made in the report from Envest to the previously prepared noise impact assessment report commissioned by FR Mark & Associates dated May 2013 and this included a baseline Noise Survey, noise limit recommendations, noise impact assessment and acoustic mitigation measures. The predicted noise impact at the nearest classrooms of Broadbridge Primary School was compared against the recommended noise limit. The Envest Report recommended additional mitigation measures. These mitigation measures included the following as detailed in Section 3.2 Recommended Additional Noise Mitigation Measures of Noise Impact Assessment Report:–

- Perimeter noise barrier to extend a distance of 37.5m at a height of 2m behind the proposed earth bunds from the boundary with Coolafinny Road
- Perimeter noise barrier to extend for a further 50m at a height of 2.75m from a distance of 37.5m from the boundary with Coolafinny Road
- Perimeter noise barrier to have a minimum density of 25kg/m²

The report concluded that the proposed noise mitigation measures would not allow exceedance of the target noise level based on a worst-case 1 hour level of usage of the Petrol
Filling Station, including the car wash operations, refuelling, HGV parking and plant and equipment operations.

These mitigation measures were in addition to the measures included in Environmental Health’s consultation response dated 9 October 2013 to Planning Application A/2012/0327/RM and included the following:-

- A 75m long 2m high acoustic barrier along the site north west boundary with the school
- A 3m high earth mound
- An additional acoustic barrier

(As detailed on DOE stamp approved drawing no 17 Rev 01). The acoustic barriers to be constructed either of masonry, timber panelling (close lapped with no gaps) or of earth and to have a minimum self-weight of 25kg/m².

The landscaping is part of the development proposal as submitted by the applicant outlined in Drawing no 17 Rev 01 and includes dense planting to be provided to mounds situated on the boundary with the school. Therefore I am satisfied Environmental Health have considered the potential noise impact from the proposal and that adequate measures are in place to mitigate against detrimental impact.

The current Noise report does not take into account the committed Planning Application (A/2014/0587/F)

Planning Application Ref. A/2014/0587/F) is in reference to Broadbridge Primary School. The noise report from Envest Environmental Ltd considered the impact of noise at the façade of the nearest classrooms at Broadbridge Primary School in relation to the site development at Broadbridge Filling Station. It is for the applicant of planning application A/2014/0587/F to ensure that the school development meets with the appropriate acoustic design standards as included in the Department of Education Acoustic Design of Schools: performance standards and other relevant standards in meeting with current Building Control regulations.

The department has to appreciate that it is not acceptable to have approved a scheme which required extensive noise mitigation measures along the common boundary with a school environment and that it is not acceptable to be subjecting the Primary school to increased noise levels from a HGV parking area for years to come. The department needs to ensure that the area of the filling station site does not expand beyond the area approved under A/2012/0327/RM

I refer to our previous comments and proposed conditions based on submitted noise assessments including the proposed HGV parking area which with mitigation has been demonstrated to meet target noise levels and associated noise levels recommended in BB93 the Design Guide for Schools. This application before us is to expand the area to include parking area and foot way, so all matters will be considered.

Noise from car wash - the location of the carwash was fully considered under the reserved matters application and consultation carried out with Environmental Health. It was considered that mitigation in the form of acoustic fencing could ameliorate any noise impact and further assessment would be necessary prior to the car wash becoming commercially operational to ensure operation within agreed noise limits (condition 2 · & 3).

Pollution from vehicles – Whilst it is accepted that the new will application increase traffic movements in the vicinity there is no evidence to suggest it would create any significant level of pollution.
Air pollution- The proposed petrol filling station has stage II petrol vapour recovery in place so that fumes from car filling operations are recovered to the main petrol storage tanks. The operation requires a permit from the Council under The Pollution Prevention and Control (Industrial Emissions) Regulations 2013 for petrol vapour recovery if the annual throughput of petrol exceeds 500m$^3$.

Government Policy is recommending that children in schools should not be subjected to sources of air pollution and that air quality should be a consideration when assessing Planning Applications. The scheme approved when operational will generate thousands of vehicle movements per week which in turn will lower the air quality within the school site. The Department cannot justify approving an increase in the area of the filling station site for HGV parking.

As part of Councils review and assessment of Air Quality relevant exposure to specific pollutants has to be considered. For petrol stations technical guidance looks at the potential exposure to benzene from petrol filling operations where the throughput of petrol is more than 200m$^3$. As indicated previously stage II petrol vapour recovery is in place. For review and assessment purposes the technical guidance suggests where stage II petrol vapour recovery is in place no review and assessment of air quality is needed. It is unlikely due to the relative low background pollutant levels in the area that air quality objectives would be breached, however this department will continue to review and assess air quality in accordance with government guidance. It is noted that within NI there is no specific planning guidance on planning and air quality.

General pollution: this is not specific in nature so it is difficult to comment.

Security of existing school - (it is assumed this objection is in respect of the school building) regardless of any development approved or operational beside the school, security remains a management matter for the school. The location of the school, bounded on 3 sides by public road networks already exposes it to public attention. It is possible that the presence of the filling station may afford more surveillance of the building particularly during out of school hours and term time.

Security of children – regardless of any development approved or operational beside the school, child security remains a management matter for the school.

Privacy and child protection issues: this remains a management matter for the school.

Noise from the Car wash – to assist us with our consideration in respect of car wash noise, the Department consulted the Environmental Health Department of Derry City Council. This aspect has already been approved under A/2012/0327/RM

Site selection – the Planning Authority must give consideration to the site as proposed by an applicant. If having considered all material matters the Planning Authority has no reason to refuse the application then it must be approved. Under the 2009 application, having taken into consideration all comments provided by our expert consultees, especially environmental health and the health and safety executive, the Department considered that it had no sustainable reason to refuse the application. A major material consideration in this particular application would be the planning history and that the fact that previous applications have been granted permission for the same use at the same site.
**Retail provision**: para 56 of PPS5 (Petrol Filling Stations) states net retail floorspace should not be more than 250sqm (my emphasis). The key is net floorspace; the requirement is for net retail floor space to measure 250sqm and plans indicate this requirement is met.

Plans indicate that the increase is to provide a food service and seating area measuring approx 39sqm. This use is classified in the Planning (Use Classes Order) (NI) 2004 as a sui generis use i.e. a use not falling within any specific use class. This is distinct from retailing which is classified under Class A1. As both uses are distinct as defined by the Use Classes Order, condition 4 (which details items suitable for sale in the premises) of the outline approval (A/2009/0472/O) is not offended. Furthermore it is not considered that the increase in floor area to provide the seating area conflicts with condition 5 of outline approval ref: A/2009/0472/O which relates to net retail floor space. To control any change in use from food/seating area to retail, a condition can be applied to the grant of any permission, stipulating that the reason for such a condition is to ensure the comparison function of the neighbouring town centre is not adversely affected by this development.

**The commencement of development without the benefit of planning permission**- The commencement of development without the benefit of planning permission is not an offence. However the applicant is proceeding at his own risk as there can be no guarantee that planning permission once applied for will be forthcoming. It is also the case that there is an extant planning permission for a petrol filling station that will persist regardless of the outcome of this application. It is not a requirement that the applicant await the outcome of this application before commencing development in respect of works for which permission is granted. Objectors advise that works have commenced on site without compliance with reserved matters conditions which were required to be implemented in advance of others, specifically condition 2 re: provision of acoustic fencing this matter. Enforcement Section has investigated this alleged breach of condition and have concluded that the condition has now been complied with.

**Expansion of site area to provide lorry parking**

Concerns have been raised that the proposed expansion of the site are to provide lorry parking will be contrary to health and safety and will have an impact on the safety of children entering the site. As this is a new element distinct from the previous approval consideration should be given to its acceptability.

The purpose of the lorry parking area is to allow lorry drivers an area to park and rest so that they can comply with other statutory duties relating to breaks etc. Transport NI have advised that the alternative is that lorries park along the carriageway, which in their professional opinion may be prejudicial to road users. As such in an overall context this may be considered to be a more acceptable solution in the wider public interest.

With respect to the site specific issues raised by applicant Transport NI have advised that the HGV parking is to Departmental Standard and that TransportNI have no concerns re parking and servicing. Parking standards are based Planning Service supplementary guidance Petrol Filling Station

1 space per pump plus 1 waiting space per pump plus appropriately located parking for retail shop as per shopping standard Operational Parking space for discharging petrol tanker Retail as per shopping standard.

**Shopping standard**

**Food retail**

1 space per 14m2 GFA

1 lorry space per 750m2
Non-food retail
1 space per 20 m2 GFA
1 lorry space per 750m2

Parking Turning and servicing for all vehicles likely to be attracted to the site has been designed in accordance with Departmental standards.

Substandard proposals for pedestrians
The provision of a footpath from the rear of the filling station to the old Coolafinney Road is another element of this proposal that differs from the previous approvals. The objectors have raised concerns that this proposed footway poses a real danger for the general public and the children of Broadbridge Primary School. The objection is based on the premise that existence of the footway will lead pedestrians from filling station to a busy ‘line of traffic’ to the rear of the site. They also stated that an alternative exists, which in their opinion would present a safer option. The alternative would be to provide a pedestrian access from the front of the filling station which from onto the new Coolafinney Road and lead towards Eglinton Village.

Transport NI have been consulted in respect of the application and have not raised any concerns in relation to road and pedestrian safety with the proposed layout as submitted as by the applicant. Furthermore they have met with the objectors and have had sight of all their objections on this matter. They have advised that they have no objections and have provided conditions and informatives.

In respect of the specific objections they have responded as follows;

- TransportNI attended a meeting with Planning NI, Derry City Council, the Agent for the developer, the school principal and the parent/objector on 8 Dec 2014.

- TransportNI outlined that the proposed linkage from the Filling Station would provide a pedestrian link to the existing footway provision to/from the village and also the pedestrian footbridge that has been provided as part of the A2 Dualling in order to provide a safe pedestrian access to the school/village from lands on Northern side of the Dual carriage.

- TransportNI are satisfied that the link footway from the Filling Station provides a link for pedestrians to/from the village, lands/properties to the North and the school.

- The provision of a footway along the new road line to the filling station/shop if provided may encourage pedestrians to proceed onto the roundabout or to use the roundabout to cross the dual carriageway a movement that would be prejudicial to pedestrian safety.
As such it is clear that the professional opinion of Transport NI is that there are no issues in relation to the safety of pedestrians with respect to the proposed footway. Furthermore they have advised that the alternative proposed by the objectors would be prejudicial to road safety.

10. Planning Assessment and Other Material Considerations

The proposal is for the relocation of existing sub-standard filling station, including shop, ancillary storage, carwash, vehicle parking, bunkering and landscaping. (Amended scheme to previously approved A/2012/0327/RM). The position and design of the proposed filling
station, the position of the car wash, ancillary storage, the bunkering and landscaping have largely been considered in the previously approved application and as such I will concentrate on the amendments in this application.

The current application proposes 3 major amendments to the extant approvals granted under A/2009/0472/O and A/2012/0327/RM. The amendments comprise:

a) Increase site area to provide:
   - Pedestrian access between filling station and old Coolafinney Road
   - Provision of lorry parking area to rear of station

b) Increase floor area of the associated building to provide a food server

I will consider each of the matters raised individually;

Pedestrian access between filling station and old Coolafinney Road

As previously stated objections have been raised in relation to proposed pedestrian access from the rear of the filling station to the old Coolafinney Road. The objection centres on the relationship of the new filling station and the existing primary school at Broadbridge and how that will change if this proposed pedestrian link is allowed. It is the belief of the objectors that the new link will encourage a number of scenarios, which they believe are unsafe for the public in general and in particular for the school children of the adjacent school. These include;

- the new path will encourage the drop off and pick up of pupils in the forecourt of the station, which is not a safe environment for children.
- the new path will lead children to a busy route along the old Coolafinney Road.

Further to the above objection they have presented what they believe to a safer alternative. They have proposed that the pedestrian path should enter and exit the front of the site and should be along the new carriageway leading to the Eglinton.

A meeting was held in December 2014 to facilitate discussion of concerns expressed by parents and the school principal around provision of safe pedestrian access to and from the site. The meeting was also attended by an agent for the application and representatives from Transportni and Environmental Health. Parents and the school principal are concerned that a failure to provide a footpath along the frontage of the site thereby facilitating safe passage back towards Eglinton, will result in danger to children. Their position is that the proposed pedestrian path should not be provided, if the path along the site frontage cannot be provided. The agent agreed to discuss this matter with this clients and responded by email to the Department on 16th December advising that the pedestrian link as proposed will remain.

Transport NI have also raised concerns in relation to the proposal of the objectors and have stated that the provision of a footway along the new road line to the filling station/shop may if provided encourage pedestrians to proceed onto the roundabout or to use the roundabout to cross the dual carriageway a movement that would be prejudicial to pedestrian safety. As such the only proposal on the table is the pedestrian link as submitted in the application. Planning Policy Statement 3 Access, Movement and Parking provides the policy context for roads matters. Transport NI have not raised any concerns in relation to the safety of pedestrians and road users if the pedestrian access as proposed is approved.

On balance I am not satisfied that is has been demonstrated that the proposed path would be intrinsically unsafe for pedestrian users and therefore I would recommend this aspect of the proposal to be acceptable.
Provision of lorry parking area to rear of station

Under the current proposal the site has been extended to include a new area to rear of the station for the provision of parking for lorries/HGVs. Transport NI have advised that the area has been designed to Departmental standards and that they have no objections to it.

Objections have been raised in relation to impact of health and safety and safety of children in relation to this element. This objection is linked to the provision of the new foot path in that pedestrians using the new foot way will have to cross an area of the forecourt where lorries and HGVs will be accessing the new parking area. The proposed plan shows a pedestrian zebra crossing within the site at this point. Whilst it is accepted that pedestrians will have to negotiate a 10m stretch, I believe that the provision of the zebra crossing and the imposition of a condition to provide warning signs would be adequate provision to make lorry drivers and pedestrians aware of any dangers.

Objections have also been raised in relation to noise. In particular the objections have highlighted that the current Noise Impact Assessment report prepared by Envest Environmental concludes that the HGV parking area will increase the noise levels above acceptable levels resulting in the requirement for further mitigation measures along the common boundary with the school. The current report is recommending less mitigation measures than the FR Mark Associates Noise report which outlined the requirement for both Acoustic fencing and densely landscaped embankments.

The Noise Assessment report from acoustic consultancy Envest Environmental Ltd included a noise impact assessment to assess the potential additional noise impact of the provision of additional Heavy Goods Vehicle (HGV) parking on the site. The report included proposed mitigation measures recommended in relation to the noise impact of vehicle activities in the HGV/lorry parking area. Reference was made in the report from Envest to the previously prepared noise impact assessment report commissioned by FR Mark & Associates dated May 2013 and this included a baseline Noise Survey, noise limit recommendations, noise impact assessment and acoustic mitigation measures. The predicted noise impact at the nearest classrooms of Broadbridge Primary School was compared against the recommended noise limit.

The Envest Report recommended additional mitigation measures.

These mitigation measures included the following as detailed in Section 3.2 Recommended Additional Noise Mitigation Measures of Noise Impact Assessment Report:-

- Perimeter noise barrier to extend a distance of 37.5m at a height of 2m behind the proposed earth bunds from the boundary with Coolafinny Road
- Perimeter noise barrier to extend for a further 50m at a height of 2.75m from a distance of 37.5m from the boundary with Coolafinny Road
- Perimeter noise barrier to have a minimum density of 25kg/m²

The report concluded that the proposed noise mitigation measures would not allow exceedance of the target noise level based on a worst-case 1 hour level of usage of the Petrol Filling Station, including the car wash operations, refuelling, HGV parking and plant and equipment operations.

These mitigation measures were in addition to the measures included in our consultation response dated 9 October 2013 to Planning Application A/2012/0327/RM and included the following:-

- A 75m long 2m high acoustic barrier along the site north west boundary with the school
- A 3m high earth mound
- An additional acoustic barrier

(As detailed on DOE stamp approved drawing no 17 Rev 01). The acoustic barriers to be constructed either of masonry, timber panelling (close lapped with no gaps) or of earth and to have a minimum self-weight of 25kg/m².

The landscaping is part of the development proposal as submitted by the applicant outlined in Drawing no 17 Rev 01 and includes dense planting to be provided to mounds situated on the boundary with the school.

These additional measures can be conditioned as part of any approval and I believe them to be adequate measures to deal with the additional HGV area.

**Increase floor area of the associated building.**

Under the current application it is now proposed to provide a food servery and seating area approx 39sqm net floor area. Condition 5 of the outline approval restricted the net retail floor space of the shop to 250sqm. This condition is in accordance with para 56 of PPS5 which seeks to ensure that the shop remains ancillary to the use of the site a petrol filling station and to protect the vitality and viability of existing retail facilities in Eglinton. The reserved matters application indicated a net retail floor space which complied with this condition.

This use is classified in the Planning (Use Classes Order) (NI) 2004 as a sui generis use i.e. a use not falling within any specific use class. This is distinct from retailing which is classified under Class A1. As both uses are distinct as defined by the Use Classes Order, condition 4 (which details items suitable for sale in the premises) of the outline approval (A/2009/0472/O) is not offended.

Furthermore it is not considered that the increase in floor area to provide the seating area conflicts with condition 5 of outline approval ref: A/2009/0472/O which relates to net retail floor space. To control any subsequent change in use from food/seating area to retail, a condition can be applied to the grant of any permission, stipulating that the reason for such a condition is to ensure the comparison function of the neighbouring town centre is not adversely affected by this development.

**11. Conclusion and Recommendation**

The principle of siting a petrol filling station and car wash have been previously considered and accepted in planning decision A/2012/0327/RM. As such the 3 matters as outlined above are the material factors to be considered in this case. In relation to the proposed path and HGV parking area I do not believe that is has satisfactorily demonstrated that these proposed amendments will be contrary to planning policy or will be prejudicial to the safety of road user or pedestrians. In relation to the additional floorspace I believe that whilst the floorspace of the filling station has exceeded the recommended net retail floorspace, I do not believe that the nature or purpose of this area is for retail. In any case a condition can be applied. Overall it would my opinion that the 3 major amendments as proposed are acceptable in planning terms.

Having considered all material considerations before me including the development plan, planning policies, consultations, site history, representations from third parties and the applicant, I would recommend that the Planning Committee give consideration to my
professional report and my recommendation to grant planning full planning permission for this proposal.

12. Conditions

1) As required by Section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: Time Limit.

2) The food/servery seating area shall be used only be used for that purpose and for no other purpose as outlined in the Planning (Use Classes) Order (Northern Ireland) 2015.

Reason: To ensure that the area is not used for retailing and to protect the vitality and viability of existing retail facilities in Eglinton.

3) The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with approved drawings No’s 01 to No 14 bearing the date stamp 03 Oct 2014 prior to the commencement of any other development hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

4) The gradient of the access road shall not exceed 4% (1 in 25) over the first 10m outside the road boundary. Where the vehicular access crosses a footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road user.

5) Gates or security barriers at the access shall be located at a distance from the edge of the public road that will allow the largest expected vehicle to stop clear of the public road when the gates or barriers are closed.

Reason: To ensure waiting vehicles do not encroach onto the carriageway.

6) The development hereby permitted shall not become operational until hard surfaced areas have been constructed and permanently marked in accordance with the approved Drawings No’s 01 to No 14 bearing the date stamp 03 Oct 2014 to provide adequate facilities for parking, servicing and circulating within the site. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.

Reason: To ensure that adequate provision has been made for parking, servicing and traffic circulation within the site.
7) The development hereby permitted shall be commenced until the road works indicated on:-Drawings No’s 01 to No 14 bearing the date stamp 03 Oct 2014 have been fully completed in accordance with the approved plans.

Reason: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the site are carried out at the appropriate time.

8) The development hereby permitted shall not be commenced until any highway structure/retaining wall/culvert requiring Technical Approval, as specified in the Roads (NI) Order 1993, has been approved and constructed in accordance with BD2 Technical Approval of Highways Structures : Volume 1: Design Manual for Roads and Bridges.

Reason: To ensure that the structure is designed and constructed in accordance with BD2 Technical Approval of Highways Structures: Volume 1: Design Manual for Roads and Bridges.

9) A detailed programme of works and any required / associated traffic management proposals shall be submitted to and agreed by Roads Service, prior to the commencement of any element of road works.

Reason: To facilitate the convenient movement of all road users and the orderly progress of work in the interests of road safety.

10) Subject to the above conditions, the development shall be carried out in accordance with the stamped approved Drawings No’s 01 to No 14 bearing the date stamp 03 Oct 2014.

Reason: To ensure the development is carried out in accordance with the approved plans.

11) No works shall commence on site until such times as detailed proposals for the proposed culvert, pipe size and invert level have been agreed with DARD, rivers Agency and submitted in writing to DRD Roads Service.

Reason: To ensure that adequate provision has been made for drainage.

12) Noise mitigation measures shall be incorporated in the design and construction of the development as detailed in Section 3.2 Recommended Additional Noise Mitigation Measures of Noise Impact Assessment Report prepared by Envest Environmental Ltd dated 05/01/2015.

Noise barrier along the western perimeter to be as follows:-
- From boundary with Coolafinny Road, perimeter noise barrier to extend a distance of 37.5m at a height of 2m behind the proposed earth bunds
- From a distance of 37.5m from the boundary with Coolafinny Road, perimeter noise barrier to extend for a further 50m at a height of 2.75m
- Total length of perimeter noise barrier to be 87.5m
- The perimeter noise barrier to have a minimum density of 25kg/m²

Reason: To protect amenity from the impact of noise.
13) If the carwash generates noise levels in excess of 67dBLAeq at 5m from both the entrance and exit of the carwash the applicant shall introduce noise mitigation measures; if necessary, to reduce noise to below 47dBLAeq 1hour at the facade of classroom P6B, the location of this classroom as shown on p.6 of the Noise Impact Assessment from FR Mark and Associates dated May 2013 and shall carry out additional noise monitoring and assessment to demonstrate that the necessary reduction in noise level has been achieved. A report detailing the findings of this additional monitoring and assessment shall be forwarded to the department for agreement.

Reason: To protect amenity against the impact of noise