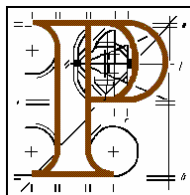


An Bord Pleanála



Inspector's Report

FILE REFERENCE: PL02.241820

Location: Crenard, Crossdoney, Co. Cavan.

Proposed Development: Retention of existing silo, alterations to internal layout to include expanded retail area, expansion of good sold to include farm supplies and hardware, retention of dust extraction unit and storage to the rear of existing unit and retention of site boundaries and fences. Permission is sought to erect additional silo, alterations to site boundaries and relocation of sewerage treatment facilities and ancillary works.

APPLICATION DETAILS:

Applicant: Andrew Gould

Planning Authority: Cavan County Council

P.A. Reference: 12/33

P.A. Decision: Grant Permission subject to conditions

APPEAL DETAILS:

Appeal Type: Third Party against decision

Appellant: Tom and Norah Regan

Date of Appeal: 3rd April, 2013

INSPECTOR Stephen Kay

Date of Site Inspection: 4th July, 2013

1.0 Site Location and Description

The appeal site is located on a local road that is accessed off the Crossdoney to Ballinagh regional road and is in a rural area outside of any identified settlement. Site access is via a local road and the junction within the regional road is located c.350 metres from the site access.

The site is occupied by a premises that was permitted on the basis of being for the production and sale of timber products. Currently located on site is a warehouse building that has a stated floor area of 685 sq metres and which is located towards the western side of the site. The main public entrance to the building is at the southern end adjacent to the access and car parking area and this southern end of the building is given over to retail sales. The range of products which are for sale in the internal retail area is extensive and includes bolts / gate hardware, livestock equipment, piping, plumbing, electrical, children's toys, safety gear / workwear, dog food and accessories, power tools and paint / wood treatment products.

The main area of the warehouse accommodates timber cutting machinery, timber storage, and a number of ancillary activities including the storage and sale of animal feeds. There are also containers of fuel stored within the warehouse building. There is a roller door entrance to the main part of the warehouse that faces east towards a yard that is in use as an external storage area. Materials stored in this area comprise a range of finished timber products including gates, fencing posts, garden play equipment and garden furniture. There are also a wide range of other materials stored outside in the yard including piping, sand and gravel materials. The existing on site waste water treatment plant is located at the eastern corner of the site with materials stored in close proximity and the exact layout and location of the existing percolation area is not clear from the information presented or from an inspection of the site.

The site is bounded to the north and north west by undeveloped lands. To the south west there is an existing agricultural access and to the east, the site is bounded by an area that comprises a cul de sac road and beyond that an open area that connects with the R154 and the junction with the local road on which the appeal site is located. The closest dwellings to the site are located to the east, on the local road adjacent to the R154 junction and to the north east on the far side of the R154 itself.

The stated area of the site is 0.455 ha.

2.0 Proposed Development

The proposed development involves the retention of some existing development on the site and permission for new development / alterations to the existing site boundaries and can be summarised as follows:

The retention of an existing silo that is located on the eastern side of the building on site, adjacent to the main entrance, and the erection of a new silo. These silo structures are 7.35 metres in height and the existing one is used for the storage of animal feed.

The retail area at the southern end of the building is proposed to be extended into what was approved under Ref. 07/944 as a manufacturing area of the site. This additional retail area has a stated floor area of 58 sq. metres. The retail area use is proposed to be amended to permit the sale of farm supplies and hardware goods.

The application provides for the retention of a new dust extraction unit that has been constructed at the northern end of the building and in a position external to the original floorplate of the building. This dust extraction unit measures c. 6.15 metres by 3.7 metres.

The application also provides for the retention of a timber racking system that is located adjoining the northern boundary of the site. This racking system has an overall height of 5 metres and is 15 metres in length.

The application also provides for the retention of alterations to the site boundaries and boundary planting / landscaping and for the relocation of effluent treatment facilities on the site onto lands located to the north east of the existing site boundary.

3.0 Planning History

- Cavan County Council Ref. 11/19 – Application for retention of silo on the site and permission for the erection of a new silo, construction of storage shed and extension of existing internal retail area. This application was withdrawn prior to a decision being issued by the Planning Authority.
- Cavan County Council Ref. 10/134 – Application for the retention of a silo on the site. Application was withdrawn prior to a decision being issued by the Planning Authority.
- Cavan County Council Ref. 07/944 – Permission granted by the Planning Authority for the construction of a fully serviced timber products industrial / storage / retail unit, effluent treatment facilities, car parking and all ancillary site works. Condition No. 14 requires the submission of a planting plan / landscaping scheme. In the response to FI submitted as part of this application, the applicants agent states that the applicant has a business premises in Crossdoney that is restricted in its capacity to expand and that part of the operations will be moved to the new site.
- Enforcement File Ref. 09/26 – relating to landscaping of the site.
- Enforcement File Ref. 10/10 – relating to silo that was erected on the site without planning permission.

Regarding these enforcement files, the Planners Report on file makes reference to the fact that warning letters have issued in relation to the site and that enforcement proceedings are ongoing pending the outcome of the application for retention.

4.0 Planning Authority Decision

4.1 Submissions / Observations

Two submissions were received during the course of the assessment of the application by the PA. These submissions raised issues regarding,

- The capacity of the local road to accommodate the HGVs associated with the use of the site and raising issues of traffic safety.
- Concerns regarding the visual impact of the development and the poor visual appearance of the site and impact on privacy of adjoining property. The construction of a new boundary wall is sought.

4.2 Further Information

Prior to the issuing of a decision the applicant was requested to submit further information on a number of issues that can be summarised as follows:

- Location of existing effluent treatment system on the site.
- Traffic circulation plan within the site.
- Car parking plan.
- Clarification regarding the external timber storage rack on site that is not included in existing permission or current application.
- Justification for the range of retail uses proposed as part of the application and compliance with the retail planning guidelines.
- Submission of a boundary treatment plan.
- Details regarding the size and type of vehicles entering the site and traffic management proposals for same.
- In the interests of traffic safety the submission of a revised site layout indicating the location of palisade fencing to the roadside boundary relocated 4 metres from the road edge.

In response to the FI request issued the applicant submitted revised / further details that can be summarised as follows:

- Revised site plan indicating the location of the treatment system and percolation area at the eastern side of the site. This layout is as per the original submission.
- Circulation plan / turning movement for HGVs shown on the revised Site Plan. The plan shows 18 no. car parking spaces.
- The storage rack for timber is shown on revised Site Plan and included in revised notices.
- Regarding retail element, claimed by the applicant that the rural location means that the Retail Planning Guidelines do not apply and that the development is supported by sections 3.3 and 3.4 of the Plan. Stated that the existing use is appropriate to provide agricultural related products.
- The FI response states that the HGV movements to the site comprise a 40ft lorry c. 3 times per week, 2 no. rigid lorries c. 3-4 times per day and small scale cars / jeeps visiting the store.

4.3 Notification of Decision

Cavan County Council issued a *Notification of Decision to Grant Permission* subject to 9 no. conditions, the most significant of which in the context of the current appeal is as follows:

- Condition No. 3 states that the sale of hardware goods is permitted for 5 years and that these goods shall not continue to be sold unless permission is granted for a continuance is granted. Hardware goods does not include for the sale of children's toys or clothing and these goods are to be removed within 1 month of the granting of permission.
- Condition No. 4 requires that not more the 3 no. HGV articulated lorry deliveries shall service the site per week.
- Condition No.5 requires that the circulation area indicated on the Site Plan submitted as part of the FI response shall be kept free from storage and materials.
- Condition No.6 requires that the palisade fence at the front of the site shall be set back by 4 metres from the road edge over the full length of the site frontage.
- Condition no. 7 requires the submission of details for the back planting of the roadside boundary and for the planting of the eastern site boundary.

5.0 Internal Reports

Planners Report – The Planners report notes the response to the FI request and considers that the applicant has not made a case as to how the uses on site comply with the retail planning guidelines and that the sale of hardware good is not considered to be appropriate in this out of town location. Other elements of the application including retention of the racking, dust extraction unit and the silos are considered to be such as not to impact negatively on residential amenity and to be acceptable. A grant of permission is recommended subject to conditions one of which requires the removal of all hardware products from the site within 1 month of the grant of permission. This recommendation was amended by a note on file from the Director of Services for Planning that recommends that the permission for hardware products would be permitted for a temporary period of 5 years.

Roads Engineer – No objection in principle subject to conditions including the setting back of the palisade fence line.

Area Engineer – No objection. Treatment system to comply with EPA Guidelines.

6.0 Grounds of Appeal ()

A third Party appeal has been received against the Notification of Decision issued by Cavan County Council. The grounds of appeal raised can be summarised as follows:

- That the existing development on site is unauthorised.
- That the HGV traffic to the site creates a safety issue and conflicts with the display areas and other uses on site.
- The traffic from the site impacts on the safety of adjoining properties. Significant additional traffic is generated on the narrow local road and the number of vehicles / deliveries is understated.
- That the circulation areas for HGVs within the site are covered with stored materials.
- Car parking by staff is taking place outside of the site.
- Site provides for the storage and sale of agricultural diesel, fertilisers, weed killers etc. as well as children's toys and clothing. This is not addressed in the decision of the PA.
- That the sale of the products that are on site is not compatible with the Retail Planning Guidelines.
- That there is contradictory information presented with regard to the retail area on site with the site plan showing an additional 58 sq. metres and the FI response stating that the total retail area is 187 sq. metres. There is also reference in the Fi response to a mezzanine area of an additional 58 sq. metres. No mezzanine is indicated or referred to in the application.
- That the dust extraction building is a structure that requires permission.
- That the issue of site boundaries has been satisfactorily addressed in the submission.
- That the fencing and landscaping required should have been undertaken immediately.
- Regarding the effluent treatment system there is a discrepancy between the requirement for a raised bed polishing filter as per the site suitability report and the standard percolation area shown in the Site Layout Plan.
- That the correct planning fee has not been paid as the retail area is greater than stated and other elements, notably the dust extraction, effluent treatment and additional production area have not been included.
- That there is no fuel interceptor etc. installed on site that would facilitate the fuel storage and sales use on the site safely.
- That permission should be refused, the applicant forced to comply with the extant enforcement notices and then reapply.

7.0 Response Submissions

7.1 First Party Response to Grounds of Appeal

The following is a summary of the response submission received on behalf of the first party:

- That the purpose of the application is to regularise the situation on the site.
- Comments regarding the inaccuracy of the floor area of the retail area is not accepted.
- Fuel licencing is a matter for the fire authority.

- That there is no evidence to support the contention that the residential amenity of the appellant is affected. It is an offence to obstruct a gateway.
- The appellant is correct regarding discrepancies between the site layout and the site characterisation / suitability assessment.
- That the use on the site is an established one and the application is incidental to and consistent with the established use.
- That the use was granted permission under the previous county development plan and the rural enterprise provisions of that plan. These are restated in the current 2009-2014 plan. Also noted that the retail strategy only applies to new developments. As the site is an established enterprise the application of this policy is inappropriate.
- That 3.8.7 and 3.8.8 of the Plan supports the provision of additional retail facilities to support local need where appropriate. This development is consistent with the established landuse character of the area.
- Rural shops / stores are not referred to in the county retail strategy.
- The Retail Planning Guidelines are of limited benefit in providing policy direction for this form of development. The proposal is for the alteration and extension of an existing store and not for a new retailing product.
- That the application would support vibrant sustainable retailing and provides a valued addition to the local areas economy and social life. The scale of development is not such as would threaten the established retail core of Cavan Town.

7.2 Planning Authority Response

The following is a summary of the response received from the Planning Authority:

- That the Planning Authority are aware of the unauthorised works that have been undertaken.
- That conditions 4, 5 and 6 attached by the Planning Authority have adequately addressed the traffic concerns.
- That the issue of the type of goods sold at the premises has been addressed in the Planners Report and the memo from the Director of Services dated 11th March, 2013.
- That the enforcement file remains open pending the determination of this application.

8.0 Relevant Development Plan Provisions

8.1 County Development Plan

The appeal site is located outside the boundary of the Crossdoney village and is in a rural area. The relevant plan is therefore the *Cavan County Development Plan, 2008-2014*.

Chapter 3 of the Plan relates to Economic development and section 3.3 relates to rural enterprise. The section states that 'enterprises will be permitted in rural locations subject to considerations of the proper planning

and sustainable development of the area. Business directly related to farming is specifically identified as being suitable for a rural area.

Section 3.8 of the Plan relates to retail and the retail strategy. 3.8.2 states that *'the principal aim is to focus retail investment in existing towns and villages, especially in their core areas.'* The importance of accessible locations that facilitate multi purpose shopping and support for the continuing role of town centres as the appropriate place for retail development and the implementation of a sequential approach are also cited.

3.8.7 of the Plan relates to retailing in rural areas and states that retail development should be directed towards town centres, edge of centres and out of town centres first and then only to rural areas. It is also stated that towns and villages should be the locations for the provision of the majority of services for the population of the county.

9.0 Assessment

In my opinion the following issues are of relevance to the assessment of the current appeal:

- Procedural Issues / Scope of Application
- Principle of Development
- Impact on Visual and Residential Amenity
- Parking, Traffic and Access
- Waste Water Treatment System Proposals

9.1 Procedural issues / Scope of the Application

9.1.1 The applicant has questioned the fee paid by the applicant to the local authority and therefore the validity of the application. The basis for questioning the fee paid relates to the alleged discrepancies in the retail floor areas as per the application drawings and the FI response and also that other elements of the development on site, such as the dust extraction plant, were not included in the fee calculation. The validity of the application is an issue between the appellants and the local authority. The application was declared valid and a Notification of Decision issued which was the subject of a valid appeal to An Bord Pleanála. On this basis it is considered appropriate that consideration of the appeal would proceed.

9.1.2 The issue raised by the appellant regarding the fee does raise an issue regarding the scope of the application which is before the board. The original public notices make reference to *'alterations to internal layout to include extended retail area'*. The revised notices submitted after the FI request make reference to *'extend internal retail area within existing timber products unit'*. The situation as observed at the time of inspection of the site is that the retail area has been expanded considerably from that shown on the approved floor plan under Ref. 07/944. Specifically, the office and toilet areas indicated in the permitted floor plan have been incorporated into the retail area and the area extended to the rear into what was part of the warehouse. In addition, the changes undertaken and shown on the floor plans submitted with the current application indicate that the toilet and office areas have been

relocated into what was formerly the warehouse and that there is now a mezzanine level above the extended retail area which is not specifically referred to in either of the public notices. It is my opinion that the public notices together with the application drawings as submitted cover the alterations to the layout of the building comprising the extension to the retail area from that approved under ref. 07/944 and also the relocation of the office and toilet areas and changes to the floor configuration. It is noted however that the public notices do not make any reference to the addition of a mezzanine level in the warehouse building and, for this reason, I do not consider that the scope of what is covered in the application and assessed under this appeal covers the mezzanine level.

- 9.1.3 With regard to the scope of the application I also note from the approved Site Plan under ref. 07/944 and the Site Plan submitted with the application that the location of the warehouse / retail building on the site has moved to the south. This was verified from the site inspection and the separation between the northern elevation of the building and the site boundary is significantly greater than what appears from the information available to be permitted under Ref. 07/944. There is no reference to this issue in the submissions received from the applicant or the Planners Report and the public notices do not make any reference to relocation of the warehouse building. Similarly, the main warehouse area that was permitted as a timber processing area is currently partially being used as a retail area for animal feeds and fuel of various types. The scope of the application does not appear to cover the change in use of this area from manufacturing / timber products use to retail use.

9.2 Principle of Development

- 9.2.1 The first party notes in the appeal response that what is for consideration is the expansion of the range of retail goods on offer at the site and that the principle of retail use of part of the site has been established under ref. 07/944 and is not for review. This is accepted however it is worth noting that the Grant of Permission which issued from the Planning Authority (Ref. 07/944) did not include any condition that specifically related to the use of the site.
- 9.2.2 The approved use on this site is under planning Ref. 07/944 and under the public notices submitted in connection with this application the use permitted is the erection of 1 no. fully serviced timber products industrial / storage / retail unit, entrance, sewage treatment facilities, car park and all ancillary site works. The unsolicited further information submitted during the assessment of that application states that the development is '*a timber products workshop and associated works*'. The layout as approved under Ref. 07/944 included a retail / shop area of c.60 sq. metres located in the south west corner of the building. From the documentation available on file it is not clear what type of retail use was envisaged for this area. What is currently on site is a retail area of c.112 sq metres comprising the entire area shown under Ref. 07/944 as retail / reception / toilets and office accommodation as well as the extended area of c. 60 sq metres giving an overall retail floorspace of c. 172 sq metres. This rises to c. 232 sq metres if account is taken of the mezzanine level.

- 9.2.3 As noted in the description of the site and the proposed development above, the range of goods currently offered for sale of the site is extensive. Some clearly relate to the originally stated principle use of the site as a timber products facility and the principal use of the site remains as a producer of timber sheds, seats, fencing panels, stakes, children's play equipment and other timber products related to the domestic and commercial / agricultural sectors. In my opinion the sale of products such as bolts, gate hardware and wood treatment products / paints etc. would all come within the scope of what could be considered to be covered by the existing application. There are however in my opinion a significant range of products on sale on site that are not covered by the existing permission. These products include, but are not restricted to the sale of fuel, animal feed both in bagged form and via the silo on site, ancillary products and materials connected with external works including piping, stone / gravel, sand and garden related products including pots, bark mulch and compost. Products for sale within the internal retail area that are, in my opinion either not related or only very loosely related to the main use as a timber products facility include equipment related to livestock (including electric fencing products / power units), power tools, plumbing and electrical supplies, dog food and accessories, children's toys, safety clothing / workwear and garden tools.
- 9.2.4 As part of their FI response, the first party set out how it was considered that the provisions of the retail Planning Guidelines did not apply to the appeal site and that the retail strategy for Cavan did not apply as it related only to new activities / development. I would accept that the Retail Planning Guidelines are not of direct relevance to the development that has been undertaken on the site given the scale of the retail area involved. The principle of a sequential test for assessment of the appropriateness of retail areas has however been carried through into the County Development Plan and there are a number of provisions within the Cavan County Development Plan that are of relevance to the assessment of the retail uses appropriate for such a site. Section 3.3 of the Plan states that enterprises will be permitted in rural locations '*subject to considerations for the proper planning and sustainable development of the area*' and the permission granted under ref. 07/944 would appear from the Planners Report to have been permitted having regard to general policies along the line of paragraph 3.3 of the current plan and having regard to general policies to support industry and enterprise. It was also the view of the Planning Authority that what was proposed in terms of the timber processing facility would be more appropriate on the appeal site than on the existing constrained site within Crossdoney Village. There is no indication in the Planners report regarding the type of products that were considered appropriate for the ancillary retail area indicated.
- 9.2.5 Section 3.8 of the County Plan relates to retail development and 3.8.2 identifies that the location of retail development is a fundamental issue. It is further stated that the principal aim is to focus retail investment in existing towns and villages, especially in their core areas. This general policy is, in my opinion, reasonable and while the principle of a sequential test as set out in the retail Planning Guidelines relates to large scale stores, the range of products for sale on the appeal site is, in my opinion such as would impact on other hardware / building supplies outlets in the general area. I would agree with the Planning Officer that the rationale given by the applicants agent for the suitability of the site for retail use is weak. It is accepted that many of the products currently sold on site are in some way related and that what is being provided is a full range of basic DIY products to serve a local market however

as outlined above I would have concerns regarding the impact of such a range of products would have on other retail outlets in local towns and villages. Section 3.8.2 of the Plan regarding retail development and appropriate locations states that the Council will have regard to the Retail Planning Guidelines and in particular the use of a sequential approach and support for the role of town centres. It is also noted that 3.8.7 of the Plan relating to rural areas specifically states that retail development should be directed towards existing development centres and only then to rural areas.

- 9.2.6 With regard to the range of products that would be appropriate to be sold on the appeal site, I consider that products related to the main use of the site as a timber processing unit, namely ancillary products such as bolts, gate hardware, and timber treatments are acceptable in principle. I would agree with the Planning Officer that the range of products sold on site relating to **hardware and DIY** is not appropriate and should be removed from the site. These products may be of some use or related to small scale DIY projects involving gates or timber products but are sold in urban centres and are not in my opinion appropriate for a rural location such as the appeal site. The products in question that are currently on site include toys, electrical equipment, sand, gravel, plumbing supplies, workwear, power tools and key cutting. The comments of the Director of Services that is on the planning file regarding the connection of these products to agriculture and the recommendation that they should therefore be permitted on a temporary basis is noted but not accepted. I would also not agree with the logic of the granting of a temporary permission for 5 years on the stated rationale of assessing demand and facilitating relocation. I do not see how the level of demand is particularly relevant to the principle as to whether the sale of these goods is acceptable or not in this rural location and while I agree that it would be appropriate to allow some time for relocation to an alternative site if desired such a timeframe should be months not years.
- 9.2.7 With regard to the range of **agricultural products** on site, the supply of feed both in bagged form and via the existing proposed silos is considered to be acceptable in principle. Such supplies would, in my opinion be suited to a rural location such as the appeal site rather than a town or village centre. I am also of the opinion that the sale of such products would be consistent with section 3.3 of the Cavan County development Plan relating to rural enterprises and the facilitation of agri enterprises and businesses directly related to farming. The supply of agricultural equipment in the form of supplies for electric fencing and livestock equipment is also, in my opinion consistent with the main use of the site supplying timber products and with serving the needs of the farming community and should be permitted.
- 9.2.8 The site currently stocks **fuel** in a number of forms. Firstly wood chip pellets are for sale. These do not appear to be a by-product of the timber processing use of the site but the sale of such product is considered acceptable in principle in this location. The site also stocks some diesel and oil although it is not clear from the information presented whether this is for sale to the public or to service delivery vehicles. Fuel is stored in an unbunded tank in the warehouse and it is my opinion that the sale of fuel to the public is not appropriate having regard to both the site location and the on site facilities for storage and access to the fuel store.

- 9.2.9 The site stocks a range of **gardening supplies and equipment** including plants, tools, pots, bark, wood chip / mulch, and compost. While the scale of these products on site is relatively limited, I am of the opinion that the appeal site is not an appropriate location for their sale which is more appropriately located within an existing retail centre. In addition, these products do not have any connection with the main use of the site as a timber products facility and are not a rural enterprise connected with agriculture or farming. For these reasons I do not consider that permission for the retention of these products is appropriate. The site also stocks a range of **dog foods and accessories**. As with the gardening products, I do not consider that the sale of these materials in a rural location outside of any development boundary is appropriate or connected with the main use of the site or agriculture.
- 9.2.10 As noted in 9.1 above, I do not consider that the mezzanine area is part of the current application given it is not referred to in the public notices and is not shown on the submitted drawings. Given the restrictions on the range of products as recommended above the question arises as to what element of retail space is appropriate. Without the mezzanine, I estimate the retail floor area as existing on site at c. 172 sq. metres. Having regard to the range of products which it is considered appropriate to be sold in this location as set out in the sections above, I consider that it is appropriate that the net retail floor area would be restricted to a maximum of 100 sq. metres. Such a floor area is an increase from the 60 sq. metres indicated under ref. 07/944 and is considered to be adequate to display the range of products permitted.

9.3 Impact on Visual and Residential Amenity

- 9.3.1 The appellants have raised a number of issues with regard to the impact of the operations on the appeal site on their amenity. Issues raised include the overdeveloped nature of the site and outside storage, boundary treatment and landscaping and traffic impacts. Traffic impacts will be addressed in section 9.4 below.
- 9.3.2 The visual impact arising from the storage of materials on site is not, in my opinion significantly negative. The height of materials stored is not excessive and the intensity of use of the site will reduce with restrictions on the type of materials permitted to be sold. Site boundaries were required to be landscaped as part of Ref. 07/944 and some work on this has been undertaken. It was also noted at the time of inspection that additional recent planting has been undertaken along the northern boundary however planting along the eastern boundary that is closest to the dwellings of the appellants is not well established. The Planning Authority have required that landscaping proposals relating to this boundary would be submitted for agreement and in the event of a grant of permission proposals for the landscaping of this area are required in addition to proposals for the landscaping of the roadside boundary and the extended part of the site at the north east corner of the site.
- 9.3.3 Regarding noise and dust, the original permission for the site does not specify noise limits or air quality monitoring requirements and no such conditions were included by the Planning Authority in the Notification of Decision to Grant Permission. The nature of the operations on site is that the main noise source is the timber cutting equipment within the warehouse building and this is already permitted under Ref. 07/944. The development that is proposed and for which retention is sought under the application the subject of this

appeal would have some impact in terms of increased traffic to the site and particularly some increase in HGV traffic. Most specifically, the existing and proposed silos are filled by HGVs and one such loading was observed at the time of inspection of the site. The material was pumped into the silo and noise emissions as observed were not excessive. Overall, I am satisfied that having regard to the separation distance between the site and the appellants properties, none of the activities to which the current application relates would result in significant residential dis amenity by virtue of noise or other air pollution.

- 9.3.4 The racking located at the rear of the site adjacent to the northern site boundary is not visually prominent from the road or from the appellants properties and is considered to be acceptable having regard to its use for the storage of timber materials. Similarly, the dust extraction system is located at the northern end of the warehouse building and is not visible from the public road. The separation between this ducting and the appellants properties is considered to be such that it would not have a significant negative impact on residential amenity. The addition of a second silo to the east of the warehouse building for the storage of animal feeds is considered to be acceptable in visual terms having regard to the design of the structure and its scale which is lower than that of the warehouse building.

9.4 Parking, Traffic and Access

- 9.4.1 The appellant has raised a number of issues with regard to the impacts arising as a result of traffic generated by the existing and proposed development the subject of this appeal. In terms of car parking, the applicant demonstrated how based on 187 sq. metres of retail space there is a requirement for 10 no. parking spaces and 7 no. spaces to serve the warehouse. The applicant has indicated how this can be accommodated within the site however it is noted that some of these spaces to the east of the site access are currently covered by external storage of materials. A reduction in the retail floor area to c. 100 sq metres would reduce the overall parking requirement to 12 no. spaces.
- 9.4.2 The appellants have also highlighted the fact that employees of the facility park on a cul de sac road that is located to the east of the site between the site and the R154. This access road is currently outside of the site boundary and it is recommended that the applicant be required to ensure that all staff parking requirements are accommodated within the site.
- 9.4.3 The appellants raised issues regarding the blocking of their entrance by HGV traffic however it is not clear how this would occur and there appears to be no reason why vehicles would queue or park on the public road. The comments of the first party regarding it being an offence under the road traffic legislation to block an access are noted.
- 9.4.4 Regarding the existing access arrangements to the site, the Planning Authority recommended that the roadside boundary would be set back by 4 metres from the road edge along the entire length. The existing set back of the roadside boundary is such that the visibility from 2.4 metres back from the road edge is restricted in both directions and it is therefore recommended that the roadside boundary be relocated and set back as recommended by the Planning Authority.

- 9.4.5 Within the site, the first party submitted a HGV turning movement illustrated on a site plan. It is noted that the area indicated is not currently free from the storage of materials and is not hard surfaced in the case of the eastern part of the area shown. It should be a condition of any permission that this area would be kept free of stored materials. Regarding conflict with other uses on the site, It is considered that having regard to the stated volumes of HGV traffic (c. 3 per week) that there is not a significant potential safety issue regarding conflict between pedestrians / customers and vehicles.

9.5 Waste Water Treatment System Proposals

- 9.5.1 The existing on site waste water treatment plan is located at the eastern corner of the site is closely surrounded by stored materials. The location of the percolation area serving this plant is not clear on site however it is stated that it is not currently working satisfactorily. What is proposed is the retention of the existing Envirocare P6 treatment system and the construction of a new percolation area to be located at the eastern corner of the site, on lands that are outside of the existing site boundary. A copy of the site assessment undertaken was submitted as part of the application and indicates a T test result of c.81 and a P test result of c.55. Groundwater was encountered at c. 0.75 metre below ground level at the date of testing which was November. The assessment recommends that the existing treatment system be retained and that a new soil polishing filter / percolation area be constructed at a raised level to ensure a minimum of 0.9 metre of material between distribution pipes and observed ground water level.
- 9.5.2 On the basis of the information presented it is considered that the proposed construction of a new raised percolation area is acceptable in principle. It is noted that the applicant has not submitted any maintenance agreement and this should be made a condition of any permission along with certification of the installation of the new percolation area.

9.6 Appropriate Assessment

- 9.6.1 The appeal site is located c.2.75 km from the closest point on Lough Oughter SAC and SPA which is at Bellahillan Bridge to the north west of Crossdoney Village and at the far southern end of the lough. The application documentation and the Planners Report did not make reference to a screening for appropriate assessment. The Lough Oughter SAC is described in the Site Synopsis as a series of natural eutrophic lakes and bog woodland, two habitats listed on Annex I of the E.U. Habitats Directive and for the otter, a species listed on Annex II of the same Directive. The site also contains areas of dry woodland, marsh, reed bed and wet pasture. The site is an importance site for wintering birds and Whooper Swan and Greenland White fronted goose are both noted as being of particular significance.
- 9.6.2 Having regard to the nature of the development, the replacement of the existing percolation area with a raised constructed percolation area and to the separation between the site and the closest area of the Lough Oughter SAC and SPA, it is considered that the proposed development is not likely to have significant effects on the European site in light of its conservation objectives.

9.7 Conclusion

- 9.7.1 Having regard to the above, it is my opinion that the range of goods currently offered for sale on the site is significantly wider than what can be justified either under the existing permission on the site or on the basis that it is ancillary to the main use of the site as timber processing or that it is a rural enterprise that is connected with agriculture. The scale of the retail operation on the site is not very significant and it is accepted that the provisions of the Retail Planning Guidelines are not directly applicable to such situations, however there is a range of hardware products, gardening products as well as clothing and toys that are not appropriate for a rural location outside of any identified settlement. The granting of retention for such uses would, in my opinion be clearly contrary to the provisions of the Cavan County Development Plan as it relates to local enterprise and retailing.

10.0 Recommendation:

In view of the above, it is recommended that permission be Granted based on the following reasons and considerations and subject to the attached conditions:

Reasons and Considerations:

Having regard to the to the existing permission on the site for a timber products facility and ancillary retail sales area, to the nature and scale of the use for which retention is sought and the new development proposed on site, it is considered that, subject to compliance with conditions below, the proposed development would be consistent with the policy of the Cavan County Development Plan, 2008-2014 regarding retailing and rural enterprise and not have a significant negative impact on the viability or vitality of existing retail outlets located within development centres, would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions:

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 15 day of January 2013, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development hereby approved does not authorise the mezzanine level in the warehouse building which is not indicated on the drawings submitted with the application or on the public notices.

Reason: In the interests of clarity.

3. The development hereby approved shall incorporate the following amendments:
 - (a) The roadside boundary shall be set back a minimum distance of 4 metres from the road edge along the entirety of the roadside boundary. New or relocated fencing shall be dark green in colour.
 - (b) Provision shall be made for the accommodation of employee car parking on site and all employee parking shall be accommodated on site. The cul de sac area to the east of the site shall not be used for the purpose of employee car parking.
 - (c) The retail floor area shall be limited to a maximum net floor space of 100 sq. metres.

Revised plans indicating these amendments shall be submitted for the written agreement of the Planning Authority within 3 months of the date of this permission.

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

4. The range of materials and products sold on site shall be restricted to materials and products ancillary to or a by product of the main use of the site as a timber processing facility or those directly related to agriculture. Permitted products and materials shall include finished timber products and related products such as garden furniture, outdoor play equipment, gate hardware, wood paints and treatments, screws / bolts etc. Products directly connected with supplies for agriculture including feed, livestock equipment and electric fence equipment are also permitted. Other products comprising hardware products (power tools, garden products, piping, sand, gravel electrical and plumbing supplies), clothing, children's toys and dog food / dog accessories and liquid fuel are not permitted.

Clarification regarding the range of products sold on the site will be submitted for the written agreement of the Planning Authority within 1 months of the date of this permission and all products that are not permitted shall be removed within from the site within a further 3 months from that date.

Reason: In the interests of residential amenity and protection of existing retail centres.

5. Deliveries to the site shall only be limited to between 08.00 hours and 18.00 hours Monday to Friday, and between 08.00 hours and 13.00 hours on Saturday. No deliveries shall take place on Sundays or bank or public holidays.

Reason: In the interest of residential amenity and orderly development.

6. The retail element of the operations on site shall not open outside of 08.00 hours and 18.00 hours Monday to Sunday inclusive.

Reason: In the interest of residential amenity and orderly development.

7. Construction on site shall be limited to between 08.00 hours and 18.00 hours Monday to Friday, and between 08.00 hours and 13.00 hours on Saturday. No work shall take place on Sundays or bank or public holidays.

Reason: In the interest of residential amenity and orderly development.

8. The circulation area for HGV's as indicated on the Site Layout Plan received by the Planning Authority on 15th January, 2013 shall be kept free from materials and products.

Reason: In the interest of traffic safety and to ensure the safe movement of vehicles within the site.

9. The following shall be complied with in the development:

- (a) Treated effluent from the septic tank system shall be discharged to a raised percolation area which shall be provided in accordance with the standards set out in "Wastewater Treatment Manual – Treatment Systems for Single Houses" – Environmental Protection Agency (current edition).
- (b) Within three months of the installation of the new percolation area, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the raised percolation area is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

10. The landscaping scheme shown on drg no. 12-005-001, as submitted to the planning authority on the 13th day of January, 2013 shall be carried out within the first planting season following substantial completion of external construction works. In addition to the proposals in the submitted scheme, the following shall be carried out:

- (a) The relocated roadside fencing shall be backplanted with a hedgerow of indigenous species to be relocated a minimum of one metre behind the relocated roadside fence.
- (b) A second row whitethorn hedging shall be planted along the full eastern boundary of the site.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interests of residential and visual amenity.

Stephen Kay
Inspectorate
15th July, 2013