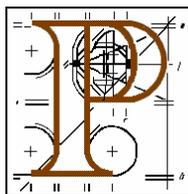


# An Bord Pleanála



## Inspector's Report

**Reference:** PL27.237400

**P.A. Reference:** 10/2123

**Title:** 10 no. date centre units, enclosed electrical compound, car parking, temporary wastewater treatment plant, associated works and new access road from the Ballyronan interchange.

**Location:** Mountkenedy and Tinnapark Demesnes, Co. Wicklow.

**Applicant:** Ecolo Data Centres Limited

**Appellants:** National Roads Authority  
Claus, Iris and Marc Michel

**Observers (x3):** Dick Roche, TD, Cllrs. David Grant, Nicky Kelly, John Snell

**Planning Authority:** Wicklow County Council

**Type of Appeal:** Third party against permission

**Decision:** Planning Permission granted with conditions

**Date of Site Visit:** 13<sup>th</sup> December 2010 and 12<sup>th</sup> January 2011

**Inspector:** Philip Davis

## **1. Introduction**

This appeal is by the National Roads Authority and local landowners against the decision of the planning authority to grant permission for a data centre on a site between Newtownmountkennedy and Kilpedder on the N11 in County Wicklow. The main grounds of appeal relate to traffic impacts, previous refusals by the Board on the site, and a variety of issues relating to current and proposed national and regional guidelines, the site location and the impact on protected structures.

## **2. Site Description**

Photographs of the site and environs are attached in the appendix to this report.

### **Newtownmountkennedy/Kilpedder**

Newtownmountkennedy is a town with a population of approximately 3,000 located in County Wicklow, some 35 km from Dublin and 6 km south west of Greystones. Kilpedder is a smaller village approximately 3 km to the north of Newtownmountkennedy. The settlements are divided by a large demesne and public woodland with no direct pedestrian connection between them. The N11 runs through Kilpedder and to the east of Newtownmountkennedy. A pedestrian bridge over the road links the two halves of Kilpedder. Access to Newtownmountkennedy by road from the N11 is from the Ballyronan Interchange. There is a small settlement at Ballyronan on the east side of the Interchange. Both main settlements are connected to Greystones, Bray, and the Dart via a regular bus service (Dublin Bus no. 184). The area is characterised by rolling hills, with levels rising steadily to the west up to the Wicklow Mountains. Newtownmountkennedy is primarily a local service town, but is within the commuting zone of larger settlements and Dublin city. There are a number of commercial and business uses in the area, including the headquarters of Coillte.

### **The site and environs**

The appeal site is an irregularly shaped site of approximately 32.84 hectares located north of Newtownmountkennedy and south-west of Kilpedder. It is currently in use for grazing, mainly horses at present. It is on a steady slope, rising steadily from the east (where it bounds the N11). It is within the former demesnelands of Mountkennedy House, a protected structure (there is the remains of a Motte next to the main house). There are mature beech trees along the southern boundary, along with a drained watercourse. Overhead powerlines intersect the site, running north to south. The site is bounded by a mix of wall, ditch, and fence. The site includes a wayleave some 250 metres long extending from the south-east, along part of the lands of Mountkennedy House, connecting with a roundabout (the Ballyronan Interchange) at a mixed grade junction on the N11. This part of the site runs thorough the main entrance to Newtownmountkennedy House just east of the gatehouse and gates. At the southern end it runs under the overhead power lines. The

remnants of the former Dublin road can be seen at parts between the boundaries of the site and the N11.

To the east of the site is the N11, a major highway, with some scattered commercial premises and housing opposite. North of the appeal site, and just beyond the high hedges marking the boundary, is a long private road running from the N11 to a minor country road to the west. This road provides access to Tinnepark House, the grounds of which are an organic farm. There is a farm shop attached to the house and a café (currently closed) next to the main house. To the north-east, there is the southern extent of Kilpeddar village. The closest part of the village is a terrace of what appear to be 19<sup>th</sup> Century dwellings and a public house.

West of the appeal site is farmland, a gravel pit (which currently seems to be out of use), with further farmland on land rising towards a ridge over looking the area.

South of the site is demesne lands (largely used for grazing) associated with Mount Kennedy House, a fine 18<sup>th</sup> Century mansion on high ground some 450 metres from the site. There is a motte and bailey next to the house, indicating the very early roots of the estate. The town of Newtownmounkenedy lies beyond the demesne – there is an area of public woodland between the built up area and the demesne.

### **3. Proposal**

The proposed development, as described on the site notice, is described as follows:

- i) Construction of an access road from the south western roundabout of the Ballyronan interchange to the site entrance.
- ii) Closure of an existing access to Mount Kennedy House (a Protected Structure) off the N11.
- iii) Construction of 10 no. identical two storey Data Centre units each measuring c. 10,915 m gross floor space.
- iv) An auxiliary cooling compound.
- v) An enclosed electrical compound providing for a future step down transformer from the existing 220/110Kv Overhead power line.
- vi) A primary dry cooling compound measuring 0.7 hectares in area housing dry cooling units.
- vii) Four no. heat exchanger buildings.
- viii) 250 no. car parking spaces.
- ix) A temporary wastewater treatment plant and percolation area.
- x) 1. no. main security hut.
- xi) Landscape berming and additional planting.

#### 4. Technical reports and other planning file correspondence

##### Planning application

The planning application, which included an EIS, plans and specifications, supporting documents, and a letter of consent from a landowner, was submitted to the planning authority on the 11<sup>th</sup> February 2010. Following a further information request, additional information was submitted on the 7<sup>th</sup> July 2010.

##### External correspondence

**An Taisce:** Detailed letter submitted the 9<sup>th</sup> March 2010 outlined concerns regarding protected structure, waste, habitats, water supply and infrastructure.

**Fisheries Ireland.** Letter dated March 10<sup>th</sup>, 2010 states that contrary to the statement in the EIS the stream on the site supports salmonid species. Water quality assessment in the EIS is stated to be out of date. A further item of correspondence (same date) from the Dublin District of Inland Fisheries Ireland queried data in the EIS regarding suspended solids. It also stated that it is important that the EPA Manual be followed in the implementation of the proposed treatment system.

**DoEHLG:** Letter dated 12<sup>th</sup> March notes presence of bat roosts and recommends a number of conditions. Further letter dated 16<sup>th</sup> March 2010 recommends conditions relating to archaeological monitoring.

**National Roads Authority:** Objects on the grounds that it is contrary to national policy with regard to frontage (26<sup>th</sup> March 2010). A further letter dated 13<sup>th</sup> April 2010 repeated that it is considered at variance with national policy. Following the submission of further information, the NRA stated that the Authority's position remains as previously stated.

**Environmental Protection Agency.** A letter dated 21<sup>st</sup> July 2010 stated that as the proposed development is not a licensable activity they have no comments.

**Claus, Iris and Mark Michel** – Detailed observation submitted.

**Alan Butler** of Dublin 12 – requests that the lands provide for employment opportunities (18<sup>th</sup> March 2010).

**Aine Burke** of Youghal Co. Cork (18<sup>th</sup> March 2020) – requests conditions relating to run-off and landscaping.

##### Interdepartmental correspondence and reports

**Water & Environment Services:** On the 1<sup>st</sup> March 2010 a memo internal to W&ES outlined a series of concerns regarding inadequacies in the application documentation. A memo to the planning department dated 9<sup>th</sup> March 2010 stated there was no objection subject to conditions. A memo from the Senior Executive Chemist recommended 7 no. conditions. Following the further

information submission a number of memorandums are on file recommending a variety of conditions.

**Roads Engineer:** A number of conditions requested regarding the connection to the Ballyronan Interchange (18<sup>th</sup> March 2010).

**Fire service:** A number of fire requirements under Building Regulations are outlined.

**Planners Report:** A detailed planning report recommended refusal for 4 no. reasons. A note from a senior officer on the report overruled this and recommended that additional information be sought on a number of items. A further planners report following the submission of additional information recommended conditions subject to 34 no. reasons, and the refusal of units 7, 8 and 9 for reasons relating to the location within the attendant grounds of a protected structure.

## 5. Planning Context

### Planning permissions – appeal site

A recent appeal against the decision of Wicklow County Council (**08/46**) to grant permission for a 194,000 square metre commercial (warehouse/ industrial) development on the site was withdrawn by the applicant before a decision was made (**PL27.233795**).

In August 2005 the Board, on appeal, overturned the decision of the planning authority (**03/9406**) to grant permission for an office, business and science and technology park with a gross floor area of just over 78,000 square metres. The 5 no. reasons for refusal relate to the Regional Planning Guidelines, the traffic impact on the N11; prematurity by way of a deficiency in water supply to the area; prematurity by way of a deficiency in sewerage facilities for the area; and the impact on the attendant grounds of a protected structure (**PL27.210160**).

### Planning permissions – general vicinity

In 2006 the Board granted approval for the Newtownmountkennedy and Kilcoole Regional Sewerage Scheme (**EF2019**).

### Development Plan

The site is zoned for a ‘Data Centre Facility’ in the Wicklow County Development Plan 2010-2016. Newtownmountkennedy is designated a level 4 ‘moderate’ growth town and Kilpedder is designated a level 7 centre (generally locally based industry only). Mount Kennedy House and Tinnapark House are protected structures and specific policies within the Development Plan refer to the need to protect mature trees within the grounds.

Extracts from the relevant Development Plan policies and other relevant policies are attached in the appendix to this report.

## 6. Decision

The planning authority decided to grant permission subject to 34 conditions. In addition, units 7, 8 and 9 were refused as they were considered visually intrusive with regard to the location within the attendant grounds of Mount Kennedy House (this repeats condition 6 of the permission).

Key conditions include condition 11, stating that a contract for the upgrading of the Ballyronan Interchange shall be signed prior to commencement, and there shall be no occupation of any unit until the Interchange has been upgraded. Condition 12 outlines a requirement for the agreement of alterations to the western roundabout of the Interchange and a requirement for a Stage 3 Road Safety Audit. Conditions 14 and 15 relate to public transport and pedestrian/cycling access. Conditions 17, 18 and 19 relates to the provision of a temporary treatment plant and percolation area.

## 7. Grounds of Appeal

### National Roads Authority:

- It is submitted that the proposed development is at variance with national policy with regard to controlling development along national roads and protecting the carrying capacity and safety of the network.
- It is argued in some detail that the proposed development is contrary to Regional Planning Guidelines and is inconsistent with the provisions of the Newtownmountkenedy Local Area Plan 2008 and the CDP. In relation to this it is submitted that the zoning of the lands was contrary to advice and good planning practice.
- It is submitted that the proposed upgrade works to the Ballyronan Interchange to not satisfy the requirements of the DoEHLG's Spatial Planning and National Roads (draft) Guidelines 2010. Reference is made to section 2.4 of these guidelines relating to capacity enhancements. It is noted that the proposed upgrade works may require separate statutory approvals. A number of detailed points are made with regard to what is considered a failure to consider wider aspect of any proposed upgrades to the junction and the lack of a proper framework strategy for road improvements in the area.
- It is submitted that the Traffic and Transport Assessment submitted is inadequate to accurately reflect the traffic impact of the proposed development. It is suggested that it assumes a high level of modal split with is questioned. It is also stated that it does not consider the cumulative impact of planned development in the area (other zoned areas are noted).
- The NRA noted the planning history of the site and submits that previous reasons for refusal by the Board are still relevant.

### **Claus, Iris and Marc Michel of Tinnapark House and Organic Farm**

- It is submitted that the decision to grant was taken after inadequate consideration – with particular regard to the apparent overruling of the original planners recommendation.
- It is submitted that it is contrary to the policies set out in the Regional Planning Guidelines for the Greater Dublin Area 2004-2016 and the current draft RPG. It notes that development outside designated areas should be strictly limited to local need – it is noted that neither Newtownmountkennedy nor Kilpedder are designated centres.
- It is argued that the proposed access would reduce the capacity of the Ballyronan Interchange and would lead to traffic hazard and a loss of screening due to the removal of vegetation. The NRA opposition to the proposal on traffic grounds is noted, in addition to previous refusals by the Board. It is submitted that condition 11 with regard to improvements to the interchange is inadequate as it does not include for other developments in the area and notes the NRA’s comments. It is also submitted that it is invalid as the condition cannot be discharged without NRA approval.
- It is argued that the proposed development, in particular the proposed access, would seriously impact on the setting of Tinnapark House and Mountkennedy House, and as such is contrary to the Architectural Heritage Protection Guidelines.
- It is submitted that the use of a temporary wastewater treatment system is unsuitable for such a large scale development and raises a possible impact on the candidate SAC and SPA at Kilcoole Marsh and the salmonid fishery. It is submitted that the proposed development is therefore premature pending further infrastructure provision in the area.
- It is argued that the proposed development is unsustainable in the context of the availability of zoned employment lands in the broader area, and it does not pass the sequential test. It is submitted that there is unlikely to be a demand for the proposed quantum of development at such a peripheral location.
- It is submitted that it will interfere with the access to Tinnapark House and farm. It is requested that if permission is to be granted a condition is set to require a connection the existing lane serving Tinnapark House and farm (where bollards are proposed by the applications).
- It is submitted that it will alter the character of the boundary with Tinnapark House and farm - a buffer zone is requested if the Board is minded to grant permission.
- Concern is expressed at possible impacts on groundwater – the appellants use wells to supply water to the farm.
- It is submitted that it impinges unacceptably on Tinnapark House (a protected structure).

## 8. Applicants response

### NRA appeal:

- It is submitted that the proposed development is a strategically important element in delivering services to the digital/software economy, and as such fulfils a number of national policies and requirements.
- In regard to the NRA appeal, it is noted that the NRA did not object to the original proposal, and suggests that the key concern of the NRA is the lack of consultation regarding proposals for the Interchange. A summary report by Moylan Consulting Engineers is submitted, which states that the total outward trips generated are a total of 276 vehicles during the three shift changes. It is submitted that it will therefore not have a significant impact on the adjoining road network.
- It is denied that the proposed development would compromise any policy objective of the NRA as it is proposed to privately fund the upgrading of the Interchange (drawing P500 submitted).
- It is noted that the junction is onto the R772 which is not a designated national road, with consequent access onto a grade separated junction.
- It is noted that the LAP and CDP predate the draft Spatial Planning and National Roads Guidelines 2010.
- It is argued in detail that all the requirements set out in the Guidelines with regard to access and connectivity and loading have been addressed in the design.
- It is argued that the proposal will significantly strengthen the existing road and public transport network and create a public cycle track. It is noted that the area is well served by public transport.
- It is argued in some detail that the proposal is in accordance with Regional Planning Guidance as it is of strategic importance and that Data Centre developments are restricted to sites with very specific requirements which cannot always be catered for in existing commercial zones. It is emphasised that it is fully in accordance with the CDP and LAP for the area (it is noted that Section 18(4) of the Act states that when a new CDP is adopted the LAP shall cease to have effect).
- It is argued that the proposal is not premature pending a reassessment of the N11 at this point as the anticipated traffic levels are within existing capacity levels – it is further noted that improvements to the junction can be carried out by way of development contribution (it is stated that a Section 48(2)(c) contribution would be acceptable).
- It is reiterated that they consider the TIA submitted to be based on reasonable criteria. It is argued that there are no objective criteria for considering that the proposal would compromise the carrying capacity of a national route.
- It is noted that the current proposal is significantly smaller in scale and different in nature from that previously refused permission.

### **Michel appeal:**

- A detailed table sets out the reasoning for the overturning of the original planning officers recommendation – in short, it was considered that all relevant objections were overcome in the revised information or was capable of being dealt with by way of condition.
- It is argued that the national importance of the proposed use and the zoning designation over rides any RPG policy objectives in regards to Moderate Growth Towns.
- It is submitted that following consultations with An Taisce, care was taken in the design of the buildings and landscaping to minimise any impact on the setting of the protected structures and the existing trees.
- It is noted that there were no objections to the proposal from any of the Engineering or Environmental sections of the council with regard to the provision of infrastructure.
- It is stated that the reason for the bollards on the access road to the north of the site is to ensure that no traffic is permitted to travel northward along the access road and onto the N11.
- It is stated that a planning condition regarding a detailed groundwater protection scheme would be acceptable.
- It is denied that there would be any significant impact on the setting of Tinnapark.
- It is concluded that the general concerns of the appellants can be addressed through planning conditions.

### **9. Planning authority's comments**

No response to the grounds of appeal on file.

### **10. Observers (public representatives)**

Separate observations were submitted as public representatives by Dick Roche TD, Cllr. David Grant, Cllr. John Snell and Cllr. Nicky Kelly.

In the four individual submissions they each emphasise that they support strongly the proposed development and submit that it will bring much needed jobs to the area. It is submitted that there is very strong support for the proposed development in the local community. It is argued that the zoning of the land is not contrary to advice from the DoEHLG or the RPG.

## **11. Further correspondence**

### **Michel appeal**

In further correspondence, in response to the applicants letter, the appellants made the following additional comments:

- It is argued that as the applicant did not appeal the condition removing four of the units, these should not be restated in the event of the Board deciding to grant permission.
- It is argued that if the proposed development is of major strategic importance, then it should have been submitted to the Board directly under the Strategic Infrastructure Act.
- It is claimed that more jobs would be created if the proposal was within a major centre with more possible spin-off benefits.
- It is submitted that the justification for such a large site has not been fully demonstrated.
- It is noted that the proposed upgrade works have not been approved by the NRA or the Council.
- It is argued that the link road is not 'plan led' and is generally and it is suggested that the link has few if any benefits for the area.
- Concerns about the proximity of the works to Tinnapark are restated.
- It is submitted that the proposal is ad-hoc and does not represent the type of plan-led development supported by the draft Spatial Planning and National Roads Guidelines.
- A letter is attached from the DoEHLG with regard to concerns about the rezoning of lands.
- It is restated that they consider the re-zoning of the lands to have been inappropriate.
- It is noted that the SEP in the internal memo had strong concerns about the impact on the nearby protected structures.

### **NRA**

- It is stated that the NRA has reviewed the assessment carried out by Wicklow County Council and does not concur with its conclusions. It considers the 2001 analysis (a study carried out by Buchanan and Partners) to be out of date. In particular it does not take account that there has not been the delivery on a number of proposed local roads in the meantime.
- It is considered that the decision of Wicklow County Council does not adhere to the provisions of the Policy Statement on Development Management and Access to National Roads (May, 2006), or to the recently published Spatial Planning and National Roads (draft) Guidelines.
- It is restated that the proposed development is considered premature pending agreement on the required upgrade works on the N11 Ballyronan Junction.

- It is noted that the Ministerial press statement on the draft Guidelines states that planning authorities were being requested to have regard to the recommended approach in the draft Guidelines – it is stated that the planning authority do not appear to have followed the request (reference, Section 2.4 of the Guidelines which states that planning authorities need to ensure that there is sufficient capacity on national roads).

### Applicants

- The applicants submitted additional information which includes letters of support locally.
- It is noted that a recent (August/September) traffic count carried out by the NRA conformed that the Ballyronan Interchange is operating at just 25% of its theoretical capacity.
- It is noted that in a ministerial letter of the 6<sup>th</sup> September 2010 it is stated that specific locational requirements may justify zonings in rural areas (copy of letter attached).

## 12. Assessment

Having inspected the site and reviewed the file documents, I consider it appropriate to assess the proposed development under the following headings:

- **Principle of Development (national, regional and local plans)**
- **Traffic issues**
- **Residential amenity (impact on human beings)**
- **Flora and fauna**
- **Soils, geology and hydrogeology**
- **Surface water**
- **Air quality and climate**
- **Noise**
- **Landscape and visual impact**
- **Cultural heritage**
- **Material assets**
- **Interractions**

### **Principle of Development**

The appeal site is zoned in the Wicklow County Development Plan for “*to provide for a data centre facility and associated related industries set in open parkland with extensive landscaping, a high architectural standard of layout and building design with low site coverage. Employment types other than those strictly related to data storage shall show a clear process related requirement to locate in proximity to a data centre*”. Although not explicitly stated, I consider that this zoning in the Plan adopted 2010 supersedes the LAP zoning for the site. I note that the Minister wrote expressing concerns at certain zoning designations within the County Development Plan and I further note the concerns expressed by the appellants regarding the process behind the zoning.

The site has a history of refusals of planning permission, most notably a recent one by the Board which stated that the proposed development (which was significantly larger than that currently proposed) was contrary to Regional Planning Guidelines.

The Regional Planning Guidelines (2010-2022) in policy EP2 and related policies (extracts attached in the appendix to this report) sets out a framework for development in the region and in specific identified clusters in the south Dublin/Wicklow area. The appeal site is not within an identified area and it is not claimed by either the applicants or the planning authority that it is within such an area – rather, it is argued that the proposed development is particularly suited to the site for a variety of technical reasons (primarily a good electricity supply), and is nationally strategically important and as such is an exceptional case which justifies permission. While it is not stated explicitly within either national or regional guidance where such exemptions should be made, I consider it reasonable that in certain limited circumstances that there may be sites outside identified growth areas or industrial sites that would be suitable for ‘one-off’ job generating proposals or for sites that cannot be facilitated within existing zoned and serviced lands.

The appeal site is outside the town of Newtownmountkennedy with little functional relationship either to it, or the much smaller settlement of Kilpedder. The presence of two major electric power connections is certainly an advantage to a number of commercial uses, but the site has few other features that justifies a commercial use. It has no sewerage connection, it is visually prominent from the nearby road, and access is problematic. While it is walkable distance from Newtownmountkennedy and there is a single bus route stopping in Kilpedder and at the nearby road junction serving Greystones, almost any development on the site will most likely be very car dependent.

The applicants have provided a detailed justification for the use of the site both within the appeal documentation and in the EIS. None of the arguments strike me as having any real force. There is no convincing evidence on file that the use could not be accommodated within a range of commercially zoned and serviced sites in core areas identified within the RPG and which would be more fully in compliance with the overall policy objectives set out in the NSS and Greater Dublin RPG. In reality, for reasons I will set out in more detail in the relevant sections below, I find the site highly problematic for any type of large scale commercial or residential development.

The development as proposed is consistent with the statutory development plan for the area – indeed, it seems as if the Plan was written specifically to facilitate this development. Equally clearly, the proposed development of this site is not consistent with the overall thrust of national or regional policy with regard to the location of commercial uses. I do not consider that there are any special circumstances to justify the location of the proposed use on this site – on the contrary, I consider the site to be highly problematic by way of its location in a sensitive site within demesne lands and with poor public transport connections to the overall catchment.

### **Traffic issues**

The proposed development is to be served via a single road that runs from a roundabout on the Ballyronan Interchange (this roundabout links the road to Newtownmountkennedy town centre, the northbound slip of the N11, and the road running under the main highway leading to other slips and local roads). The proposed link road runs parallel to the N11, crossing over the entrance to Mount Kennedy House just in front of the gate lodge and main gate. The road branches towards the main area of development and also connects to a small lane running from the N11 to the entrance to Tinnapark House. The submission documents indicate that this entrance will not be regularly open to vehicular traffic to prevent it being used as a short cut.

The site can currently be accessed either directly (via the main lodge) from the N11 (vehicle only, there is no safe pedestrian walk along the N11), or via a minor road running just south of the last building in Kilpeddar, which serves the organic farm and other businesses north of the site. It can also be accessed via a private road from Mount Kennedy House that runs through public woodland and across the fields from the main house. Apart from a very convoluted series of country lanes to the west, the only direct link between Newtownmountkennedy is via the N11. There is a bus link between the two (with an existing stop next to the Ballyronan Interchange and in Kilpeddar village), but pedestrian/cycling links are difficult, despite the close proximity of the two settlements as there is no safe footpath or bike path along the N11.

The NRA have objected to the proposed development – their submission is technical in nature, but the key issues are that the proposal will result in excessive traffic on the Ballyronan interchange (it is submitted that the Transport Impact Assessment is not adequate); that it is contrary to national policy (including the current draft Spatial Planning and National Roads Guidelines), and that it is premature pending upgrade works to the N11. The arguments submitted, and the rebuttal points sent by the applicant, are detailed and technical and I recommend that the Board read them directly – the following is my general observations and comments on these.

The Ballyronan Interchange is a large mixed grade junction providing access to the N11 for traffic from Newtownmountkennedy and a number of other settlements in the area. The main road at this point is very heavily trafficked and from the information submitted it seems that it is close to capacity, although it is indicated that the junction itself is well within its design capacity.

The applicants submit that the overall development, in terms of scale and traffic generation, is significantly less than the development previously refused, and would have a relatively minor impact. The TIA does indicate that capacity on the junction does exist to cater for projected increases. However, I concur with the view of the NRA that the base assumption of the TIA seems excessively conservative. Although the site is accessible via a bus route and is walkable and cycleable from the two adjoining settlements, I consider that the likely reality is that the convenient location next to the main road would result in a very high proportion of workers driving to the site, notwithstanding any

future mobility management plans. I also have concerns about the general assumption of a low number of workers relative to the overall floorspace provided. While the proposed use of the site would not have anywhere near the number of workers as, for example, an office park, any future user would require significant flexibility, and I consider that the assumptions used seem on the low side. Having regard to the importance of the road and the junction, on a precautionary basis there should have been an assumption of a greater number of workers on the site. On the basis of the information submitted, I consider that the TIA does not provide a sufficient basis for concluding that there is sufficient capacity within the junction and adjoining main highway.

The importance of the site is such that clearly, notwithstanding the requirement set out in both current and draft Guidelines, the applicants and local authority should have co-operated more closely with the NRA in assessing future developments and upgrades for the junction. Without wishing to anticipate what may have been the outcome of any such plan led approach to development in the area, I do not consider that the grant of permission for a development such as this without the full cooperation and agreement of the NRA is in accordance with good practice, or indeed with stated national Guidance with regard to developments on national roads. In the absence of evidence on file that the development can be satisfactorily served without an unacceptable degrading of national road capacity, I consider that the proposal is premature and would result in unnecessary extra traffic movements.

The construction of the access road to the site would have one significant benefit – it would provide a relatively safe pedestrian and cycling link between the two nearby settlements and the proposed development – at present it is only possible to walk or cycle between the two settlements by either taking very long detours to the west or east, or using a very hazardous route along the hard shoulder of the N11. I would consider the provision of a safe link to be quite a significant benefit to the area.

### **Residential amenity – human beings**

The proposed development is quite large in scale relative to the immediate locality – Newtownmountkennedy has a population of approximately 2,500. The location of the site next to a main road and within reach of the city public transportation system (the adjoining bus route connects to the Dart), means that employment generation is likely to be from quite a wide catchment and so will not necessarily directly benefit the two settlements adjoining. It is also unclear from the information submitted whether there would be a net employment gain in the region – the site is likely to be a competitor for other sites (including those zoned and serviced appropriately) for any potential user. There would likely be minor economic benefits to the small number of pub/retail outlets in Kilpedder from having additional workers in the vicinity, although the likelihood is that this impact would not be that significant as the proposed units would be quite self-contained. While I fully understand the submissions by the observers arguing that there will be a substantial employment benefit to the area, I do not consider that there is any evidence that there would be a net employment benefit to the Dublin Region in granting permission for this particular site. As I noted above, I do not find the

arguments made by the applicants that there are not other better located sites available convincing.

There are relatively few receptors in the vicinity for noise and disruption caused by construction works – I do not anticipate that such disturbance would be outside normal acceptable limits. I note the objections of the adjoining property owners and their concerns about the impact on their farm and dwelling. I consider that the separation distance is such that any operational impact on the farm could be controlled by way of condition.

### **Flora and fauna**

The site is primarily open grassland with mature hedgerow and trees along three sides of the boundary. There are no designated areas within or adjoining the site, but a watercourse flows through the site. This watercourse runs to the coast which includes the Murragh candidate SAC and SPA. There are a number of other designated sites in the vicinity, including the Glen of the Downs SAC (2 km north) and Carriggower Bog, 2 km west.

The EIS does not identify any habitats of more than local interest. There are a number of protected species either on the site, or likely to be on the site, including pygmy shrew, stoat, common frog, barn owl and bats. The most important species on the site is likely to be bats. Most of the ecological interest applies to the wooded edge of the site, which would be significantly disturbed during construction, especially by the building of the new link road.

Although the loss of trees is a concern, I consider that the key elements in terms of woodland and grassland loss are either negligible, or can be dealt with by appropriate condition, both in terms of habitat creation/replacement (i.e. proposed wetlands and new planting), the protection of existing trees, and where necessary, the licensed removal of bat roosts and any other roost/nest of a protected species on the site.

I do have some concerns regarding the impact on water ecology. The watercourse running through the site has been engineered and seems moderately polluted, probably from farm run-off. There is a letter on file from Fisheries Ireland indicating that the watercourse may be suitable for salmonid species. It is the tributary of a water system that drains into the coastal wetlands – an area designated as SAC, SPA and NHA. The EIS gives scant information about potential impacts in the event of either low level run off from construction or operation, or from an accidental release of pollutants. While the potential impacts downstream are most likely negligible – indeed it is possible that with appropriate mitigation the quality of run-off could be improved, I have strong misgivings about the failure of the EIS to address this issue, especially having regard to the proposed wastewater treatment system – I will address this point in the relevant section below.

## **Soils, Geology and Hydrogeology**

The appeal site appears to consist largely of deep deposits of clay and silt soils (apparently quite well draining) over underlying sandstones and siltstones. Site investigations carried out as part of the EIS did not encounter bedrock and there are no visual indications of outcropping. The construction works will result in the removal of topsoils and the importation of hardcore. I do not consider that there would be any significant impact above what would normally be expected of a construction project of this scale.

The site is indicated as being underlain by a poor aquifer (as defined by the GSI groundwater protection system). There are indications of several domestic wells in the vicinity, including those used by the appellants. The EIS indicates that the relatively poor permeability of the deeper soils implies that groundwater recharge is likely from the west (i.e. uphill) and I consider this reasonable.

Part of the proposal includes a proprietary wastewater treatment system with discharge to a percolation area. The T-value of the subsoil is around 20 as indicated on the site characterisation form (i.e. moderately permeable). The overall geology is therefore consistent with the requirements of the EPA guidelines, although I have concerns that the slope of the land may result in overflow at times towards the watercourse to the south, which in turn discharges to designated habitats (as discussed above). The treatment plant and percolation area are in the centre of the proposed development, which means that pumping is likely to be necessary from the units downslope – this could result in problems in the event of an electrical or mechanical failure.

While a wastewater system could be constructed on the site consistent with the current guidelines, I have strong concerns about whether this is consistent with best practice. When no convincing argument has been provided as to why this development can not be located on appropriately zoned and serviced lands in the vicinity, it is questionable as to whether the risk to ground or surface waters, however small, would be consistent with general good practice. While the information provided in the EIS accords with minimal requirements of the legislation and guidance, I would consider that a high standard of evidence would be required to justify a development requiring the type of system proposed, when there are likely alternatives available on zoned and serviced lands utilising the public wastewater treatment and disposal system. While it does appear that there are proposals to extend the local system to the site, I consider it premature pending the provision of sewerage connections to the lands to permit such a large scale development on the lands.

## **Surface Water and water supply**

The EIS includes water sampling for the stream on the site, indicating a flow rate of up to 350 l/m with clear water and no visible contamination. The stream is not indicated on the EPA National River Quality monitoring network. From my visual assessment, the streams run in cut drains through much of the land and there was some visible contaminated run-off from a

cattle feeding area between the stream and the N11 south of the gate lodge. This stream eventually drains to the coast at a European designated site.

There is no evidence that the site is subject to flooding – given the relative levels and local geology I would consider there to be no significant hazard.

It is proposed to protect the watercourse by way of the usual precautions during construction. Given the relative locations of the stream and the main construction areas, I would consider that this could be achieved without significant threat to the watercourse.

The overall design uses a network of ponds and controls to prevent contaminated run-off to the watercourse (not including the area proposed for the wastewater treatment system). The proposals are not submitted in great detail, but the space and layout of the site would permit a SUDS type water control system – I would recommend a condition to this end if the Board is minded to grant permission.

The site is served by a trunk water main from Merepark Reservoir close to the site so I do not anticipate any problems with the supply of drinking water.

### **Air quality and climate**

Although rural in nature, the EIS indicates significant air pollution in the area associated with the N11. Although the assumptions for increased air pollution due to extra traffic may not be strictly accurate if the NRA submission that additional traffic has been underestimated, I do not consider it likely that it would be by a very large degree.

Dust and other air quality issues caused by construction and the exposure of bare earth before landscaping establishes can be addressed by way of condition.

The proposed use is a high energy user and the applicant has stated that they would seek an agreement for the use of renewable energy (off-site). But as it is likely that this site would be more car dependent than most (but not all) possible alternative zoned and serviced site, I consider it likely to be marginally worse in terms of CO<sub>2</sub> emissions than more centrally located sites for this type of development.

### **Noise**

The dominant noise at present is from traffic on the N11, which is clearly audible even from the western end of the site. There are no natural topographical features to act as noise suppressors. Daytime noise sampling in the EIS indicates noise levels above 45 and up to 60 L<sub>A10</sub>.

It is indicated that the proposed use would not result in significant noise emissions from operational sources. Access traffic and some external plant would be a source of noise, but it is likely to be within acceptable levels,

although if the Board is minded to grant I would recommend conditions relating to noise suppression for external service plant.

### **Landscape and visual impact**

The appeal site is within a very attractive area of rolling countryside, typical of such outer demesne land. It is visible (albeit partly screened by mature trees) from the N11, and to a lesser extent from a number of other viewpoints such as the pedestrian bridge over Kilpedder. The area is rural in ambience, although the village of Kilpedder sprawls on both sides of the N11 to the south. There are a number of unsightly commercial premises on the opposite side of the road. The site is not visible from Newtownmountkennedy or from the public roads to the north due to the topography and heavy vegetation cover. It is visible from the pedestrian bridge in Kilpedder crossing the N11.

The EIS has a number of visualisations and photographs, which I consider are broadly accurate, although in winter when there is less vegetation cover there will be less screening, and it will take some time for the proposed additional landscaping to soften the impact of the works, especially the access road parallel to the N11.

The site is separated from Tinnapark House and the long private access road (used by the public to access the farm shop) by a thick vegetation screen at present. There would be intermittent views from this road, but in general there are few views from the grounds of Tinnapark House that would be directly impacted upon by the proposed development.

The planning authority refused units 7, 8 and 9 for visual reasons. I am not clear as to why these particular units were chosen – I would consider the units closest to the N11 to be the most visible and the ones most likely to be intrusive from the perspective of most receptors (those on the road and residents in and around Kilpedder. It is not clear to me that the removals of these units does much more than result in a very minor improvement on the overall setting and layout of the proposed development.

### **Cultural heritage**

The appeal site is within the attendant grounds of Mount Kennedy House, a protected structure (the previous refusal on the site referred to this status). It is not part of the immediate demesne lands of this fine 18<sup>th</sup> Century house, but is within the landholding and within the original demesne lands and grounds of the house. There is no evidence of formal landscaping, although the planting and establishment of the deciduous woodland along the front of the site would seem to me to confirm that it was always considered that this part of the landholding would have been part of the demesne. As such, I consider it an important part of the setting of the house. I note that the refusal for PL27.210160 included in its reasons the impact on the setting of the protected structure.

The site is also close to another protected structure, Tinnapark house, which is less than 200 metres to the north-west. This house is part of the adjoining

organic farm and has an attractive setting with some landscaped gardens. There are two sets of mature vegetated hedgerows/shelter belts between it and the site.

The site of Mount Kennedy House has a history pre-dating the 18<sup>th</sup> Century house – there is a Motte adjoining it. The likelihood is that there would have been significant medieval settlement in the area around a Motte. There are a number of recorded ancient monuments (cists and mounds) in the vicinity, but not within the site. The EIS states that there are a number of features on the site which are probably the remains of structures associated with the demesne such as structure tree belts and ditches.

The works would result in the loss of structures along the N11 frontage in order to construct the access road. These structures, including the walls of the gated entrance (next to the gate lodge) would be considered part of the protected structure. The gate lodge will not be physically touched (the lodge is stated to be contemporary with Mount Temple House in the EIS, although it seems to have been significantly altered). There are a number of dwellings and physical features including the remains of the old Dublin Road that are close to, or within the site. While the gate lodge is not to be physically touched I disagree with the arguments in the EIS and related documentation that there would be no impact – I consider that running the access road between the gate lodge and the N11 would have quite a significant impact on the overall setting of the lodge and associated gate.

There is a strong possibility of archaeological remains within the site. I would consider that this issue can be dealt with by way of condition ensuring the identification and, if necessary, excavation of any features discovered during the initial works. However, I consider that there is little substantive difference between the current proposed works and that previously refused by the Board for the reason of its impact on the setting of Mount Kennedy House in terms of its overall impact on the setting of the House. While the proposal is better landscaped and somewhat smaller in scale, it is still a large scale commercial development, for which there seems little justification for locating on this particular site. I therefore recommend a refusal for a similar reason to no. 5 of the previous decision.

### **Material assets**

The appeal site is served by 220/110kv and 10 kv power lines and a gas main is located in the medium of the N11. It is on the Eircom network and there is an ESBT fibre optic line on the existing 220kv power line. It is served by the public water supply system. It is not served by a public sewer, and the road capacity is disputed by the NRA.

The site is currently used for horse grazing, presumably on a commercial basis. The appellants run an adjoining organic farm (largely arable) with a farm shop and café (the latter is now temporarily closed). I would anticipate the possibility of minor impacts on the organic farm during construction works. There is a substantial planted belt between the sites, so while I would

not consider the proximity of a commercial use next to an organic farm to be ideal, I do not consider them incompatible.

The appellant raised concerns about access to the laneway from the N11 into his property. There is a short lane here (which I assume is public highway) which terminates at a wide area – at the end is the gated entrance to the organic farm, to the south is a fenced off hammerhead which potentially provides access to the appeal site. I consider that the issue of requiring adequate access here for all legitimate users could be addressed by condition if the Board is minded to grant permission.

### **Interactions**

I could consider the key interactions on the site to be those which impact on the setting of an important protected structure and its grounds, the incremental impact of additional traffic in the locality, and the overall impact on the rural amenities, and the impact on local watercourses.

Having regard to the issues raised above, I have particular concerns about all these issues. In environmental terms, I consider that the issue of traffic and water pollution can be addressed through adequate controls, but in planning terms I do not consider that the applicant has demonstrated that the overall impacts would justify the loss of open lands in such a sensitive location and I consider that the interaction of all the potential impacts makes this site unsuitable for the scale of development proposed.

## **13. Conclusions and Recommendations**

I conclude that notwithstanding the zoning designation for the site, the proposed development would be contrary to the overall objectives set out in the Regional Planning Guidelines for the Dublin area, would generate excessive traffic movements at the Ballyronan interchange and is premature pending the agreement of a layout for upgrades to Ballyronan and for sewerage provision. I conclude that the proposed development should be refused for reasons broadly similar to the proposal in PL27.210160.

I recommend therefore that the proposed development be refused planning permission for the reasons set out below.

### **REASONS AND CONSIDERATIONS**

1. Having regard to the nature and size of the proposed development and its potential catchment area and the dependence on the car as the primary mode of transportation it is considered that notwithstanding the zoning designation in the Wicklow County Development Plan 2010-2016, the proposed development would be contrary to the principles of sustainable development as set out in the Regional Planning Guidelines for the Greater Dublin Area 2010-2022. The site is located within the hinterland area and

is not within an identified growth area and the type of development proposed would be contrary to the land use/transportation planning principles of the Regional Planning Guidelines 2010-2022. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. The Board is not satisfied, on the basis of the information submitted with the application and appeal, that the traffic movements associated with the proposed development would not prejudice the level of service and carrying capacity of the N11, and would therefore reduce the effectiveness of public investment in this National Primary Route and adversely affect the use of the national road by traffic.
3. It is considered that the proposed development would be premature by reference to an assessment of future developments in the area and a planned approach to improvements to the Ballyronan Interchange.
4. It is considered that the proposed development would be premature by reference to an existing deficiency in the provision of public piped sewerage facilities to serve the proposed development. It is not considered appropriate to serve a large scale commercial development of this type by way of a small scale treatment with groundwater discharge facility in proximity to watercourses that drain to EU designated wetlands along the coast.
5. The site of the proposed development is within the attendant grounds of a protected structure, Mountkennedy House. These attendant grounds constitute demesne lands, the subject of protection. It is considered that the proposed large scale commercial development, including an access roadway along the frontage of the site, would be contrary to the planning and sustainable development of the area and result in a serious injury to the visual amenity of Mountkennedy House and demesne.

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**Philip Davis,**  
**Inspectorate.**  
**20<sup>th</sup> January 2011**